



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

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Order Instituting Rulemaking to Oversee the)
Resource Adequacy Program, Consider) R.09-10-032
Program Refinements, and Establish) (Filed October 29, 2009)
Annual Local Procurement Obligations)

**COMMENTS OF
DYNEGY MORRO BAY, LLC, DYNEGY MOSS LANDING, LLC, AND
DYNEGY OAKLAND, LLC ON PHASE 2 PROPOSALS**

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February 8, 2011

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Pursuant to Rule 6.3 of the Commission’s Rules of Practice and Procedure and Administrative Law Judge David Gamson’s January 10, 2011, Ruling Revising Comment Schedule and Adding Energy Division Proposals Into the Record, Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC, and Dynegy Oakland, LLC (collectively, “Dynegy”) submits these comments on Phase 2 Proposals in the above-captioned proceeding.

I. Introduction

On November 30, 2010, the following parties provided comments on Phase 2 issues: the Alliance for Retail Energy Markets (“AReM”); the California Independent System Operator Corporation (“CAISO”); the California Large Energy Consumers Association (“CLECA”); Energy Division staff (“ED”); ENERNOC, Inc. (“ENERNOC”); the Independent Energy Producers Association (“IEPA”); Pacific Gas & Electric Company (“PG&E”); Southern California Edison Company (“SCE”); and San

Diego Gas & Electric Company (“SDG&E”). Dynegy will refer to their comments by their acronyms.

Additionally, three parties submitted motions to add issues to the scope of issues set forth for Phase 2. The CAISO submitted a motion to add a proposal for the procurement of non-generic capacity through the Resource Adequacy (“RA”) program (“CAISO Motion”), SCE submitted a motion to reevaluate how Path 26 capacity is allocated, and to reevaluate how resources coming on-line in the compliance year are allowed to count towards meeting the RA requirements in that compliance year. AReM submitted a motion to implement LSE-specific coincident load adjustment factors. Dynegy does not object to adding these issues to the scope of Phase 2.

II. Summary

Dynegy’s comments on Phase 2 issues:

- Support PG&E’s proposal to review how Net Qualifying Capacity (“NQC”) is determined for new wind and solar resources, *if* that review would also include an evaluation of how NQC is determined for existing variable resources;
- Object to transferring the obligation to replace capacity on scheduled outage from the RA buyer to the RA seller and support SCE’s proposal to eliminate the replacement obligation in favor of adding a planned outage adjustment;
- Support further discussion of the CAISO’s proposal to procure non-generic capacity through the RA program;

- Offer an alternative to Energy Division’s proposal to continue aggregation of the PG&E local capacity areas;
- Offer an alternative to SDG&E’s proposal to move from annual local capacity requirements to monthly or seasonal requirements; and
- Support IEPA’s proposal to revisit the \$40/kW year trigger for waivers of penalties for failing to procure local RA capacity.

At this time, Dynegy takes no position on those proposals on which it does not comment.

III. Comments

a. PG&E’s proposal regarding NQC values for new solar resources

PG&E’s comments express concern that using the historical profiles of the current wind and solar fleet to determine the NQC of new wind and solar resources is inappropriate.¹ More specifically, and as discussed at the January 25, 2011, workshop, PG&E is concerned that using historical values from the current solar fleet, of which natural-gas assisted solar thermal resources are a substantial component, to derive NQC values for new solar resources, a dominant share of which are expected to be photovoltaic resources, will overstate the NQC values for such new resources.

Dynegy agrees with PG&E that historical data from one variable resource technology should not be used to determine the NQC values for a different variable resource technology. However, the method used to determine NQC values for new variable resources should not be revised without a comprehensive re-examination of the methods used to determine the NQC value for all variable resources. Observation of

¹ Proposals of Pacific Gas & Electric Company (U39E) on the Phase 2 Issues, November 30, 2010, (“PG&E Comments”) at 8-9.

demand and wind resource production for several 2010 super-peak days, particularly August 25, September 28 and September 29, reveal that the current method for determining NQC values for variable resources (applying a 70% exceedence threshold to three years of same-month peak-hour data) still significantly overstates the dependable capability of wind resources on super-peak days when demand is driven up by hot, stationary high-pressure weather systems. Dynegy would support adding the issue of determining variable resource NQC to Phase 2, especially if the scope of that issue spanned both new and existing resources. However, Dynegy acknowledges that the determination of variable resource NQC was a contentious issue before and is likely to be again, and so the prospects for arriving at a consensus proposal for modifying the method for determining variable resource NQC is unlikely. If the Commission does not take up the issue of methods to determine new and existing variable resource NQC in Phase 2 of this proceeding, Dynegy respectfully urges that it be addressed in the next RA proceeding.

b. Proposals regarding the scheduled outage replacement rule

Several parties have advanced proposals regarding the current rule that RA buyers must replace RA capacity on scheduled outage.

