

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



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Order Instituting Rulemaking to Consider
Refinements to and Further Development of
the Commission's Resource Adequacy
Requirements Program.

Rulemaking No. 05-12-013
(Filed December 15, 2005)

**COMMENTS OF THE UTILITY REFORM NETWORK
ON THE PROPOSED DECISION OF ALJ WETZELL**

THE UTILITY REFORM NETWORK

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December 2, 2009

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COMMENTS OF TURN ON THE PROPOSED DECISION

Pursuant to Article 14 of this Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) respectfully submits these comments on the Proposed Decision (PD) of Administrative Law Judge (ALJ) Wetzell that was distributed on November 3, 2009, in Phase 2, Track 2 of this proceeding to consider refinements to the Commission's Resource Adequacy (RA) program. The deadline for comments on the PD was extended to today by an ALJ ruling dated November 19, 2009.

TURN found much to like in the PD, including particularly:

- its rejection of a Centralized Capacity Market (CCM) in favor of continuing the current state-jurisdictional bilateral market approach to RA procurement;
- the recognition that California's aggressive energy policy goals require a more refined approach to procurement than merely the purchase of generic capacity to meet peak demand; and
- the fact that the PD suggests only incremental changes that are largely consistent with today's RA program, rather than embracing a wholly new and largely experimental paradigm that would take years to implement and refine.

However, there is one fundamental element of the PD with which TURN strongly disagrees, and which we believe reflects legal error – the conclusion at pages 32-33 that the RA program must be evaluated **on a stand alone basis**, separate and apart from the Long-Term Procurement Planning (LTPP) and Renewables Portfolio Standard (RPS) processes to which the PD attributes most of the recent new generation development in California:

. . . as the Staff Report and the comments make clear, this Commission has been leaning heavily on the IOUs and the LTPP process to ensure that sufficient resources are being developed for future needs. Moreover, as alluded to earlier, it is reasonable to conclude that California's aggressive RPS policy is responsible for a significant portion of the resource development that has occurred in recent years.

Thus, ***even though adequate resource investment may be taking place in California***, such a development cannot reasonably be attributed to the RA program alone, or, possibly, even in significant part. This leads to a dilemma. On the one hand, if we consider the RA program on a stand-alone basis, separate from the LTPP and RPS processes, then there is little evidence that RA program is meeting its primary reliability objective of facilitating new generation investment. ***On other hand, if we were to consider the LTPP and RPS programs as integral components of the RA program, then it could be said that the reliability objective is being met.*** However, other problems immediately arise with such a construct. Most importantly, the LTPP process applies directly only to IOUs, and by definition it does not treat IOUs and ESPs (or CCAs) alike.¹⁴ ***If one were to claim that the RA program is meeting its reliability objective based on the assumption that the LTPP process is part of the RA program, then it would have to be acknowledged that the program is inconsistent with Section 380(e)'s directives*** to implement and enforce RA requirements in a nondiscriminatory manner and to subject each LSE to the same RA requirements. Moreover, while the Commission makes every effort to harmonize its various regulatory programs, the RA, LTPP, and RPS programs are not so closely coordinated that they can be considered one integrated program.

We therefore find that the RA program should be evaluated on a stand-alone basis. Accordingly, we find that the RA program has not been meeting the primary reliability objective of facilitating investment in new generation. Without revision, it is not likely to do so going forward. . . .

¹⁴ Through the Cost Allocation Mechanism established by D.06-07-029, IOUs that make certain types of forward commitments may, in defined circumstances, pass a portion of the procurement costs to non-IOU LSEs. Thus, in limited cases, the LTPP process is indirectly applicable to all LSEs. (PD at 32-33) (emphasis added)

TURN submits that the PD errs *as a matter of law* when it concludes that: “[i]f one were to claim that the RA program is meeting its reliability objective based on the assumption that the LTPP process is part of the RA program, then it would have to be acknowledged that the program is inconsistent with Section 380 . . .” Quite to the contrary, Section 380 – in subdivision (g) -- *explicitly contemplates* that the IOUs, under

their Section 454.5 Long-Term Procurement Plans (LTPPs), may procure system and local area reliability resources for the benefit of *all* customers and recover the associated costs on a fully non-bypassable basis.

