

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
FLEXIBLE CAPACITY PROCUREMENT PROPOSALS**

April 5, 2013

Mona Tierney-Lloyd
Director, Regulatory Affairs
EnerNOC, Inc.
P.O. Box 378
Cayucos, CA 93430
Telephone: (805) 995-1618
Facsimile: (805) 995-1678
Email: mtierney-lloyd@enernoc.com

TABLE OF CONTENTS

	<i>Page</i>
Table of Contents	i
I. INTRODUCTION	1
II. BOTH THE JOINT PARTIES' AND ENERGY DIVISION FLEXIBLE CAPACITY PROCUREMENT PROPOSALS HAVE SERIOUS DEFICIENCIES AND SHOULD NOT BE ADOPTED BY THE COMMISSION IN ITS JUNE 2013 RA DECISION	3
III. NO NEED EXISTS FOR ANY OF THE PENDING FLEXIBLE CAPACITY PROPOSALS TO BE ADOPTED FOR THE 2014 RA YEAR.....	5
IV. IN ADDITION TO AN ABSENCE OF NEED, OTHER SHORTCOMINGS IN THE JOINT PARTIES' AND ENERGY DIVISION PROPOSALS ALSO REQUIRE THAT NEITHER BE ADOPTED FOR THE 2014 RA YEAR	11
V. A FLEXIBLE CAPACITY PROCUREMENT MECHANISM MUST BE RESOURCE AND TECHNOLOGY NEUTRAL.....	14
VI. CONCLUSION.....	16
<u>APPENDIX A</u> : ENERNOC PROPOSED FINDINGS OF FACT, PROPOSED CONCLUSIONS OF LAW, AND PROPOSED ORDERING PARAGRAPHS	

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
FLEXIBLE CAPACITY PROCUREMENT PROPOSALS**

EnerNOC, Inc. (EnerNOC) respectfully submits these Comments on the Flexible Capacity Procurement Proposals that have been distributed or have been the subject of Workshops and Comment in Phase 2 of this proceeding. These Comments are timely filed and served pursuant to the Commission's Rules of Practice and Procedure, the ALJ's Ruling Resetting Schedule for Comments on Phase 2 Resource Adequacy Issues and Scheduling a Prehearing Conference (PHC) issued on March 11, 2013 ("March 11 ALJ's Ruling"), and the ALJ's rulings and instructions to parties on these Comments provided at the Phase 2 PHC held on March 20, 2013.

**I.
INTRODUCTION**

EnerNOC has actively participated in this proceeding on the issue of flexible capacity procurement over the last year, including responses to initial "flexible capacity procurement" proposals offered by the California Independent System Operator (CAISO) and the Energy Division, considered, but not adopted, in the June 2012 Resource Adequacy (RA) Decision (D.) 12-06-025. By Decision (D.) 12-06-025, the Commission stated that there "are good reasons to define 'flexibility' for Resource Adequacy purposes and identify the types of flexible resources needed to maintain reliability," but found that these initial proposals were not "sufficiently

detailed” or “ready for implementation” to permit their adoption at that time.¹ Instead, the Commission committed to “study flexible capacity proposals further in this proceeding,” with the intent “to issue a decision by or near the end of 2012 on this topic.”²

The “record” on the issue of “flexible capacity procurement” since that June 2012 decision has consisted of three Workshops held between August 2012 and March 2013; a “Joint Parties’ Proposal,” offered jointly by the California Independent System Operator (CAISO), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E) and included in a Phase 2 Scoping Memo issued on December 6, 2012; Comments on that proposal filed on December 26, 2012; and a Revised Energy Division Proposal, first offered at the Workshop held on January 23, 2013, then revised and distributed with the March 11 ALJ’s Ruling. Additional presentations, including those made at the Workshop held on March 20 following a Prehearing Conference (PHC) held that same day or revisions to the Joint Parties’ Proposal or Revised Energy Division Proposal will only become part of the record if submitted along with the party’s Comments on flexible capacity procurement due today (April 5). In this regard, additional or alternative proposals were presented at the March 20 Workshop by Pacific Gas and Electric Company (PG&E) and Distributed Energy Consumer Advocacy (DECA).

At the March 20 PHC, ALJ Gamson, consistent with his March 11 ALJ’s Ruling, provided specific and valuable guidance on the Comments to be filed today. In this regard, ALJ Gamson asked that parties “very directly” address the following:

Questions on the Proposals

- Should the Joint Parties’ Proposal be adopted by the Commission “in whole or in part,” and, if “it should be adopted in part,” what “specific revisions” should be made?
- Should the Revised Energy Division Proposal be adopted by the Commission in whole or in part, and, if in part, what “specific revisions” should be made?

