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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Refinements to and Further Development of the Commission's Resource Adequacy Requirements Program.	Rulemaking 05-12-013 (Filed December 15, 2005)

COMMENTS OF RRI ENERGY, INC.
ON REVISED PROPOSED DECISION OF ALJ WETZEL

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Date: April 16, 2010

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OF THE STATE OF CALIFORNIA

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Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), and the *Administrative Law Judge's Ruling Providing for Comments and Replies Regarding the Revised Proposed Decision* issued on March 30, 2010, RRI Energy, Inc. (RRI) submits its comments on the Revised Proposed Decision of Administrative Law Judge Wetzel adopting a preferred policy on Resource Adequacy (RA), issued March 30, 2010.

The Assigned Commissioner established Phase 2, Track 2 in this proceeding on December 22, 2006 to consider the establishment of a centralized capacity market, among other issues. In the 40 months since this phase of the proceeding was initiated, RRI has participated in numerous filings explaining in significant detail the reasons that a centralized forward capacity market is an essential mechanism to assure long term resource adequacy in California, and is very disappointed that the Commission is contemplating a policy decision that effectively retains the *status quo*.

I. INTRODUCTION

On March 30, 2010, ALJ Wetzel published the revised proposed decision ("RPD") on long term resource adequacy. The RPD would close this proceeding (R.05-12-013) without major structural changes to the RA program, concluding that the existing RA program should not be altered to require multi-year forward commitments or a central-clearing mechanism. The RPD reverses the proposed multi-year forward commitment obligation reflected in the Original Proposed Decision (OPD) published on November 23, 2009, and would instead continue the existing year-ahead bilateral RA program.

II. COMMENTS

A. The OPD Found the Existing RA Framework to be Ineffective – yet the RPD Inexplicably Reverses the Related Findings of the OPD

The OPD found that "the RA program standing alone has not been meeting the long-term reliability objective of facilitating investment in new generation and, without revision, is not likely to do so going forward."[1] The OPD concluded that, standing alone, "there is little evidence that the RA program is meeting its primary reliability objective of facilitating new generation investment."[2] The OPD acknowledged that many market participants, the CAISO and others have expressed concern with the existing resource adequacy program. This conclusion is consistent with extensive evidence in the record provided by numerous parties. While the OPD recognized that action was required to resolve problems with the existing RA framework, the RPD sweeps these problems under the rug, effectively ignoring the record in this proceeding.

The RPD instead finds that "the RA program, in combination with the LTPP and RPS programs, is meeting California's needs for infrastructure development, and no other proposal in this proceeding offers a reasonable likelihood of doing so more

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1 *See* OPD at 85.

2 *See OPD* at 32.

effectively or at lower cost to ratepayers."[3] No additional evidence was introduced after the OPD was issued – yet the RPD would somehow reinterpret the evidence to draw the opposite conclusion.

B. The OPD Found that the Status Quo Failed to Comply with Section 380 - Yet the RPD Inexplicably Concludes that the Existing RA Framework is Compliant

The OPD concluded that the existing RA program could not meet the requirements of Section 380 (which requires an RA program applicable to all LSEs). Further, the OPD made a finding that the existing "short-term" approach "does not adequately foster investment in new generation" and that "to ensure that the program functions as intended, we determine that it is necessary to modify the program by providing for a multi-year forward commitment of capacity resources."

In contrast, the RPD concludes that both Section 380 and 365.1 (from SB 695) contemplate investment by the IOUs with cost allocation to both bundled and unbundled customers. The RPD clarifies that the narrow role of the PD is not to meet the RA requirement under Section 380 for all LSEs but that the Commission can rely on its other programs, and in particular investment in new generation by the IOUs.

The Commission is obligated under Section 380 of the Public Utilities Code to determine the most efficient and equitable means of ensuring that investment is made in new generating capacity, that existing economic generating capacity is retained, and that the cost of generating capacity is allocated equitably. This existing law also specifically authorizes the Commission to consider a centralized resource adequacy

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3 *See* RPD at 80.

mechanism to fulfill these objectives, including equitable cost allocation. It is unclear how the Commission is fulfilling these mandates if it adopts the RPD.

