The Alliance for Retail Energy Markets[1], the Direct Access Customer Coalition[2], the Energy Users Forum[3], and Shell Energy North America (US), L. P.
Response to CAISO Proposal for Waiver request for Sutter
Sent to: ppettingill@caiso.com

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The CAISO has announced that it plans to seek a waiver of its tariff to allow a Capacity Procurement Mechanism ("CPM") designation to Calpine's Sutter Energy Center, 525 MW facility near Yuba City in Sutter County, CA. This payment, estimated at approximately $30 million annually (at current CPM prices) would begin after the waiver is granted, and if no other LSE steps in to purchase the capacity, and would continue for the remainder of 2012.

Under its current tariff, the CAISO can make a CPM designation to a unit if the unit owner requests a CPM designation in order to avoid retirement. Upon such a request, the CAISO must conduct a study, and if four specific conditions have been met, it may offer a CPM designation to forestall retirement. On December 6, 2011, the CAISO has issued its ***California ISO Report on Basis and Need for a CPM Designation for Sutter Energy Center*** ("Report"), and conducted a stakeholder call on December 12, 2011 that provided the opportunity for market participants to ask questions about the Report and the planned waiver request.

The CAISO's Report contends that three of the four conditions for a CPM designation to preclude Sutter Energy Center's retirement have been met. The one condition that, according to the Report, has not been met is that the unit must be needed to meet reliability needs in the coming year. Instead, the CAISO Report showed that this unit would not be needed until late 2017 or early 2018. Nevertheless, because the Report shows that there is a potential 3570 MW gap in 2017, the CAISO intends to make a CPM payment to these units in 2012 so that they will not retire, and therefore, the CAISO intends to petition the Federal Energy Regulatory Commission ("FERC") for a waiver of the fourth condition so that it can make the CPM designation to the Sutter Energy Center.

Moreover, the CAISO Report says that Calpine's request highlights the benefits of developing a capacity mechanism that addresses longer term needs of the system, and that they will initiate a stakeholder process in early 2012 to develop a longer term mechanism.

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[1] AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California's direct access market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.
[2] DACC is a regulatory alliance of commercial, industrial and governmental customers who have opted for direct access for some or all of their loads.
[3] Energy Users Forum is an ad hoc association that represents the interests of a diverse set of medium and large bundled and direct access customers with accounts located in the service territory of the three large California Investor-Owned Utilities and most California municipal utilities.

The Alliance for Retail Energy Markets ("AReM"), the Direct Access Customer Coalition ("DACC"), the Energy Users Forum ("EUF"), and Shell Energy North America (US), L.P. ("Shell") do not oppose the initiation of a stakeholder process to consider modifications that would improve how the capacity mechanisms can be improved to address the long term needs of the state. AReM/DACC/EUF/Shell do not believe, however, that the CAISO should seek a waiver of its tariff provision to issue a CPM designation to the Sutter Energy Center for the following reasons:

