

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)

**REPLY COMMENTS OF THE
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES
ON RESOURCE ADEQUACY FLEXIBLE CAPACITY PROCUREMENT**

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Reply Comments on Resource Adequacy (RA) Flexible Capacity Procurement, including proposals that have been distributed and been the subject of Workshops and/or Comment in Phase 2 of this proceeding. These Reply Comments are timely filed and served pursuant to the Commission’s Rules of Practice and Procedure and the ALJ’s Ruling Resetting Schedule for Comments on Phase 2 Resource Adequacy (RA) Issues and Scheduling a Prehearing Conference (PHC) issued on March 11, 2013.

I.

THERE IS WIDESPREAD SUPPORT FOR THE COMMISSION *NOT* TO AUTHORIZE FLEXIBLE CAPACITY PROCUREMENT AS PROPOSED BY EITHER THE JOINT PARTIES OR THE ENERGY DIVISION IN ITS JUNE 2013 RA DECISION.

In its June 2012 RA Decision (D.) 12-06-025 on local capacity procurement obligations for 2013, the Commission first considered “proposals by the ISO [California Independent System Operator] and the Energy Division to address flexible capacity needs with regard to local capacity requirements over the next several years.”¹ In that order, the Commission “agreed” that there is a “need to define flexible attributes for local reliability purposes in order to ensure ongoing reliability in a changing load and supply environment.”²

¹ D.12-06-025, at p. 1.

² *Id.*, at p. 17.

However, with respect to the proposals then before it, the Commission rejected both proposals, “agree[ing] with parties that additional effort is needed.”³ In doing so, the Commission cited to party “concerns” regarding the proposals’ terms, lack of transparency, and limited applicability, coupled with the fact that “there is no immediate need to impose flexibility requirements in 2013.”⁴ The Commission, in turn, directed parties to “build upon the efforts of the ISO and Energy Division” on the issue of flexible capacity in 2012 with the “intent...to adopt a framework...for implementation in the 2014 RA compliance year.”⁵

Since D.12-06-025 was issued, it is the case that the CAISO, together with Southern California Edison Company (SCE) and San Diego Gas and Electric Company (SDG&E) (Joint Parties), and the Energy Division have provided “new” RA flexible capacity procurement proposals in 2012 and 2013, both of which are now nearly identical.⁶ However, as the Opening Comments of a broad and varied range of parties make clear, these proposals suffer from the same, and even more critical, problems that existed for proposals considered in D.12-06-025.

Specifically, in Opening Comments filed by ratepayer advocates, environmental organizations, affected third parties, municipalities, and community choice aggregators, these parties establish that provisions in both the Joint Parties and Energy Division proposals have serious shortcomings, are at odds with Commission policy by excluding preferred resources, and cannot be adopted as written.⁷ According to these parties, claims by the Joint Parties or Energy Division of an “immediate need for flexible capacity procurement” rest on contested assumptions that, among other things, fail to consider the ability of “existing resources and

³ D.12-06-025, at pp. 18-19

⁴ *Id.*

⁵ *Id.*, at p. 20.

⁶ The only notable difference between the two is the inclusion by Energy Division of a Pacific Gas and Electric Company (PG&E) hydro resource proposal. (CEERT Opening Comments, at p. 10.)

⁷ See, e.g., California Wind Energy Association (CalWEA) Opening Comments, at p. 2; LSA Opening Comments, at pp. 3-4, 6-7 (the proposals contain “too many program gaps for implementation in 2014”); EnerNOC Opening Comments, at pp. 11-14; Vote Solar Initiative Opening Comments, at p. 4; CLECA Opening Comments, at pp. 8-10.

mechanisms,” including Loading Order preferred resources, “to address operational flexibility needs for the foreseeable future”⁸ and the “potential costs of adding a requirement for flexible RA.”⁹