C. A Multi-Year Forward Obligation is Essential – yet Implementation Through the Bilateral Market Structure Would Cripple Retail Competition, Leaving a Centralized Forward Capacity Market as the Only Reasonable Long Term RA Mechanism

The Commission has painted itself into a corner. As clearly explained by multiple parties, implementing the multi-year forward commitment with a bilateral market structure would impose unworkable burdens on ESPs, requiring them to undertake significant obligations to secure supply commitments for multiple forward years when the duration of service commitments to their customers is much shorter. The only way a multi-year forward commitment is compatible with retail competition is if those commitments are made under a filed and approved federal tariff for a centralized capacity mechanism, where the commitments are made years in advance, but the obligations are not assigned until the delivery period. The Commission was apparently convinced by the comments filed on the OPD that implementing a multi-year forward commitment through a bilateral market structure was incompatible with retail competition, and that the only rational means of implementing such an obligation is through a symmetric multi-year forward centralized capacity market. But instead of choosing to move in the direction of competition, transparency and assured resource adequacy through a systematic centralized auction mechanism, the RPD would have the Commission retreat to the *status quo*.

The OPD found concerns that a multi-year forward commitment would fail to enable or support direct access to be insufficient to reject that structure – while the RPD refers to this as an "overriding concern."[4] RRI agrees that retail competition is in the best interest of customers, but maintaining the *status quo* does nothing to facilitate customer choice (particularly given the RPD's aim to rely on utility companies as the buyers and builders of RA capacity) and fails to address the critical deficiencies of the existing RA framework in facilitating investment.

D. The RPD Mistakenly Concludes that the Best Way to Protect Commission Jurisdiction Over the RA Framework is to Maintain the Status Quo

The year-ahead, bilateral structure that would be preserved by the OPD is the path of least resistance – and may appear to be the prudent, low-risk option. Unfortunately, this is not the case, as the shortcomings of the existing RA program can no longer be ignored. For example, the OPD included the following finding: "Having determined that the RA program is not adequately facilitating investment, we find it becomes imperative to resolve the long-standing question of whether to impose a multi-year forward commitment of RA capacity on LSEs."[5]

The RPD states that "a decision to endorse a centralized capacity auction mechanism would be a decision to hand substantial components of resource adequacy over to the Federal Energy Regulatory Commission. Such a move is at best premature. We therefore decide to continue the bilateral contracting approach."[6] There is no basis for this conclusion – and in fact, further delay may mean that the opportunity to define the policy is taken out of the Commission's hands.

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4 *See* RPD at 71.

5 *See OPD* at 33.

6 *See R*PD at 3.

The CAISO and FERC have historically deferred to the Commission on key RA policy principles such as counting rules and planning reserve margin. By adopting the RPD, the Commission will be rejecting the recommendation of the CAISO and the majority of market participants for a centralized forward capacity market. By retaining the existing year-ahead RA framework, the Commission will be ignoring the CAISO's strong preference for a multi-year forward RA structure.

By adopting the RPD, the Commission is rejecting the opportunity to lay out the initial policy framework for extending its partnership with the CAISO on resource adequacy to assure that critical investment is made. With the RPD's proposed entrenchment of the *status quo*, sealed by the planned termination of this proceeding, market participants will have no choice but to turn their attention to the upcoming stakeholder process at the CAISO through which the replacement of the Interim Capacity Procurement Mechanism (ICPM) will be developed as the best opportunity to assure long term resource adequacy in California.

E. The RPD Increases Risks to California Ratepayers

California environmental policies, including implementation of the greenhouse gas reduction mandates of AB 32, an Executive Order from the Governor calling for regulations to increase California's Renewable Portfolio Standard (RPS) to 33 percent by 2020, and a proposed policy that would require substantial reductions in once through cooling by 19 power plants in California will require extensive construction of new transmission lines, new generating capacity, and assurance of sufficient reserves and ramping capability to integrate an enormous increase in intermittent generation.

RRI operates more than 3,000 MW of fast-ramping thermal capacity in Southern California but is confronted by state policy calling for retirement of "aging" power plants, the proposed policy limiting use of once through cooling, and other proposed policies that threaten the operation of these power plants. Although RRI is evaluating opportunities to modernize these facilities, including possible measures to substantially reduce water use, improve heat rates, reduce minimum load, and make ramp rates of up to 30 MW per minute available to the CAISO – all such improvements require significant investment, many with multiple year pay-back periods. The existing opaque and *ad hoc* resource adequacy framework is simply inadequate to support such investments.

A multi-year forward, centralized capacity market would provide the systematic framework and clear price signals that are necessary for rational decisions by RRI and its competitors. Independent power companies are willing to invest and compete – if rules are clear, prices are transparent, and sufficient assurance of forward values is available to justify those investments.[7] Such a multi-year forward capacity market would also provide several years of lead time to allow the development of new generation, including expanded use of renewable resources, demand response and energy efficiency. By continuing to rely on an RA framework that relies only on year-ahead commitments with the utilities being the principal buyers or builders of new generation for reliability, the Commission would impose an unnecessary cost and risk on customers.

