Alliance for Retail Energy Markets Informal Responses to IRP Procurement Compliance Questions

July 14, 2026

The Alliance for Retail Energy Markets ("AReM") submits these informal responses to questions sent by email to parties of R.25-06-019 on June 17, 2026. Overall, AReM is concerned that these questions indicate that the Commission is reconsidering some of its decision language from the MTR decisions (D.21-06-035, D.23-03-040, D.26-02-057). Changing the rules of the MTR program midstream can result in unfair outcomes to load-serving entities ("LSEs") who made financially binding decisions in response to the afore cited orders. AReM cautions against major rule changes now and instead recommends the Commission implement major changes as part of the upcoming Reliable and Clean Power Procurement Program ("RCPPP").

AReM is also concerned about potential overlap between the scope of these questions and the RCPPP, for which a recent Ruling has sought comments. At times, AReM withholds final comments until it provides responses on the RCPPP ruling.

Section 1. Net Cone

1. *Should a mechanism other than Net Cost of New Entry (CONE) be used to determine the penalty for procurement non-compliance? If yes, what mechanism?*

   No. The Net CONE penalty has been in place since D.21-06-035. The Commission had an opportunity to choose a different value before any penalty was due but confirmed Net CONE in D.23-02-040. The Commission should not change course now. Doing so would be a clear example of changing the rules midstream, that AReM cautions against.

   As to future penalties for the RCPPP program, AReM will have further comments on penalties in response to the latest proposal. Any penalty mechanism, whether based on Net CONE or something else, should be transparent, predictable, and calibrated to support compliance without unduly burdening LSEs.

2. *Should the penalty be proportionate to the Load Serving Entities (LSE's) load served so that its ratepayers are not disproportionately and inequitably affected? Explain.*

   AReM fails to understand this question. The penalty amount at Net CONE should be the same for all LSEs. To do otherwise would be discriminatory. Thus, the penalty should be in proportion to the deficiency, not an LSE's load. Because smaller LSEs have smaller procurement requirements due to their load share, their total exposure to penalties in dollars should be proportionate to their load already.

3. *It is proposed to replace existing language that sets the procurement penalty amount (Net CONE) -- set at the price of a battery energy storage facility-- to a specific dollar amount. Is there a reason that a specific dollar amount should not be provided to replace Net CONE? If yes, explain why?*

   It would be appropriate to set the Net CONE dollar amount to a reasonable estimate of Net CONE. As stated earlier, AReM opposes using a penalty other than Net CONE at this late juncture for existing procurement mandates. AReM will supply further comment on setting penalty values for RCPPP in response to the recent ruling in R.20-05-003. If the Commission decides penalties are justified, AReM seeks penalties that are predictable, timely, and calibrated to support compliance without unduly burdening LSEs.

4. *Should application of procurement penalties be determined annually following June 1st?*

   Based on the decision language in D.23-02-040 and extended in subsequent decisions, that is AReM's expectation. However, LSEs should be afforded opportunity to present their case for "good faith efforts" prior to any penalty. AReM will provide further commentary on penalties and citations in response to the recent RCPPP proposal. If the Commission decides penalties are justified, AReM seeks penalties that are predictable and timely.

Section 2. Good Faith Effort

1. *With the implementation of the alternative compliance approach, it is proposed to sunset the "good faith effort" policy. Is there a need for a complementary policy for the existing alternative compliance approach? Why or why not?*

   A "good faith effort" policy is still needed. The Commission decided in D.25-09-007 that the alternative compliance approach using RA does not apply in specific circumstances. First, it does not apply to delays caused by contract failures. An LSE must have a contract to use the alternative compliance mechanism and can be exposed to penalties until a replacement contract is executed, and that replacement capacity may be delayed beyond the required online date. Second, the alternative compliance mechanism is limited to three-year delays. LSEs with delays beyond this time will require a penalty determination considering "good faith efforts." Third, the Commission needs to decide if there is a point after which an LSE is backstopped and whether a penalty is also required for such backstopped LSEs based on “good faith efforts.”

Moreover, maintaining “good faith effort” flexibility helps preserve MTR compliance as a distinct IRP compliance question, rather than collapsing it entirely into RA compliance.

