

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 THE
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON
THE PROPOSED DECISION ON 2013 LOCAL PROCUREMENT OBLIGATIONS**

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MISCELLANEOUS

Article 14, Commission Rules of Practice and Procedure1

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The Center for Energy Efficiency and Renewable Technologies 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**

In addition to addressing 2013 local procurement obligations, the Proposed Decision considers proposals by the California Independent System Operator (CAISO) and the Commission’s Energy Division “to address flexible capacity needs with regard to local capacity requirements over the next several years.”¹ It is with respect to these proposals that CEERT focused its advocacy in this phase of R.11-10-023 by participating in the January 2012 workshops and providing comments on the Energy Division Workshop Report on April 11, 2012.

¹ Proposed Decision, at p. 2.

The Proposed Decision declines to adopt either proposal because of a need for further study with a decision expected “by or near the end of 2012 on this topic.”² Of significance, the Proposed Decision also commits to “coordinat[ing]” the Commission’s efforts on this issue with “efforts in the Long-Term procurement Process (LTPP) proceeding (Rulemaking 12-03-014) to provide a method for contracting for multi-year local capacity needs.”³

The Proposed Decision correctly states that CEERT supported adoption of the Energy Division’s proposal based on a revised Maximum Cumulative Capacity (MCC) bucket structure over the CAISO’s proposal. It was, and remains, CEERT’s position that the Energy Division’s proposal was consistent with the policy framework for the Resource Adequacy (RA) program and could “provide the proper allocation of resources to the CAISO in order to reliably serve load.”⁴

While CEERT does not object to a postponement to further study these proposals before adopting either, CEERT does believe that the Proposed Decision should be modified to provide greater specificity on how critical issues related to “flexible capacity” procurement will in fact be sequenced and coordinated between this proceeding and the LTPP (R.12-03-014), including the prerequisite of establishing a “need” for such resources. All parties will benefit from this direction, especially where similar issues and studies offered by the CAISO regarding flexible capacity “needs” are already being considered in the LTPP, with hearings expected in August 2012.⁵ CEERT’s recommended modifications to the Proposed Decision to clarify consideration of these issues between this proceeding and the LTPP rulemaking are addressed in the following section.

² Proposed Decision, at p. 2.

³ Proposed Decision, at p. 2.

⁴ CEERT Comments on Energy Division (ED) Workshop Report (April 11, 2012), at p. 2.

⁵ R.12-03-014 (LTPP) Scoping Memo, at pp. 5-8.

II.
THE PROPOSED DECISION SHOULD BE MODIFIED TO PROVIDE GREATER SPECIFICITY ON THE COORDINATION AND SEQUENCE FOR CONSIDERATION OF PRIORITY ISSUES ON FLEXIBLE CAPACITY PROCUREMENT.

In several places, the Proposed Decision commits to coordinating efforts on issues related to addressing flexible capacity needs with regard to local capacity requirements between this proceeding (R.11-10-023) and the LTPP rulemaking (R.12-03-014).⁶ This promised coordination is critical, but left vague by the Proposed Decision, including failing to address the needed sequencing for considering and resolving these outstanding issues between the two proceedings.

Specifically, the Proposed Decision appears to set a next-step course for parties *in this proceeding* to “build upon the efforts” of the CAISO and Energy Division to “finalize a framework for filling flexible capacity needs.”⁷ However, consideration or adoption of such a framework presupposes that such “flexible capacity needs” actually exist and must be procured either near-term or long-term. That issue is being considered, but has yet to be decided, in the LTPP rulemaking,⁸ and a focus in this proceeding on developing a framework for that procurement has the effect of putting the cart-before-the-horse or suggesting a predisposition of that issue.

In this regard, the Proposed Decision confirms that there exists “no immediate need to impose flexibility requirements in 2013,” and, as such, looks to “the 2014 RA compliance year” to implement any “framework for filling flexible capacity needs.”⁹ However, the LTPP rulemaking has confirmed and is on course to consider testimony from the CAISO and other parties this summer on, e.g., “*Whether additional capacity is required to meet local reliability*

⁶ Proposed Decision, at pp. 2, 13, 20.

⁷ Proposed Decision, at p. 20.

⁸ R.12-03-014 (LTPP) Scoping Memo, at pp. 5-7.

⁹ Proposed Decision, at pp. 19-20.

needs” between 2014 and 2012 in specific Southern California locations, “*whether* flexible capacity attributes should be incorporated into a decision regarding additional capacity required to meet local reliability needs between 2014 and 2021,” “*whether*” and to what extent the Commission should rely on CAISO local capacity requirements and once-through-cooling (OTC) studies and assumptions in determining future local reliability needs. ¹⁰

Thus, while CEERT might agree that “grid operations and reliability may suffer without sufficient generation capable of being flexibly dispatched,” as stated by the Proposed Decision,¹¹ that agreement is conditioned on the Commission, based on a full and complete record, finding that a *need* for such “flexibility” in utility local capacity resource procurement exists *in the first place*. To CEERT’s understanding, that finding is reserved to the LTPP and has yet to be made.

