BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

R.04-04-003
(Filed April 1, 2004)

REPLY COMMENTS OF DUKE ENERGY NORTH AMERICA
ON CAPACITY MARKETS WHITE PAPER

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October 11, 2005

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Pursuant to ALJ Minkin’s August 25, 2005 Ruling, Duke Energy North America, LLC (“Duke Energy” or “DENA”) provides these reply comments on the Energy Division’s August 25, 2005 *Capacity Markets White Paper*” (“Whitepaper”). DENA filed opening comments on September 23, 2005, describing how a capacity market could address problems with the state of current market failure as well as answering the specific questions posed by in the ALJ Ruling. Having reviewed other parties’ comments, DENA replies with these brief remarks.

I. Reply Comments.

A. Interim or Bridging Efforts Must Immediately Occur To Create Regulatory Credibility and Avoid Regulatory Uncertainty.

As addressed by DENA in response to Staff Recommendation No. 8, it is critical that regulatory credibility be established and that market uncertainty be minimized. Practically speaking, this means a clear articulation of the capacity market “end state” that will be pursued and a similarly clear articulation of the path to be taken, including any phase-in of design elements on a clear schedule. The relative roles of the CPUC and CAISO must be clear. Once established, the market should be permitted to operate without threat of intervention. Other parties’ comments articulate the same concerns.1

1 See, SCE page 14; Constellation, pages 20-21; Calpine, page 8; WCP, page 10; IEP page 13; ORA pages 24-26; PG&E, page 3, 7; Sempra Global, page 12; SDG&E, page 15.
While DENA believes these developments will have a positive effect once brought to full implementation, the fact remains that full implementation of RAR coupled with a capacity market will not occur for some time, and certainly no sooner than two years. Just as DENA has urged the Commission for some time now to provide for “interim” or “bridging” bilateral contracts as a way to secure needed capacity while moving toward formalized capacity markets, that need is now all the more necessary if supply shortfalls are to be avoided.  Such actions have not yet been taken, but should be embraced now to provide supply sufficiency during the transition toward full RAR implementation and the creation of a formalized capacity market.

If any regulatory credibility is to exist and the investment climate improve, steps must be taken immediately to assure supply sufficiency, particularly in those local areas with greater reliability problems. As currently outlined in a recent CPUC proposed decision, full RAR compliance will not occur in the next year, leaving important gaps in how to secure capacity critical for system reliability. Immediate actions must be taken before the formalized capacity market structure and RAR are fully operating. DENA urges

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the Commission to articulate the immediate use of 3-5 year capacity contracts with existing generation to assure supply sufficiency during the transition period.


DENA believes there is a significant level of general agreement between parties with respect to the relative roles of the Commission and CAISO for the formal capacity market, although differences exist with respect to certain implementation details. DENA encourages the Commission to have its jurisdictional LSEs pursue capacity contracting well ahead of the operation of the formal CAISO capacity market, consistent with the adopted RAR policies. RAR remains in transition, and even if the currently pending decision is adopted, full implementation cannot be expected for two years. This means that system reliability is not ensured during that transition period. Rather than risking reliability, interim steps should be taken to bridge the current state of the market and provide supply sufficiency.

Information from CAISO could be used to highlight problem reliability areas and focus transitional, interim capacity contracting on providing continued availability of existing generation and capacity expansions in those problem reliability locations. In this way the overall goal of the capacity market construct—maintain existing generation and develop new infrastructure—can be pursued immediately while the formal market structures supporting RAR are incorporated into the CAISO’s wholesale market redesign. Such actions should address the pressing concerns about supply sufficiency in the reliability-troubled areas, thus buying breathing room to develop and implement a formal capacity market structure at CAISO consistent with the resource procurement policies articulated by the Commission.
II. Conclusion

Upon review of the comments filed by a number of parties, DENA believes there is a substantial level of agreement at a high level regarding the need for regulatory credibility and stability, as well as the use of a formalized capacity market to spur much-needed investment in generation capacity. Despite the high level agreement, immediate 3-5 year transitional contracts must be entered into immediately to provide time to work out the expected disputes of design and implementation details while maintaining system reliability. Failing to address growing local reliability issues now could result in a more difficult supply crisis that would undoubtedly derail RAR and capacity market implementation. Stated differently, the Commission, in conjunction with CAISO and stakeholders, should articulate a durable market direction and path toward implementation that includes the transitional mechanism of bridging contracting efforts to address pressing capacity and reliability needs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Eric Janssen, am over the age of 18 years and employed in the City and County of Sacramento. My business address is 2015 H Street, Sacramento.


Executed on October 11, 2005, at Sacramento, California.

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