



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Oversee
the Resource Adequacy Program,
Consider Program Refinements, and
Establish Annual Local Procurement
Obligations

R.09-10-032
(Filed October 29, 2009)

**COMMENTS OF J.P. MORGAN VENTURES ENERGY CORPORATION AND
BE CA LLC ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE
GAMSON ADOPTING LOCAL PROCUREMENT OBLIGATIONS FOR 2011
AND FURTHER REFINING THE RESOURCE ADEQUACY PROGRAM**

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June 14, 2010

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J.P. Morgan Ventures Energy Corporation (“JPMVEC”) and BE CA LLC (“BE CA”) and together with JPMVEC, “J.P. Morgan”) respectfully file comments on the proposed decision of Administrative Law Judge (“ALJ”) David Gamson Adopting Local Procurement Obligations For 2011 And Further Refining The Resource Adequacy Program (“Proposed Decision”), issued May 25, 2010, in the above-captioned proceeding.

I. COMMUNICATIONS

Service of notices, orders, and other communications and correspondence in this proceeding should be directed to J.P. Morgan’s counsel and representative at the addresses set forth below:

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II. COMMENTS

a. J.P. Morgan Supports The Proposed Decision’s Recommendation To Increase The Resource Adequacy Deficiency Penalty

J.P. Morgan supports the recommendation in the Proposed Decision to reset and rebalance the existing Resource Adequacy (“RA”) deficiency penalty structure. As noted in the proposed decision, Load Serving Entities (“LSEs”) that fail to procure sufficient system RA capacity are currently subject to a penalty equal to three-hundred percent (300%) of the purported Cost-of-New Entry (“CONE”) of \$40/kW-year (\$3.33/kW-month) and LSEs that fail to procure sufficient local RA capacity are subject to a penalty equal to one-hundred percent (100%) of CONE. The Proposed Decision proposes to modify the RA penalty structure as follows:¹

	Small Procurement Deficiency	System Procurement Deficiency	Local Procurement Deficiency
Replaced within five business days of date of notification	\$1,500 first incident in calendar year; \$3,000 for each incident thereafter in a calendar year	\$3.33/kW-month	\$3.33/kW-month
Replaced after five business days of date of notification or not replaced	LSE pays the applicable System or Local RA penalty for the deficiency	\$6.66/kW-month	\$6.66/kW-month

The Proposed Decision states that:

A problem with the existing penalty structure is that it provides no guidance as to what happens if the LSE does not replace capacity within

¹ Proposed Decision at 50.

the specified number of business days after notification. While it is important for capacity to be replaced quickly, the LSE may choose not to do so. For example, an LSE may find it to be less expensive to pay the penalty than to fix the procurement deficiency. Therefore, it is appropriate to both provide an incentive for timely replacement and to provide a clear and increased penalty if this does not occur. The adopted new penalty structure meets both of these objectives.²

J.P. Morgan agrees with this rationale and supports the recommendation in the proposed decision to increase the penalty rate for local procurement deficiencies. However, as discussed further below, J.P. Morgan continues to recommend that the penalty rate for local procurement deficiencies be set at a level higher than that for system procurement deficiencies.

b. J.P. Morgan Recommends That The Penalty Rate For Local Procurement Deficiencies Be Set Higher Than That For System Procurement Deficiencies

In its earlier comments in this proceeding, J.P. Morgan recommended that the CPUC appropriately balance the RA deficiency penalty structure to reflect the fact that local RA procurement deficiencies are of greater importance - from a reliability perspective - than system RA procurement deficiencies.³ J.P. Morgan supported Energy Division staff's proposal to, among other things, set the penalty rate at \$9.99/kW-month for local procurement deficiencies not replaced within five business days and at \$6.66/kW-month for system procurement deficiencies not replaced with five business days. J.P. Morgan stated that the existing penalty structure, where system RA deficiency penalty is set at 300% of CONE but the local RA deficiency penalty rate is set at 100% of

² Proposed Decision at 50-51.

³ Comments and Motion of J.P. Morgan Ventures Energy Corporation and BE CA LLC For Party Status, filed March 12, 2010, in Docket No. R.09-10-032, at 3.