¹ D.12-06-025, at p. 2.

² Id.

- With respect to the Joint Parties’ Proposal, are there jurisdictional limitations on what the Commission, as opposed to the CAISO, can adopt?
- Should the Joint Parties’ Proposal be adopted “word for word” or “in concept,” and, “if in concept, exactly what would that concept be?”
- Should adoption of the Joint Parties’ Proposal include adoption of “formulas,” “particular formulas,” or “revised formulas”?³

Questions on Timing and Need

- Should any proposal be adopted in a 2013 decision for the 2014 RA year, the 2015 RA year, or “later”?
- Should a “policy” be adopted in 2013 for 2014 and later, but “specific implementation detail” adopted “for 2015 and later”?⁴

Comment Content

In addition to addressing these issues, parties were encouraged to “provide specific findings of facts, conclusions of law and ordering paragraphs that would allow whatever you believe should be adopted to be adopted by the Commission.”⁵ Parties were also allowed to include responses to the Motion by The Utility Reform Network (TURN) and Sierra Club (Sierra Club) for Evidentiary Hearings filed on March 7, as amended on March 28, 2013.⁶

II.

BOTH THE JOINT PARTIES’ AND ENERGY DIVISION FLEXIBLE CAPACITY PROCUREMENT PROPOSALS HAVE SERIOUS DEFICIENCIES AND SHOULD NOT BE ADOPTED BY THE COMMISSION IN ITS JUNE 2013 RA DECISION.

EnerNOC has fully reviewed the record to date in this proceeding and each of the pending proposals. Specific to the proposals now before the Commission, EnerNOC has already expressed its overarching concerns with the Joint Parties’ Proposal in its detailed Comments filed on December 26, 2012. Among other things, EnerNOC took exception to the rigid definition of “flexibility” and other requirements imposed by the Joint Parties’ Proposal that would limit eligibility to specific generation types and exclude demand response and resulted in the proposal failing to meet the RA guiding principle of “technology neutrality” or fairly

³ PHC Reporter’s Transcript (RT) at 10-12 (ALJ Gamson).

⁴ PHC RT at 12 (ALJ Gamson).

⁵ PHC RT at 12 (ALJ Gamson).

⁶ PHC RT at 54 (ALJ Gamson).

considering the attributes and characteristics of DR to meet this need.⁷ These shortcomings of the Joint Parties' Proposal are mirrored in the nearly identical Revised Energy Division Proposal; have not, but must be, cured; and require that the Commission reject both.

In support of EnerNOC's position, it is important to understand what these proposals would require. In this regard, the Joint Parties' Proposal would establish a monthly ramping requirement equal to the sum of the maximum three-hour ramp in that month plus the maximum of either the most serious single contingency (MSSC) or 3.5% of the monthly expected peak load. Generation capacity would qualify as effective flexible capacity (EFC), for units requiring 90 minutes or more start-up time (SUT), by determining the minimum of either the net qualifying capacity (NQC) minus the minimum operating level (Pmin) or 180 minutes multiplied by the average ramp rate (RRavg) of the unit. $EFC \text{ for } SUT > 90 \text{ min} = \text{minimum}((NQC - Pmin), (180 \text{ min} * RRavg))$ The equation for generation units requiring less than 90 minutes SUT is as follows: $EFC \text{ for } SUT < 90 \text{ min} = \text{minimum}(NQC, (Pmin + (180 \text{ minutes} - SUT) * RRavg))$.

This requirement would be allocated to load-serving entities (LSEs) on the basis of their load ratio share of coincident peak demand on a year-ahead basis. Each LSE would have to demonstrate that they have 90% of the resources committed to comply with the monthly flexible ramping requirement on a year-ahead basis and full compliance on a month-ahead basis. The obligation of the flexible capacity resource is to bid to supply energy into the CAISO's energy market between 5 AM and 10 PM daily, for a total of 17 hours.

