

**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.

Rulemaking 12-03-014
(Filed March 22, 2012)

**COMMENTS OF GENON ENERGY, INC.
ON PRELIMINARY SCOPING MEMO**

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I. INTRODUCTION.

Pursuant to the Order Instituting Rulemaking (“OIR”) adopted on March 22, 2012, GenOn Energy, Inc. (“GenOn”) provides the following comments on the preliminary scoping memo identified in the OIR.

GenOn endorses the schedule set forth in the OIR that calls for a decision in this proceeding in December 2012. As GenOn has described in the predecessor long-term procurement plan (“LTPP”) proceeding (Rulemaking (“R”) 10-05-006), it is critical that the Commission make a needs determination in connection with local capacity requirements by year-end 2012. With respect to multi-year flexible capacity procurement rules, GenOn believes procurement rules for existing capacity are best addressed in the docket where resource adequacy (“RA”) requirements are currently being addressed (R.11-10-023). If multi-year flexible capacity procurement is taken up in this docket, that topic should be assigned a separate, secondary phase such that its consideration does not jeopardize a timely decision on local capacity needs.

II. THE OIR CORRECTLY TARGETS YEAR-END 2012 FOR A DECISION ON LOCAL CAPACITY NEEDS.

In the prior LTPP rulemaking (R.10-05-006), GenOn signed the Settlement Agreement addressing the status of the record in connection with the issue of whether new generating capacity is required over the ten-year planning period. A major source of compromise that led to

the Settlement Agreement was the premise that additional needs analyses would be conducted during 2012, and that the Commission would adopt a procedural schedule that would address those analyses and issue a need determination by the end of 2012. The Settlement Agreement is explicitly clear on this subject. This compromise allowed parties to forego litigating the need determination in R.10-05-006 based on the incomplete record then in existence. Aware that parties cannot tell the Commission what to do, the proposed schedule contained in the Settlement Agreement was styled as a recommendation. However, that recommendation was a crucial element of the Settlement Agreement.

The need for an expedited needs analysis arises from the length of time it takes to develop new generation resources in California. In its testimony and opening brief in R.10-05-006, GenOn established the timeline for completion of new generation facilities. The process of developing and constructing a new generation project in today's regulatory environment in California can be expected to take between 7 and 9 years. If new capacity is needed in California by 2020, we already lack sufficient time to develop new resources according to a 9 year schedule, even if development were to begin today. And if we assume that a new project can be completed in 7 years, which is the best case scenario in today's regulatory environment, it will be necessary to commence the request for offer ("RFO") process in 2013. Such timing would be necessary to enable: (1) developers to select their technology, prepare proposals for submission in the RFO, contract with equipment vendors, and commence their permitting processes; (2) the procuring utilities to consider offers, negotiate with participants, select winning projects, and obtain Commission approval of the contracts; and (3) winning developers to complete the permitting process, secure financing, and complete construction. Issuance of RFOs in 2013 also presumably would require some lead time after the Commission adopts its need determination, to allow the utilities to prepare RFO protocols and design and structure the RFOs. Given all of these tasks and the time required to complete them, the Commission must evaluate additional analyses addressing possible need for new generation, and adopt a need determination, by year-end 2012 to allow sufficient time to complete any projects that may be needed in 2020.

The scoping memo in the OIR sets forth a schedule consistent with these concerns, specifying that a decision will be issued in December 2012. Between now and year-end 2012, the Commission should consider additional needs analysis conducted by the California Independent System Operator and allow parties the opportunity to test the conclusions of such additional analysis. If the analysis shows need for new capacity, the Commission can issue a decision by year-end 2012 authorizing the procurement of such capacity. Issuing a need determination by the end of 2012, with RFOs to follow soon in 2013, would allow sufficient time for the processes outlined about to be completed to bring new projects into operation to meet the need in 2020. If the Commission does not meet this timeline, it creates a risk that sufficient new capacity will not be available to meet reliability needs in 2020.

III. WHILE THE COMMISSION SHOULD CONSIDER A MULTI-YEAR FLEXIBLE CAPACITY PROCUREMENT FRAMEWORK, THAT CONSIDERATION IS BEST UNDERTAKEN IN R.11-10-023.

On page 9, the OIR specifies that “Multi-year Flexible Capacity Procurement Rules” is an issue the Commission intends to consider in this proceeding. GenOn does not dispute that this is an important issue meriting the Commission’s focused attention. However, for several reasons, this issue should be taken up in the existing RA docket (R.11-10-023), not in this new LTPP rulemaking.

Most importantly, the formulation of a multi-year flexible capacity procurement framework is a controversial endeavor that will take longer than seven months to complete. As outlined in the previous section, the Commission’s urgent focus is required on the local needs determination. GenOn is concerned that folding the multi-year flexible capacity procurement topic into the LTPP will delay the decision on local needs beyond 2012.

On another front, the evolution of the Commission’s procurement policymaking over the last decade is the bifurcated LTPP and RA frameworks. The LTPP rulemakings have become an effective vehicle for determining when new generation resources are needed for reliability. The RA rulemakings have consistently addressed issues regarding the capacity compensation that existing facilities will receive. The issue of whether to adopt a multi-year flexible capacity

procurement framework is fundamentally about how to compensate existing facilities. Adhering to how the Commission has handled this type of procurement issue in the past, as well as the fact that the Commission has already done some detailed work on flexible capacity procurement in the existing RA docket, the best place to consider a multi-year flexible capacity procurement framework is in the existing RA docket.

If the Commission nonetheless decides to take up the issue of a multi-year flexible capacity procurement framework in this LTPP, GenOn urges the Commission to create a separate phase of this proceeding to address the issue. The expeditious determination of local needs requirements should not be compromised by attempting to resolve what promises to be a controversial decision. Placing the multi-year flexible capacity procurement issue in a separate phase independent of the local needs analysis will optimize the possibility the Commission can meet a year-end 2012 deadline for a decision on local needs.

IV. CONCLUSION.

Based on the foregoing, the Commission should affirm the schedule identified in the OIR which would result in a decision on local needs requirements in December 2012. The Commission should consider the multi-year flexible capacity procurement issue in the existing RA docket, but if it instead elects to consider the issue in this docket, the issue should be placed in a separate phase so as not to delay a local needs decision.

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Respectfully submitted,

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