AReM proposes to transfer the obligation for RA buyers to replace RA capacity on scheduled outage to the sellers of RA capacity.² According to AReM, this transfer is required to catalyze the development of a truly commercially-viable standard capacity RA product. AReM asserts that RA sellers should take on this obligation because the RA sellers, not the RA buyers, have the information and expertise needed to manage

² Phase 2 Proposals of the Alliance for Retail Energy Markets, November 30, 2010, (“AReM Comments”) at 2-3.

scheduled outage risk. AReM also recommends that the obligation for RA sellers to replace capacity on scheduled outage be codified in the CAISO tariff. For similar reasons, CLECA also proposes that the obligation to replace RA capacity on scheduled outage be transferred to the seller.³

Dynergy opposes simply transferring the obligation to replace RA capacity on scheduled outage from the RA buyer to the RA seller. First, Dynergy does not understand why the requirement for buyers to replace RA capacity on scheduled outage, in and of itself, would be an unassailable impediment to developing a standard RA capacity product. While separately negotiating how buyers and sellers allocate the scheduled outage replacement obligation may be viewed as problematic in creating a standard RA capacity product, that obligation need be separately negotiated between buyer and seller *only if the buyer is trying to transfer that obligation to the seller*. A “standard” RA capacity product could leave that obligation with the RA buyer just as easily as imposing it on the seller.

Additionally, the premise that an RA seller has superior information regarding, and control over, the scheduled outages for their resources is a heroic assumption and insufficient justification to mandate transferring the obligation to replace RA capacity on scheduled outage from buyers to sellers. A “standard” RA capacity contract could easily require the seller to notify the buyer of the times for scheduled outages, thus ensuring that buyers know when RA units will be on scheduled outage. Given that tolling contracts – which effectively transfer control of the RA resource from the seller to the buyer - seem to be the predominant form of RA contract, at least to Dynergy’s understanding, RA

³ Response of the California Large Energy Consumers Association to the Phase 2 Scoping Memo and Ruling of Assigned Commissioner and ALJ Determining the Scope, Schedule, and Need for Hearing, November 30, 2010, (“CLECA Comments”) at 7.

buyers scheduling RA resources to serve their load currently already *must* be intimately familiar with the timing of scheduled outages for the RA units they have under contract. Moreover, given that the vast majority of scheduled supply transactions in the CAISO's day-ahead market are self-schedules,⁴ the expectation that RA buyers are not or need not be aware of scheduled outages for the RA units serving their loads seems profoundly misplaced. If buyers were serving their loads simply by buying out of the CAISO market pool, indifferent to which particular unit was providing that supply, a case could be made for buyers not needing to have this scheduled outage information and for transferring the replacement obligation to sellers. However, the prevalence of self-schedules in the CAISO's markets indicates that RA buyers are *not* indifferent to which units provide supply to meet their demands. Further, there may be other reasons why RA buyers prefer to self-schedule particular resources, including seeking to align day-to-day resource and demand scheduling with allocated Congestion Revenue Rights. In any case, the dominance of RA tolling agreements and self-scheduling in the CAISO markets suggests there is no fundamental reason to assume that suppliers have exclusive control of scheduled outage information, and, on the basis of exclusively having that information, should exclusively own the replacement obligation.

