

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



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Order Instituting Rulemaking to Oversee the
Resource Adequacy Program, Consider
Program Refinements, and Establish Annual
Local Procurement Obligations.

Rulemaking 09-10-032
(Filed October 29, 2009)

**SEPARATE PHASE ONE REPLY COMMENTS
OF THE UTILITY REFORM NETWORK**

THE UTILITY REFORM NETWORK

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March 26, 2010

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SEPARATE REPLY COMMENTS OF TURN

Pursuant to the schedule established in the December 23, 2009, Assigned Commissioner Ruling (ACR), as modified by the March 4, 2010, electronic mail ruling of Administrative Law Judge (ALJ) Gamson, The Utility Reform Network (TURN) respectfully submits this brief reply to the opening comments of other parties on the issues raised in Phase One of this proceeding. TURN is also submitting a Joint Reply today with Sempra Energy Solutions LLC on the issue of the true-up of Local Resource Adequacy (RA) obligations to reflect load migration during the compliance year.

I. Standard Capacity Product (SCP) Issues

A. SCP for Exempt Resources

In our opening comments TURN expressed concern over the prospect of applying the SCP availability standards to as-available resources, many of which are also “preferred” resources that do not fit neatly within the SCP construct that was developed with more conventional generation technologies in mind. After reviewing the excellent opening comments of CalWEA and CCC, TURN is even more convinced that it is at best premature, and perhaps ultimately ill-advised, to attempt force fit renewable and Combined Heat and Power (CHP) resources into the SCP paradigm. The SCP is, of course, vitally important to the development of a liquid market for a fully tradable RA product, but the success of such a market does NOT require that every last resource utilize the SCP. Preferred resources are generally developed pursuant to long-term contracts with Load Serving Entities (LSEs), and most of them are unlikely to have any desire to sell their RA capacity as a product separate from their energy deliveries. The terms of those supply contracts already provide strong performance incentives, and the

existing RA counting rules, which are based on historical output for these resource types, create an additional incentive for these resources to be available when needed. TURN therefore urges this Commission to step back and give this issue much more careful consideration before rushing to force fit the square peg of as-available resources into the round hole of the SCP.

B. Scheduled Outage Replacement Obligation

The opening comments reveal a great deal of uncertainty among virtually all facets of the industry regarding the most desirable substitute for the current “LSE must replace” rule for units subject to scheduled maintenance outages. While some parties continue to express support for a “supplier must replace” rule that would become part of the SCP, virtually no one seems to like the CAISO’s most recent proposal for such a supplier obligation. Likewise, while many parties indicate interest in further exploring SCE’s proposal for a Planned Outage Adder (POA) to LSEs’ RA obligations in the off-peak months when the vast majority of such maintenance takes place, virtually all parties recognize that there is not yet sufficient data available to analyze the practical impacts of that approach. In response to this uncertainty, a number of parties have suggested simply deferring the resolution of this issue to Phase 2 of this proceeding.

While TURN fully agrees that this issue requires further analysis and dialogue to reach resolution on an appropriate substitute for the “LSE must replace” rule, we also urge this Commission not to postpone the issue until Phase Two of this proceeding, which would result in yet another full year of delay in achieving a truly tradable RA capacity product. Especially with the reopening of Direct Access (DA) and the likely

adoption of a Local RA true-up mechanism, the need for such a tradable product is pressing indeed.

Instead of simply deferring this issue to Phase 2, TURN suggests instead that the Commission eliminate the “LSE must replace” rule – which no one seems to support – in its Phase One decision in June, and pursue an expedited process to resolve this single issue via a “Phase One B” decision in July or August of this year at the latest. In order to facilitate such a timely resolution, Energy Division should request that SCE and the CAISO present data showing the potential magnitude of a POA, and address the other questions enumerated by WPTF¹ on page 4 of its opening comments, as quickly as possible. Within two weeks after this information is distributed, another workshop should be held to discuss the issue in depth, followed by another round of focused party comments. Such an expedited but thorough review should allow for the preparation of a separate Proposed Decision (PD) *on this topic alone* while the parties are reviewing and preparing comments on the main Phase One PD.

While this additional phasing may cut into LSEs’ RA procurement timelines to some modest degree, a Phase One decision that eliminated the “LSE must replace” rule would provide an opportunity for parties to begin developing the transactional documents and processes for purchase and sale of a truly fungible SCP. Actual transactions presumably would be delayed until the Commission decided whether to pursue the POA approach or a “supplier must replace” obligation, but with a Phase One B decision by late

¹ While TURN believes that WPTF is asking the right questions with respect to the SCE POA proposal, we strongly oppose WPTF’s suggestion that the Commission consider converting the current monthly RA obligation into a level annual obligation. Such a proposal, which would require LSEs to maintain roughly 50,000 MW of RA resources throughout the entire year, is nothing more than a prescription for vastly higher ratepayer costs in return for virtually zero incremental reliability benefits.

July or early August, there should still be ample time for LSEs to complete their 2011 procurement by the compliance filing deadline.

TURN urges this Commission to consider this alternative procedural path as a means of reaching a reasoned resolution of the scheduled outage replacement issue without forcing the market to endure yet another year of procurement in the absence of a truly tradable standard capacity product.

II. Local True-ups, Un-bundling Local, and Current Customer Forecasting

TURN's final revised proposal for a mid-year true-up of LSEs' Local RA obligations to reflect customer load migration during the compliance year was presented in the joint opening comments submitted by TURN and Sempra Energy Solutions. TURN believes that the final revisions made to the joint proposal in response to parties' comments at the second workshop address virtually all of the concerns and criticisms that appeared again in the opening comments, and that the proposal as revised is at last ready for adoption by the Commission after literally years of refinement.

AReM's opening comments again decry the "current customer" approach to load forecasting that is implicit in TURN's Local RA true-up proposal. TURN respectfully submits that AReM is fighting last year's war. As the CEC representative indicated during the workshops, there is little if any difference *in practice* between the "customer customer" and "best estimates" approaches with respect to the load forecasts of non-IOU LSEs (the IOUs are necessarily treated differently because they absorb virtually all of the load growth from new customer connections during the year). Similarly, from a practical standpoint, the CEC and/or Energy Division has to know which LSEs are serving which customers in order to implement the Local RA true-up process. Clearly an LSE cannot

expect to have its Local RA obligation reduced when it loses a customer that was never included in its load forecast in the first place!

Accordingly, TURN respectfully requests that this Commission confirm what is already effectively the current practice and approve the use of the “current customer” forecasting method for non-IOU LSEs.

Respectfully submitted,

THE UTILITY REFORM NETWORK

March 26, 2010

By: /S/ Michel Peter Florio

Michel Peter Florio
Senior Attorney

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 March 26 , 2010 I served the attached:

**SEPARATE PHASE ONE REPLY COMMENTS
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on all eligible parties on the attached lists **R.09-10-032** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this March 26, 2010, at San Francisco, California.

/S/
Larry Wong

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