Resolution of these disputed material facts require evidentiary hearings that have not been held.¹⁰ In fact, as to the current “record,” the California Wind Energy Association (CalWEA) states that “to date, the analysis that the CAISO has presented to justify and to quantify [flexibility] need has been focused on public relations and on unrealistic, worst-case scenarios, rather than on ... a solid analytic framework.”¹¹ On this point, CalWEA further notes that serious questions exist as to “whether the proposals presented to date provide reasonable, rigorous calculations of the quantities of flexible resources that are needed and that will be available from existing resources” and that no “record” has “been developed on how all resources from which flexibility could be procured – including preferred resources such as wind, solar, and demand response – might compete on a technologically-neutral basis to provide this service.”¹²

In its Opening Comments, the Sierra Club also states that the proposals “improperly exclud[e] demand response and energy storage” at odds with the Commission’s Loading Order and California’s environmental objectives.¹³ The adverse consequences and discrimination to

⁸ The Utility Reform Network (TURN) and Sierra Club Joint Amended Request for Evidentiary Hearings, at pp. 3-5.

⁹ California Wind Energy Association (CalWEA) Opening Comments, at p. 2.

¹⁰ CEERT Opening Comments, at p. 4; TURN Opening Comments, at pp. 1-2, 3-9; California Large Energy Consumers Association (CLECA), at pp. 2-7; CalWEA Opening Comments, at p. 2; Marin Energy Authority (MEA) Comments, at pp. 2-3, 5-6; City and County of San Francisco (City) Opening Comments, at pp. 1-3; Large-Scale Solar Association (LSA) Opening Comments, at pp. 4-5; EnerNOC Opening Comments, at pp. 5-11; Sierra Club Opening Comments, at pp. 2-4; Vote Solar Initiative Opening Comments, at pp. 2-3.

¹¹ CalWEA Opening Comments, at p. 3.

¹² CalWEA Opening Comments, at p. 2.

¹³ Sierra Club Opening Comments, at pp. 4-6; California Energy Storage Association (CESA) Opening Comments, at p. 3 (asking that the “Commission should find that the current Energy Division and Joint Party flexible RA capacity procurement proposals should be completely rejected because they both unreasonably discriminate against participation by preferred resources and energy storage resources.”) See also, Distributed Energy Consumer Advocates (DECA) Opening Comments at pp. 10-11.

preferred resources that will result from this lack of technology neutrality in both the Joint Parties and Energy Division proposals is also detailed in the Opening Comments of EnerNOC, Inc.¹⁴ In this regard, the California Large Energy Consumers Association (CLECA) also contends that the limited “special treatment of hydro resources,” with “no provision for other use limited resources,” such as demand response and storage, will “understate the level of availability of potential flexibility.”¹⁵ CLECA concludes: “If hydro can receive special treatment, there is no reason why these other resources cannot.”¹⁶

These circumstances have led some parties to ask the Commission not to adopt any flexible capacity procurement proposal or mechanism in its June 2013 RA Decision for application in the 2014 RA year or, if it elects to do so, “proceed with only limited implementation” of such procurement in 2014 or make a “policy” decision only.¹⁷ Sierra Club advocates for the June 2013 RA Decision providing “a path to an informed decision on flexible capacity procurement for the 2015 [RA] Year.”¹⁸ CalWEA urges a commitment by the Commission in that decision to “further refine both how to quantify the needed and available flexible capacity and how to expand the types of the resources which can provide flexibility to

¹⁴ EnerNOC Opening Comments, at pp. 14-15. According to EnerNOC: “The Commission should make clear...that any eventual flexible capacity RA requirement or procurement mechanism adopted by it *must* be technology neutral and resource neutral and incorporate an opportunity for preferred resources with flexible capability to participate.” (EnerNOC Opening Comments, at p. 15.)

¹⁵ CLECA Opening Comments, at p. 8. See also, Calpine Corporation Opening Comments, at pp. 2-3, 7.

¹⁶ CLECA Opening Comments, at p. 9.