Second, it is not clear how expecting entities who are primarily RA *sellers* to be required to also become RA *buyers* makes the process of procuring replacement capacity any more efficient or cost-effective. The RA process likely will not become more cost-effective if parties who are primarily, if not exclusively, RA sellers are forced to take on

⁴ See, e.g., the CAISO 2009 Annual Report of Market Issues and Performance, Figure 3.6, which indicates that from April 2009 through December 2009, between 65% and 85% of all day-ahead supply transactions were self-scheduled. This report is available at <http://www.caiso.com/2777/27778a322d0f0.pdf>.

the associated business requirements, particularly the credit mechanisms, needed to be able to buy replacement capacity for scheduled outages. Instead, Dynegy agrees with SCE's perspective, expressed in the January 25 workshop, that RA sellers will likely seek a premium to cover both the additional transaction costs of having to procure replacement capacity as well as the risk of not being able to completely control the timing of scheduled outages if they are forced to take on the obligation to replace capacity on scheduled outage. Moreover, contrary to what seems to be a prevailing perspective, RA sellers may not have exclusive control over if and when the scheduled outages take place. RA sellers may depend on contract crews, not their own employees, to perform scheduled maintenance, especially major overhauls. In that case, they cannot simply take scheduled outages at times of their choosing, but must work with the contract crews' availability as a constraint. Fundamentally, even if they do not rely on contract crews for outages, RA sellers do not have exclusive control over the timing of their units' scheduled outages because scheduled outages must be coordinated with the CAISO, which may reject or move a scheduled RA unit outage to meet the reliability needs of the system, including the need for transmission owners to maintain their transmission network under CAISO control. Mandating that suppliers must take on the replacement obligation because they have control over scheduled outage timing overestimates a supplier's ability to control the timing of scheduled outages.

In sum, mandating that RA sellers take on sole responsibility for procuring replacement capacity for RA units on scheduled outages as AReM and CLECA propose is unnecessary for the development of a standard RA contract. Further, if most RA transactions are tolling agreements self-scheduled in the CAISO's markets, the AReM

and CLECA approach overestimates the amount of control RA suppliers have over the timing of scheduled outages.

Energy Division has proposed to retain the current “buyer replace” rule until the CAISO files, and FERC approves, tariff provisions that (1) allow the CAISO to reliability operate the system and coordinate scheduled outages; (2) deny scheduled outages as needed to comply with North American Electric Reliability (“NERC”) and Western Electricity Coordinating Council (“WECC”) standards; (3) relies solely on the CAISO and RA suppliers (not buyers) to coordinate scheduled outages; (4) removes LSEs from the coordination of scheduled outages such that the CPUC would not need to maintain rules to regulate LSE behavior related to the performance of RA units; and (5) create a specific penalty/incentive structure to limit the amount of time RA units are on outage.⁵ Dynegy agrees that the current “buyer replace” rule should be retained until a rule that ensures reliability is implemented. However, as discussed above, it is not necessary (or even possible) to completely relieve RA buyers from any notice or other kinds of obligations related to scheduled outages if RA resources under tolling agreements are going to be self-scheduled by LSEs buyers in the CAISO markets. Additionally, Dynegy questions the wisdom of a penalty structure specifically intended to limit the time RA units are on *scheduled* outage. Such a penalty structure would have to account for the reality that it is necessary for thermal units take major scheduled outages, often lasting for more than a month, typically at two- or three-year intervals. Moreover, such an approach would have to account for the reality that nuclear units must take multi-month

⁵ R. 09-10-032, Phase II - Energy Division Staff Proposals, January 10, 2011 (“Energy Division Proposals”), at 4-5.

refueling outages on a recurring basis. A penalty structure that did not discourage units from taking periodic, prudent scheduled maintenance outages would have to account for these relatively infrequent, but relatively long, outages, and therefore would have to operate over a multi-year horizon. Encouraging RA fleet availability is a reasonable goal, but it must be recognized that a key to ensuring unit availability is to allow units to take scheduled maintenance outages.

SCE has proposed an alternate to transferring the obligation to replace RA capacity on scheduled outage to RA suppliers. SCE's proposal would eliminate the obligation to replace RA capacity on scheduled outage and increase LSEs' RA procurement targets by a "Planned Outage Adjustment" amount.⁶ Dynegy remains skeptical about abandoning the *status quo*, but strongly prefers SCE's proposed alternate to simply transferring the obligation to replace RA capacity on scheduled outage from buyers to sellers. Eliminating the replacement obligation would obviate the alleged need to transfer this obligation to RA suppliers in order to create a "standard" RA product, and increasing the RA procurement targets would ensure the CAISO has sufficient capacity available to it to reasonably allow scheduled outages to take place. Because Dynegy depends on being able to perform scheduled maintenance to ensure the availability of its RA resources, Dynegy would not support simply eliminating the obligation to replace RA capacity on scheduled outage if not having replacement capacity for units on scheduled outages would make it less likely to have the CAISO approve its requests to take scheduled outages. While Dynegy remains skeptical that the obligation to replace RA

