

**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
(October 20, 2011)

**REPLY COMMENTS OF THE INDEPENDENT ENERGY
PRODUCERS ASSOCIATION ON FLEXIBLE CAPACITY
WORKSHOPS AND PROPOSALS**

**INDEPENDENT ENERGY PRODUCERS
ASSOCIATION**

Steven Kelly, Policy Director
1215 K Street, Suite 900
Sacramento, CA 95814
Telephone: (916) 448-9499
Facsimile: (916) 448-0182
Email: steven@iepa.com

**GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP**

Brian T. Cragg
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: bcragg@goodinmacbride.com

Attorneys for the Independent Energy Producers
Association

Dated: April 15, 2013

**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
(October 20, 2011)

**REPLY COMMENTS OF THE INDEPENDENT ENERGY
PRODUCERS ASSOCIATION ON FLEXIBLE CAPACITY
WORKSHOPS AND PROPOSALS**

In response to the comments on the flexible capacity workshops and proposals, the Independent Energy Producers Association (IEP) replies to four topics raised in the comments.

I. OBLIGATION TO OFFER FLEXIBLE CAPACITY

Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) oppose, at least for 2014, the Energy Division's proposal that would allow a resource with flexible capacity to elect not to sell the unit's capacity as flexible capacity and instead to sell only generic capacity. SCE and SDG&E argue that this requirement is needed because there are no market power mitigation procedures in effect for flexible capacity, and the operational requirements associated with flexible capacity for 2014 are no different than those that currently exist, so there is no added operational burden associated with providing flexible capacity.¹

¹ *Opening Comments of San Diego Gas & Electric Company on Phase 2 Resource Adequacy Issues*, pp. 7-8; *Southern California Edison Company's Post-Workshop Comments*, p. 8.

The utilities' concerns about potential market power in 2014 coupled with IEP's concerns that existing contracts should not be construed as conveying flexible capacity (unless clearly stated)² provide a strong argument why 2014 should to be treated as a transitional, trial run in which a showing by Commission-jurisdictional entities replaces a procurement obligation. Limiting the utility obligation to a showing in 2014 will help illuminate the extent to which market power may exist in the future and will provide a forward market signal to initiate procurement practices to mitigate any exercise of market power in 2015 and beyond.

Market mechanisms and rules are already in place to mitigate any *exercise* of market power (*e.g.*, the Capacity Procurement Mechanism), and additional rules limiting generator flexibility in anticipation of the presence of presumed *potential* market power are unnecessary. The market power argument ignores the fact that the market for flexible capacity is characterized by many sellers (the draft Effective Flexible Capacity (EFC) table issued by the California Independent System Operator (CAISO) lists 250 units that can provide flexible capacity) and few buyers (primarily the three large investor-owned utilities and a handful of Energy Service Providers)—hardly the market conditions that are conducive to the exercise of seller market power. Moreover, the CAISO projects that the EFC associated with the existing fleet exceeds projected flexible capacity needs for several years—also not a situation where seller market power is likely to develop.

SCE and SDG&E overlook the possibility that generators may have solid operational reasons to decide not to incur the obligation to perform in the way required for flexible capacity, especially when the obligations are still being defined and prices for EFC are unknown. The owners of generating resources have a strong economic incentive to maximize

² Comments of the Independent Energy Producers Association on Flexible Capacity Workshops and Proposals, pp. 7-8.

net revenues, but if the projected cost of providing flexible capacity exceeds the expected revenues, generators should not be required to offer flexible capacity at prices that do not cover their costs.

In addition, if resource owners opt to offer generic capacity, rather than flexible capacity, to a degree that threatens system reliability, the CAISO could use the backstop Capacity Procurement Mechanism (CPM) to procure the necessary flexible capacity.

At this point in the development of the market for flexible capacity, there is no need to introduce an element of compulsion. Resource owners should be allowed to make operational decisions based on economics, not unnecessary mandates.

II. THE NEED FOR FLEXIBLE CAPACITY ARISES FROM A VARIETY OF POLICIES AND CHOICES

The comments of the California Large Energy Consumers Association (CLECA) include a passage that seems to hold intermittent generation resources responsible for creating the need for flexible capacity. CLECA suggests that because the CAISO market rules do not require intermittent generation resources to schedule on a day-ahead basis, the CAISO must commit resources through the Residual Unit Commitment (RUC) process, and the CAISO is then unable to de-commit the resources when the intermittent generation resources show up in real time. CLECA concludes, “The result is that consumers must now pay for flexible resources to address a problem that is a result of limitations in the market design. The alternative is for consumers to adjust their own behavior to work around the output of these renewable facilities that are supposed to be serving them, not the other way around.”³

In seemingly placing the primary responsibility for the need for flexible capacity on intermittent generation resources, CLECA overlooks some critical facts. First, many

³ *Comments of the California Large Energy Consumers Association in Response to the Administrative Law Judge's Ruling of March 11, 2013*, p. 5.

intermittent resources schedule on a day-ahead basis. At last week's Market Performance and Planning Forum, the CAISO made a presentation that showed that, contrary to CLECA's assumption, a significant portion of wind resources are in fact scheduling on a day-ahead basis.⁴ In addition, the CAISO is modifying its tariff to remove barriers to the integration of variable energy resources. These modifications include providing a option to scheduled energy on a 15-minute basis and requiring variable energy resources to provide meteorological and forced outage data to support power production forecasting. These changes, combined with modifications to the CAISO's Participating Intermittent Resource Program, will better align the schedules and actual production of intermittent resources.

