

**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

R.11-10-023  
(Filed October 20, 2011)

**REPLY COMMENTS OF THE WESTERN POWER TRADING FORUM IN REGARD  
TO FLEXIBLE CAPACITY PROCUREMENT ISSUES**

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Pursuant to the schedule set forth in the March 11, 2013, Administrative Law Judge's Ruling Resetting Schedule for Comments on Phase 2 Resource Adequacy Issues and Scheduling a Prehearing Conference ("Ruling") in this proceeding, the Western Power Trading Forum ("WPTF")<sup>1</sup> provides these reply comments addressing the revised Energy Division proposal<sup>2</sup> that was attached to the Ruling ("ED Proposal").

**I. OPENING REMARKS**

WPTF members are very active market participants at the CAISO and are supportive of improvements to increase the efficiency and effectiveness of the resource adequacy ("RA") program. As noted in our opening comments, the fact that the Joint Parties Proposal<sup>3</sup> and the revised ED Proposal are now closely aligned is important as disparate compliance requirements as between the two agencies would create harmful market uncertainty and would hamper achievement of the Commission goals for RA flexibility. WPTF also is encouraged that the two

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<sup>1</sup> WPTF is a California non-profit, mutual benefit corporation dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

<sup>2</sup> See, *Energy Division Flexible Capacity Procurement Revised Proposal*.

<sup>3</sup> See, *Resource Adequacy and Flexible Capacity Procurement: Joint Parties' Proposal*, filed on October 29, 2012 ("Joint Parties' Proposal") by California Independent System Operator, Southern California Edison Company and San Diego Gas & Electric Company. The *Joint Parties' Proposal* was also an attachment to the December 6, 2012 *Phase 2 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge*.

agencies are working in a cooperative fashion to address their respective and overlapping jurisdictional authority, and hopes that the alignment of the two proposals is evidence that the two agencies will manage to resolve jurisdictional issues.

In its opening comments, WPTF recommended that policy goals should be adopted for the interim period of 2014, with specific implementation both as to generators and load-serving entities (“LSEs”) in 2015. We note that this approach was essentially endorsed, with minor modifications by all commenters other than the members of the Joint Parties and therefore WPTF continues to urge its adoption by the Commission. In the following reply comments, WPTF notes the following points:

First, the Commission will encounter a major timing issue if it seeks to implement an enforceable flexible capacity program in 2014, as proposed by the Joint Parties.<sup>4</sup> This is especially true since the California Independent System Operator (“CAISO”) has yet to define precisely what is meant by a flexible resource product.

Second, an LSE and a generator have no way to structure a transaction when they do not know what a flexible resource product actually looks like or how to price it, meaning that 2014 is too soon for a firm enforceable program to be put in place.

Third, despite conservative representations to the contrary by CAISO, it appears highly unlikely that there is a real need for 2014, meaning that year can be used to observe, monitor and design an enforceable program for 2015.

## **II. REPLY COMMENTS**

### **A. Reply to the Joint Parties**

Although CAISO and the three investor-owned utilities (“IOUs”) did not file jointly, their respective individual filings each called for implementation of enforceable flexibility requirements in 2014.<sup>5</sup> WPTF believes that attempting to rush to impose an enforceable flexibility requirement in 2014 is a recipe for market confusion and disruption. This is

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<sup>4</sup> The use of the word “enforceable” in this context means a program that contains penalties for generators and load-serving entities (“LSEs”) with regard to non-compliance with their respective must-offer or must-take obligations.

