BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED
10-01-10
04:59 PM

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.	Rulemaking 10-05-006 (Filed May 6, 2010)

COMMENTS OF L. JAN REID ON SENATE BILL 695

I. Introduction

Pursuant to the September 14, 2010 Ruling (Ruling) issued by Administrative Law Judge (ALJ) Victoria Kolakowski, I submit these comments on the effect of Senate Bill 695 (SB 695) on the Commission's previously adopted Cost Allocation Mechanism (CAM). In the Ruling, comments were due on September 24 and reply comments were due on October 1. On September 20, ALJ Kolakowski sent an email to the service list which changed the deadlines for comments and reply comments to October 1 and October 8, respectively. I will file this pleading electronically on Friday, October 1.

The Ruling requested that parties answer six questions concerning SB 695 and the CAM.[1] My answers to these questions are given in Section V below.

II. Recommendations

I have relied on past Commission decisions, state law, and information provided by the Investor Owned Utilities (IOUs) in developing recommendations concerning the CAM.

[1] SB 695 adds section 365.1 to the Public Utilities Code.

I recommend the following:[2]

1. The Commission should not consider Pacific Gas and Electric Company's (PG&E's) opening brief in Application (A.) 09-09-021 in the instant rulemaking. (Section III, p. 4)
2. The Commission should issue a decision which modifies the two previous CAM Decisions (D.), 06-06-029 and 07-09-044. (Section V.A, p. 9)
3. The Commission should find that IOUs can recover the net capacity costs of Utility Owned Generation (UOG) via a non-bypassable charge if the Commission finds that the UOG benefits all customers in a utility's service territory, regardless of whether the UOG is approved for system reliability or local reliability purposes. (Section V.A, pp. 8-9)
4. The Commission should state that it will determine whether or not a proposed generation resource is eligible for CAM treatment at the time a utility files an application for Commission approval of the generation resource. (Section V.A, pp. 8-9)
5. In the context of SB 695, the Commission should find that "all customers" means any individual, business, or institution (entity) which receives electricity service in the state of California from an electrical corporation, regardless of whether or not that entity is a customer of an IOU. (Section V.B, p. 10)
6. The Commission should grant authorization in this proceeding to allow utility-owned generation to be eligible for CAM treatment. (Section V.A, pp. 8-9)
7. When it files its application for Commission approval of the UOG, the IOU must state whether or not it seeks CAM treatment for the generation resource. (Section V.A, pp. 8-9)
8. If an IOU seeks CAM treatment for any generation resource, whether UOG or Purchased Power Agreement (PPA), the IOU should be required to show that the resource benefits all customers in an IOU's distribution service territory. The Commission should require that the IOU should make this showing at the time it files its application for approval of the resource. (Section V.A, pp. 8-9)

---

[2] Citations to these comments are given in parenthesis at the end of each recommendation and finding.

9. The Commission should modify the existing energy auction system rather than attempt to design an entirely new system. (Section V.E, pp. 11-12)

My recommendations are based on the following reasoning.

1. Pursuant to Rule 8.2(k) of The Commission's Rules of Practice and Procedure and PU § 1701.3(e) the Commission must make its decisions based on the evidence of record. (Section III, p. 4)
2. A.09-09-021 is not part of the record of this proceeding. (Section III, p. 4)
3. At its option, the Commission may use a method other than an energy auction to determine the net capacity costs. (Section V.A, p. 8)
4. If the Commission authorizes or orders an IOU to build or buy utility-owned generation (UOG) and that UOG is used for the benefit of all customers in the IOU's distribution service territory, then the net capacity costs are non-bypassable. (Section V.A, pp. 8-9)
5. Some of the IOUs or Load Serving Entities (LSEs) may sell power to LSEs, Community Choice Aggregators (CCAs), or Public Owned Utilities (POUs), who in turn supply electricity to their customers. (Section V.B, p. 10)
6. The energy auction system appears to be working well and seems to be accomplishing the goals envisioned by the Commission and the Settling Parties. (Section V.E, pp. 11-12)
7. The energy auction apparently continues to have broad support from a diverse group of parties. (Section V.E, pp. 11-12)
8. No party has filed an application for rehearing or a petition for modification of the energy auction system created by the Commission in D.07-09-044. (Section V.E, p. 12)
9. In their comments on the scoping memo, parties have disagreed on the cost allocation rules, not on the energy auction mechanism. (Section V.E, p. 12)
10. The energy auction has the advantage of being a market-based system rather than a system based on a fundamental model which may or may not be correct. (Section V.E, p. 12)
11. The Commission and parties have limited resources which should not be spent attempting to design a new system to value the net cost of capacity. (Section V.E, p. 12)

