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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
Revisions to the Planning Reserve Margin for
Reliable and Cost-Effective Electric Service.

Rulemaking 08-04-012
(Filed April 10, 2008)

ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

1. Summary and Notice of Workshops

This ruling and scoping memo determines the issues to be considered in Phases I and II of this proceeding and the procedures and timetable for their resolution. It also addresses notices of intent to claim intervenor compensation.

NOTICE IS HEREBY GIVEN that the Energy Division will convene workshops on October 22 and 23, 2008 in the Commission Office Building, 505 Van Ness Avenue, San Francisco, California 94102. Energy Division will provide information regarding the room, starting and ending times, and agenda.

2. Phasing and Issues to be Considered

2.1 Overview

Prehearing Conference (PHC) statements were filed by the Alliance for Retail Energy Markets, the City and County of San Francisco, the California Large Energy Consumers Association (CLECA), the Division of Ratepayer Advocates (DRA), the Independent Energy Producers Association (IEP), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), Sempra Global, San Diego Gas & Electric Company (SDG&E), The Utility Reform

Network (TURN), and Western Power Trading Forum. A PHC was held in San Francisco on June 2, 2008.

The determinations made in this ruling are informed by the PHC statements as well as the PHC discussions, and are guided by the Order Instituting Rulemaking (OIR). The OIR summarized the overall purpose and scope of this proceeding as follows:

We open this rulemaking to review, and modify to the extent found to be appropriate, the planning reserve margin (PRM) used for purposes of our Long-Term Procurement Planning (LTPP) and Resource Adequacy (RA) programs. We do so to bring greater policy clarity and certainty to California's electricity market and to ensure that our LTPP and RA programs are designed to yield the level of reliability that ratepayers demand. (OIR, p. 2.)

2.2 Consolidation of Phases

The OIR discussed an approach for phased consideration of the issues to be addressed in the proceeding.¹ Phase I was designated to evaluate and adopt a computer model and detailed data requirements to establish capacity and reserve obligations required to maintain a range of reliability levels. Phase II was designated to (1) apply this methodology to study, determine, and adopt a capacity and reserve requirement for the RA program; and (2) create a mechanism to repeat this assessment for future LTPP and RA cycles. Phase II was also designated as the forum to determine whether to pursue an optional Phase III. Phase III, if opened, would (1) refine the methodology and data sets by including economic optimization of customer preferences and (2) possibly

¹ OIR, p. 9.

evaluate location-specific reliability assessments in conjunction with the Local Capacity Requirements (LCR) analytical process.

Recommendations for combining Phases I and II were offered by PG&E and SDG&E in their respective PHC statements.² As explained below, I find that significant procedural efficiency, as well as development of a more comprehensive record, will be realized by consolidating Phase I and Phase II issues and targeting a single decision on both sets of issues for issuance later next year. I will therefore order such consolidation.³

In addition to eliminating the various procedural steps that would be required for issuance of an early, separate decision on the preferred model and data assumptions, consolidation of Phases I and II resolves the need for a “feedback loop” as suggested by TURN. TURN’s underlying concern is that issuance of a methodology-only decision (i.e., one that does not also consider study results) could yield outcomes that fall outside the range of reasonable assumptions. I share this concern. I find that it is preferable to enable the Commission to concurrently consider both the methodology for determining the PRM and the results of applying that methodology. Consolidating Phases I and II also allows more flexibility in adjusting the schedule going forward, which may be particularly beneficial in light of workshop discussions that revealed some uncertainty with respect to certain project deliverables. Finally, eliminating the need for a separate decision on Phase I issues will enable the

² I understand that PG&E may change its position on combining Phases I and II.

³ Although the phases are consolidated, the OIR’s designation of phases and issues is retained to avoid confusion.

PRM study process to develop further before a determination on the need for an evidentiary hearing is made. This has the potential to reduce or eliminate costs and delays associated with evidentiary hearings that might be avoidable.

2.3 Phase I/Phase II Issues

As a general proposition, issues that bear upon the determination of whether the established PRM should be modified fall within the scope of this proceeding. The OIR's preliminary scoping memo set forth a description of seven issues that the Commission anticipated would be addressed in Phase I.⁴ This ruling hereby affirms that the topics and the sub-topics described in the OIR may be reviewed and resolved in the Phase I/Phase II decision. This includes the question of whether to open a Phase III, as anticipated in the OIR.

