



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

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Order Instituting Rulemaking to Integrate and Refine
Procurement Policies and Consider Long-Term
Procurement Plans.

R.10-05-006
(Filed May 6, 2010)

**PREHEARING CONFERENCE STATEMENT OF THE
ALLIANCE FOR RETAIL ENERGY MARKETS**

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February 23, 2011

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The Alliance for Retail Energy Markets (“AReM”)¹ respectfully submits this Prehearing Conference Statement, in accordance with the *Administrative Law Judge’s Ruling Modifying System Track I Schedule and Setting Prehearing Conference* (“Ruling”), issued February 10, 2011, which set this date for submission of such statements. The Ruling states that the Prehearing Conference will address, in part, Track III topics that should be included as part of the Track I schedule. As discussed herein, AReM proposes one Track III topic for resolution as part of the Track I schedule and one Track III topic for resolution through settlement negotiations.

I. INCLUDE IN THE TRACK I SCHEDULE THE ISSUE OF DISTINGUISHING “SYSTEM” VERSUS “BUNDLED” RESOURCE NEEDS FOR ALLOCATING COSTS OF NEW GENERATION

The Order Instituting Rulemaking (“OIR”) for this proceeding, Rulemaking (“R.”)10-05-006, which was issued on May 13, 2010, explained that the scope of activity for the previous Long-Term Procurement Planning (“LTPP”) proceeding, R.08-02-007, was never completed. In

¹AReM is a California mutual benefit corporation formed by electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of individual members or affiliates of its members with respect to the issues addressed herein.

particular, the OIR notes that several issues were included within the scope of a planned Phase II, but that “[n]o activity was taken on Phase II.”² The OIR lists the following Phase II issue from R.08-02-007, which was never addressed in that proceeding:

- Consider whether and to what extent refinements to policies distinguishing system versus bundled resource needs, including a methodology that allocates the cost of new generation to system and bundled customers.³

This issue, which is of critical concern to both direct access customers and electric service providers (“ESPs”), was first brought to the Commission’s attention in R.06-12-013. AReM offered testimony in that proceeding supporting the application of the principle of cost causation to procurement of new generation resources by determining whether “system” or ‘bundled’ load growth is driving the need for such resources.⁴ As a result of the testimony offered by AReM in that proceeding, the Commission determined in D.07-12-052 that:

In the next LTPP procurement cycle scoping document, the IOUs and other interested intervenors will be instructed to develop proposals for methodologies for identifying bundled- versus system-driven resource needs...⁵

R.08-02-007 was that next “LTPP procurement cycle” cited in D.07-12-052 and the Rulemaking⁶ and Preliminary Scoping Memo⁷ for R.08-02-007 did indeed include that issue within the scope for the proceeding. Further, the Preliminary Scoping Memo clarified that the issue was included to address “gaps in the Commissions’ rules” regarding “the extent to which utilities can elect the cost allocation mechanism (CAM) for new generation.”⁸ The memo further explained:

² *Order Instituting Rulemaking*, R.10-05-006, May 13, 2010, p. 7.

³ *Ibid*, p. 6.

⁴ See discussion in D.07-12-052, pp. 116-120.

⁵ D.07-12-052, p. 119.

⁶ *Order Instituting Rulemaking*, R.08-02-007, February 20, 2008, pp. 1-2 and 11.

⁷ OIR, R.08-02-007, February 20, 2008, Attachment A, Preliminary Scoping Memo, pp. A-27-A-28.

⁸ OIR, R.08-02-007, Attachment A, Preliminary Scoping Memo, p. A-27.

In other words, [ESP] load may grow at a different rate than bundled load and *there should not be a cross-subsidy between the two.*” (emphasis added)⁹

Specifically, the Commission must evaluate the characteristics of the load served by the utilities versus the characteristics of the load served by the ESPs to determine the different rates at which they grow. The results of that analysis will determine cost causation for new generation and, therefore, provide the foundation needed for a rational and non-discriminatory allocation of those costs.

The Commission should at last fulfill its long-standing promise to address and resolve this issue.¹⁰ AReM believes that resolution of this cost-causation issue fits naturally with the Track I System Resource Plans and the analysis of bundled loads and load growth underway concurrently in Track II. Accordingly, AReM requests the Commission include this Track III issue for resolution on the schedule set forth for Track I in the Ruling.

II. ORDER SETTLEMENT NEGOTIATIONS TO ADDRESS REFINEMENTS TO TIMELINES FOR UTILITIES’ SALES OF EXCESS RESOURCE ADEQUACY PRODUCTS

Track III, Phase 2 includes the topic of refining the timelines of the utilities’ Requests For Offers (“RFOs”) for sales of excess Resource Adequacy (“RA”) products.¹¹ AReM has raised this concern frequently since RA requirements were first imposed in 2005. In particular, AReM has described significant difficulty in obtaining Local RA capacity, especially in Local Areas in which the utilities own or control the vast majority of available capacity. AReM supports the Commission’s insistence that the utilities offer excess RA to the market in time for other load-

⁹ *Ibid.*

¹⁰ AReM initially raised this concern as far back as R.04-04-003 and later filed testimony on this issue in Rulemaking 06-02-013. See, *Comments of the Alliance for Retail Energy Markets on the Assigned Commissioner’s Ruling Regarding Next Steps in Procurement Proceeding*, R.04-04-003, December 12, 2005, p. 7 and *Testimony on Behalf of the Alliance for Retail Energy Markets*, R.06-02-013, March 2, 2007.

¹¹ *Assigned Commissioner and Administrative Law Judge’s Joint Scoping Memo and Ruling*, R.10-05-006, December 3, 2010, p. 45.

serving entities (“LSEs”) to buy to meet their own RA obligations.¹² Additionally, while the utilities may have made RA available, they have at times insisted on overly complex and burdensome price, terms and conditions. Therefore, the Commission should also address the utilities’ asymmetrical negotiating position and direct the utilities to offer their excess RA with commercially reasonable price, terms and conditions. This would increase the availability of Local RA capacity and significantly improve market liquidity.

However, the Track I schedule, if adopted for this Track III issue, would not resolve this issue in time for the next RA compliance cycle, which requires LSEs to submit their 2012 showings by the end of October 2011.¹³ Further, AReM believes that this issue can be amicably resolved if the Commission orders the utilities to come to the negotiating table and work out the details. Therefore, AReM proposes the Commission direct the parties to commence settlement discussions within 30 days and target completion of a settlement agreement within 60 days thereafter in order to be useful for 2012 RA compliance.

III. CONCLUSION

As described in more detail above, AReM respectfully requests that the Commission take the following actions:

- Address the Track III issue of refinements to policies distinguishing system versus bundled resource needs, including a methodology that determines cost causation related to procurement of new generation resources, as part of the Track I schedule.

¹² *Ibid*, and OIR, R.10-05-006, p. 16.

¹³ The Track I schedule in the Ruling has a final decision being issued in December 2011.

- Order settlement negotiations to adopt refinements to timelines of the utilities' RFOs for sales of excess RA to other LSEs to be completed within 90 days in time for 2012 RA compliance.

Respectfully submitted,

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ALLIANCE FOR RETAIL ENERGY MARKETS

February 23, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing ***Prehearing Conference Statement of the Alliance for Retail Energy Markets*** on all parties of record in ***R.10-05-006*** 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, and to the Assigned Commissioner and Administrative Law Judge.

This Certificate of Service is executed on February 23, 2011 at Redwood City, California.

/s/ Susan J. Mara _____
SUSAN J. MARA

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