III. Legal Requirements

The Ruling referred to PG&E's Opening Brief in A. 09-09-021 and stated that "At least one IOU has interpreted Section 365.1(c)(2)(A) and (B) as a way to allocate the net capacity costs of new utility-own generation on a non-bypassable basis." (Ruling, pp. 4-5 and footnote 7, p. 5)

Public Utilities Code (PU) § 1701.3(e) states that "The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision based on evidence in the record." Referring to ex-parte requirements, the Commission states that "The Commission shall render its decision based on the evidence of record." (The Commission's Rules of Practice and Procedure, Rule (Rule) 8.2(k)) The intent of PU § 1701.3(e) and Rule 8.2(k) is clear. The Commission must make its' decisions based on the evidence of record.

A.09-09-021 is not part of the record of this proceeding. Therefore, the Commission should not consider PG&E's opening brief in A.09-09-021 in the Commission's deliberations in the instant rulemaking.

IV. The CAM Process

The Commission initially established the CAM in D. 06-07-029 and modified the CAM in D.07-09-044. In 2007, the Commission adopted all provisions of the Joint Settlement Agreement (Settlement Agreement/ Settlement) presented by Settling Parties outlining Principles for the process and products to be included in the energy auction established by the Commission in Decision (D.) 06-07-029, except for two specific clarifications of the Settlement's proposed allocation of resource adequacy (RA) capacity (Section VIII.A.2) and several other general clarifications." (D.07-09-044, slip op at 1) I was an active participant in the Settlement as a representative of Aglet Consumer Alliance, one of the Settling Parties.

Key elements of the CAM as established by D.06-07-029 and modified by D.07-09-044 are given below:

1. The Commission designated the IOU as the entity to procure new generation within an IOU's distribution service territory, with the costs and benefits associated with development of these new resources allocated to benefiting customers.[3] (D.06-07-029, slip op. at 26)
2. The LSEs in the IOU's service territory will be allocated rights to the capacity that can be applied toward each LSE's Resource Adequacy Reliability (RAR) requirements. The LSEs' customers receiving the benefit of this additional capacity pay only for the net cost of this capacity, determined as a net of the total cost of the contract minus the energy revenues associated with dispatch of the contract. (D.06-07-029, slip op. at 26)
3. The Commission's Energy Division is responsible for allocating RA capacity based on the Net Qualifying Capacity (NQC). (D.07-09-044, slip op. at 5-6)
4. New generation approved by the Commission and eligible for the cost allocation mechanism will receive cost recovery for a period of up to 10 years. The maximum term of any cost paid by all customers is limited to the term of the contract, or 10 years, which ever is less, from the time that the new unit comes online. (D.06-07-029, slip op. at 27)
5. The administrative cost of selecting the contract (i.e., the procurement administrative costs for contract negotiation and selection) will be born by only the bundled customers. (D.06-07-029, slip op. at 27)
6. As previously determined in D.04-12-048, all currently bundled customers are responsible for any long-term commitments entered into by the IOUs for 10 years, unless otherwise modified by the Commission. (D.06-07-029, slip op. at 27)

---

[3] Benefiting customers are defined as all bundled service customers, Direct Access (DA) customers and CCA customers. Benefiting customers are also other customers who are located within a utility distribution service territory, but take service from a local POU subsequent to the date the new generation goes into service. (D.06-07-029, slip op. at 26, footnote 21)