2.4 Proposed Foundational Phase

IEP proposes that the Commission first issue a foundational decision on the purpose of the PRM prior to the initiation of Phase I. IEP believes this will avoid wasted effort. The proposed foundational decision would answer questions that relate to the operation of the transmission grid by the California Independent System Operator (CAISO).

I do not find that the process set forth in the OIR (as modified by this ruling) will result in wasted effort. In fact, it appears preferable to examine the issues more holistically, in a single review process. Moreover, the lessons learned in the Phase I/Phase II review may inform consideration of the issues identified by IEP to the extent that they fall within the scope of Phase III. This proposal will not be adopted.

⁴ OIR, pp. 11-13.

2.5 Long Term Procurement Authorization

The OIR indicated that the Phase II decision would create a mechanism to determine the PRM for future LTTP cycles. PG&E instead requests that the decision in this proceeding authorize load-serving entities to forward procure the resources necessary to satisfy any increased PRM that may be adopted. PG&E is concerned that delaying long-term procurement authorization to the next LTTP decision could put California at risk for resource deficiencies given the time required for resource development.

Even though the established PRM is a critical component of the determination of long term procurement needs, procurement authorization is not merely a mechanistic function of the PRM. Rather, such authorization should occur in the context of an evaluation of utility procurement plans, i.e., in the appropriate LTTP or utility-specific proceeding. I find that approval of the utilities' LTTP's and revisions to currently approved plans both exceed the scope of this rulemaking.

2.6 Reliability Metric

CLECA believes that a Loss of Load Expectation (LOLE) planning standard such as an outage of one day in ten years does not give appropriate weight to the size and duration of outages. CLECA recommends that the PRM analysis include consideration of Expected Unserved Energy (EUE) as the basis for establishing the PRM. DRA recommends use of the EUE metric until customer value-of-service information is available.

Determination of the appropriate reliability metric is one of the basic building blocks for constructing the PRM. It was explicitly designated as an issue to be considered in the OIR. The Phase I/Phase II decision will, of necessity, approve a metric which may be based on an LOLE or EUE approach. As noted above, Phase III would be the forum to consider economic optimization of reliability based on value-of-service analysis.

3. Development of the Record

3.1 Evidentiary Hearings

The OIR determined preliminarily that a full review of the PRM may involve adjudication of factual questions for which evidentiary hearings may be necessary. At this point, it appears that it may be possible to resolve some or all of the issues through a combination of written comments and workshops, without the need for evidentiary hearings. This scoping memo and ruling allows for the current workshop process to develop further before a determination on the need for hearings is made by the Administrative Law Judge (ALJ). It also provides for the filing of motions, at an appropriate time, by parties that believe hearings will be necessary.

3.2 Working Group Process

In conjunction with workshops, the Energy Division has established and coordinated a working group process to develop and evaluate study assumptions and data requirements, and to address other issues related to the modeling of PRM options. While there was some initial concern about timeliness of notice of particular working group meetings, those concerns appear to have been resolved satisfactorily. I note with approval that the Energy Division has developed protocols for administration of the working group process that appear well-calculated to promote both the participation of interested parties and

transparency throughout the modeling process. It is clear that the staff's working group approach has considerable promise to identify and narrow issues and promote greater understanding of the PRM modeling process.

3.3 Coordination with the CAISO

Several parties have emphasized the importance of coordinating this proceeding with the CAISO's Planning Reserve Requirement Study (PRRS) process. Such coordination is clearly of critical importance, as this proceeding involves this Commission's and the CAISO's shared responsibility for reliable electric service in California. Failure to accomplish effective coordination would inevitably lead to costly duplication of effort and, potentially, conflicting policy directions. I am pleased to take note of the CAISO's active and constructive participation and its commitment to integrate its stakeholder process with this proceeding.⁵ A coordinated working relationship between the CAISO and the Commission is consistent with the requirement of Section 380 (a)⁶ that the Commission shall establish resource adequacy requirements in consultation with the CAISO.

3.4 PRM Modeling

The OIR emphasized the need to bring greater analytical rigor and transparency to the establishment of the PRM,⁷ and there appears to be broad consensus that sophisticated computer modeling software and expertise is required to fill this need. Although it is somewhat problematic that such

⁵ Transcript, PHC, p. 12.

