

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Oversee
The Resource Adequacy Program, Consider
Program Refinements, and Establish Annual
Local Procurement Obligations.

Rulemaking 11-10-023
(Filed October 20, 2011)

**COMMENTS OF ENERNOC, INC., ON PROPOSED DECISION ADOPTING LOCAL
PROCUREMENT OBLIGATIONS AND RA PROGRAM REFINEMENTS**

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EnerNOC, Inc. (EnerNOC) respectfully submits these Comments on the Proposed Decision of Administrative Law Judge (ALJ) Gamson Adopting Local Procurement Obligations for 2013 and Further Refining the Resource Adequacy (RA) Program (“Proposed Decision”). The Proposed Decision was issued in R.11-10-023 on May 22, 2012. These Comments are timely filed and served pursuant to Article 14 of the Commission’s Rules of Practice and Procedure and the instructions accompanying the Proposed Decision.

**I.
INTRODUCTION**

EnerNOC has actively participated in this proceeding through workshops and submission of opening and reply comments in April 2012 on proposals made by the California Independent System Operator (CAISO) and the Energy Division to address flexible capacity needs with regard to local capacity requirements over the next several years. These proposals are addressed in the Proposed Decision. While EnerNOC has continually indicated its preference for the Energy Division’s proposal, EnerNOC does support the Proposed Decision’s determination to postpone adoption of either proposal pending further examination of this issue. However, certain modifications of the Proposed Decision are still required to ensure consistency with Commission policy and clarification of next steps, as indicated herein.

II.
**THE PROPOSED DECISION’S ADOPTION OF THE ENERGY DIVISION’S
MAXIMUM CUMULATIVE CAPACITY CAP FOR
DEMAND RESPONSE IS COUNTER TO COMMISSION POLICY.**

While declining to adopt either the Energy Division new maximum cumulative capacity (MCC) buckets proposal or the CAISO’s flexible capacity proposal at this time, the Proposed Decision does conclude that it will “look to the Energy Division’s back-up proposal to update MCC buckets and implement a new demand response MCC bucket at this time.”¹ Stating that this proposal is “non-controversial” and “responsive to previous Commission decisions,” the Proposed Decision adopts the “Energy Division proposal to update the percentages used for the MCC buckets to reflect more current load shapes, and to add a bucket specific for Demand Response resources.”²

Contrary to the Proposed Decision’s conclusion that this proposal was non-controversial, the fact is that this position and recommendation by the Energy Division was given very little scrutiny or review in either the workshops or comments on which this Proposed Decision is based. Along with the Energy Division and the CAISO, all parties, including EnerNOC, were focused on the primary proposals of these entities, not any “back-up” proposal.

EnerNOC wishes to confirm now that it has *significant* concerns with and *objects to* the Commission establishing a new demand response (DR) MCC based upon Energy Division’s back-up proposal. The back-up proposal would establish an MCC cap of 5.6% for DR resources to count toward the load serving entity’s (LSE’s) resource adequacy (RA) requirement. Any DR acquired above the cap would not count for RA.

Such a result is completely contrary to applicable and recent Commission precedent. Specifically, just last month in D.12-04-045, the Commission stated its continued support and

¹ Proposed Decision, at p. 22.

² Id.

desire to expand demand response *above* current levels.³ While the joint agencies have established a goal of 5% of peak demand delivered through demand response resources in the Energy Action Plan (EAP) II, the 5% was *not* intended to serve as a *cap*. As the Commission stated in D.12-04-045: “We remain committed to meeting this target *and to increasing* our reliance on cost-effective DR.”⁴

Establishing an MCC cap at 5.6% for DR will discourage the LSEs, in particular, the investor-owned utilities (IOUs), from exploring DR opportunities that may approach or exceed the cap, if additional DR capacity would not count for RA purposes. EnerNOC further notes that, in Energy Division’s primary proposal,⁵ DR was part of MCC bucket 2 with a cap for both bucket 1 and 2 of 45%. There is a significant difference between this proposal and the back-up proposal in terms of the limitation it represents for DR participation.