2. *Should “good faith effort” be defined? If yes, what should be the definition of “good faith effort”. Note: Any definition should be objective and measurable.*

   Yes. As confirmed in the scoping memo and D.25-09-007, “good faith efforts” requires further definition. LSEs require further guidance on what evidence to present to the Commission for it to make final penalty determinations. This evidence should include:

   - Whether and when an LSE conducted a Request for Offer (“RFO”) process.
   - The number and type of responses to each RFO and shortlist materials.
   - Evidence of progress in negotiations. This would include developer communications, negotiation history, draft term sheets, draft contracts, internal approval materials or other similar documentation.
   - Whether any contract was ever executed to meet the MTR requirement, even if the contract failed to deliver new resource capacity.
   - Reasons for any contract failure. Examples could include force majeure events, permitting delays, interconnection delays, deliverability issues, transmission constraints, unexpected price escalation, project withdrawal, financing failure, supply chain issues, or other documented circumstances outside the LSE’s reasonable control.
   - Efforts, including RFOs and swaps with LSEs, made to replace contracts that failed.
   - Use of the alternative compliance mechanisms, both successful and unsuccessful, especially if unsuccessful due to the unreasonable costs of the original bridging mechanism.

   The standard should be objective and measurable, but not so narrow that it eliminates legitimate flexibility. LSEs should know in advance that if they provide certain categories of documentation, those materials will be considered evidence of “good faith effort.” In addition, given the lack of clarity to date, some additional leniency is warranted for delays in meeting requirements through the 2026 tranche.

3. *With the implementation of the alternative compliance approach, please explain why the "good faith effort" policy may still be necessary. Provide an example scenario.*

 See Response to Section 2, Question 1.

Section 3. Definition of "Online"

1. *The proposed definition of online is "the resource is delivering power to the grid and contracted to deliver by the specified compliance tranche date." Other than Commercial Operations Date (COD), are there any other determinants that meet the proposed definition?*

   AReM suggests the resource COD as published by CAISO be used as a starting point, but it is open to alternatives if they can be substantiated as reasonable. The Commission should avoid creating a compliance standard that conflicts with CAISO processes or retroactively changes the meaning of existing contracts.

2. *Can a resource receive a Commercial Operations for Market (COM) notice without ever receiving a COD notice? Please explain.*

   This questions seeks factual information. AReM suggests it is better aimed at CAISO and generators rather than LSEs.

3. *What modifications or upgrades can or should occur that would result in incremental capacity of a resource? Is there anything else other than physical modifications or upgrades that can result in an increase in a resource's deliverability capabilities?*

   A resource could obtain full deliverability when it previously had energy only or partial deliverability. AReM understands such a resource would be considered incremental and MTR-eligible under current rules if it is not in the baseline list. The Commission should recognize the full value of resources where that value is real and demonstrable. The Commission should not omit counting resources if recognizing that value would reduce unnecessary customer costs.

4. *When looking at how energy and storage resources can be paired, are there negative impacts to a resource having intermittent pairing with an energy resource that does not fully span the contract term of the storage? Explain.*

   AReM does not fully understand this question. The term "negative impacts" is not clear in this context.

Section 4. Capacity Factor

1. *What engineering assessment calculation methods can be used by an LSE to demonstrate an 80% capacity factor? Explain specific calculation methods and how this would be demonstrated.*

   AReM understands it as a technological constraint. The contract must be with a resource that has a technology that is capable of satisfying the 80% capacity factor. The assessment needs to confirm this. Given this category was initially aimed at geothermal resources before being broadened to high capacity factor, AReM recommends making the assessment perfunctory for any geothermal resource.

2. *Should the 80% annual capacity factor requirement be determined by: (a) An average annual capacity factor of 80% across the entire term of the contract or (b) An annual capacity factor of 80% in at least the first year of a contract? Explain.*
3. *Should there be a different definition for capacity factor? Why?*

   AReM responds to the above two questions jointly. D.21-06-035 only states that the resource be "able to deliver firm power (with a capacity factor of at least 80 percent)" not that an LSE needs to contract for energy at an 80% capacity factor. Therefore, any contracted energy amount should not be utilized in the assessment. The capacity factor assessment should be based on the technology of the resource as indicated in the response to the previous question.

4. *Due to the Long Lead Time (LLT) requirement for the ratio of the actual amount of electrical power produced by a generating unit and the required continuous generation at full maximum discharge for 24 hours a day, 7 days a week, over a year, should there be a varied definition of capacity factor for LLT resources?*

   The term "actual amount" implies an operational standard, meaning that resources would be assessed based on the amount of energy actually produced. This contradicts the language of D.21-06-035 which states the unit is only able to deliver. Actual operations may be constrained by congestion, for instance. Any attempt to regulate outages would also infringe on the RA market.