7. The IOUs are required to administer a competitive solicitation and select new resources for long-term contracts. The IOUs must select an independent evaluator (IE), with approval by the Energy Division, to oversee any competitive Request For Offers (RFO) that produces a contract subject to the cost allocation mechanism. (D.07-09-044, Appendix A, p. 1)
8. Each IOU may fill its new generation need by way of a competitive RFO, which is open to any fuel type or technology from both green sites and repowered brown sites. (D.06-07-029, slip op. at 28)
9. IOUs are encouraged to hold all-source solicitations to select long-term contracts but only new or repowered facilities of any resource type are eligible for the cost allocation mechanism. (D.06-07-029, slip op. at 28)
10. If the utility signs a "hybrid" contract which includes some years of service from an existing unit, and some years of service for a new unit on the same or on a near site—the cost-allocation method only applies to the part of the contract with the new facility. Any part of the contract that uses the existing facility must be paid fully by bundled ratepayers. (D.06-07-029, slip op. at 29)
11. Resources chosen by the IOU that are utility built or utility owned are not eligible for the cost recovery mechanism. (D.06-07-029, slip op. at 29)
12. Each IOU may fill its new generation need with resources that are within or outside of the California Independent System Operator's (CAISO's) identified local reliability areas. If a new unit subject to the cost-allocation mechanism falls within a local area, the local RA counting benefit will go to all LSEs that are paying for the resource. The IOU should justify why any new contract procured on behalf of the entire system does not address local RAR. (D.06-07-029, slip op. at 30)
13. Energy and capacity from any new resources should be unbundled, with the costs and benefits of the RA capacity component socialized to all customers connected to the utility's distribution system, and the costs and benefits of the energy component assigned to those that value the energy the most, as demonstrated through an auction or similar mechanism. (D.06-07-029, slip op. at 30)
14. All auctions shall include a Back-to-Back Toll and a Residual Back-to-Back (BTB) Toll with associated Day-Ahead Unit Contingent Call Options. A third product, Novation, may be offered if the utility elects to do so. (D.07-09-044, slip op. at 7-8)

15. The first energy auction for a new facility should be conducted no later than three months after the start of commercial operation. (D.07-09-044, Appendix A, p. 2)
16. In its pre-bid documents, the utility will specify the date on which it expects to conduct the auction, the bid submission deadline and the manner in which bids are to be submitted. (D.07-09-044, Appendix A, p. 2)
17. At the time it provides the initial pre-bid documents, the utility shall state whether or not it will participate in the Energy Auction and the product(s) on which it intends to bid. (D.07-09-044, Appendix A, p. 2)
18. If the utility elects not to bid on the BTB Toll product, the utility will select with Energy Division approval an independent third party consultant (MVA Consultant) to provide an independent assessment of the market value of the BTB toll for each identified term (e.g., two years). (D.07-09-044, Appendix A, pp. 3-4)
19. The utility shall specify the default and termination provisions in the final bid documents as well as the standard credit and collateral terms. (D.07-09-044, Appendix A, pps. 6, 8, 11, and 14)
20. If a utility voluntarily terminates an Energy Auction Purchase Power Agreement (PPA), the utility will make a termination payment based on the market valuation. (D.07-09-044, Appendix A, pps. 11 and 14)
21. The IOU should charge the benefiting customers the net cost of capacity, determined as a net of the total cost of the contract minus the energy revenues associated with dispatch of the total contract. All RA counting benefits and net costs are spread to the LSEs whose customers are allocated costs based on share of 12-month coincident peak, adjusted on a monthly basis to facilitate load migration. The contract costs paid and RA benefits received by DA (or CCA and muni load) and bundled customers should be based on a share basis equal to the credit share received. (D.06-07-029, slip op. at 31)
22. If an IOU identifies and selects a new power plant project outside of a competitive solicitation, i.e., through a "unique fleeting opportunity" ("UFO") such as Mountainview or Contra Costa 8, that "UFO" is ineligible to be considered for cost-allocation treatment. (D.06-07-029, slip op. at 33)
23. LSEs will not be allowed to opt-out of the CAM. (D.06-07-029, slip op. at 35)

24. POU customers are not subject to the CAM, unless the customer is subject to D.04-12-048, as modified by D.05-12-022. (D.06-07-029, slip op. at 48)
25. Cogeneration is not exempt from departing load charges. (D.06-07-029, Finding of Fact 35, slip op. at 59)

V. ALJ Kolakowski's Questions

ALJ Kolakowksi has requested that parties address the six questions listed on pages 5-6 of the Ruling. I respond to these questions, below.