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[7] A centralized capacity market does not replace the need for bilateral contracts for capacity – but instead provides a transparent and relevant index to the forward value of capacity

(footnote continued)

F. The RPD Ignores Broad Support for a Centralized Forward Capacity Market

The Commission has received comments and support from a broad range of parties advocating the adoption of a Centralized Forward Capacity Market, including generators, utilities, electric service providers and retail electric customers. The Commission has also received support for the adoption of a Centralized Forward Capacity Market from a member of the Senate Energy Utilities and Communications Committee. In May, 2009, Senator Roderick Wright, representing California's 25th Senate District, sent a letter to President Peevey (attached hereto as Appendix 1) encouraging the Commission to adopt a policy decision outlining key principles for a multi-year forward capacity market to protect ratepayer interests by assuring stable prices and reliable electric service. Senator Wright pointed out that the Commission need not specify every detail, instead encouraging the Commission to work cooperatively with the CAISO to define a centralized capacity market that incorporates a multi-year forward auction for a standard product to procure the full forecasted load and planning reserve margin, with costs assigned based on realized load.

The Commission's authority to adopt a centralized capacity market was recently affirmed by the Legislature. With a unanimous vote in the Senate, and a single dissenting vote in the Assembly, the Legislature passed Senate Bill 695 last fall, which was signed into law by Governor Schwarzenegger on October 11, 2009. Not only did SB 695 provide for the reinstatement of customer choice and direct access, but it affirmed the Commission's authority to consider a centralized resource adequacy

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that can facilitate bilateral contracting, and provide a benchmark to assess the cost of such contracts against the market value of local and system capacity.

mechanism, providing that with the Commission's approval of a centralized resource adequacy mechanism, SB 695's requirement for a fully nonbypassable cost allocation mechanism to assign capacity costs to all customers would be suspended.[8] This provision makes clear that the Legislature acknowledges the Commission's authority to adopt a centralized resource adequacy mechanism, but moreover it recognizes the simplicity and fairness of allocating costs through a transparent, competitive, centralized capacity market. .

G. The RPD Would Stifle Competition by Relying on the Utilities for Backstop Procurement

The OPD rejected the IOUs in the role of backstop procurement, while the RPD relies on that role. The OPD noted the concern that over-reliance on backstop procurement is "fundamentally at odds with the LSE-based procurement objective of the RA program,"[9] and that "the absence of a durable backstop mechanism is another shortcoming of the current program that jeopardizes the reliability and cost-effectiveness objectives" and further that "a more durable backstop procurement mechanism that does not rely primarily on IOUs is needed to complement the RA program." The OPD further noted that "since IOU-based backstop procurement could run afoul of the Section 380(e) requirement for nondiscriminatory establishment of RA requirements for all LSEs, we recognize that CAISO backstop procurement is likely to be a component of the RA program."

The OPD found that the current RA program "relies too heavily on IOU-based procurement to ensure that investment in non-renewable resources needed for long-

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8 *See* Section 365.1(d)(1) of the Public Utilities Code.

9 *See OPD* at 18.

term reliability occurs" and that "expanding the LTPP process to include all LSEs would be a less practical means of complying with Section 380 than the alternative of incorporating long term requirements into the RA program."

In stark contrast to the findings in the OPD, the RPD concludes that the record does not support making any major structural changes, and while it acknowledges the need for a more durable backstop, it intends to rely primarily on the IOUs, building off the Cost Allocation Mechanism adopted in D.06-07-029. Again, there is no basis in the record supporting this about face, which would appear to establish IOU procurement as the Commission's preference for a durable backstop procurement mechanism.

H. The RPD Would Reverse the Commission's "Competitive Market First" Policy to the Detriment of Customers

Consistent with its apparent intent to rely on IOU procurement as the principal backstop, the RPD would appear to abandon the Commission's "competitive market first" philosophy adopted in D.07-12-052, and instead formalize its adoption of a centralized planning approach.[10] The original PD would have rejected what it characterized as a imprudent "wait and see" approach to determining whether the existing RA structure in conjunction with the Renewable Portfolio Standard and the CAISO's locational marginal pricing will cause LSEs to make long-term commitments to new capacity in the absence of a regulatory obligation.[11] The RPD flip flops, concluding that "it is too soon to conclude that many, or most, of the benefits" of a multi-year

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[10] The Commission emphasized that it believes in a "competitive market first" approach, and that "all long-term procurement should occur via competitive procurements, rather than through preemptive actions by the IOU, except in truly extraordinary circumstances." (D.7-12-052, page 209).