¹⁷ CalWEA Opening Comments, at p. 3; TURN Opening Comments, at pp. 2-3; LSA Opening Comments, at pp. 7-8; EnerNOC Opening Comments, at p. 15; Sierra Club Opening Comments, at p. 7; Independent Energy Producers Association (IEP) Opening Comments, at pp. 2-3; DECA Opening Comments, at p. 4; TURN Opening Comments, at pp. 9-10 (the “Commission could adopt a ‘Report Only’ requirement for the 2014 compliance year”). While the Division of Ratepayer Advocates (DRA) states that it “generally supports” the Joint Parties and Energy Division, it nevertheless asks that, if adopted, the “Commission should not impose mandatory flexible capacity procurement obligations in 2014.” (DRA Opening Comments, at pp. 14-16.)

¹⁸ Sierra Club Opening Comments, at p. 7.

include the Loading Order's Preferred Resources" for incorporation in the RA program in a later year (e.g., 2015).¹⁹

CEERT's Opening Comments share many of these views. However, as addressed further below, it remains CEERT's position that the Commission should use the 2014 RA Year to permit some experience to be gained on flexible capacity procurement, but that any such authorization should be limited and subject to ex post evaluation, consistent with CEERT's recommendations in its Opening Comments.²⁰

II. THE "NEXT STEPS" APPROACH ON FLEXIBLE CAPACITY PROCUREMENT RECOMMENDED BY CEERT IS INTENDED TO ADDRESS THE CONCERNS EXPRESSED BY MULTIPLE PARTIES REGARDING THE PENDING PROPOSALS.

As its Opening Comments make clear, CEERT agrees that "the current record is not sufficient to support a reliability need to procure flexible capacity in 2014."²¹ Further, like other parties, CEERT agrees that any adopted procurement mechanism must include "operating protocols and performance metrics for Loading Order preferred resources, in particular, demand response (DR), and for storage, hydro, and other use limited resources in a manner that will allow preferred resources to provide flexible capacity to the grid on an equivalent basis with conventional fossil resources."²²

In response to these circumstances, CEERT's Opening Comments propose a thoughtful and well-supported path forward on the issue of flexible capacity procurement for 2014 and future RA years in a manner that will ensure consistency with the Commission's and the State's energy resource and environmental policies. CEERT believes that its proposal will best address

¹⁹ CalWEA Opening Comments, at p. 3. See also, California Energy Storage Alliance (CESA) Opening Comments, at p. 3 ("The Commission should state its intention to adopt a flexible RA capacity procurement mechanism that fully integrates preferred resources and energy storage resources before the end of 2013.")

²⁰ See, CEERT Opening Comments, at pp. 16-18.

²¹ CEERT Opening Comments, at p. 4.

²² CEERT Opening Comments, at p. 6.

the concerns of all parties to this proceeding and, therefore, renews its recommendations at pages 16 through 18 of its Opening Comments, as incorporated in its Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs in Appendix A thereto.

In this regard, CEERT agrees that, while the “need” for flexible procurement in RA Year 2014 is in doubt, there is *no* doubt that a “need” exists for an inclusive operational definition of “flexible capacity” that certainly extends beyond even Energy Division’s inclusion of a single use-limited resource (hydro resources).²³ Even the Joint Parties support broadening the definition and the corresponding Must Offer Obligation to include use-limited resources, storage, and especially Loading Order preferred resources, such as demand response.²⁴ Unfortunately, neither the Joint Parties or the Energy Division have offered a current proposal that would do so.

The Opening Comments reflect a difference of opinion among the parties on how to address this situation, with recommendations ranging from the Commission (1) not authorizing flexible procurement for the 2014 RA year,²⁵ (2) allowing for “limited” implementation in 2014, but with no penalties for under procurement for the RA buyers and no Must Offer Obligation for the RA sellers,²⁶ or (3) adopting the Joint Parties or Energy Division proposals either as written or with revisions. As CEERT’s Comments reflect, CEERT does support *limited* adoption of the Revised Energy Division Proposal, but subject to *required, specific revisions* that would allow only a portion of the calculated flexibility requirement to be procured through that proposal in 2014; that would permit only a time-limited use of that proposal; and that would include the commitment to refine terms, develop metrics, and expand the definition of flexible resources to

²³ See, nn. 12-16, *supra*.

²⁴ CAISO Opening Comments on Workshop Issues (April 5, 2013), at p.3.