For these reasons, EnerNOC objects to the Proposed Decision’s adoption of the Energy Division’s “back-up” proposal because it conflicts with applicable Commission precedent, especially by limiting future DR resource development by establishing a cap that limits LSE procurement for RA purposes. EnerNOC, therefore, urges the Commission to modify the Proposed Decision to eliminate any adoption of a specific MCC bucket at this time. Again, not only was this “back-up” proposal never well examined in this proceeding and is inconsistent with Commission policy, but its adoption now would also inject unnecessary uncertainty on this point given the possibility of changes within the year resulting from further investigation of the unresolved issues in this docket.

Thus, because the Proposed Decision has set a course for further considering central proposals on flexible capacity in the near term, it is possible that additional revisions could

³ D.12-04-045, at pp. 11-16.

⁴ D.12-04-045, at pp. 11-12.

⁵ Energy Division Workshop Report, March 23, 2012, at p. 8.

ultimately be made relative to existing RA requirements and/or the MCC buckets based on that examination. It would not be prudent to impose a requirement that may be in place for 2013 and then revise it again for 2014, potentially, and beyond.

**III.
THE PROPOSED DECISION SHOULD BE REVISED TO AVOID PREJUDGING
THE NEED FOR FLEXIBLE CAPACITY IN ADVANCE OF ASSESSING
THE FACTS TO SUPPORT SUCH A DETERMINATION IN A
FUTURE PHASE OF THIS PROCEEDING OR IN R.12-03-014 (LTPP).**

In Section 3.2.2 (“Flexible Capacity and Maximum Cumulative Capacity Buckets Proposals”), the Proposed Decision states:

“No party disputes that grid operations and reliability may suffer without sufficient generation capable of being flexibly dispatched. We agree that we need to define flexible attributes for local reliability purposes in order to ensure ongoing reliability in a changing load and supply environment. Both the ISO and Energy Division have presented worthwhile proposals intended to address, from different perspectives, the need for flexible capacity on the grid in order for the ISO to continue to operate the grid reliably as increasing levels of generation from renewable, often intermittent, sources of power are operational and generating electricity.”⁶

While EnerNOC might agree that the CAISO and Energy Division proposals are designed to “address” a “need” for flexible capacity on the grid, neither establishes, nor is there any record herein that establishes, the condition precedent for such proposals – namely, that such a “need” even exists in the first place. In fact, that key factual condition precedent - determination of need – is an issue that, as of this date, is to be exclusively addressed and resolved in the Commission’s Long Term Procurement Plan (LTPP) rulemaking, R.12-03-014.

In these circumstances, any framework that is developed in this or a successor proceeding to further consider any proposal to address flexible capacity must be coordinated with and based on the record and a determination of the “need” for such resources, if any, first made in R.12-03-014 (LTPP). The Proposed Decision must be modified to make this relationship with R.12-03-

⁶ Proposed Decision, at p. 17.

014 clear and to state that a proposal could be adopted, but its implementation will be conditioned on a need for flexible resources first being identified in R.12-03-014. To do otherwise, has the effect of inappropriately prejudging the outcome of a pending issue in R.12-03-014 (LTPP).

In this regard, the Scoping Memo in R.12-03-014 (LTPP) predated the Proposed Decision here and makes clear that the issues before the Commission in that proceeding will include the following:

- “1. Whether additional capacity is required to meet local reliability needs in the Los Angeles Basin and Big Creek/Ventura area between 2014 and 2021, and, if so, how much;
- “2. Whether flexible capacity attributes should be incorporated into a decision regarding additional capacity required to meet local reliability needs between 2014 and 2021 and, if so, how;
- “3. How any relevant decisions in the Commission’s RA docket R.11-10-023 regarding flexible capacity should be incorporated into a decision on procurement of additional local capacity;
- “4. What assumptions concerning retirements of OTC plants should be made for the purpose of determining future local reliability needs;
5. Whether the ISO’s local capacity requirements and OTC studies should be adopted by the Commission as the basis for procurement of additional local capacity, and, if not, what should form the basis of a Commission decision;
- “6. How resources aside from conventional generation, such as uncommitted energy efficiency, demand response, energy storage and distributed generation resources should be considered in determining future local reliability needs;”⁷