CEERT believes that determining local capacity needs is an urgent matter, especially given the long lead time for solicitations, procurement, permitting and construction prior to the OTC retirements. However, a clear path for doing so is necessary to support a full record and achieve consistent results on need and other related, critical issues including defining flexibility for planning, permitting and procurement purposes and establishing multi-year procurement targets to meet local capacity needs. In this proceeding, no record has been established to date to support either a needs assessment or such definitions or multi-year targets relative to such an assessment. However, there will be a record established this summer in the LTPP that will either address or inform many of these same issues.

For these reasons, CEERT, and likely other parties, would benefit by the Proposed Decision providing greater clarity as to the timing and forum for considering the need assessment for flexible capacity resources, which is a prerequisite to having any proposed structure for its

¹⁰ *Id.*, at p. 5; emphasis added.

¹¹ Proposed Decision, at p. 17.

procurement in place, and establishing multi-year procurement targets, defining flexibility for planning, permitting and procurement purposes; and establishing procurement targets to meet local capacity needs. To that end, CEERT requests that the Proposed Decision be modified to state that any adoption or application of a “framework for filling flexible capacity needs in this proceeding” will be conditioned on the Commission first determining in the LTPP rulemaking (R.12-03-014) that such a need exists. In terms of timing, any schedule to address such a framework should avoid conflicts with, and be targeted to follow, the testimony, hearing, and briefing schedule already adopted in the LTPP for assessing flexible capacity need. Such an approach assures the most expeditious use of the limited resources of the Commission staff and all parties. In fact, the LTPP hearing process will be an opportunity for all parties to become better educated regarding the “record” regarding flexible capacity needs.

In addition, the Proposed Decision should identify, with reference to the LTPP’s Scoping Memo, the proceeding and timing for considering such priority issues as establishing multi-year procurement targets and defining “flexibility” between the two proceedings. While the Scoping Memo in the LTPP commits to be “informed” by decisions in R.11-10-023, it does specifically ask “how” any “relevant decisions” in this proceeding “regarding flexible capacity should be incorporated into a decision on procurement of additional local capacity.”¹² This same commitment to being “informed” by the LTPP decisions and *record* should be made by the Proposed Decision. To do otherwise, creates uncertainty for parties and the process and could lead to unnecessary duplication or conflict between the two proceedings. The only other option is to consolidate R.11-10-023 with R.12-03-014 for purposes of addressing flexible capacity requirements and procurement.

¹² R.12-03-014 (LTPP) Scoping Memo, at pp. 3, 5.

To provide this needed clarity and to avoid any delay or conflict in addressing the issue of local capacity needs, CEERT offers Proposed Findings of Fact and Conclusions of Law to be added to the Proposed Decision. CEERT's recommendations are aimed at ensuring, at the least, incorporation here of the record in R.12-03-014 on the issues identified in the LTPP Scoping Memo for Track 2 that are also relevant to resolution or implementation of a flexible capacity "framework" in this proceeding.

III. CONCLUSION

For the reasons stated above, CEERT continues to support the Energy Division's proposal revising the MCC bucket structure. While CEERT does not object to continued study of a framework for filling flexible capacity needs in this proceeding, such continued study should recognize the urgent nature of determining local capacity needs with deference and coordination with the record being developed on that issue in the LTPP rulemaking (R.12-03-014). To that end, CEERT specifically requests modifications to the Proposed Decision consistent with these comments and the Proposed Findings of Fact and Conclusion of Law contained in Appendix A hereto.

Respectfully submitted,

June 11, 2012

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APPENDIX A

PROPOSED FINDINGS OF FACT AND CONCLUSION OF LAW

CEERT recommends that the following changes be made to the Findings of Fact and Conclusion of Law 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 Finding of Fact or Conclusion of Law in the Proposed Decision for which a modification is proposed.
- Any proposed additional Finding of Fact or Conclusion of Law is not numbered, but is identified as a “NEW FINDING OF FACT” or “NEW CONCLUSION OF LAW.”
- Added language is indicated by **bold type**; removed language is indicated by **bold strike-through**.

PROPOSED FINDINGS OF FACT:

3. [34] There is a need for refinements to the RA program to further define elements of flexibility with regard to multi-year contracts for local capacity requirements, **with any adopted definitions to be coordinated with any decision made in R.12-03-014 (LTPP) on the need and attributes for flexible capacity to meet local reliability needs**

___ [NEW FINDING OF FACT] **Defining “flexibility” for purposes of planning, permitting, and procurement is a priority and should be informed by relevant decisions issued in R.12-03-014 (LTPP).**

4. [34] Proposals by Energy Division and the ISO to address flexible capacity, while helpful require further consideration, **and-detail, and coordination with the record and decisions issued in the R.12-03-014 (LTPP) on any need for flexible capacity beginning in 2014 to meet local reliability requirements before adoption and implementation.**

PROPOSED CONCLUSION OF LAW:

5. [36] It is necessary to further consider issues related to flexible capacity in another portion of this proceeding, **with any consideration of those issues coordinated with R.12-03-014 (LTPP) and any related need determination made in that proceeding.**