(g) An electrical corporation's costs of meeting resource adequacy requirements, including, but not limited to, the costs associated with system reliability and local area reliability, that are determined to be reasonable by the commission, or are otherwise recoverable under a procurement plan approved by the commission pursuant to Section 454.5, shall be fully recoverable from those customers on whose behalf the costs are incurred, as determined by the commission, at the time the commitment to incur the cost is made or thereafter, on a fully nonbypassable basis, as determined by the commission. The commission shall exclude any amounts authorized to be recovered pursuant to Section 366.2 when authorizing the amount of costs to be recovered from customers of a community choice aggregator or from customers that purchase electricity through a direct transaction pursuant to this subdivision.

Indeed, this very provision provided the statutory basis for this Commission's adoption of the Cost Allocation Mechanism (CAM) in D.06-07-029. Thus, rather than being contrary to statute, *this Commission's past reliance on IOU procurement of new infrastructure through the LTPP, with cost allocation via the CAM, is entirely consistent with the resource adequacy framework* established by the legislature. The PD is therefore in error when it asserts that the RA program must be modified to operate on a stand alone basis in order for it to be in compliance with the law.

Lest there be any doubt on this point, the legislature recently passed, and the governor signed, SB 695 (Stats. 2009, Ch. 337), an urgency statute that, among other things, enacted Section 365.1 of the Public Utilities Code. Subdivision (c)(2) of that section provides explicit additional guidance to this Commission with respect to the implementation of Section 380(g). Far from rejecting any reliance on LTPP procurement and the "all benefiting customers" cost allocation as a legitimate means of meeting the

requirements of Section 380, Section 365.1(c)(2) *explicitly codifies* this Commission’s past reliance on the CAM, albeit with some limited modifications (making the “energy auction” optional and allowing cost allocation for the full term of any third-party contracts). Specifically, Section 365.1(c)(2) directs this Commission to:

(2) (A) Ensure 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, to all of the following:

- (i) Bundled service customers of the electrical corporation.
- (ii) Customers that purchase electricity through a direct transaction with other providers.
- (iii) Customers of community choice aggregators.

(B) The resource adequacy benefits of generation resources acquired by an electrical corporation pursuant to subparagraph (A) shall be allocated to all customers who pay their net capacity costs. Net capacity costs shall be determined by subtracting the energy and ancillary services value of the resource from the total costs paid by the electrical corporation pursuant to a contract with a third party or the annual revenue requirement for the resource if the electrical corporation directly owns the resource. 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.

(C) ***It is the intent of the Legislature, in enacting this paragraph, to provide additional guidance to the commission with respect to the implementation of subdivision (g) of Section 380***, as well as to ensure that the customers to whom the net costs and benefits of capacity are allocated are not required to pay for the cost of electricity they do not consume. (emphasis added)

SB 695 was enacted shortly before the PD was released, and the statute is mentioned only in passing, in footnote 26 on page 61 of the PD, with respect to its partial lifting of the existing suspension of direct access. Nowhere does the PD discuss the

implications of Section 365.1(c)(2) with respect to the primary issue being decided in this proceeding – the future structure of the RA program. ***TURN submits that it is impossible to square the PD’s rejection of any linkage between the LTPP process and the RA program with the provisions of Section 365.1(c)(2).*** As a result, the PD must be rewritten to take that new statute into account. Once it does so, this Commission should conclude that the current RA program, in conjunction with the LTPP process and the CAM allocation, is fully compliant with the statutory framework, including the objective of ensuring that adequate new generation is developed when and where needed.

In fact, the PD explicitly recognizes that the “comprehensive forward assessment” that it contemplates as a critical step in the new RA framework “may overlap the needs assessment process of the LTPP program in important respects,” and even suggests that the implementation proceeding “will need to explore whether, and if so to what extent, to coordinate or even to merge these processes” (PD at 77). Indeed, the various LTPP frameworks being discussed in R.08-02-007 all contemplate that a “system need assessment” would form an important part of the LTPP. Rather than directing the establishment of an entirely new and largely duplicative process, the Commission should recognize that ***it already has exactly what it needs*** – a comprehensive process to review the need for new generation, including the location and characteristics of that generation, and a mechanism by which the IOUs can be directed to procure that generation and allocate the net capacity costs to all benefiting customers. Thus, there is no need for this proceeding to “reinvent the wheel.”

