

**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

R.09-10-032  
(Filed October 29, 2009)

**REPLY COMMENTS OF  
DYNEGY MORRO BAY, LLC, DYNEGY MOSS LANDING, LLC,  
DYNEGY OAKLAND, LLC, and DYNEGY SOUTH BAY, LLC  
ON PHASE 1 ISSUES**

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March 26, 2010

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In accordance with the December 23, 2009 *Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule and Need for Hearing in This Proceeding* (“Scoping Memo”),<sup>1</sup> Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC, Dynegy Oakland, LLC, and Dynegy South Bay, LLC (collectively, “Dynegy”) submits these reply comments on Phase 1 issues.

**REPLY COMMENTS**

**1. The Commission should provide more time to consider Southern California Edison’s proposal to eliminate the scheduled outage replacement rule.**

Several parties, in addition to Dynegy, including Mirant, the Division of Ratepayer Advocates, the California Independent System Operator Corporation (“CAISO”) and the Western Power Trading Forum (“WPTF”) support further consideration of the Southern California Edison (“SCE”) proposal to eliminate the scheduled outage replacement rule.<sup>2</sup>

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<sup>1</sup> Available at <http://docs.cpuc.ca.gov/eFile/RULC/111709.pdf>.

<sup>2</sup> *California Independent System Operator Corporation Comments on Phase 1 Workshop Issues* at 9-10; *Comments of the Division of Ratepayer Advocates on Phase 1 Proposals* (“DRA Comments”) at 2; *Comments of Mirant California, LLC and Mirant Delta, LLC on Phase One Workshop Issues* (“Mirant Comments”) at 5-6; *Comments of the Western Power Trading Forum* at 4.

Additionally, the California Wind Energy Association and California Cogeneration Council support SCE's proposal.<sup>3</sup>

While the Alliance for Retail Energy Markets correctly notes that the SCE proposal was submitted late in the Phase 1 proceeding, and urges that it be ignored or deferred,<sup>4</sup> Dynegy instead urges that the Commission defer acting on the scheduled outage replacement rule in Phase 1 and fully consider the SCE proposal in Phase 2. It would be far better for the RA program in general, and the Standard Capacity Product in particular, to allow additional time for the SCE proposal to be thoroughly considered than to impose a flawed "seller replace" proposal through a hasty decision.

**2. The process for obtaining a waiver of local capacity requirements should either be fully retained or fully re-examined.**

Dynegy joins Calpine, the Independent Energy Producers Association, J.P. Morgan, and Mirant in objecting to the Joint Parties' proposal that would grant a waiver of the local capacity procurement requirement.<sup>5</sup> As these parties pointed out, many subjective factors affect the evaluation and granting of a waiver request. Concluding that a waiver request simply be granted if an entity received no bids below the outdated \$40/kW-year cost of new entry without evaluating such factors as non-price terms and conditions in the buyers' *pro forma* power purchase agreements, would completely undermine the reasonableness and due process foundations of the waiver process. Moreover, it would carry on the obsolete \$40/kW-year trigger threshold, a number that should be fundamentally re-examined. Dynegy urges the Commission to re-visit this value in an upcoming proceeding, but also to take no action to

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<sup>3</sup> *Comments of the California Wind Energy Association and the California Cogeneration Council on Phase I Issues* ("CalWEA/CCC Comments") at 11.

<sup>4</sup> *Phase I Comments of the Alliance For Retail Energy Markets* at 3-4.

<sup>5</sup> *Opening Comments on Phase I Workshop issues* at 2-4; *Comments of the Independent Energy Producers Association on Phase I Workshop Issues* at 1-4; *Comments and Motion of J.P. Morgan Ventures Energy Corporation and BE CA LLC for Party Status* at 3-6; and *Mirant Comments* at 2-4.

change the waiver process *except* in a proceeding where *all* aspects of the waiver process can and will be re-examined.

**3. Increasing the penalty for failing to procure local capacity will not give rise to local market power concerns**

SCE opines that increasing the penalty amount for failing to procure local capacity will provide suppliers with more ability to exert local market power regarding the price of these resources.<sup>6</sup> That unsupported assertion completely ignores the existing local capacity waiver process and the current \$40/kW-year waiver trigger price. As Dynegy and others comments note,<sup>7</sup> Energy Division Staff's proposal to increase the penalty for failing to procure local capacity appropriately recognizes that failing to procure capacity in a local area creates a higher likelihood of shedding firm load because there are fewer options for addressing a capacity shortfall in a local area than for the CAISO's balancing authority area as a whole. Notably, the last CAISO firm load shedding event was the result of a capacity shortfall in Southern California, not within the CAISO balancing authority area.<sup>8</sup> With CAISO-wide peak demands dropping every year since 2006,<sup>9</sup> there appears to be no current or looming shortage of system capacity. Moreover, the Commission has instituted a process to ensure that a supplier cannot exercise local market power in providing local capacity. Consequently, Energy Division's proposal to increase the penalty for local shortfalls to the current penalty level for system shortfalls is sound and should be adopted.

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<sup>6</sup> *Southern California Edison Company's (U-338E) Post-Workshop Comments on Phase I Issues* at 13.