This direction, however, appears to have been ignored by the Proposed Decision, which makes the following conflicting or, at least, competing, directions:

“We will immediately begin the effort to finalize a framework for filling flexible capacity needs in this proceeding. Our intent is to adopt a framework by or near the end of 2012, for implementation in the 2014 RA compliance year. We will

⁷ Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, R.12-03-014 (May 17, 2012), at p. 5.

also coordinate our efforts in this proceeding with those in the LTPP proceeding. The Scoping Memo in the LTPP proceeding foresees a Commission decision by or near the end of 2012 allowing or requiring utilities and/or other LSEs to procure for local reliability needs under multi-year contracts. The flexible needs framework we expect to adopt in this proceeding could potentially be used for subsequent Request for Offers to fulfill procurement determined in the LTPP proceeding.”⁸

Clearly, there is an overlap of the examination of the issues relative to flexible capacity in both this proceeding and the LTPP (R.12-03-014). This is not beneficial either to party participation or, more importantly, to Commission decision-making. EnerNOC, therefore, urges the Commission to modify the Proposed Decision to clarify that a “need” determination for flexible capacity will be made in R.12-03-014 (LTPP) and that a determination of “need” will be a condition precedent to the adoption of any “flexible capacity” proposal here.

**IV.
THE PROPOSED DECISION’S APPROVAL OF THE LOCAL
DISPATCH EXEMPTION FOR CERTAIN DEMAND RESPONSE
PROGRAMS MUST BE REVISED SO THAT THE
EXEMPTION IS IN PLACE FOR THE 2013 COMPLIANCE YEAR.**

The Proposed Decision grants Pacific Gas and Electric Company’s (PG&E’s) request for an exemption to the local dispatchability requirement in order to receive local RA credit for the capacity bidding program (CBP), demand bidding program (DBP) and the aggregator-managed portfolio (AMP) until May 2013.⁹ PG&E’s request for an exemption was centered primarily around timing concerns associated with receiving a later-than-expected final decision in the DR 3-Year Program Proceeding (D.12-04-045) and resulting delays in implementation that would impact PG&E’s resource adequacy demonstration filing in October 2012.

The Proposed Decision appropriately finds that timing concerns are among the eligible reasons to request, and receive, an exemption. However, the Proposed Decision, in its discussion

⁸ Id.

⁹ Proposed Decision, at pp. 32-33.

and Ordering Paragraph 39, states that PG&E is “to implement changes by May 1, 2013”¹⁰ or require these programs to “be locally dispatchable by May 1, 2013.”¹¹ However, PG&E’s RA filing in October 2012 will be for the 2013 Compliance Year, and some of the programs requested for an exemption are not even available for dispatch until May 2013. Ending the requested exemption in May 2013 would require PG&E to have local dispatch capability for its resources during the Compliance Year in which PG&E sought the exemption. Thus, in order for the exemption to be meaningful, it must be in place for the 2013 Compliance Year.

In fact, both the discussion and Ordering Paragraph 10 should be modified consistent with the Proposed Decision’s Conclusion of Law 10, which states that the exemption should be available for the “2013 compliance year.” That result is not only reasonable for the reasons offered by PG&E originally, but is also supported by factors that have emerged since that time that impact the ability to implement local dispatch requirements upon AMP resources with any certainty. For example, both PG&E and Southern California Edison Company (SCE) have issued requests for offer (RFO) for DR resources for 2013 and 2014, as permitted in D.12-04-045. EnerNOC is preparing a response to those RFOs. However, the timing associated with evaluating, selecting, finalizing, and receiving regulatory approval for those selected bids is uncertain. The responses for RFOs will be submitted at, or slightly in advance of, the issuance of a final decision in this proceeding.