Section 5. Resource Delays

1. *If a resource is delayed or contracted with a later online date and paired with a bridge or alternative compliance pathway, should the LSE get to apply the selected tranche Effective Load Carrying Capability (ELCC), or should they be required to use the later ELCC associated to the online date?*

   AReM initially asked this question to Staff in 2021. It received guidance that ELCCs would apply by tranche and not by COD. This was due to technical concerns with the ELCC study. Specifically, if LSEs used a particular tranche ELCC for more than the tranche capacity, it would render the ELCCs inaccurate. AReM recommends that this guidance not be changed at this late date. Use of ELCCs more broadly will be addressed in comments on the RCPPP.

2. *How should resource delay be defined? What evidence can be provided to prove a resource delay?*

   AReM recommends that a delay is when the resource COD is later than the agreed COD in the executed contract. As part of the "good faith efforts" review process, the Commission should specify what kinds of documentation it needs to review to explain the cause of any delays. See response to Section 2, Question 2. Also see response to Section 5, Question 5 for documentation of delays prior to an executed contract that would also fall under "good faith efforts."

3. *If a resource is delayed and a long-term contract is not procured, how should the ELCC for the initial tranche be applied?*

   See response to Section 5, Question 1.

4. *Should the alternative compliance mechanism cure a deficiency gap for a resource that is contracted for a later date, or should the alternative compliance mechanism only close the gap if a resource was originally contracted for an earlier online date?*

   Based on the decision language in D.25-09-007 and guidance received from Staff, AReM understands it to be the latter. The former would require a "good faith efforts" showing. Given the ambiguity in the process, some leniency in the "good faith efforts" demonstrations for capacity through the 2026 tranche is warranted. See response to Section 2, Question 2. Also see the response to Section 2, Question 5 below for limited instances when the delay happened prior to contract execution.

5. *What documentation should be required to demonstrate a resource was originally intended for an earlier contract date other than an executed contract? Please explain.*

   As part of a "good faith efforts" review, the Commission should consider if an LSE had a proposed contract, term sheet, advanced negotiation, or other documentation showing that the parties were working toward an earlier online date, and the date slipped by a relatively limited period before execution.

6. *If a resource is delayed, can an LSE negotiate language that requires the delivery period be extended to maintain a 10- year tenure?*

   Can an LSE typically do so, yes. Whether it should be required is a separate question. Given the lack of clarity on the issue to date, AReM recommends leniency for LSEs for any penalty risk through the 2026 tranche.

Section 6. Issuance of Citations

1. *Since citations are currently issued publicly, is there a reason that procurement citations should not include the following information: Citation Number, LSE, Date Notified, Date Issued, LSE CPUC ID, LSE Type, Specified Violation, Citation Amount, Pay Status, Appeal Status, Appeal Number? If yes, please explain.*

   AReM does not specifically oppose this information being released publicly, per standard practice. AReM would oppose any citation process that would reveal an ESP's load forecast, which is confidential.

2. *Should citations be issued annually? Why or why not?*

   Based on the decision language in D.23-02-040 and extended in subsequent decisions, AReM's expectation is that citations be issued annually. However, LSEs should be afforded opportunity to present their case for "good faith efforts" prior to any penalty. AReM will provide further commentary on penalties and citations in response to the recent RCPPP proposal. If the Commission decides penalties are justified, AReM seeks penalties that are predictable and timely.

3. *What timeframe should be implemented for issuance of procurement citations?*

See responses to Section 1, Question 4 and Section 6, Question 2.

Section 7. Aligning Integrated Resource Planning (IRP), Resource Adequacy (RA), and Renewables Procurement Section (RPS)

1. *Given that IRP, RA, and RPS have different goals and mandates, are there opportunities to align the three programs? Please explain.*
2. *What burdens need to be overcome to align IRP, RA, and RPS?*
3. *Are their stakeholder time constraints inherent in an effort to align IRP, RA, and RPS? Please explain.*

AReM responds to the above three questions jointly. AReM has submitted extensive RCPPP comments in favor of greater coordination between these programs. It will provide further commentary in response to the RCPPP ruling.