[11] *See* OPD at 35.

forward procurement obligation “will not be achieved under the current year-ahead approach.”[12]

The original PD would have accepted the PG&E proposal for a multi-year forward bilateral design. The RPD adopts the Bilateral Trade Group’s year-ahead structure with a bulletin board. The RPD would add to this a staff recommendation to include a “collaborative forward assessment of capacity need with a multi-year horizon” which would be “an indispensible tool that would assist all market participants by providing high-quality official supply and demand information.”

The OPD would have initiated a proceeding to implement its policy decision. The RPD instead concludes that the Commission will not now initiate a dedicated implementation proceeding, but instead asks the Energy Division to consider whether a new proceeding is required, or whether relevant topics to implement this policy decision can be addressed in existing proceedings. The RPD also asks the Energy Division to consider how the “forward assessment” process should be coordinated or even merged with the existing LTPP assessment process.

By relying on centralized planning and utility procurement, the Commission would assure a step backward – away from competitive markets and back toward the cost, complexity and ratepayer risk implicit in a centrally planned, cost-of-service model. A worse time for a retreat from competitive markets and a policy that encourages merchant investment is difficult to imagine.

The original PD observed that “[a]s long as IOU procurement is the primary source of new generation investment, merchant investment will tend to be crowded out

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12 *See* RPD at 34.

of the California market."[13] The RPD eliminates this finding, instead concluding that Section 365.1 and 380(g) anticipate IOU procurement, and stating that it will "seek opportunities to support competitive wholesale markets while ensuring that the primary goals for resource adequacy are met."[14] No details of when or how this inquiry will be conducted are provided by the RPD.

III. CONCLUSION

The State's policy objectives can be best achieved through a centralized forward capacity market, in which commitments are made to new and existing generation by a multi-year forward market that would be collaboratively developed by the Commission, CAISO, and market participants. Not only would such a framework meet the requirements of Section 380, but it would also facilitate investment in emerging, clean and renewable supplies and demand response, and relieve all load serving entities from significant risk and financial burden of securing supply multiple years in advance because charges for capacity are not allocated until the year in which the capacity is made available, based on the actual load served by each provider.

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13 *See OPD* at 40.

14 *See* RPD at 38.

The time is now for the Commission to move forward in a collaborative process with the CAISO to develop the design details for a centralized forward capacity market, and secure these benefits for California.

Respectfully submitted this April 16, 2010, at San Francisco, California

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APPENDIX 1

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May 6, 2009

Michael Peevey, President
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102

Re: Rulemaking No. 05-12-013, Support for a Multi-Year Forward Capacity Market

Dear ~~Commissioner~~ Mike Peevey:

As you know from our many discussions on energy policy issues, I strongly believe that the most important objectives of California's energy strategy are reliability and price stability. Achieving lower energy prices and reducing harmful environmental impacts from the creation and use of energy are also important considerations. However, I believe that the ratepayers, who are also the end users of electricity, place the highest priority on reliability of service, and a stable energy price. With these principles in mind, I want to offer my support for the creation of a Multi-Year Forward Capacity Market, and to urge you and your fellow Commissioners to take steps to move us closer to that goal.

I have followed the discussions surrounding the proposal for a centralized capacity market, as reflected in the Rulemaking pending before the Commission, R.05-12-013. The parties' positions demonstrate clearly that while California has made strides toward assuring Resource Adequacy, so long as the process of ensuring that utilities and other load serving entities obtain commitments for generation capacity focus on one year commitments, there will be tremendous uncertainty among existing and prospective generation providers. The Commission has indicated a clear preference for encouraging a competitive market for new generation to serve California's energy needs. I support that preference. However, to encourage the widest possible number of potential entrants into the California energy market, the statutes and regulations that create the framework for purchasing generating capacity and energy must provide sufficient certainty that a well understood and stable mechanism for contracting for generation capacity is in place. Without regulatory stability in this crucial sector, investment in California generation projects will be discouraged and the State will fail to reap the benefits of a diverse marketplace for new energy projects. Ensuring that California's regulatory environment attracts, and does not discourage, new investment in generation capacity is absolutely essential for achieving our primary goal of ensuring reliable electric service now and into the future.

The primary benefit of a Multi-Year Forward Capacity Market is that it allows both existing generators and new generation developers to compete to provide the capacity to ensure resource adequacy in the future. The multi-year timeframe is essential to allow new projects to compete with existing generation facilities. The proposed auction process for such a market allows generators to receive a clear price signal far enough in advance to complete the siting and construction of new projects, which is not possible under the present Resource Adequacy regulatory framework.