1. CPM compensation is predicated upon a capacity payment for a resource needed to maintain reliability in the coming year only. In this instance, there is no demonstrable need for the facility's capacity or energy for more than 5 years to meet system or local needs. It is inappropriate to suggest that the same payment structure put in place for backstop procurement needed in the current year should be applied for backstop procurement five years hence.
2. The year ahead Resource adequacy showings for 2012 have been made, and there is no evidence that there are deficiencies in that procurement by California Load Serving Entities ("LSEs"), nor does the timing of the waiver request allow LSEs to make any adjustment in their purchases that would allow them to restructure their RA portfolios to accommodate this additional capacity procurement by the CAISO.
3. Securing a waiver in order to make this payment is inappropriate given the CAISO is in the midst of preparing studies to inform the CPUC's Long Term Procurement Proceeding ("LTPP") to assist in decision making about the level of future procurement that will be necessary. In addition, the CAISO's use of the highest load scenario posited in the LTPP proceeding to justify its waiver request – without providing alternative scenarios – precludes stakeholders (and FERC) from making a reasoned decision about the waiver request.
4. The LTPP process is done every two years; there is no reason to pre-determine outcomes from those evaluations by paying one and only unit to stay open in order to participate in future solicitations. If there is a need for a special purpose non-market based contract in the interim, this should be considered at the CPUC via a specific docketed application so that the rate impacts can be fully vetted.
5. The CAISO study indicates that there is a 3570 MW shortfall in late 2017/early 2018 in part to support renewable integration. This has several implications that support opposition to the waiver request:
    a. If this scenario plays out, there will be significant levels of procurement going on, with potentially new and better technologies than the Sutter Energy Center's combined cycle plant. For instance, new gas turbine technology, such as GE's LMS100 gas turbines provide 50 MW of ramping on a 100 MW unit, with fast start capability which may be better suited for the cycling needs anticipated with large scale renewables. Pumped storage in permitting phases is another potential solution. The waiver request provides a significant subsidy to one and only one potential supplier of requirements.
    b. The inevitable shutdown of plants due to insufficient revenues has been discussed at renewable integration stakeholder workshops and has been anticipated. A decision by the CAISO to pay CPM for a unit needed 5 years later is unwarranted and unfair.

   c. While the CAISO was clear on the December 12 stakeholder call that the Calpine request for a CPM designation is the only one that it has received to date, it was unable to provide information on whether there is a significant level of additional uncommitted resources that might seek the same designation. AReM/DACC/EUF/Shell are very concerned that the CAISO would be unable to deny such requests as such denial could be viewed as discriminatory; the impact of signficant amounts of procurement in this manner will serve to compromise bilateral transactions and severely impede capacity market price formation.
   d. The CAISO Report does not perform any sort of economic analysis of retaining Sutter Energy Center vis a vis other facilities; it seems that this may make it more likely that additional resource owners who have not gotten a RA contract will make similar requests.
6. The CAISO's proposed six month stakeholder process to put in place more forward looking RA requirements that will make this unit more valuable is optimistic, as evidenced by the following facts:
   a. The CAISO has taken no action in the 18 months since the CPUC issued its decision rejecting a multi year forward capacity market.
   b. The CAISO has been unable to conclude a proceeding on the Planning Reserve Margin or issues relative to the Standardized Capacity Product, which ostensibly are simpler issues that the design of capacity requirements, and markets to meet them.
   c. Just what the CAISO will seek to do in its stakeholder process is unclear – if it seeking only to get a multi year forward RA obligation in place with no clearing market, that outcome has severe market consequences, especially for retail choice providers, whose load will vary significanly over a multi-year time frame. Any movement toward multi-year capacity requirements must carry with it the ability for obligated entities to manage those obligations through a well-designed market structure.
   d. The likelihood that the CAISO's stakeholder process will not produce meaningful changes to California's capacity construct in six months' time raises a serious concern that these payments will continue beyond 2012, and if additional facility owners also request such payment, the excess procurement could become very large.
7. The CAISO does not appear to have explored any other options for helping the Calpine units avoid retirement, such as:
   a. Mothballing: The study indicates that Calpine has attested that mothballing would potentially trigger New Source Review requirements, which would make the unit uneconomic, but no economics are offered in this regard. Moreover, has the possibility of securing waivers to those requirements been explored so that mothballing could be considered?
   b. RMR: Is RMR a feasible alternative. Would that cost less than a CPM designation?
   c. Having suggested the exploration of alternative payment structures, it is important to note that out-of-market procurement like this is always detrimental to competitive market formation because it creates uplift payments, rather than price signals.

8. The system is long capacity due partially to policies that have approved contracts for facilities that were in excess to any new resource need identified in the LTPP process. These policies have consequences when the supply begins to far outstrip demand, as is the case with respect to California's system capacity. Market participants should not be shielded from those consequences with out-of-market payments.

AReM/DACC/EUF/Shell appreciate this opportunity to submit these comments. If you have questions, please contact Sue Mara at 415-902-4108.