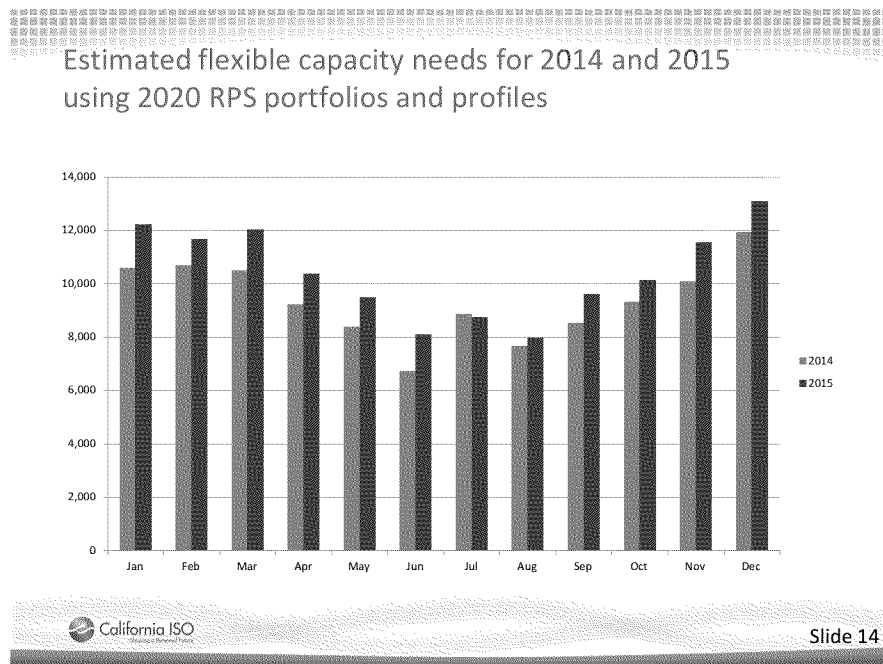
The Revised Energy Division Proposal, again, is nearly identical to the Joint Parties' Proposal, with the exception of incorporating PG&E's "alternative" proposal. That "alternative" proposal is focused solely on including hydro resources among the eligible flexible capacity procurement products.

⁷ EnerNOC Comments on Joint Parties' Proposal, at pp. 3-7.

In sum, these proposals are designed for generators and exclude consideration of preferred resources or use-limited resources, with the exception of PG&E’s hydro resources. While the Workshops have been useful in furthering understanding of these various proposals, that understanding does not change EnerNOC’s overall objections, as previously stated. These concerns are addressed further below and reflected in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs attached hereto as Appendix A.

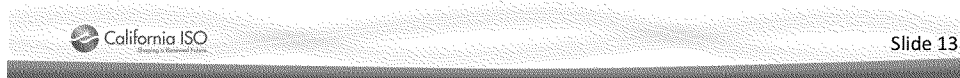
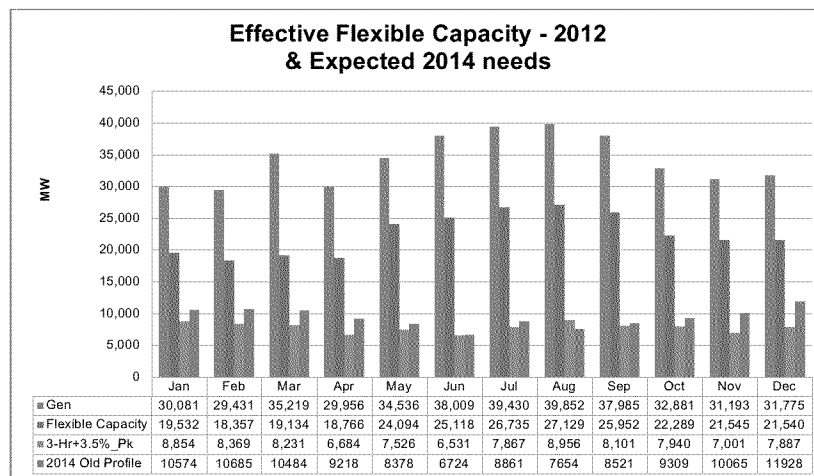
**III.
NO NEED EXISTS FOR ANY OF THE PENDING FLEXIBLE CAPACITY
PROCUREMENT PROPOSALS TO BE ADOPTED FOR THE 2014 RA YEAR**

At both Workshops held on January 23 and March 20, CAISO made presentations as to the need for flexible capacity. CAISO’s January 23 Presentation, offered by Clyde Loutin, forecasts a need for flexible capacity by month for 2014 and 2015. That slide (Slide 14) is reprinted below and shows a range of flexible capacity need varying from a low of roughly 7,000 MW in June 2014 to a high of roughly 13,000 MW in December 2015.