<sup>7</sup> That occurred on August 25, 2005, when the Pacific DC Intertie blocked, overloading Path 26. See CAISO Alert, Warning and Emergency history, revision date 2/24/2010, available at <http://www.caiso.com/docs/09003a6080/08/8a/09003a6080088aa7.pdf>.

<sup>9</sup> See California ISO Peak Load History 1998-2010, available at <http://www.caiso.com/1fb4/1fb4af6c73260.pdf>.

**4. All RA resources should be subject to the SCP availability requirements.**

Despite the Federal Energy Regulatory Commission's clear direction,<sup>10</sup> the Division of Ratepayer Advocates, the California Wind Energy Association and the California Cogeneration Council still advocate exempting certain resources providing RA capacity from the availability requirements of the Standard Capacity Product.<sup>11</sup> DRA, CalWEA and the CCC assert that intermittent resources' power purchase agreements contain sufficient availability incentives and don't require additional availability incentives. As Dynegy noted in its opening comments, layering additional penalties on existing contracts is inconsistent with how existing RA capacity contracts with availability incentives and penalties were treated when the SCP was enacted.<sup>12</sup> Existing power purchase agreements with sufficient availability incentives could be similarly grandfathered.

Though intermittent resources count towards meeting RA requirements, they are only energy resources and not capacity resources. They cannot respond to CAISO dispatch instructions to increase output to their NQC values. They have been assigned RA capacity values through an exceedence formula, which, though it yields less generous RA capacity values than the previous method (which greatly overstated the dependable RA capacity value of these resources), is still generous. The RA values for these non-dispatchable resources are probabilistic measures of how much energy an intermittent resource *might* be able to produce at a given point in time, not a deterministic measurement of how much they reliably *can* produce at

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<sup>10</sup> California Independent System Operator Corporation, 127 FERC ¶ 61,298 (2009) at P 65.

<sup>11</sup> CalWEA/CCC Comments at 6-10; DRA Comments at 3.

<sup>12</sup> *Comments of Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC, Dynegy Oakland, LLC, and Dynegy South Bay, LLC, on Phase 1 Issues* at 5-6.

a given point in time.<sup>13</sup> Intermittent resources use probability-based NQC values because their “fuel” availability is intermittent; if the sun is not shining or the wind is not blowing, no contract incentives can make these resources available to meet reliability needs. Nevertheless, the advocates for these resources, despite their protests about being a square energy resource peg that is being hammered into a round RA capacity resource hole, continue to insist their right to be fully hammered into that hole. If the energy-based power purchase agreements that the representatives of these intermittent resources assert provide sufficient availability incentives for these resources, it’s not at all apparent why they do not also provide sufficient revenues that would obviate the need for these energy resources to fight for poorly-fitting capacity payments.

CalWEA/CCC accuses the CAISO of discriminatory treatment because the CAISO has proposed to deem the availability of a non-dispatchable resource to be proportional to its mechanical availability.<sup>14</sup> CalWEA/CCC assert that it would be wrong for such resources to receive a non-availability penalty if the resource “actually delivered its full RA capacity”.<sup>15</sup> CalWEA/CCC do not understand what it means to “deliver” RA capacity. RA capacity is delivered, and reliability maintained, when a resource can respond to a CAISO dispatch instruction. A resource that is producing energy without a dispatch instruction from the CAISO may or may not be enhancing system reliability. The fundamental premise of a capacity-based reliability program such as the RA program is that resources provide RA capacity value when they can produce power when they are *required* to do so, not just when they *can* do so.

Moreover, the CAISO’s proposal to link availability to mechanical availability is reasonable. Intermittent resources are already provided with preferential treatment within the

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<sup>13</sup> Fuel availability for conventional resources is assumed to be 100% - a reasonable assumption under all but the most severe or unusual conditions. So the availability of conventional resources is driven by their mechanical availability.

<sup>14</sup> CalWEA/CCC Comments at 9.

<sup>15</sup> *Id.*

reliability-based RA program because they are assigned probabilistic NQC values which represent the amount of energy they *might* be able to produce if conditions are right rather than what they *can* produce when instructed to do so. If an intermittent resource produces more power than its NQC when it is not fully mechanically available, how much power would it have produced if it were fully available? Further, depending on when that “extra” power is produced - would the CAISO necessarily need that power?

The CAISO’s proposal to tie RA resource availability to mechanical availability is sound, consistent with the reliability purposes of the RA program, and the Commission should approve it. Moreover, the Commission should remove forced outage data from the data stream used to calculate NQC for non-dispatchable resources and subject those resources – which are providing RA capacity - to the availability requirements of the RA SCP.

## **CONCLUSION**

Dynegy respectfully submits these reply comments and requests that the Commission consider them in its deliberations on Phase 1 issues and adopt the recommendations contained herein.

Respectfully submitted,

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March 26, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing ***Reply Comments of Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC, Dynegy Oakland, LLC, and Dynegy South Bay, LLC on Phase 1 Issues*** on all parties of record in R.09-10-032 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.

This Certificate of Service is executed on March 30, 2010, at Houston, Texas.

/s/ Kathy Fisher

Kathy Fisher

Dkt. R09.10.032

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