<sup>5</sup> CAISO, at p. 1; Pacific Gas and Electric Company (“PG&E”) at p. v (introduction) and p. 2; Southern California Edison Company (“SCE”) at p. 2; and San Diego Gas & Electric Company (“SDG&E”) at p. 1.

particularly true since the market still lacks an adequate definition of precisely what constitutes a flexibility product. As noted by Shell Energy North America (U.S.), L.P. (“Shell”), “The Commission should use the next twelve months to determine the need for flexible capacity resources, the type of program that should be adopted to ensure the availability of flexible capacity resources, the definition of a flexible capacity product, and enforcement protocols.”<sup>6</sup> The Independent Energy Producers Association (“IEP”) made a similar suggestion with its “trial program” proposal, when it said, “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.”<sup>7</sup>

In other words, time is needed for market parties to gain a better understanding of precisely what is required. Compliance issues must be addressed as well so that the applicability and level of penalties or other sanctions that will apply for generator or LSE non-compliance is fully known and understood. Other issues as well, such as the treatment of existing contracts for system or local RA, the treatment of all use-limited resources and, most importantly, the definition of a specific capacity product, can all be accomplished. Moreover, WPTF supports the implementation of both a multi-year forward capacity obligation and a centralized capacity market, as the joint implementation of the obligation and the centralized market are critical to providing all LSEs, including Electric Service Providers (“ESPs”) and Community Choice Aggregators (“CCAs”) with the necessary tools to manage their RA obligations.

Finally, it should be noted that numerous parties have questioned whether there actually is a need for a flexible resource product in 2014. As noted by NRG Energy, Inc. (“NRG”), “it is

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<sup>6</sup> Shell at p. 2.

<sup>7</sup> IEP, at p. 11. IEP further notes at p. 6 that, “the Commission, in close consultation with the CAISO, should adopt a common set of operational obligations that constitute a flexible capacity product that can be uniformly transacted as part of the RA procurement process and uniformly counted to meet LSEs’ EFC procurement obligations.”

unlikely that the need for flexibility would constrain, or even affect, RA procurement for 2014.”<sup>8</sup> TURN notes that the Joint Parties did not provide any documentation regarding the need for their specific proposal until the morning of the January 23rd workshop and “that analysis showed that there was no need for the Commission to implement the Joint Parties’ Proposal to be effective for the 2014 RA compliance year, as the Joint Parties requested.”<sup>9</sup> The California Large Energy Consumers Association (“CLECA”) states that, “no need has been established in the record of this proceeding to implement any flexibility requirement for the RA Procurement Year 2014.”<sup>10</sup> The California Wind Energy Association (“CalWEA”) says that it “has serious reservations 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.”<sup>11</sup> Shell observes that, “The Commission’s recent decision (D.13-03-029) to deny approval of SDG&E’s application for new flexible capacity resources (Pio Pico and Quail Brush) suggests that additional flexible capacity is not needed at this time, or in the next several years.”<sup>12</sup> EnerNOC, Inc. (“EnerNOC”) concludes that, “It is a point of material factual dispute as to whether there is a need and whether any such need must be addressed in 2014.”<sup>13</sup> WPTF concurs that despite representations to the contrary by CAISO based on its admittedly conservative projections, there is yet to be a convincing showing that a flexibility product will be needed next year.

It simply is not possible to finalize the overall design and regulations for an order to be issued in the June 2013 time frame that imposes an enforceable flexible capacity requirement –

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<sup>8</sup> NRG, at p. 5.

<sup>9</sup> TURN, at p. 5.

<sup>10</sup> CLECA, at p. 2.

<sup>11</sup> CalWEA, at p. 2.

<sup>12</sup> Shell, at p. 5.

<sup>13</sup> EnerNOC, at p. 8.

and if the TURN/Sierra Club motion for hearings is granted, there clearly would be insufficient time for buyers and sellers to manage their procurement in time for the 2014 compliance showings. Therefore, WPTF continues to urge the Commission to adopt the trial run program proposed by WPTF, IEP and others<sup>14</sup> that implement flexibility requirements in 2014 without a must-offer obligation (“MOO”) and without a specific compliance obligation. Such a program would entail the following elements:

1. The CAISO/Commission would provide market participants with (i) the overall level of the 2014 flexible requirements, (ii) an allocation of those requirements to the LSEs based on the allocation mechanisms described in the ED Proposal, and (ii) the amount of Net Qualifying Capacity (“NQC”) from existing resources that can meet the flexible requirements.
2. Individual LSE’s 2014 RA compliance will be predicated upon meeting the system and local requirements as in past years.
3. When LSEs submit their 2014 RA compliance showings, those showings will be analyzed to see if the 2014 procurement actually met the flexible requirements or not.
4. For 2014, there will be no specific MOO imposed on suppliers, nor will there be any sanctions or other penalties imposed on LSEs whose RA portfolios do not meet their flexible requirement allocation.

