

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate
and Refine Procurement Policies and
Consider Long-Term Procurement Plans

R.12-03-014
(Filed March 22, 2012)

COMMENTS OF NRG ENERGY, INC. ON
PRELIMINARY SCOPING MEMO

Abraham Silverman
211 Carnegie Center
Princeton, NJ 08540
Telephone: (609) 524-4696
Email: abraham.silverman@nrgenergy.com

Attorney for
NRGE NERGY, INC.

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In accordance with the March 27, 2012 *Order Instituting Rulemaking* (“OIR”), NRG Energy, Inc.¹ (“NRG”) hereby submits these comments on the Preliminary Scoping Memo (“Scoping Memo”) contained in the OIR.

I. COMMENTS

The Scoping Memo highlights the immediate need for a proceeding focusing on the creation of a mechanism for the State of California to procure, on a multi-year forward basis, the flexible capacity needed to meet California’s renewable energy integration goals. We urge the Commission to initiate a single process to focus on and deal with this issue.

A. There is a Clear Need for Multi-Year Forward Procurement of Flexible Capacity.

The Scoping Memo correctly acknowledges that there is currently a “procurement gap” between the California Public Utility Commission’s (“Commission’s”) existing single year-forward Resource Adequacy (“RA”) market and its Long-Term Procurement Planning (“LTPP”) process, which evaluates conditions and directs procurement ten years in advance. As the OIR

¹ NRG Energy, Inc. is the parent of Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC, Long Beach Generation LLC and NRG Solar Blythe LLC, each of which owns and operates generating resources in California. Because the focus of this proceeding is on California market issues, NRG Energy, Inc. appears on behalf of these entities, referred to here as the NRG Companies.

recognized, neither the RA program nor the LTPP deals with needs that may arise in years two through nine:

Multi-year Flexible Capacity Procurement Rules – We may consider adoption of new rules for forward procurement of flexible resources to support grid reliability, for either local reliability reasons and/or grid integration of renewable resources. In conjunction, we may review our policy and consider refinements to our existing rules concerning long-term contract solicitations.²

The NRG Companies support the Commission’s efforts to address this disconnect and urge the Commission to adopt a multi-year forward RA construct.

The recent decision by Calpine Corporation to retire its Sutter Energy Center (“Sutter”) typifies the problems with the Commission’s existing procurement policies. Two parallel proceedings have sprung from Calpine’s decision, both of which seem likely to result in the procurement of system RA at prices above those typically seen in the RA market. The first is the CPUC’s consideration and approval of Resolution E-4471,³ which directed the three Investor Owned Utilities to attempt to negotiate an RA contract for the Sutter facility at a price less than that that Sutter would earn under the California Independent System Operator Corporation’s (“CAISO’s”) Capacity Procurement Mechanism (“CPM”). The second is the CAISO’s request of the Federal Energy Regulatory Energy Commission (“FERC”) to waive portions of its FERC-approved tariff to allow the CAISO to grant a risk-of-retirement Capacity Procurement Mechanism (“CPM”) designation to Sutter so this modern, efficient combined-cycle facility would remain available to help meet an approximately 4,000 MW deficiency in flexible capacity the CAISO projects to be realized in 2018.⁴

² Scoping Memo at 9.

³ Available at http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/162985.pdf.

⁴ See *California Independent System Operator Corporation Petition for Waiver of Tariff Revisions and Request for Confidential Treatment*, submitted January 25, 2012 in Docket No. ER12-897 at 3.

The issue of whether to take extraordinary action to prevent a single facility from retiring has created significant controversy. Most parties submitting comments to FERC opposed the CAISO's request to grant Sutter a risk-of-retirement CPM designation and the Commission itself appeared conflicted, approving the Resolution by a 3-2 vote. In particular, Commissioner Sandoval voted for the Resolution with the express understanding that the resolution directed the IOUs to negotiate an RA contract with Calpine – but at a price less than rate that Sutter would be entitled to under the CPM program. Clearly, the entire Sutter issue would have been avoided by the type of long-term forward, bilateral, capacity procurement mechanism the Commission is considering in its OIR.