A. Question 1

How should the CAM process adopted in D.06-07-029 and D.07-09-044 be modified or refined to comply with SB 695?

At its option, the Commission may use a method other than an energy auction to determine the net capacity costs. In part, PU § 365.1(c)(2)(B) states that "An energy auction shall not be required as a condition for applying this allocation, but may be allowed as a means to establish the energy and ancillary services value of the resource for purposes of determining the net costs of capacity to be recovered from customers pursuant to this paragraph, and the allocation of the net capacity costs of contracts with third parties shall be allowed for the terms of those contracts."

As mentioned above (Section IV, Item 11), resources chosen by the IOU that are utility-built or utility-owned were initially not eligible for the cost recovery mechanism. (D.06-07-029, slip op. at 29) This prohibition was changed by the passage of SB 695.

State law now requires that "in the event that the commission authorizes, in the situation of a contract with a third party, or orders, in the situation of utility-owned generation, an electrical corporation to obtain generation resources that the commission determines are needed to meet system or local area

reliability needs for the benefit of all customers in the electrical corporation's distribution service territory, the net capacity costs of those generation resources are allocated on a fully nonbypassable basis consistent with departing load provisions as determined by the commission" . . . (PU § 365.1(c)(2)(A))

Thus, if the Commission authorizes or orders an IOU to build or buy utility-owned generation (UOG) and that UOG is used for the benefit of all customers in the IOU's distribution service territory, then the net capacity costs are non-bypassable.

The Commission should address at least one policy issue (generation for local area reliability) related to SB 695. SB 695 allows generation for local area reliability purposes to be included in the CAM system. However, SB 695 also requires that UOG and PPAs must benefit all customers in an IOU's distribution service territory. I note that a local area is a subset of the distribution service territory.

Therefore, I recommend the following:

1. The Commission should issue a decision which modifies the two previous CAM decisions, D.06-06-029 and D.07-09-044.
2. The decision should state that IOUs can recover the net capacity costs of UOG via a non-bypassable charge if the Commission finds that the UOG benefits all customers in a utility's service territory, regardless of whether the UOG is approved for system reliability or local reliability purposes.
3. The decision should state that the Commission will determine whether or not a proposed generation resource is eligible for CAM treatment at the time a utility files an application for Commission approval of the generation resource.

B. Question 2

How should the Commission interpret and define the term "all customers" in the context of SB 695 and existing procurement rules?

Some of the IOUs or LSEs may sell power to LSEs, CCAs, or POUs, who in turn supply electricity to their customers. In this instance, the Commission should interpret "all customers" to mean any individual, business, or institution (entities) which receives electricity service in the state of California from an electrical corporation, regardless of whether or not that entity is a customer of an IOU.

C. Question 3

Pursuant to Section 365.1(c)(2)(A), should the Commission grant authorization in this proceeding to allow utility-owned generation be eligible for CAM treatment?

Yes. The Commission should grant authorization in this proceeding to allow utility-owned generation to be eligible for CAM treatment. I discuss this issued in more detail in Section V.A, above.

D. Question 4

What criteria and factors should the Commission consider when determining whether to allow utility-owned generation to be eligible for the CAM?

When it files its application for Commission approval of the UOG, the IOU must state whether or not it seeks CAM treatment for the generation resource. If the IOU seeks CAM treatment for the resource, the IOU should be required to show that the resource benefits all customers in an IOU's distribution service territory. The Commission should require that the IOU should make this showing at the time it files its application for approval of the UOG resource. I discuss this issue in more detail in Section V.A.

E. Question 5

How should the Commission interpret Section 365.1(c)(2)(B) which provides that "an energy auction shall not be required" but "may be allowed as a means to establish the energy and ancillary services value of the resources for the purposes of determining the net costs of capacity . . . ?

