

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)

ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

1. Summary and Notice

Based on the prehearing conference (PHC) statements filed on January 13, 2006, the February 3, 2006 PHC, the February 8-9, 2006 workshop on local resource adequacy requirements (RAR), and the February 17, 2006 meet and confer session on the local capacity requirements (LCR) study being performed by the California Independent System Operator (CAISO), this ruling and scoping memo determines the issues to be considered in the proceeding as well as procedures and the timetable for their resolution. It also addresses other procedural matters and sets further workshops, a second PHC, and an evidentiary hearing.

NOTICE IS HEREBY GIVEN that a workshop to address Phase 1 issues as defined in this ruling is set for Wednesday, March 15, 2006, at 10:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.

FURTHER NOTICE IS HEREBY GIVEN that a second PHC is set for Tuesday, March 28, 2006, at 10:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California. The PHC will address scheduling of witnesses and related matters as described in this ruling.

FURTHER NOTICE IS HEREBY GIVEN that an evidentiary hearing is set for Monday, April 3, 2006 at 9:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.

2. Scope of Proceeding: Issues to be Considered

The preliminary scoping memo in the Order Instituting Rulemaking (OIR) identified the local RAR program element as the centerpiece and the first priority of this rulemaking. This involves consideration of the CAISO’s LCR study as well as the local RAR proposals submitted by the Alliance for Retail Energy Markets (AReM); the Independent Energy Producers (IEP); and jointly by Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (Investor-Owned Utilities) (the IOUs). The OIR recognized that it could be necessary for the Assigned Commissioner and the Administrative Law Judge (ALJ) to establish phases of this proceeding, with LCR constituting the first phase and most, if not all, other issues constituting the second phase. As the ALJ determined at the February 3 PHC, Phase 1 is established to consider local RAR. Phase 1 will also include consideration of the other issues set forth in the first of the following two tables.

Phase 1 Topics

Topic	Remarks
Local RAR	Key LCR issues include reliability criteria, local area definitions, and other issues identified in the CAISO’s February 22, 2006 report on the meet and confer on input assumptions. Among the key local RAR issues are allocation of LCR determinations to load serving entities (LSEs); the IOUs’ transfer pricing proposal; operational responses to contingencies identified in the LCR study such as short-term equipment upgrades,

	<p>reevaluation of line ratings, and demand response and load shedding options that should be counted towards the LCR obligation; market power definition and mitigation; CAISO backstop procurement; and local RAR waivers.</p>
<p>Tradable Capacity Product</p>	<p>This topic may be of critical importance to enable LSEs to efficiently acquire capacity to meet their local (LCR-based) procurement obligations and is therefore included in Phase 1. Focus is the definition of standard contract criteria and/or terms that would meet CAISO operational needs and facilitate capacity trading. Consideration should be coordinated with the proposed availability requirements of the CAISO's pre-MRTU RA tariff (<i>see</i> Feb. 9 workshop, transcript pp. 219-220).</p> <p>Does not include development of a centralized capacity market regime.</p>
<p>Compliance Topics</p>	<p>D.05-10-042 adopted the broad policy that a penalty equal to 300% of the cost for new capacity (150% for 2006 only) is an appropriate sanction for an LSE's failure to acquire the capacity needed to meet its RAR obligation. The OIR provided that this proceeding will consider ways to give definition and clarity to this policy and address concerns that penalties might accrue to the General Fund of the State of California. Providing such definition and clarity, including how penalties and backstop procurement interact, may be particularly important in connection with local RAR.</p>
<p>Implementation Issues</p>	<p>Implementing the first cycle of year-ahead RAR compliance filings for 2006 and the first round of month-ahead RAR compliance filings for 2006 may reveal RAR program gaps or deficiencies that must be resolved by the Commission before 2007</p>

	<p>compliance filings are due. An example may be the issue of responsibility for forced outages. Parties will be permitted to comment on the Energy Division’s recently issued Resource Adequacy Filing Guide (including related “FAQs”) for the 2006 year-ahead compliance and issues raised in the March 7, 2006 Energy Division workshop on the month-ahead compliance filings.</p>
<p>Issues deferred from D.04-10-035 and D.05-10-042</p>	<p>The Commission identified various topics for which it would entertain proposals in future RAR proceedings. For example, the Commission said it would consider extending an adder for determining the capacity value of newer wind technologies. Parties interested in pursuing such topics will be permitted to make their proposals in Phase 1, provided that such proposals must include a showing (a) that the proposal needs to be resolved in Phase 1 rather than Phase 2 and (b) that the proposal can be fairly and effectively considered in Phase 1 without unduly impacting the schedule.</p>