⁶ Southern California Edison Company's (U 338-E) Proposals on Phase 2 Issues, November 30, 2010, ("SCE Comments") at 4-5.

capacity on scheduled outage needs to be transferred from buyers to sellers to standardize the RA capacity product, Dynegy supports SCE's proposal as an alternate to doing to.

c. CAISO's motion for consideration of non-generic capacity procurement through the RA program

The CAISO has proposed to modify RA procurement so as to facilitate the procurement of non-generic capacity through the RA program. The CAISO proposes to prepare, by May 1 of each year, both an inventory of the existing resource operational characteristics and an evaluation of the expected operational requirements for the coming RA compliance year based on the RA procurement from the prior RA compliance year. As the CAISO explains, the evaluation of the expected operational requirements would inform LSE procurement for the coming RA compliance year. Next, each November, the CAISO would evaluate the operational characteristics of the RA fleet presented in the RA showings for the next RA compliance year. If the expected operational requirements were not met in the year-ahead showings, LSEs would be required to show in their month-ahead RA filings that they had procured additional capacity with the operational characteristics needed to satisfy the projection of operational need. Finally, the CAISO has proposed that the current RA structure, which mandates that LSEs show the year prior to the compliance year that they have procured 90% of their RA requirements (peak demand plus planning reserve margin) for the upcoming months May through September, be changed to require that LSEs show in the year prior to the compliance year that they have procured capacity to meet the projected operational requirements for the entire next year, not just the period May through September.

Dynegy supports the CAISO’s motion to include this issue in the scope of Phase 2 issues. The increased penetration of renewable resources will have significant implications for operational flexibility and system reliability in all months – implications that cannot be fully addressed by generic capacity requirements that span only the five summer months. The CAISO’s proposal would significantly change the nature and requirements of the RA program and warrants much more in-depth discussion than has been possible to date. As a matter of first impression, Dynegy supports extending the period for all RA obligations, not just local requirements, from the five summer months to a full year. Dynegy supports this not only to recognize the additional operational requirements brought on by variable resources in the non-summer months, but also to better align the current RA program with the economic and operational realities of providing capacity and renewable integration services from long-life fixed assets – assets that cannot reasonably be moved, de-staffed, or expected to subsist on a few monthly capacity contracts and off-peak power prices. Dynegy looks forward to a more detailed discussion of the CAISO’s proposal in Phase 2.

d. Energy Division proposal to continue aggregation of PG&E local areas

Energy Division has proposed to permanently continue the aggregate the six “other” local capacity areas within PG&E’s service area (Humboldt, North Coast/North Bay, Sierra, Stockton, Fresno, and Kern). This aggregation, first established in D.06-06-064, was intended to mitigate market power concerns.

Discussion at the January 18, 2011 workshop helped clarify that the market power concerns related to PG&E’s control of most, if not all, of the resources in these local capacity areas, making it difficult for smaller Electric Service Providers (“ESPs”) to

acquire local capacity in some local areas to meet their allocated share of the local capacity requirements in those areas.

Dynegy is sympathetic to the ESPs' plight. However, it is not realistic nor technically accurate to assume that a MW of capacity procured in Fresno could be used to meet a local capacity obligation in Humboldt. Local capacity requirements are "local" because the capacity need relates to a specific area and cannot be met by capacity located outside that specific area. Moreover, as IEPA noted, the aggregation of the six "other" local PG&E areas has done nothing to address the ongoing capacity deficiencies in some of those areas.⁷ If, as discussed at the January 18 workshop, a conscious decision has been made to not address the capacity deficiencies in some local areas because doing so would be too expensive, then perhaps the Commission should consider waiving the local capacity requirements for LSEs in those particular areas rather than perpetuating the fiction that capacity in one locally constrained area somehow meets the reliability needs of a separate, electrically distant locally constrained area.

e. SDG&E's proposal for monthly or seasonal local capacity requirements

SDG&E has proposed to implement monthly or seasonal local RA requirements in lieu of the current annual local RA requirement.⁸ Per SDG&E, LSEs are required to show all of their local RA resources in their compliance filings, thereby rendering "shown" resources in excess of the local RA requirement as "RA resources." Because these excess resources are considered "RA resources," they are no longer considered "non-RA resources" that could substitute for local RA capacity that may go on forced

⁷ Proposal on Phase 2 Issues of the Independent Energy Producers Association, November 30, 2010, ("IEP Comments") at 3-4.