Second, CLECA fails to recognize that the increasing volatility of demand plays an increasing and significant role in the need for flexible resources. For at least three decades, the state has endorsed and followed policies designed to reduce on-peak load: energy efficiency, demand response, time-of-use pricing for retail sales and wholesale purchases, the California Solar Initiative, self-generation incentives, and combined heat and power, to name a few. It should come as no surprise that those policies are starting to bear fruit in the form of altered demand profiles. Some of these load-reduction technologies exacerbate the volatility of demand. For example, the CAISO accounts for many applications of behind-the-meter, roof-top solar as demand reduction. An unthinking assignment to intermittent generators of the responsibility for a growing need for flexible capacity ignores how the state's billion-dollar investment in energy efficiency, demand response, and distributed generation (including roof-top solar) has been successful in depressing peak demand, shifting some demand to what formerly were off-peak hours, and adding to the intermittency of demand in relation to grid operations. Any attempt to

⁴ The presentation is available at http://www.caiso.com/Documents/Agenda-Presentation-MarketPerformance-PlanningForumApr10_2013.pdf . See slides 10 and 11.

impute cost responsibility for the need for flexible capacity to a single “cause,” such as the intermittent generation resources, ignores how emerging load-reduction strategies similarly affect the need for flexible resources.

III. SALES OF FLEXIBLE AND GENERIC CAPACITY

As noted in IEP’s Opening Comments, IEP supports the principle that a MW of capacity may be sold only once (*i.e.*, as either generic or flexible depending on its attributes). However, IEP remains somewhat confused about the Joint Parties’ and Energy Division’s position on sales of flexible and generic capacity. During the workshop discussion on March 20, representatives of the Joint Parties seem to say that their proposal would allow sales of generic capacity below the resource’s Pmin and EFC in separate transactions and to separate buyers, and a generator would not be required to sell its generic capacity before it could market its EFC. This approach seemed consistent with the differentiated approach to flexible capacity, and the Energy Division has now embraced the differentiated approach. Nevertheless, at the workshop, Energy Division seemed to say that the generic capacity below a unit’s Pmin had to be bundled with flexible capacity above the Pmin and sold as a bundled product. IEP hopes that the Joint Parties’ and Energy Division’s precise position on this issue is made clear in their reply comments.

IEP continues to urge that the flexible capacity initiative should result in a viable commercial product and maximum commercial flexibility. A mandatory bundling of the inflexible generic capacity below Pmin and the flexible capacity above Pmin would create inefficiencies that benefit neither generators nor ratepayers and would unnecessarily restrict generator’s commercial and operational options. Prohibiting a sale of flexible capacity unless the associated inflexible capacity below Pmin is also sold will reduce the supply of flexible capacity and ultimately increase costs for ratepayers.

Generators should be allowed to sell the inflexible and flexible capacity in separate transactions and to different purchasers (recognizing that a MW of capacity may be sold only once), so long as the unit is able to meet the requirements of any System, Local, and flexible RA capacity that is sold. If capacity above a unit's Pmin is sold as flexible RA capacity that has a longer must-offer obligation than the inflexible capacity below the Pmin that is sold as System RA capacity, for example, a generator could meet both obligations by offering the combined capacity for the hours of the longer must-offer obligation. The decision to sell inflexible and flexible capacity associated with the same resource should be an economic and operational decision made by the manager of the resource, not an unnecessary mandatory restriction imposed by the Commission.

Regardless of the positions taken by the Joint Parties and Energy Division, the Commission should clarify that sales of flexible capacity are not tied to a sale of the associated inflexible capacity below Pmin.

IV. REPLACEMENT FOR SCHEDULED OUTAGES

The comments of Pacific Gas and Electric Company (PG&E) raise the issue of whether a replacement obligation should apply to flexible RA capacity resources. PG&E's discussion, however, leaves PG&E's position on this issue unclear. PG&E advocates that the replacement rule should not be applied to flexible capacity in 2014, but it is unclear whether PG&E refers to the fact that the Commission does not require replacement of RA capacity on scheduled outages or to the provisions of the CAISO tariff that require replacement of RA capacity when a resource takes a scheduled outage.⁵

From IEP's perspective, the CAISO tariff provisions on replacement for scheduled outages are in place and in effect and should also apply to flexible RA capacity. IEP

⁵ *Comments of Pacific Gas and Electric Company on Workshops and Proposals*, p. 28.

recommends that a flexible RA obligation should not be imposed in 2014; rather, a flexible capacity obligation should apply for 2015, at which time the CAISO's tariff related to a capacity replacement obligation should govern.

V. CONCLUSION

IEP's overall position is that the ability of generators to provide the flexible capacity the CAISO forecasts it needs to maintain a reliable system will depend on the development of a commercially viable flexible capacity product. As a general principle, the Commission should strive to make it as easy as possible for facilities with flexible operational attributes to offer flexible RA capacity in the market. To the extent possible, the restrictions and obligations associated with flexible RA capacity should be kept to a minimum, and the Commission should rely on market-based incentives to ensure a sufficient supply of flexible capacity.

IEP respectfully urges the Commission to consider these principles and IEP's comments as it resolves the issues raised by the introduction of a flexible RA capacity procurement obligation.

Respectfully submitted this 15th day of April, 2013 at San Francisco, California.

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP
Brian T. Cragg
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: bcragg@goodinmacbride.com

By /s/ Brian T. Cragg

Brian T. Cragg

Attorneys for the Independent Energy
Producers Association

2970/017/X151145.v1