Phase 2 Topics

Topic	Remarks
<p>Assembly Bill (AB) 380 Implementation</p>	<p>In Phase 2 the Commission will complete its implementation of AB 380, including in particular establishment of appropriate RAR for the smaller and multi-jurisdictional IOUs.</p>
<p>General Order</p>	<p>Develop a new Commission general order that assembles the Commission’s RAR regulations (including both system RAR and local RAR) into a single source document.</p>
<p>Capacity Markets</p>	<p>Review whether/how to develop a centralized</p>

	capacity market regime. May include resource tagging and trading concept. Includes review of August 25, 2005 capacity markets white paper and comments and replies filed in R.04-04-003 along with opportunity to supplement that record.
Multi-Year RAR	Review whether/how to establish a multi-year forward commitment concept to overlay the year-ahead and month-ahead RAR program components.
Zonal RAR	Review whether/how to establish a zonal RAR concept to overlay the system and local RAR program components.
Confidentiality Issues	To the extent, if any, that the Phase 1 decision in the confidentiality rulemaking (R.05-06-040) requires or warrants Commission consideration of RAR-specific confidentiality issues, such consideration may occur in Phase 2.
Issues deferred from D.04-10-035 and D.05-10-042	Except as provided above in connection with Phase 1, Phase 2 is the forum for parties interested in pursuing these topics to make their proposals.

3. Need for Evidentiary Hearings

Some parties identified in general terms, in their pre-hearing conference statements, local RAR issues for which they believe hearings are required.¹

Others contend that all issues pertaining to local RAR can and should be

¹ AReM states that there are a number of “fact-intensive” local RAR issues such as costs and benefits of reliability criteria, market power mitigation, waivers, cost allocation, the need for transmission upgrades as weighed against the need for local capacity, and the geographical boundaries of load pockets. Sempra Global similarly believes that cost-effectiveness issues in particular require development of a factual record. Western Power Trading Forum (WPTF) anticipates that the local RAR proposals will necessarily address multiple factual issues whose analysis would benefit from hearings.

resolved through a workshop and comment process. I recognize that these statements were filed before the local RAR proposals were submitted and were necessarily general in nature. At this time I am not persuaded that evidentiary hearings are required. It is incumbent upon those arguing for hearing to identify specifically the disputed material issues of fact that require hearings. I concur with the suggestion that a determination on the need for evidentiary hearings should be deferred until an additional workshop has been completed.²

However, the expedited Phase 1 schedule necessary for the Commission to decide Phase 1 issues by June means there is little flexibility to set hearings at a later date. Accordingly, this ruling determines that evidentiary hearings on local RAR may be required and schedules such hearings along with a second PHC. When the Phase 1 workshop set by this ruling is completed, the Assigned ALJ, in consultation with the undersigned, will make a determination on whether to proceed with the second PHC and hearings or remove them from the calendar. If a determination is made that evidentiary hearings are not necessary, it is possible that additional workshops may be scheduled.

The Commission will determine at a later date whether to conduct hearings for Phase 2 issues.

4. Timetable; Submission Date

The timetable and the projected submission dates are set forth in the following schedule. Some parties have requested an opportunity to submit comments on the LAR proposals that were filed in January. This schedule makes provision for the filing of such comments by noon on March 13, 2005. The March 13 comments may also address the CAISO's February 22, 2006 report on the

² If hearings are required in Phase 1, they will be limited to the LCR study and the local RAR proposals.

February 17 meet and confer as well as RAR implementation issues that need to be resolved in the Phase 1 decision. In addition, parties may include in their March 13 filings proposals regarding a tradable capacity product, compliance, and issues deferred from the earlier RAR decisions consistent with the foregoing discussion regarding the scope of Phase 1.³ Finally, any party claiming that evidentiary hearings on local RAR issues (including the CAISO's LCR study) are required shall include in its March 13 filing a showing that identifies with specificity the disputed factual issue(s) that require hearing. Further guidance on the content of the March 13 filings may be provided by the ALJ or the Energy Division.

Adherence to this schedule and achieving the Commission's objective of issuing a decision on local RAR depends upon the CAISO's completion of the 2007 LCR study by April 21, 2006 (8 weeks from February 24, 2006). Therefore, this ruling directs the CAISO to file the study by that date.

As noted above, a determination will be made upon completion of the March 15 workshop whether to proceed with evidentiary hearings or remove them from the calendar. Events with the "EH" notation in the following schedule would be removed from the schedule if no hearings are to be held.