⁸ San Diego Gas & Electric Company's (U 902 E) Phase 2 Scoping Memo Comments and Proposals, November 30, 2010, ("SDG&E Comments") at 2-3.

outage. Under monthly or seasonal local requirements, an LSE that procured local RA capacity to meet August local RA requirements would likely have excess local RA capacity in other months, allowing them to use that excess local RA capacity to substitute for outages of local RA units in those other months and avoid RA penalties.

If the core issue driving the desire for monthly local RA requirements is the concern about rendering excess “shown” RA resources as unavailable to substitute for other RA resources that may suffer outages, Dynegy is sympathetic to this concern. Procured local resources in excess of the local RA need should not be disqualified from substituting for other local RA resources on outage simply because they were “shown” in a compliance filing.

However, Dynegy is greatly concerned about converting annual requirements to monthly requirements if doing so would create an expectation that generating units should be contracted for only in the months in which they are expected to be needed. Doing so would extend the perceptions that generating units can voluntarily change their business models and practices so that they incur costs only in the months in which they are needed (by laying off staff in the winter months, for example), or that higher heat rate generating units have sufficient energy and ancillary service market opportunities available in the lower demand off-peak months to remain economically viable with only a few monthly RA capacity contracts. These perceptions aside, the reality is that the vast majority of RA capacity comes from long-life fixed assets that incur costs on an annual basis. Deeming such units to be “needed” in the summer months but not “needed” in

other months conveniently ignores that reality, to the perceived benefit of RA buyers but to the detriment of merchant RA suppliers.⁹

Further, as the CAISO notes in its proposal to procure non-generic capacity through the RA program, the need for operational flexibility extends beyond the five summer “RA” months. The CAISO has therefore proposed to extend the RA showing period from the five summer months to the entire year.¹⁰ As discussed in Section c. above, Dynegy supports this proposal to better align RA requirements with the realities of generating unit economics and operation. .

In sum, Dynegy supports allowing excess local capacity shown in an RA compliance filing to be used to substitute for local RA capacity on outage, but strongly opposes changing the annual local RA requirement to monthly or seasonal requirements.

f. IEP’s proposal to revisit the \$40 waiver trigger

IEP has proposed to revisit the \$40/kW-year “trigger” for waivers of penalties for failing to meet local capacity requirements.¹¹ IEP did not propose a specific replacement waiver trigger price, and this issue was not discussed in the workshops.

Dynegy supports IEP’s call to revisit this very stale waiver trigger price. The now nearly five-year-old \$40/kW price was based on a price offered in a Section 206 complaint filed in 2005 and an estimate of net market revenues made prior to the implementation of the CAISO’s nodal market. There is no reason to expect that this old

⁹ Conversely, Investor Owner Utilities recover the costs of the generation they own through customer rates even in months in which such resources may not be “needed” (e.g., the SCE peakers).

¹⁰ Motion of the California Independent System Operator Corporation for Expansion of the Phase 2 Scope to Include a Proposal for Procurement of Non-Generic Capacity Through the Resource Adequacy Program, November 30, 2010, (“CAISO Motion”) at 3, 13.

¹¹ IEP at 4-5.

information now reflects the current net cost of new capacity, which, according to Decision D.06-06-064 (at 67), the waiver trigger price is supposed to reflect.

IV. Conclusion

Dynergy respectfully requests that the Commission take these comments into consideration when issuing a decision in this rulemaking.

Respectfully submitted,

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On behalf of Dynergy Morro Bay LLC, Dynergy Moss Landing LLC, and Dynergy Oakland LLC

February 8, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **COMMENTS OF DYNEGY MORRO BAY, LLC, DYNEGY MOSS LANDING, LLC, AND DYNEGY OAKLAND, LLC ON PHASE 2 PROPOSALS** on all parties identified in R.09-10-032 on the attached service lists by via email to those listed with email and via U.S. mail to those without email service.

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

Dated at Houston, Texas, this 8th day of February, 2011.

/s/ Kathy Fisher
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[TOP OF PAGE](#)
[BACK TO INDEX OF SERVICE LISTS](#)