Therefore, bidders must make educated assumptions about the outcome of this proceeding in their responses, and PG&E and SCE will only just be learning what types of bids they have received in response to their RFOs. EnerNOC is certainly willing and able to dispatch its resources on a local capacity area (LCA) basis, if required. EnerNOC can also dispatch its

¹⁰ Proposed Decision, Conclusion of Law 10, at p. 33.

¹¹ Proposed Decision, Ordering Paragraph 10, at p. 39.

resources on a sub-LAP (load aggregation point) basis, consistent with the requirement of CAISO's Proxy Demand Resource (PDR), so long as the sub-LAPs are of a sufficient size to allow EnerNOC to aggregate customers and manage the fluctuation potential of a portfolio with a smaller pool of customers. Aggregation is the way that EnerNOC manages performance risk. Limiting aggregation increases performance risk for EnerNOC. However, the uncertainty around the issue of local deliverability makes it difficult for aggregators to anticipate how to submit a response to the RFO and for PG&E to anticipate the response to the RFOs to know whether DR will count for local resource adequacy.

For these reasons, extending the exemption for the 2013 Compliance Year is reasonable and necessary. EnerNOC, therefore, urges the Commission to modify the Proposed Decision's discussion and Ordering Paragraph 10 to extend the exemption for the 2013 Compliance Year, consistent with the Proposed Decision's Conclusion of Law 10.

V. CONCLUSION

For the reasons stated above, EnerNOC urges the Commission to modify the Proposed Decision in issuing its final decision as follows, consistent with EnerNOC's Proposed Ordering Paragraphs contained in Appendix A hereto:

1. The use of the Energy Division's back-up proposal to establish an MCC bucket for DR resources should be eliminated from this Proposed Decision because it is counter to Commission policy and is not supported by the record established to date in this proceeding.
2. The Proposed Decision should be modified to avoid prejudging the need for flexible capacity resources in advance of an examination of the facts related to that issue, which is within the scope of R.12-03-014 (LTPP).
3. The request made by PG&E for exemption of CBP, DBP and AMP resources for the local dispatch requirement for 2013 should be granted, as contained in the Proposed

Decision. However, the exemption should be in place through the 2013 Compliance Year, as correctly stated in Conclusion of Law 10 of the Proposed Decision, and the Proposed Decision's discussion at pages 32 through 33 and Ordering Paragraph 10 should be modified accordingly.

Respectfully submitted,

June 11, 2012

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APPENDIX A

PROPOSED ORDERING PARAGRAPHS

EnerNOC recommends that the following changes be made to the Ordering Paragraphs of the Proposed Decision Adopting Local Procurement Obligations for 2013 and Further Refining the Resource Adequacy Program (Proposed Decision). Please note the following:

- A page citation to that Proposed Decision is provided in brackets for each Ordering Paragraph in the Proposed Decision for which a modification is proposed.
- Any proposed additional Ordering Paragraph is not numbered, but is identified as a “NEW ORDERING PARAGRAPH.”
- Added language is indicated by **bold type**; removed language is indicated by **bold strike-through**.

PROPOSED ORDERING PARAGRAPHS:

___. [NEW ORDERING PARAGRAPH] The implementation of a framework for applying a flexible capacity resource adequacy requirement will depend upon the establishment of need in R.12-03-014.

7. [39] Energy Division shall update the percentages used for the Maximum Cumulative Capacity Buckets to reflect more current load shapes, ~~and to add a bucket specifically for Demand Responder resources, and to implement this via the Energy Division's Resource Adequacy template.~~

10. [39] Pacific Gas and Electric Company's Aggregator Managed Program, Capacity Bidding Program and Demand Bidding Program shall be counted for Resource Adequacy in the 2013 Resource Adequacy compliance year. ~~These programs must be locally dispatchable by May 1, 2013.~~