⁶ Statutory references herein are to the Public Utilities Code.

⁷ OIR, p. 8.

modeling requires resources and capabilities that are not readily available to most parties or the Commission, the CAISO has presented a solution that appears to be reasonable and workable once certain access and confidentiality questions are resolved.

As discussed in the initial Energy Division workshops held in June 2008, the CAISO has contracted with General Electric Energy (GE Energy) as a consultant in connection with its PRRS study process. GE Energy will use its Multi-Area Reliability Simulation Software (MARS) for this study. Following a stakeholder process, CAISO selected GE Energy on the basis of acceptance of the software by other Independent System Operators (ISOs), GE Energy's experience performing PRM studies for other ISOs, its ability to meet scheduling requirements, and competitive pricing. As noted above, the CAISO has agreed that its PRRS process will be integrated with this rulemaking, thereby making the GE MARS modeling capabilities available for the development of the record.

While there may be challenges with this approach for developing the record (primarily related to party access to the model and confidentiality concerns), no viable alternative approach to studying the PRM has been offered.⁸ I also note that, while some concerns have been raised, no generalized opposition to the use of the GE MARS model has been voiced in this proceeding. Based on the cooperative and constructive participation of the CAISO and its consultant, I

⁸ On July 25, 2008 TURN filed a motion for adoption of a protective order and application of Rules 10.3 and 10.4 of the Rules of Practice and Procedure. That motion will be addressed by separate ruling of the ALJ.

am confident that any such challenges can and will be resolved.⁹

I therefore approve the plan to use the CAISO/GE MARS modeling approach for development of the Phase I/Phase II record. I emphasize that this determination in no way prejudices the Commission's eventual decision on whether, how, or to what extent to adopt and apply the results of the PRM model runs that are made during the course of the proceeding.

4. Timetable

The OIR indicated a target date of June 2009 for issuance of the Phase II decision. Several parties requested that this schedule be accelerated significantly. PG&E, for example, suggested that the matter be resolved by December 2008. SCE, on the other hand, suggested that more time is needed for a detailed and thorough analysis.

The initial workshop discussions confirm that it is not reasonable to plan on closing the record within the next few weeks, which would be required for a December decision. In fact, it is now clear that the OIR's expectation of a June 2009 decision concluding Phase II was too optimistic. Development and application of the PRM modeling process is a major undertaking that will require a significant period of time. Whether or not evidentiary hearings are determined to be necessary, I do not find it reasonable to target a decision on Track I and Track II issues before the third quarter of 2009. This means that the PRM

⁹ The Commission has had recent experience with a similar approach in connection with the application of the CAISO's LCR studies to the Local RA program component. While there have been well-documented challenges with integrating the LCR studies into our program, including procedural concerns about transparency and opportunity for full participation, it is important to note that such challenges have ultimately been met.

adopted in the Phase I/Phase II decision will not be in force prior to the start of the compliance cycle for the 2010 program year.

Following is the adopted schedule. The ALJ will set exact dates based on this schedule and may adopt appropriate revisions as necessary or appropriate for the efficient and orderly administration of this proceeding.

Schedule For Phases I and II

April 25, 2008	PHC statements filed
June 02, 2008	PHC
June 16, 2008	Initial working group report
June 25-26, 2008	Energy Division workshops
September, 2008	Assigned Commissioner's Phase I/II scoping memo
Oct. 22-23, 2008	Energy Division workshops
3rd & 4th quarters 2008, 1st quarter 2009	Under Energy Division direction, working groups and CAISO/GE pursue data development and model runs. Additional workshops held and reports issued as needed. A report with recommendations will be issued at the conclusion of this process.
1st quarter 2009	Motions for evidentiary hearings
1st quarter 2009	Responses to motions for evidentiary hearings
1st quarter 2009	Ruling on evidentiary hearings (need for, scope)
1st quarter 2009	Prepared testimony served (if hearings are held)
1st quarter 2009	Prepared rebuttal testimony served (if hearings are held)
2nd quarter 2009	Workshops and/or evidentiary hearings as necessary
2nd quarter 2009	Comments on Phase I/II issues (and briefs if hearings)
2nd quarter 2009	Reply comments on Phase I/II issues (and reply briefs if hearings)
2nd quarter 2009	Report on final model runs
2nd quarter 2009	Supplemental comments on final model runs
2nd quarter 2009	Supplemental reply comments on final model runs
3rd quarter 2009	Proposed decision issued
3rd quarter 2009	Comments on proposed decision
3rd quarter 2009	Reply comments on proposed decision
3rd quarter 2009	Commission issues final Phase I/II decision

As stated in the OIR, the Commission intends to resolve all matters in this proceeding within 24 months of the date of the Assigned Commissioner's scoping memo for each phase, consistent with § 1701.5.