1. The OIR Represents a Potential Step Forward.

On March 30, 2012, Energy Division staff held a workshop in the newest Resource Adequacy proceeding (R.11-10-023) to review two proposals for incorporating flexibility considerations or requirements into the RA program. Energy Division's proposal would modify the Maximum Cumulative Capability ("MCC") "buckets" currently used in the RA program to incorporate flexibility requirements by creating four buckets around two characteristics (dispatchability and use limitations) and limiting the amount of procurement in the lower quality buckets (e.g., the non-dispatchable, use-limited bucket) that can meet RA requirements.⁵ The CAISO's proposal would create three categories of flexibility (maximum ramp, load following and regulation) and would modify the RA program – including modifying the current five-month system RA showing period to an annual showing period – to ensure that monthly flexibility

⁵ Energy Division's proposal can be found at <http://docs.cpuc.ca.gov/efile/RULINGS/162601.pdf>.

requirements are met.⁶ Following several hours of discussion of both proposals, representatives from all three IOUs urged that neither proposal be adopted for RA compliance year 2013.

In addition to these two proposals for incorporating flexibility requirements into the RA program under consideration by the Commission, the CAISO is in the midst of a stakeholder process to review and develop a proposal for forward procurement of flexible capacity through a multi-year “backstop” mechanism.⁷

While the Scoping Memo expressly excludes matters under consideration in any Resource Adequacy rulemaking from being considered in the instant rulemaking,⁸ there clearly is the potential for the issue of forward procurement of flexibility to overlap multiple rulemakings (RA and LTPP) and different regulatory jurisdictions (FERC and the CPUC). Experience suggests that the more proceedings in which an issue is being considered, the less likely it will be timely and successfully addressed in a way that does not perpetuate ongoing conflicts or create new ones.

NRG urges the Commission to promptly identify and commence a single process that will deal with the “gap” issue of multi-year forward procurement of flexibility. While the CAISO already has had months’ worth of discussion about its backstop authority, it is not yet apparent what procurement process(es) this sought-after authority would backstop. What *is* apparent is that there appears to be little appetite among the IOUs for incorporating flexibility requirements into the RA program in the near term. With little appetite for dealing with forward procurement of flexibility in the RA program, and no concrete proposals for dealing with forward procurement of flexibility in the instant rulemaking, the prospects for addressing the

⁶ The CAISO proposal is available at <http://docs.cpuc.ca.gov/efile/RESP/162107.pdf>.

⁷ See <http://www.caiso.com/informed/Pages/StakeholderProcesses/FlexibleCapacityProcurement.aspx>.

⁸ Scoping Memo at 12.

procurement “gap” seem uncertain, if not dim. Moreover, aggressively pursuing a flexibility *backstop* mechanism at a time when there has not been any meaningful discussion of what the *primary* flexibility procurement mechanism is somewhat surreal.

2. Any Forward Capacity Procurement should be Integrated into the RA Process.

The Commission should ensure that any forward procurement mechanism (whether addressing flexibility or generic capacity procurement) should be completed on a routine, yearly, basis. Consequently, any long-term multi-year forward capacity mechanism should resemble the annual RA process, and not the less regular LTPP process. That suggests it may be better to take up the design of this process in the RA proceeding rather than the LTPP proceeding.

II. CONCLUSION

NRG urges the Commission to quickly establish or identify a single process in which to consider multi-year forward procurement of flexibility, and to begin work in that process in a timely fashion.

Respectfully submitted,

/s/ Abraham Silverman

Abraham Silverman
NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
Telephone: (609) 524-4696
Email: Abraham.Silverman@nrgenergy.com

Attorney for
NRGE NERGY, INC.

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