This graphical depiction in Slide 14 of the need for flexible capacity in 2014 was also reflected numerically and graphically (purple bar) by the CAISO in the same presentation at Slide 13. However, in Slide 13 (reprinted below), the CAISO also depicts the amount of generation capacity (blue bar) and effective flexible capacity (red bar) that exists as of 2012. In contrast to the forecast offered in Slide 14, Slide 13 actually shows that there is an adequate amount of existing resources to provide flexible ramping capacity to meet needs in 2014.

Available EFC (less 8% for forced outages & forecast errors)
vs. Required Flexible Capacity - 2012



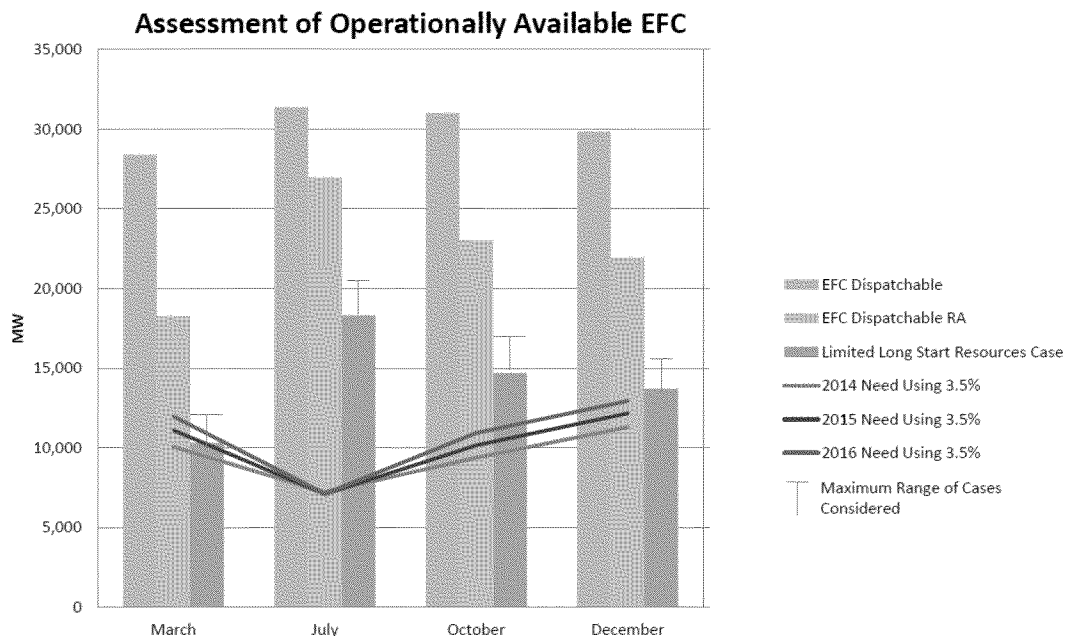
At the March 20 Workshop, the CAISO gave another presentation aimed at demonstrating the need for flexible capacity. In this presentation, Slide 19 (reprinted below) is a chart depicting the need on the system. The green bar represents all resources within CAISO's footprint that have flexible capacity capabilities. The blue bar is a subset of the green bar, which reflects the resources with flexible capacity capabilities that are made available to the CAISO as RA resources. The yellow bar is a subset of the blue bar and represents the resources with flexible capacity capabilities that are made available to the CAISO as RA resources and that

exclude resources that may have limited availability to the CAISO, either due to long, lead-time ramping requirements or due to hydro usage restrictions, for example. The line graph represents the ramping need for each year from 2014 through 2016.

From Slide 19, it is clear that the flexible capacity resources available to the CAISO, excluding those with limitations, are still in excess of the ramping needs identified in 2014, but not by much in March and December. There is, however, a very large margin of “extra” flexible capacity, capacity above and beyond the identified need, in July and October, even through 2016. The yellow lines assume that there is a long-lead time and that hydro resources are never available to the CAISO, which is probably an over-statement, and would increase the yellow line for some of the hours.