5. Category of Proceeding

This proceeding is hereby categorized as ratesetting. This final determination is subject to appeal as specified in Rule 7.6 of the Commission's Rules of Practice and Procedure (Rule).

6. Principal Hearing Officer

ALJ Mark Wetzell is the presiding officer in this proceeding.

7. Party Status

As set forth in the OIR, all load serving entities as defined in Pub. Util. Code § 380(j) are respondents in this proceeding, and by virtue of that fact they are parties to the proceeding (Rule 1.4(d)).¹⁰ Those who filed PHC statements and/or entered appearances as parties at the PHC are parties.

Going forward, pursuant to Rule 1.4 (a), all other persons and entities seeking party status shall either (a) file comments in accordance with any order of the Commission, Assigned Commissioner, or ALJ that provides for the filing of comments; or (b) file a motion to become a party. It is not necessary to file both types of documents. Those seeking party status through either method status shall comply with Rule 1.4 (b).¹¹

¹⁰ By operation of the terms of the OIR, an electric service provider ceases to be a respondent to this proceeding and a party upon confirmation of the cancellation of its registration by the Energy Division.

¹¹ Rule 1.4(b) states that those seeking party status shall "(1) fully disclose the persons or entities in whose behalf the filing, appearance or motion is made, and the interest of such persons or entities in the proceeding; and (2) show that the contentions will be reasonably pertinent to the issues already presented."

Those who wish only to monitor this proceeding will be placed in the “information only” or “state service” category. Such persons or entities should inform the Commission’s Process Office (process_office@cpuc.ca.gov) of their intent to monitor the proceeding by providing their name and organization represented, if any; address; telephone number; e-mail address; and whether they qualify for the state service designation.

8. Rules Governing *Ex Parte* Communications

As noted in the OIR, communications with decisionmakers and advisors in this rulemaking are governed by Article 8 of the Rules. (See Rule 8.4(b), Rule 8.2(c), and Rule 8.3.)

9. Notices of Intent to Claim Intervenor Compensation

9.1 Summary

CAlifornians for Renewable Energy, Inc. (CARE) timely filed a Notice of Intent (NOI) to claim intervenor compensation on June 27, 2008. TURN timely filed an NOI on July 2, 2008. As discussed below, CARE and TURN are both found to be eligible for compensation in this proceeding.

9.2 Customer Status

Pursuant to Decision (D.) 98-04-059, this ruling determines whether CARE and TURN are customers, as defined in § 1802(b). It also identifies which of the three alternative statutory definitions under which they qualify: a participant representing consumers, a representative authorized by a customer, or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers.

CARE is a non-profit organization authorized pursuant to its bylaws to represent the interests of residential ratepayers.¹² CARE states that the interests pertain to alternative energy and reduced dependence on the use of fossil fuels. TURN is a non-profit consumer advocacy organization authorized by its articles of incorporation to represent the interests of residential ratepayers. CARE and TURN both meet the requirements of the third alternative statutory definition of “customer.”

9.3 Nature and Extent of Planned Participation

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer’s planned participation in the proceeding.

CARE intends to fully and actively participate in all aspects of the proceeding. It will retain the services of experts to review modeling software, potential impacts on local communities, and impacts on and cost-effectiveness for ratepayers.

TURN has already submitted comments regarding the scope of and schedule for issues to be addressed in this proceeding, attended the PHC, and participated in the first round of workshops. TURN anticipates being actively involved in the various working groups, filing comments as required, and preparing testimony and filing briefs if evidentiary hearings are held. As in past

¹² D.98-04-059 requires that groups such as CARE include with their NOIs either (1) a copy of the authorization in their articles of incorporation or bylaws to represent the interests of residential customers or (2) a reference to a previous filing of the document. CARE should remedy its failure to comply with this requirement by including with any request for compensation it files in this docket either the appropriate documentation or a reference to the earlier filing of such documentation.