At its option, the Commission may use a method other than an energy auction to determine the net capacity costs. In part, PU § 365.1(c)(2)(B) states that "An energy auction shall not be required as a condition for applying this allocation, but may be allowed as a means to establish the energy and ancillary services value of the resource for purposes of determining the net costs of capacity to be recovered from customers pursuant to this paragraph, and the allocation of the net capacity costs of contracts with third parties shall be allowed for the terms of those contracts."

However, I would caution the Commission against attempting to set up an alternative mechanism for determining the net cost of capacity. As mentioned previously, the current CAM mechanism was established in 2007 and is the product of an unopposed settlement between twelve parties. At that time, the Commission pointed out that: (D.07-09-044, slip op. at 4)

> The parties have engaged in almost twenty negotiating sessions, either face-to-face or telephonic, and have exchanged detailed draft proposals. As a result of these intensive mediation efforts, SCE; SDG&E; PG&E; Constellation; WPTF; DRA; Aglet; J. Aron & Company; TURN; Mirant; AReM; and Barclay's Bank, PLC (Settling Parties) reached a settlement regarding principles for the process and products for the energy auction.

The energy auction system appears to be working well and seems to be accomplishing the goals envisioned by the Commission and the Settling Parties. The energy auction apparently continues to have broad support from a diverse

group of parties. I note that no party has filed an application for rehearing or a petition for modification of the energy auction system created by the Commission in D.07-09-044.[4]

ALJ Kolakowski has noted that "parties have expressed diverging opinions on how existing cost allocation rules should be modified or refined to comply with SB 695 as part of this proceeding." (Ruling, p. 5) Parties have disagreed on the cost allocation rules, not on the energy auction mechanism. Although a number of parties have suggested that the CAM system be changed (e.g., the inclusion of an opt-out mechanism), I am unaware of any party who has suggested that the energy auction mechanism be eliminated.

Additionally, the energy auction has the advantage of being a market-based system rather than a system based on a fundamental model which may or may not be correct.

The Commission and parties have limited resources which should not be spent attempting to design a new system to value the net cost of capacity. We already have a system which works. Some parties may believe that the current system needs to be modified. It will be easier for the Commission to modify the existing system than to establish another long process whose benefits are unproven. Therefore, I recommend that the Commission modify the existing energy auction system rather than attempt to design an entirely new system.

---

[4] Southern California Edison filed a Petition to Modify (PTM) of D.06-07-029. Merced Irrigation and Modesto Irrigation filed an application for rehearing of D.06-07-029. The Commission denied both the PTM and the application for rehearing in D.07-06-022 and D.07-11-051, respectively.

F. Question 6

Aside from an energy auction, what are alternative mechanisms that can be used to determine the net cost of capacity?

If appropriate, the Commission should modify the energy auction system rather than create a new mechanism. Therefore, I am not proposing an alternative mechanism at this time.

X. Conclusion

For the reasons given herein, the Commission should adopt the recommendations that I have proposed for the reasons given herein. The Commission should allow a reasonable time for additional comments and reply comments, followed by evidentiary hearings on contested issues. If hearings are held, I will participate fully in the hearings.

* * *

Dated October 1, 2010, at Santa Cruz, California.

/s/

L. Jan Reid
3185 Gross Road
Santa Cruz, CA 95062
Tel/FAX (831) 476-5700
janreid@coastecon.com

VERIFICATION

I, L. Jan Reid, make this verification on my behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated October 1, 2010, at Santa Cruz, California.

/s/

L. Jan Reid
3185 Gross Road
Santa Cruz, CA 95062
Tel/FAX (831) 476-5700
janreid@coastecon.com

CERTIFICATE OF SERVICE

I certify that I have this day by electronic mail served a true copy of the original attached "Comments of L. Jan Reid on Senate Bill 695" on all parties of record in this proceeding or their attorneys of record. I will serve a paper copy of the pleading on Commissioner Michael Peevey, and on Administrative Law Judge Victoria Kolakowski.

Dated October 1, 2010, at Santa Cruz, California.

/s/

L. Jan Reid