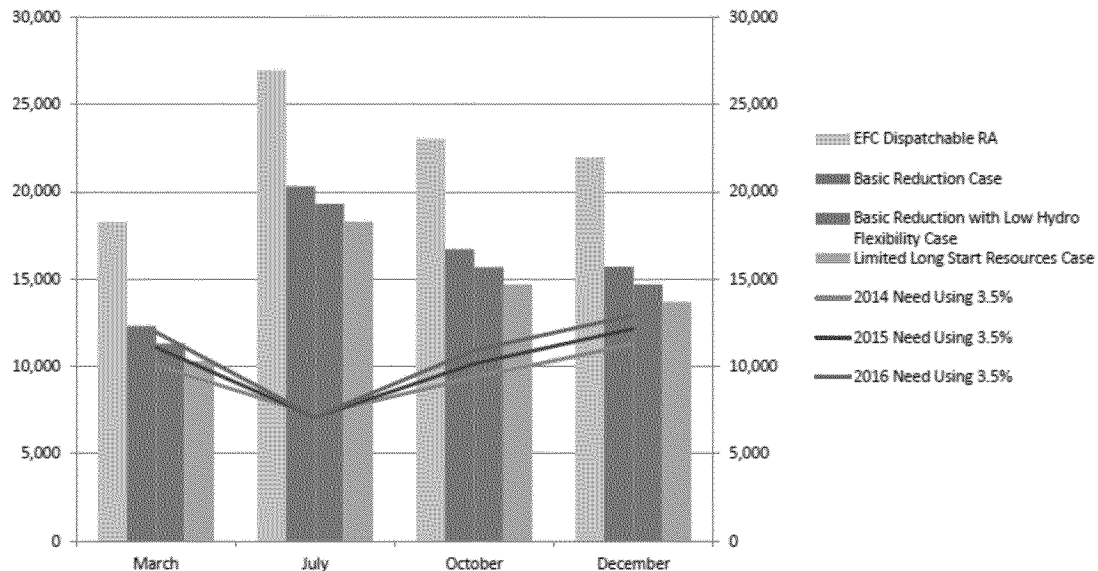
Need a procurement rule to ensure sufficient flexibility in the procured RA resources



The amount of capacity, in the “limited” category, that is available some of the time, or the duration of the availability, is indeterminable from the CAISO information presented at these workshops. However, EnerNOC suspects that it is not zero. Further, it is apparent that by increasing the amount of effective flexible capacity (EFC) that is also available to the CAISO as an RA resource, the need for a ramping requirement may be eliminated entirely. The big question is, however, why are those resources currently outside of the RA construct today and what would encourage their future participation as RA resources? While the CAISO’s calculations may demonstrate that the operating characteristics of the system are likely to change as a result of renewable integration and resources may need to be utilized differently than today, the question is: How immediate is the need and what is the best approach, as to timing, resource type, and procurement mechanism, to address this need?

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. All of the data presented, even assuming a low hydro year and excluding long, lead-time generation shows no need in 2014 (see Slide 28, reprinted below); a marginal need in March of 2015 and 2016; and a marginal need, under the above-stated conditions, in December 2016. All other times and conditions show adequate or excess available EFC relative to calculated ramping needs.

Need a procurement rule to ensure sufficient flexibility is procured from the RA Fleet



While even CAISO staff at the Workshop seemed to acknowledge that there is no immediate flexible capacity need in 2014, they nevertheless argue that 2014 would be a year to implement a flexible capacity requirement so that parties can gain experience from the new structure. However, given the highly restrictive definition of eligible “flexible capacity” limited to fossil generation only, this “experience” would not include or test the capabilities of demand response to meet this need. From EnerNOC’s standpoint, this exclusion of demand response is not only short-sighted, but at odds with DR’s capabilities and the clear intent of the Commission to require this preferred Loading Order resource to be procured to meet need before any generation.

EnerNOC does not believe that the record to date, which largely consists of the CAISO’s presentations, is nearly sufficient to support this Commission’s adoption of an annual flexible

capacity requirement in its June 2013 RA Decision. Neither the Joint Parties nor the Energy Division have demonstrated that an annual flexible capacity requirement is necessary. In fact, the record to date indicates that adequate amounts of flexible capacity already exist and are available to the CAISO through the RA requirement for most months of the year through 2016, with only a marginal need for flexible capacity to be committed to the CAISO through the RA requirement between November and March of 2015 and 2016. In addition, it is not clear why more EFC resources are not available as RA resources during those months currently, a circumstance that would, in fact, eliminate even this marginal need altogether.

While approving a flexible capacity requirement for 2014 may provide parties an opportunity to gain operational experience, only a portion of the resources, those that are primarily gas-fired generators, would gain from that experience. In fact, that experience could prove to be detrimental to other resources that have not been included in the definition of the flexible capacity product, such as demand response and other preferred resources. Those resources would be sidelined while the gas-fired resources gain market experience. In doing so, there may be no incentive, even with a proposal labeled “interim,” to expand this procurement mechanism in future RA cycles to include preferred resources. EnerNOC certainly does not believe that either an immediate (by 2014) flexible capacity procurement need exists or that it is appropriate to adopt a procurement proposal now, even on an interim basis, where the “experiment” will be limited to only fossil and not preferred resources.