RA and LTPP proceedings, TURN expects to participate in workshops and submit comments on most issues.

9.4 Itemized Estimates of Compensation

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive.

CARE estimates it may request compensation of \$182,000 for its work in Phase I of this case, based on the following component costs:

	Estimated Hours	Hourly Rate	Estimated Cost
Attorney fees	100	\$500	\$100,000
Statistical technique expert/systems analyst	150	\$200	\$30,000
President’s and Vice-President’s technical assistance	150	\$150	\$45,000
Travel, postage, copies, phone			\$7,000
Total			\$182,000

Without otherwise commenting on the reasonableness of the estimated hours or the proposed hourly rates, I note that there are computational errors in CARE’s NOI, as shown in the above table. For example, 100 hours at an hourly rate of \$500 would yield an estimated cost of \$50,000, not \$100,000. CARE should take care to review its computations in any request for compensation it files. I also note that compared to TURN’s estimate of \$750 for expenses (see below), CARE’s estimate of \$7,000 for travel, postage, copies, and phone seems excessive.

TURN estimates it may request compensation of \$126,000 for its work in this case, based on the following component costs:

Attorney/Category	Estimated Hours	Hourly Rate	Estimated Cost
Michel P. Florio, Attorney	150	\$535	\$80,250
Kevin Woodruff, Consultant	200	\$225	\$45,000
Other Direct Expenses			\$750
Total			\$126,000

9.5 Significant Financial Hardship

Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. As defined in Section 1802(g), “significant financial hardship” in the case of a group or organization means that the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding. As groups or organizations representing the interests of customers, CARE and TURN are required to meet this comparison test.

CARE claims the following:

The second criterion under the definition of significant financial hardship for a group or organization requires the weighing of the reasonable cost of participation – which is estimated at \$182,000 – against the economic interest of the individual ratepayers who make up CARE. While it is difficult to quantify the economic interest that a low income person has in stopping/modifying the proposed PRM, it is clear that the cost of effective participation in this proceeding outweighs the economic interest of any individual member. (NOI of CARE, p. 9.)

It is worthwhile noting that the purpose of this proceeding is to consider whether the current PRM should be changed, not “stopping” it. CARE’s larger point, however, appears to be well-taken: the economic interest of any individual residential ratepayer represented by CARE is undoubtedly small in comparison to the reasonable cost of effective participation.

TURN received a finding of significant financial hardship showing in a ruling issued by ALJ Kenney in Application 07-12-021, dated April 18, 2008. This proceeding commenced within one year of the date of that finding, so the rebuttable presumption created by Section 1804(b)(1) applies in this case.

9.6 Underrepresentation of Interests

D.98-04-059 provides that rulings on NOIs will address whether an intervenor represents interests that, if not for the availability of compensation, would be underrepresented in the proceeding. CARE states that it serves to protect the interests of its “low-income people of color retail ratepayer members.” TURN submits that given the heavy representation of generator and utility interests in this proceeding, small consumers would be grossly underrepresented absent TURN’s participation.

IT IS RULED that:

1. The scope and the timetable for Phases I and II of this proceeding are set forth in the foregoing discussion. The Assigned Commissioner or Administrative Law Judge (ALJ) may make any revisions to this schedule necessary to facilitate the fair and efficient management of the proceeding.
2. Any party arguing for evidentiary hearings shall, in accordance with the time set by the ALJ, file a motion that identifies specifically the material issues of fact that the party asserts require hearings.

3. This proceeding is categorized as ratesetting. This ruling on category may be appealed, as provided in Rule 7.6 of the Commission's Rules of Practice and Procedure.

4. ALJ Mark Wetzell is the presiding officer in this proceeding.

5. CALifornians for Renewable Energy, Inc. (CARE) and The Utility Reform Network (TURN) have met the requirements of Pub. Util. Code § 1804(a).

6. CARE and TURN have demonstrated significant financial hardship and are eligible to claim compensation in this proceeding, provided, however, that these findings of eligibility in no way assure compensation.

Dated September 30, 2008, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated September 30, 2008, at San Francisco, California.

/s/ OYIN MILON

Oyin Milon