CONE, is confounding and that Staff's proposal better reflects the value of local RA versus system RA.⁴

The Proposed Decision incorrectly finds that the penalty levels for system and local procurement deficiencies should be set at the same level. The Proposed Decision states that:

The adopted levels also simplify both proposals by equalizing penalty levels for local and system procurement deficiencies. This is done because there is disagreement among parties as to whether local or system procurement deficiencies should have higher penalties; with no clear answer to that question, we will simply equalize penalty levels for all deficiencies.⁵

J.P. Morgan disagrees with the finding in the Proposed Decision that there is “no clear answer” to the question whether local or system procurement deficiencies have higher penalties. To the contrary, satisfaction of local RA requirements is critical to maintaining reliable operation of the system. Unlike system RA, which can be provided by any number of resources located in or out of state, local RA can only be satisfied by resources located within certain defined areas of the system. The Commission acknowledged the unique and important nature of local RA in D.06-06-064, where it stated that “...a year-long procurement obligation should provide assurance of revenue adequacy *to those units that are most needed to ensure the reliability of the CAISO grid . . .*”⁶ Furthermore, that both the Commission as well as the CAISO place greater importance on ensuring that LSEs satisfy their local procurement obligations, rather than system RA obligations, is evidenced by the fact that: (1) while the CAISO generally defers to each local regulatory authority, including the Commission, to establish their own system RA requirements, the

⁴ Id.

⁵ Proposed Decision at 51.

⁶ See Commission Opinion on Local Resource Adequacy Requirements, D. 06-06-064 , issued June 29, 2006, at 38-42 (emphasis added).

CAISO is specific with respect to the local RA requirements that must be satisfied in order to support reliable grid operation;⁷ (2) the Commission and CAISO require that LSEs demonstrate in their year-ahead RA compliance showings that they have satisfied 100% of their local procurement obligations, whereas they permit LSEs to fill their residual system RA procurement obligations during each month of the compliance year;⁸ (3) the CAISO's Standard Capacity Product unit substitution rules are much more stringent with respect to the ability of a supplier to replace a local resource than that of a system resource;⁹ and (4) while RA price information is generally not publicly available, in 2008, Commission staff reported that:

CPUC staff observations of CPUC jurisdictional LSE capacity procurement indicate that Local RA capacity is generally transacting in a \$20 to \$45 per kw year price range, depending on the economics of the specific local area; while capacity used to fulfill system-wide RA requirements is generally transacting in the \$15 to \$25 per kw year price range.¹⁰

As indicated by the above evidence, including the limited price information available, the importance and value of local RA resources is greater than that of system RA resources and thus the penalty prices associated with procurement deficiencies should likewise reflect that important difference.

To address this issue, J.P. Morgan recommends that the Commission instead adopt a penalty structure similar to that proposed by Energy Division staff and summarized above. Specifically, J.P. Morgan recommends that the penalty price for a

⁷ CAISO Tariff at Sections 40.2.2.1(a) and 40.3, posted at <http://www.caiso.com/27af/27afdde4c020.pdf>

⁸ See CPUC *Revised 2010 Filing Guide for System and Local Resource Adequacy (RA) Compliance Filings* at 3, posted at http://www.cpuc.ca.gov/PUC/energy/Procurement/RA/ra_compliance_materials.htm and CAISO Tariff at Section 40.2.3.4, posted at <http://www.caiso.com/27af/27afdde4c020.pdf>

⁹ See CAISO Tariff at Section 40.9.4.2.1(1), posted at <http://www.caiso.com/27af/27afdde4c020.pdf>

¹⁰ See CPUC memorandum, "CPUC Comments on "Draft Proposal to Board of Governors" posted on December 14, 2007," at p.5, available at <http://www.caiso.com/1f4a/1f4a9d984ad20.pdf>.

local RA procurement deficiency not replaced within five business days of notice be set at \$9.99/kW-month and the penalty price for a system RA procurement deficiency not replaced within five business days of notice be set at \$6.66/kW-month.

c. J.P. Morgan Supports The Proposed Decision's Finding That The Existing Local Resource Adequacy Waiver Process Should Not Be Modified

The Proposed Decision states that:

Additionally, we reject the alternative RA penalty proposal to change the local waiver process and requirements. Historically, the local waiver only has been applied for a total of two times. It has been approved one of those two times. The rejection of the other application was due to the LSE not meeting the established criterion. During this proceeding, the Energy Division published both the letter approving the waiver and the resolution denying the waiver on its website, as requested by parties. This was done to provide parties with the transparency and more certainty around the waiver process. Given the historical background surrounding the local waiver, we feel there is no need to add any additionally language to the rules surrounding its process.¹¹

J.P. Morgan supports the Proposed Decision's recommendation not to change the existing waiver process, as established in D.06-06-064.¹² As stated in its previous comments, J.P. Morgan has significant concerns with the Joint Parties' proposal to modify the existing local RA waiver process requirements.¹³ J.P. Morgan expressed concern that the Joint Parties' proposal would eliminate any opportunity for a thorough review of the circumstances that gave rise to the waiver request while effectively establishing the \$40/kW-yr waiver trigger price as a "hard cap", i.e., automatically granting a waiver request upon receipt of bids for local capacity in excess of the waiver

¹¹ Proposed Decision at 52.

¹² Proposed Decision at 48-49 and D.06-06-064 at 72-73.

¹³ Comments and Motion of J.P. Morgan Ventures Energy Corporation and BE CA LLC For Party Status, filed March 12, 2010, in Docket No. R.09-10-032, at 4.

trigger price.¹⁴ J.P. Morgan therefore supports the Proposed Decision’s recommendation not to change the existing waiver process.

d. J.P. Morgan Recommends Aligning The RA Penalty Price And The Waiver Trigger Price

As summarized above, the Proposed Decision recommends that the RA penalty be increased to \$6.66/kW-month for both system and local RA procurement deficiencies not replaced within five business days of notification. However, the RA waiver trigger price remains at \$40/kW-year or \$3.33/kW-month. While J.P. Morgan recognizes that the level of the waiver trigger price was not at issue in Phase 1 of the RA proceeding, J.P. Morgan is concerned that having a different RA penalty price and waiver trigger price could create an incentive for LSEs to pursue a waiver of their RA obligations rather than satisfy their procurement obligations. In order to establish appropriate incentives for LSEs to pursue timely satisfaction of their procurement obligations, J.P. Morgan recommends that the RA penalty price and waiver trigger price be set at the same level - \$6.66/kW-month.

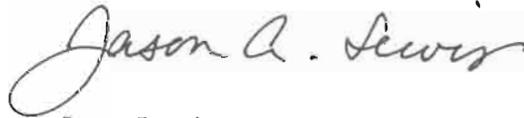
Finally, J.P. Morgan understands that the level of the waiver trigger price is inherently linked to the policy issues under consideration in the CAISO’s upcoming process to reconsider the structure of its Interim Capacity Procurement Mechanism (“ICPM”) and the price for CAISO backstop capacity. The CAISO process is expected to conclude by the end of this year. J.P. Morgan recommends that either the Commission address the waiver trigger price level in this decision or explicitly consider the issue as part of Phase 2 of this proceeding and in parallel with the CAISO’s ICPM process.

¹⁴ Id at 4-5.

IV. CONCLUSION

J.P. Morgan respectfully requests that the Commission consider the above comments when issuing a final decision in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jason A. Lewis". The signature is written in black ink on a white background.

Jason Lewis

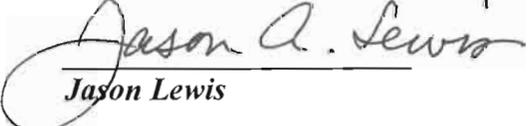
Attorney for J.P. Morgan

June 14, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *Comments of J.P. Morgan Ventures Energy Corporation and BE CA LLC on Proposed Decision of Administrative Law Judge Gamson Adopting Local Procurement Obligations for 2011 and Further Refining The Resource Adequacy Program* on all parties of record in *R.09-10-032* by serving an electronic copy on their email addresses of record and, for those parties without an email address of record, by mailing a properly addressed copy by first-class mail with postage prepaid to each party on the Commission's official service list for this proceeding.

This Certificate of Service is executed on June 14, 2010, at New York, New York.


Jason Lewis

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