EnerNOC, therefore, recommends that the Commission not adopt an annual flexible capacity requirement based on the Joint Parties’ Proposal or, for the same reasons, the nearly identical Revised Energy Division Proposal for the 2014 RA year. While the PG&E alternative, incorporated in the Revised Energy Division Proposal, and the DECA Proposal appear to seek to

cure a central deficiency of both of these proposals by including at least one or more use-limited resources, this circumstance does not change the absence of an immediate need for flexible capacity or the benefit of further exploring this issue in evidentiary hearings, as urged by TURN and the Sierra Club.

**IV.
IN ADDITION TO AN ABSENCE OF NEED, OTHER SHORTCOMINGS
IN THE JOINT PARTIES' AND ENERGY DIVISION PROPOSALS ALSO
REQUIRE THAT NEITHER BE ADOPTED FOR THE 2014 RA YEAR.**

The Joint Parties' Proposal and the Revised Energy Division Proposal have some merit in that they have taken a complex concern – a significant, *possible*, future change in resource utilization to address renewable resource availability – and have sought to create a straightforward way of addressing it. The use of the term “possible” is appropriate because these proposals assume a static view of the future. For example, the proposals assume no change in the net load shape from demand or new technologies, which may or may not be justified.

Further as demonstrated above, none of the data submitted in this proceeding to date supports a need for flexible capacity in 2014, even assuming a low hydro year and reductions in available capacity for long, lead-time resources. Again, the need is not urgent in 2014 and only marginally so in 2015.

Thus, the only value in implementing a flexible capacity requirement in 2014 would be to allow certain generation resources and LSEs to gain operational experience with implementing the new requirements, but, as demonstrated above and discussed further below, it is only a limited subset of generation resources that will benefit from this experience. This serious shortcoming in both the Joint Parties' Proposal and Revised Energy Division Proposal make both unacceptable in their current form.

A. Failure to Account for Preferred Resources

In its recent decision on SCE's long term local capacity requirements (D.13-01-015), the Commission made clear that Loading Order preferred resources *are and can* be relied upon to meet local need and certainly are preferred to any unnecessary, long-term over-commitment to fossil resources. EnerNOC asks the Commission to apply the precedent of D.13-01-015 in reviewing the Joint Parties' and Energy Division flexible capacity proposals here, which conflict with that decision and its adopted policies by excluding, in particular, preferred resources. In so doing, these proposals ensure that generation, which alone is determined to provide flexible capacity resources under those proposals, will be paid a premium for the "flexible capacity" product and will also gain experience from implementing these new requirements before all other resources.

EnerNOC believes that preferred resources can contribute to a flexible capacity need and are wrongly excluded from these proposals. It is incumbent upon the Commission to once again remind the parties, as it did in D.13-02-015, that the Loading Order "preferred resources," including demand response, are to be considered first, not as an afterthought, in meeting any resource need.

Further, as discussed further in Section V below, there is no basis for this exclusion and the ways that DR can effectively contribute toward the solution under different parameters needs can and should be explored in the coming year. Therefore, EnerNOC strongly recommends that the Commission reject the piecemeal and discriminatory approach taken by the Joint Parties and Energy Division in their proposals and use the time that is available to develop a more inclusive proposal consistent with the Commission's energy priorities and policies.

B. Product Definition is Specific to Generation

The flexible capacity product is defined in the Joint Parties' and Revised Energy Division Proposals using generator terms of Pmin and Pmax, for example, which have no direct relevance to DR resources. Perhaps these were the more thorny definitions to determine, but it is clear from the outset that the product is developed with generation in mind and all other resources have to make themselves fit into that definition, or they will not be counted as flexible capacity. That is not technology neutrality, as claimed by the Joint Parties, but discrimination against other eligible resources. Further, the requirement to bid to provide energy for 17 hours a day, every day is also designed for a generator, not demand response. There is no basis for this exclusion, and the ways that DR can effectively contribute toward the solution under different parameters needs can and must be explored in the coming year.

C. No Discussion of Market Implications

Several parties in the Workshops asked the question about whether the CAISO had considered sending market signals for when and where they needed energy and/or ancillary services, as opposed to instituting a requirement that parties bid to supply energy 17 hours/day, every day. The point is that a regulatory construct is being considered here to address a concern that could be addressed through market signals that would allow parties to bid to provide the services when and where they are needed. The proposed construct may, in fact, further reduce those very market signals due to an oversupply of available capacity.