In a very real sense, the passage of SB 695 – and Section 365.1(c)(2) in particular – has provided the answer that this proceeding was seeking, an answer that recognizes

that *long-term contracts with creditworthy counterparties are a practical necessity* to ensure the development of needed new generation under current financial and energy market conditions. The statute provides for such procurement by the IOUs through the LTPP, with equitable cost allocation to ensure that customers of all CPUC-jurisdictional Load Serving Entities (LSEs) pay their fair share of the costs. Moreover, the changes that Section 365.1(c)(2) enacts with respect to the CAM – making the energy auction optional and allowing cost allocation for the full term of any third party contracts – address many of the objections that the IOUs have raised in the past with respect to the existing CAM approach. Their primary remaining objection – that the balance sheet impacts and debt equivalence costs associated with procurement on behalf of all benefiting customers are not being properly recognized – can be addressed by this Commission in determining the level and types of costs that are eligible for CAM recovery.

There is simply no need to make any major structural changes to the existing RA program in order to ensure that the correct types of new generation are developed when and where needed, and that the costs of such new generation are equitably shared by the customers of all LSEs. The Commission’s existing LTPP, RA and RPS policies, as largely endorsed by the enactment of Section 365.1(c)(2), already achieve those objectives as effectively as can reasonably be expected.

In contrast, there is no real basis (other than hope) for believing that the multi-year RA obligation recommended by the PD will achieve those goals at all, let alone more effectively than the current approach. Specifically, while the PD would require LSEs to enter into *forward* commitments for the capacity needed to meet their RA

obligations, there is no requirement that those commitments be of any particular duration. Thus, an LSE could comply simply by signing a series of one-year contracts three to five years in advance of the delivery year. Yet no party could seriously contend that such one-year agreements would provide a sufficient basis for financing new infrastructure development, the very goal that the PD finds is not being met by the current program.

TURN respectfully submits that this Commission should recognize a success story when it sees it, and reject any major changes to the current RA program beyond those limited refinements to the CAM allocation that are required by Section 365.1(c)(2).

Respectfully submitted,

THE UTILITY REFORM NETWORK

December 2, 2009

By: _____/S/_____

Michel Peter Florio
Senior Attorney

APPENDIX

TURN's Proposed Changes to Findings of Fact

- **Delete Findings of Fact 1 through 11 and 15.**
- **Add a new Findings of Fact, as follows:**
 1. The combination of the current RA program, along with the LTPP and RPS programs, is reasonably meeting California's needs for new infrastructure development, and no proposal presented in this proceeding offers a reasonable likelihood of doing so more effectively or at lower cost to ratepayers.
 2. The CAM mechanism, modified as necessary to comply with Section 365.1(c)(2), will ensure that the costs of any new infrastructure required to meet system and local reliability needs are allocated fairly, to the customers of all LSEs.
 3. The record in this proceeding does not support making any major structural modifications to the current RA program.

TURN's Proposed Changes to Conclusions of Law

2. **Delete and replace with the following:** "The current RA program does not require any major structural modification."
5. **Delete.**
6. **Delete.**
7. In light of the overriding importance of maintaining the Commission's current scope of jurisdiction over the RA program, a bilateral trading approach ~~combined with a multi-year forward commitment~~ will better meet the objectives for the RA program.
8. **Delete.**
9. **Delete.**
10. **Delete.**
11. Pending further order of the Commission the CAM procedure adopted in D.06-07-029 should remain in effect, ***subject to modification to conform to the provisions of Section 365.1(c)(2)*** ~~without modification.~~
13. **Delete.**

TURN's Proposed Changes to Ordering Paragraphs

- **Delete Ordering Paragraphs 1 and 2.**
- **Add a new Ordering Paragraph, as follows:**
 1. The Cost Allocation Mechanism (CAM) adopted in D.06-07-029 shall remain in effect, with its application modified in future proceedings to conform to changes required by Section 365.1(c)(2).

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On December 2, 2009 I served the attached:

COMMENTS OF THE UTILITY REFORM NETWORK

ON THE PROPOSED DECISION OF ALJ WETZELL

on all eligible parties on the attached lists **R.05-12-013** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this December 2, 2009, at San Francisco, California.

/S/
Larry Wong

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