Phase 1 Schedule

Event	Date
Comments filed on (1) local RAR proposals and CAISO meet	March 13, 2006

³ Advisory staff has informed me that several parties are currently working to develop a proposal for a tradable capacity product. If these parties want such a proposal to be considered in Phase 1 they should submit the proposal with their March 13 filings. Alternatively, if the tradable capacity product proposal is still under development, parties may submit a status report on March 13 with appropriate procedural recommendations that include submission of a complete proposal by March 31, 2006.

and confer report, (2) implementation issues, (3) tradable capacity product, (4) compliance, (5) deferred issues, and (6) need for hearings	12:00 noon
Workshop to review proposals and procedural options	March 15, 2006
Determination regarding need for evidentiary hearing and additional workshops	March 16, 2006
Prepared testimony served (EH)	March 20, 2006
Rebuttal testimony served (EH)	March 27, 2006
Prehearing conference - motions, schedule witnesses, etc. (EH)	March 28, 2006
Hearings begin (EH)	April 3, 2006
Hearings end (EH)	April 7, 2007
CAISO files 2007 LCR Study	April 21, 2006
Concurrent opening briefs filed and requests for final oral argument (EH); workshop comments filed	April 21, 2006
Concurrent reply briefs filed (EH); replies to workshop comments filed; comments on LCR study filed; submission	April 28, 2006
Proposed decision (EH)/ draft decision	May 16, 2006
Comments	June 5, 2006
Reply comments	June 12, 2006
Final Commission order local RAR and other Phase 1 issues	June 15, 2006

Phase 2 Schedule

Event	Date
Ruling calling for Phase 2 proposals, establishing priorities among Phase 2 topics, and setting detailed workshop and	May 31, 2006

comment schedule	
Workshops	Summer 2006
Comments, submission	Fall 2006
Draft decision	Nov. 14, 2006
Comments	Dec. 4, 2006
Reply comments	Dec. 11, 2006
Final Commission order on Phase 2 issues	Dec. 14, 2006

As noted in the OIR, the Commission intends to resolve all matters in this proceeding within 18 months of the date of this scoping memo, consistent with Pub. Util. Code § 1701.5.

5. Category of Proceeding

The OIR made a preliminary determination that this proceeding should be categorized as ratesetting on the grounds that consideration and approval of the refinements to and further development of the RAR program will impact respondent IOUs' rates. The AReM and the WPTF believe that since this is a statewide policy proceeding that is not focused on individual utility rates, it should be deemed a quasi-legislative proceeding.

The standard used by the Commission in the OIR – that utility rates will be impacted by the policies and rules adopted in this proceeding – is the appropriate standard to apply here. As discussed at the PHC, the local RAR proposals that have been submitted in this proceeding include provisions that can have substantial rate impacts. Accordingly, this ruling determines that the proceeding is ratesetting. This final determination is subject to appeal as

specified in Rule 6.4 of the Commission's Rules of Practice and Procedure (Rules).

6. Principal Hearing Officer

ALJ Mark Wetzell is the principal hearing officer in this proceeding.

7. Party Status

Those who are not already parties, but who wish to participate in this proceeding as full parties must make their request by written motion to intervene, or orally on the record during the proceeding. Others may request that their names be added to the service list (in the "information only" or "state service" category) by sending an e-mail note to the Commission's Process Office at ALJ_Process@cpuc.ca.gov.

8. Rules Governing *Ex Parte* Communications

As discussed in the OIR and as confirmed herein, this is a ratesetting proceeding subject to Pub. Util. Code § 1701.3(c). This means that *ex parte* communications are prohibited unless certain statutory requirements are met. See also, Rule 7(c).

9. Final Oral Argument

Pursuant to Public Utilities Code Section 1701.3(d) and Rule 8(d), and in the event that an evidentiary hearing has been held, any party requesting final oral argument before the Commission shall make such request by letter to the ALJ on the date set for filing of concurrent opening briefs.

IT IS RULED that:

1. The scope and the phasing of this proceeding is set forth in the foregoing discussion.

2. The timetable for this proceeding is set forth in the foregoing discussion.

As provided in the OIR, the assigned Commissioner or Administrative Law

Judges (ALJ) may make any revisions to this schedule necessary to facilitate the fair and efficient management of the proceeding.

3. The local capacity requirements study for 2007 being conducted by the California Independent System Operator is due April 21, 2006.

4. This proceeding is categorized as ratesetting and evidentiary hearings may be necessary as set forth in the foregoing discussion. This ruling on category may be appealed, as provided in Rule 6.4.

5. Administrative Law Judge Mark Wetzell is the principal hearing officer in this proceeding.

6. With respect to issues addressed in evidentiary hearings, any party requesting final oral argument before the Commission shall make such request by letter to the ALJ on the date set for filing of concurrent opening briefs.

Dated March 1, 2006, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