D. Implications for Next DR 3-Year Program Cycle

Current DR contracts expire in December 2014. The utilities will be submitting their applications for the next DR 3-Year Program Plans in January 2014. The utilities will be

receiving guidance from Energy Division in advance of the January application filing date as to what the applications should include.

If the Commission decides to adopt the Joint Parties' Proposal, and defer consideration of other resources, including DR, until sometime in the future, the utilities will file their DR applications in January assuming DR is not a flexible capacity resource, locking that position in place for the *next 3 years*. Some of the utilities would also like to issue request for offers (RFOs) for competitively solicited DR service contracts for that period of time. If the resource definitions are going to be a moving target over the next year for DR, then it makes it very difficult to do that or it means DR could be treated differently than other resources for a longer period of time. Once the solicitation is completed, the contracts signed, and the Commission approves the contract, there is not an opportunity to change the resource definition.

An even worse case, from a DR Aggregator's point of view, is that the aggregator would be obligated to provide DR as if it were providing flexible capacity, without getting the benefit of qualifying for flexible capacity resource adequacy and without being able to receive a premium capacity value for that service, relative to generic capacity. That problem would be compounded by cost effectiveness methodologies that do not value flexible capacity services. Therefore, failure to incorporate DR into a definition of flexible capacity resources has implications that may be longer lived than the resolution of issues for the 2014 RA delivery year.

V.
A FLEXIBLE CAPACITY PROCUREMENT MECHANISM
MUST BE RESOURCE AND TECHNOLOGY NEUTRAL

For the reasons stated above, it is EnerNOC's position that there is no pressing need to adopt a flexible capacity procurement mechanism in the June 2013 RA Decision and no pending proposal adequate to the task, even if a need did exist. However, *if* the Commission nevertheless

elects to move forward to address this issue or adopt any flexible capacity procurement proposal or definition this year, EnerNOC recommends that the Commission do so only on a policy basis. That policy would be limited to the Commission indicating an intent to address flexible ramping needs over the coming RA cycles to ensure that the CAISO has adequate ramping capacity available to it as more and more renewable resources are integrated into the CAISO's system.

The Commission should make clear, however, 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. Further, the Commission should use the time between now and June 2014, to develop a comprehensive assessment of the need and resources that can meet the need for implementation in the 2015 resource adequacy delivery year in a manner supporting, not undermining, state policy for preferred resources, in particular, demand response.

A clear example of how the Joint Parties' proposal excludes preferred resources in a discriminatory fashion is the requirement that so-called flexible resources offer energy 17 hours per day, every day. Some might argue that such a requirement is not discriminatory because it does not by its terms limit eligibility to generation. However, the requirement is patently discriminatory because it is not technology or resource neutral: only traditional forms of generation can meet this requirement. While DR resources have excellent flexibility characteristics, very few if any DR resources would have the ability to provide energy over an entire 17 hour period every day. Including this requirement will ensure that DR and other preferred resources with flexible capability will be excluded from the market. Designing market rules that ensure only certain technologies and types of resources can meet the requirements is *per se* unreasonable and discriminatory.

VI. CONCLUSION

EnerNOC appreciates this opportunity to address the issue of RA flexible capacity procurement. Based on the record to date, EnerNOC does not believe that any need exists for any of the pending proposals to be adopted in the June 2013 RA Decision. However, if the Commission does decide to move forward on this issue in that order, EnerNOC asks that any direction the Commission gives be limited to policy guidance on future development of flexible capacity procurement models to ensure that any such procurement mechanism preserves technology and resource neutrality and follows the Commission's Loading Order of preferred resources. EnerNOC's recommendations are further incorporated in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs in Appendix A hereto.

Respectfully submitted,

April 5, 2013

/s/ MONA TIERNEY-LLOYD
Mona Tierney-Lloyd

Mona Tierney Lloyd
Director, Regulatory Affairs
EnerNOC, Inc.
P.O. Box 378
Cayucos, CA 93430
Telephone: (805) 995-1618
Facsimile: (805) 995-1678
Email: mtierney-lloyd@enernoc.com

APPENDIX A

PROPOSED FINDINGS OF FACT, PROPOSED CONCLUSIONS OF LAW, AND PROPOSED ORDERING PARAGRAPHS ON FLEXIBLE CAPACITY PROCUREMENT

EnerNOC recommends that the Commission include the following Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs in its decision on proposals and issues related to Flexible Capacity Procurement in its June 2013 Final Decision on Resource Adequacy Local Procurement Obligations for 2014.