²⁵ Clean Coalition Opening Comments, at p. 3.

²⁶ Western Power Trading Forum (WPTF) Opening Comments, at pp. 3-4.

include Loading Order resources, with an evaluation of its effectiveness on an ex post basis to permit its use or expansion beyond the 2014 RA Year.²⁷

Again, CEERT agrees with the many other parties who contend that the definition of flexible capacity contained in both the Joint Parties' and Energy Division proposals is indeed much too narrow, ignores historically significant sources of flexibility outside of the RA procurement process, and wrongly excludes Loading Order preferred resources. Nevertheless, CEERT does believe that some "flexible capacity" will be required to be procured through the RA process sometime in the next few years. CEERT, therefore, shares the view that a "practice" or "trial run" in procuring such resources in the 2014 RA Year is appropriate to "allow the affected entities to gain valuable experience" and, in turn, for the Commission to "make appropriate modifications and adjustments before implementing a fully enforceable program for the 2015 compliance year."²⁸

However, a "practice" procurement in 2014 without consequences to either buyer or seller will not provide this critical experience. Load serving entities (LSEs) must know that they need to procure defined quantities of a known product from a viable supplier or that they are obligated to replace resources that fail to appear in month ahead showings or in real time and will potentially face penalties for failure to do so. Providers of flexible capacity must understand that they are obligated to provide this flexibility in real time and must price the cost of doing so into their bid in order to collect real data about the supply curve and cost of this critical program.

It is also not acceptable to wait yet another year for critical resources like demand response or storage to assume their rightful place in the arsenal of the grid operators to deliver cost effective, policy preferred reliability. It is CEERT's position that its recommendations

²⁷ CEERT Opening Comments, at pp. 14-16.

²⁸ IEP Opening Comments, at pp. 3-4; See, also, WPTF Opening Comments, at pp. 3-4, 9.

provide the correct response to ensure timely incorporation of these resources by the Commission permitting only a portion of the calculated “flexibility need” to be procured through the RA process in 2014, while immediately pursuing the critical tasks of retrofitting the existing fleet not slated for imminent retirement to enhance flexibility and designing the metrics and the performance assurances for demand response, storage and other use-limited resources.

In addition to the Commission following CEERT’s recommendations if it elects to adopt some flexible capacity procurement in its June 2013 RA Decision, CEERT also urges the Commission, in doing so, to specifically reject any call to limit or prevent the CAISO from counting “any attribute, including flexibility or capacity, which has not been explicitly procured and compensated, towards meeting any operational or procurement requirement.”²⁹ It is CEERT’s position that no basis exists for excluding a resource that, for example, raises output or cuts demand without explicit instructions from the CAISO during the afternoon ramp as a source of “flexibility.” Such an approach would overturn historic mechanisms for how the grid has been balanced for over a century and could allow a small class of fossil resources to become the sole source of “flexibility” and to do so at a premium payment.

The CAISO should instead look first to all available resources on the CAISO grid, whether supply or demand, or exchanges with other Balancing Authorities that are naturally following the ebb and flow of market prices as demand rises and falls to “balance the grid” outside of the RA program before ratepayer dollars are spent to procure surplus flexibility. CEERT does note that it is reasonable for the CAISO to maintain a portion of its flexibility needs under direct dispatch control with an appropriate Must Offer Obligation to supply this flexibility in real time and for the Commission to authorize advance procurement of this capability. However, California must first develop and ensure that policy preferred resources, such as

²⁹ NRG Energy Opening Comments, at p. 12.

demand response and storage, are part of meeting any identified RA flexible capacity need before and rather than permitting exclusive reliance on traditional fossil resources only.

III. CONCLUSION

Based on the record to date in this proceeding, as supported by Comments filed by numerous parties, CEERT renews its recommendations for the Commission's June 2013 RA Decision on flexible capacity procurement issues addressed in its Opening Comments and summarized at pages 16 through 18. CEERT also asks that the Commission's June 2013 RA Decision incorporate CEERT's Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs contained in Appendix A of those comments.

Respectfully submitted,

April 15, 2013

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