**B. Reply to TURN and Sierra Club Motion for Hearings**

TURN and the Sierra Club filed their joint Motion for Evidentiary Hearings on March 7, 2013, and an Amended Request for Evidentiary Hearings on March 28, 2013. In their opening comments, the Center for Energy Efficiency and Renewable Technologies (“CEERT”)<sup>15</sup>

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<sup>15</sup> CEERT, at p. 4

supported this request. Other parties either were silent on the issue or, such as SDG&E, opposed hearings. WPTF concurs with TURN and Sierra Club that the current record is inadequate to establish an enforceable flexibility requirement for 2014. As noted above, much needs to be done to determine whether and how such an obligation should be implemented.

The question, however, is whether the hearings process is best suited to achieve this fuller record. WPTF believes that the workshop approach outlined by Calpine Corporation will better serve to enhance the record. As Calpine notes, “workshops would provide a better process to constructively develop a more meaningful record than hearings.”<sup>16</sup> Hearings are, by necessity, adversarial. Workshops are usually more collegial, cooperative and less combative. Given the need for cooperation, WPTF believes that a workshop process has the potential for achieving better results than adversarial hearings. In order for a fuller record to be achieved, such workshops should be transcribed so that the discussions may be incorporated into the record of the proceeding and provide the foundation for a well-reasoned Commission decision on flexibility requirements. Further, if parties felt that at the conclusion of the workshop process that hearings are still needed, nothing would preclude them for making such a motion at that time.

### **III. CONCLUSION**

In summary, the Joint Parties simply seek to do too much, too fast, without adequate analysis or market preparation and this will indubitably lead to increased uncertainty. As noted by Shell, “Uncertainty inevitably leads to increased costs to ratepayers.”<sup>17</sup>

WPTF recommends that for 2014, the Commission’s implementation of flexible capacity requirements should take the approach of a “trial run” that specifies the flexible capacity

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<sup>16</sup> Calpine, at p. 8.

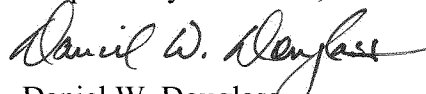
<sup>17</sup> Shell, at p. 11.



requirement, but stops short of imposing a MOO on flexible generation and stops short of imposing sanctions or penalties for non-compliance. The 2014 RA compliance year should be used to (1) finalize the methodology for determining the flexibility requirements; (2) set rules (technology-indifferent, to the maximum extent possible) for how resources count towards meeting this requirement; (3) allocate the requirements that will be applicable to each LSE; (4) finalize any remaining issues associated with determining the amount of flexible capacity that can be provided by RA eligible generating units; (5) develop compliance rules that are applicable in the event of inadequate flexible capacity available in the market and how LSE obligations will be adjusted to reflect this; and (6) establish administrative processes through which it can be determined whether the flexibility requirement is met, including rules dealing with non-compliance, cure periods and other administrative procedures.

This interim period will also provide parties the time to become acclimated to these new requirements and make any necessary contract modifications. Such an approach also provides additional time for the CAISO and the Commission to continue the discussions regarding a multi-year forward RA obligation and centralized capacity market. They are vitally needed reforms that are needed so that all LSEs, including utilities, ESPs and CCAs can manage their RA obligations. WPTF thanks the Commission for its attention to these reply comments.

Respectfully submitted,



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