PROPOSED FINDINGS OF FACT:

1. Solar resource generation is greatest from mid-morning until mid-afternoon.
2. Wind generation occurs, principally, in the evening and early morning hours.
3. The times at which wind generation stops and solar generation begins and ends may create the need for other resources to provide increased ramping support to maintain grid reliability, as reflected in the net load curve provided by the CAISO.
4. Net load equals demand less solar and wind generation.
5. The net load curve assumes that the demand curve remains constant through 2020.
6. It is possible that the demand curve could change in response to changes in rate design and demand response over time.
7. The Joint Parties, which includes SCE, SDG&E and CAISO, have proposed a flexible capacity product description to address ramping needs.
8. CAISO calculates a monthly maximum ramping need formulaically.
9. A generation resource's flexible ramping capacity can be determined in one of two ways, depending upon the start-up time (SUT) of the resource.
10. The resource, once qualified, will be required to bid into the CAISO energy markets between 5 AM and 10 PM everyday.

11. The LSE's share of the flexible capacity resource adequacy requirement will be determined based upon the LSE's coincident peak divided by the CAISO's coincident peak demand multiplied by the monthly flexible capacity requirement.

12. The LSE will be required to demonstrate that it has acquired 90% of the monthly flexible capacity requirement one year in advance and 100% of the monthly flexible capacity requirement one month in advance.

13. The Energy Division Revised Proposal is largely the same as the Joint Parties' Proposal, with the exception that Energy Division Revised Proposal incorporates PG&E's Hydro Resource Proposal.

14. PG&E's Hydro Resource Proposal would require hydro resources to bid to provide energy in the same hours as other generation resources; however, PG&E would only be obligated to dispatch those resources up to 6 hours per day. PG&E would determine the amount of hydro capacity associated with its resources based upon calculated or projected water assumptions.

15. The Joint Parties claim that their proposal is technology neutral; however, it is clear that the proposal is developed for generation resources specifically.

16. The Joint Parties proposal that use-limited or preferred resources either meet the requirements developed for generation or wait until sometime in the future when specific requirements are developed for those resource types.

17. DECA has submitted a proposal that utilizes the existing maximum capacity contribution (MCC) buckets and a flexible capacity load duration curve to enable use-limited and preferred resources to count toward the flexible capacity resource adequacy requirement.

18. It is important to ensure that DR and other preferred resources are not excluded from meeting flexible capacity requirements and that their contributions toward meeting this need is fully examined and considered under different parameters in the coming year.

19. CAISO has not provided information that supports a need for flexible capacity resources in 2014.

20. CAISO has not provided information that supports the need for an annual flexible capacity requirement.

21. If the Commission fails to adopt a definition of flexible capacity that includes DR in 2014, there will be complications for the utilities' DR program plan applications that will be filed in January 2014 for the 2015-2017 timeframe that may foreclose DR participation as a flexible capacity resource during that period of time.

22. The Proposal by the Joint Parties and as supported by Energy Division is not consistent with the Commission's Preferred Loading Order and in fact, may be discriminatory against those very resources.

23. There is no reason to move rapidly toward implementing a flexible capacity resource requirement when the evidence does not support doing so and in doing so could result in discriminatory treatment to preferred resource.

PROPOSED CONCLUSIONS OF LAW:

1. Because additional data and record support is required to establish a need for a flexible capacity requirement in the 2014 RA year, such a requirement should not be adopted for 2014.

2. Because the Joint Parties' Proposal and the nearly identical Energy Division Revised Proposal do not adequately ensure or include use-limited or preferred resources to meet flexible capacity needs, neither should be adopted at this time.

3. Evidentiary hearings should be held to address the disputed material facts of whether there is a need for flexible capacity, the timing of that need, and the resources that can meet that need.

4. A starting point for defining resources that can meet flexible capacity requirements should be one that ensures and preserves technology and resource neutrality.

PROPOSED ORDERING PARAGRAPHS:

1. The Commission shall adopt a policy position that any identified, annual flexible capacity need must be met in a manner that preserves technology and resource neutrality and follows the Loading Order of preferred resources.

2. In the absence of record support establishing a need for an annual flexible capacity requirement, a flexible capacity resource requirement for 2014 shall not be adopted at this time.

3. The proceeding shall remain open to explore incorporation of other resources into the product definition of flexible capacity in order to consider adoption of a flexible capacity procurement requirement for the 2015 RA year.