It should be emphasized that permitting new energy projects to participate in the auction for capacity is a tremendous benefit for renewable resources as well as conventional generation. As you and I well understand, California still faces significant challenges in assembling sufficient renewable resources to meet the existing RPS targets, while at the same time all the branches of government in California are moving toward establishing even higher 33% renewable energy targets. One of the most important steps we can take to encourage additional renewable resource investment in California is to ensure that the Resource Adequacy process offers a stable procurement mechanism, with prices and quantities of capacity identified far enough in advance for new renewable energy developers to effectively compete for the opportunity to match the market clearing price and receive a firm commitment for payment as part of the Resource Adequacy "stack" of resources in a future year. The impact of disruption in the credit markets cannot be underestimated in terms of the additional uncertainty it imposes on energy project developers—renewable, demand-side, or fossil-fueled. However, a firm commitment from the regulators that a winning project in the multi-year forward auction will receive payment in the future will dramatically increase the chances of such a project obtaining financing, even in these uncertain times.

At this time, I encourage the Commission to move beyond the policy debate phase of the Resource Adequacy rulemaking, and focus the parties' attention on developing a workable proposal for a Multi-Year Forward Capacity Market. Let me offer my thoughts on a procedural path that could help bring a capacity market within reach in a reasonable period of time. An important first step would be the issuance of a policy decision in the Rulemaking adopting a centralized capacity market with a multi-year forward clearing mechanism as the appropriate structure for meeting California's resource adequacy needs. This policy decision need not specify each and every detail of such a market. On the contrary, only a few key principles need to be adopted by the Commission, including the following:

1) A centralized capacity market with a multi-year forward auction is the appropriate structure to meet California's resource adequacy needs.

2) The capacity market shall secure a standardized, annual capacity market product that has a day-ahead must-offer obligation and generator performance obligation as specified in the CAISO tariff.

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3) The capacity market shall be designed to secure the full forecasted load and Planning Reserve Margins set for all CAISO load, including sufficient resources within transmission- constrained areas.

4) The market shall include annual reconfiguration auctions that allow for incremental purchases of newly identified needs, as well as the trading of capacity supply obligations.

5) The market shall include appropriate procedures to ensure that resource adequacy is met at reasonable cost if the primary auction does not.

6) Resource adequacy charges shall be collected from Load Serving Entities (LSEs) based on realized load in each month in each Transmission Access Charge area.

7) LSEs may self-supply resources in the capacity market to offset their resource adequacy charges.

As part of this policy decision, the Commission could direct the parties to engage in negotiations and collaborative workshops as part of the next phase of the proceeding. I would encourage the Commission to hold these workshops in conjunction with the CAISO. The CAISO will clearly have to be involved in any centralized market that commits capacity that is subject to dispatch by the CAISO. The continued cooperation between the Commission and the CAISO will become even more valuable as the two agencies facilitate efforts to reach a consensus set of design principles for a centralized forward capacity market.

I would be pleased to discuss these ideas with you and your fellow Commissioners at any time. In addition, I want to let you know that I will urge my colleagues in the Legislature to join me in supporting your efforts to create a Multi-Year Forward Capacity Market. Together, I think that we can fashion a workable plan for such a market and refine it sufficiently to implement the market in the near term; rather than years in the future. I take particular note of the fact that two of the major investor-owned electrical utilities and many generation owners support such a capacity market, as well as the CAISO itself. The sooner that such a market is operational, the sooner California will be positioned to attract more diverse generation resources, including renewable resources. This will go far towards achieving the essential goal of a more reliable power supply for California electric customers.

Sincerely,

RODERICK D. WRIGHT
Senator 25th District

cc: Commissioner Dian Grueneich
Commissioner John Bohn
Commissioner Rachelle Chong
Commissioner Timothy Alan Simon

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CERTIFICATE OF SERVICE

I, Linda Chaffee, certify that I have on this 16th day of April 2010 caused a copy of the foregoing

COMMENTS OF RRI ENERGY, INC.
ON REVISED PROPOSED DECISION OF ALJ WETZEL

to be served on all known parties to R.05-12-013 via e-mail to those listed with e-mail on the attached service list, and via U.S. mail to those without e-mail service. I also caused courtesy copies to be hand-delivered as follows:

President Michael R. Peevey
California Public Utilities Commission
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ALJ Mark S. Wetzell
California Public Utilities Commission
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San Francisco, CA 94102

I declare on penalty of perjury under California law that the foregoing is true. Executed this 16th day of April 2010 at San Francisco, California.

/s/ Linda Chaffee
Linda Chaffee

3094/011/X118357.v1

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