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)

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

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In the *Administrative Law Judge's Ruling Resetting Schedule for Comments on Phase 2 Resource Adequacy Issues and Scheduling a Prehearing Conference,* issued on March 11, 2013, Administrative Law Judge (ALJ) David Gamson repeated the questions he had posed at the close of the workshop on distributed generation deliverability and flexible capacity procurement held on January 23, 2013:

- Does the Commission need to decide issues related to deliverability for distributed generation or the procurement of flexible capacity in 2013, and specifically does the Commission's resolution of these issues need to be incorporated into the decision on 2014 Resource Adequacy (RA) requirements targeted for June 2013?
- If so, should the Commission issue a policy decision or an implementation decision?
- How should the Commission decide these issues?

The Independent Energy Producers Association (IEP) will comment on these questions and other issues raised in the recent workshops on flexible capacity. IEP will also briefly comment on the current status of proposals related to deliverability for distributed generation.

I. COMMENTS ON PROCUREMENT OF FLEXIBLE CAPACITY

A. A Limited Flexible Capacity Requirement Should Be Implemented for 2014

In response to the ALJ's first two questions, IEP recommends that a limited flexible capacity program should be adopted in the June decision and implemented for 2014 as a transition to full implementation in 2015.

In recent workshops on the procurement of flexible capacity, three proposals were presented. By the time of the workshop on March 20, 2013, the Energy Division's proposal had largely converged with the Joint Proposal sponsored by the California Independent System Operator (CAISO) and the investor-owned utilities. A third proposal, sponsored by Distributed Energy Consumer Advocates (DECA), was also presented at the March 20 workshop.

As discussed further below, all of the proposals have significant open issues that will be difficult to resolve in time for the proposed decision on RA requirements that must be issued in May for a June decision. As a result, adopting any of the proposals, as proposed, in June 2013 for implementation in 2014 would be disruptive and potentially damaging to the RA capacity market.

On the other hand, it would be valuable for the Commission, the CAISO, load-serving entities (LSEs), and generators to gain some experience with the procurement of this new variety of RA capacity in 2014, when the projected need for flexible capacity is low and while the existing flexible capacity in California's generation fleet exceeds the CAISO's projected need.

Under these circumstances, in the June 2013 decision the Commission should decide to implement, as a transitional mechanism, a flexible capacity reporting program, rather than imposing a flexible capacity *requirement*. On April 1, the CAISO posted the Effective Flexible Capacity (EFC) for units serving California. The CAISO should proceed to calculate the flexible capacity needs for 2014 and allocate an appropriate share of that need to each LSE. This calculation and allocation would give parties a concrete example of how the CAISO proposes to perform these steps.

After completing their initial procurement of System and Local RA capacity for 2014, the LSEs would submit a report to the Energy Division showing the amount of EFC associated with the Local and System RA capacity they procure to meet their 2014 RA obligations, compared to the flexible procurement obligation allocated to them by the CAISO. To be clear, under this proposal LSEs would not be required to actually procure their allocated EFC capacity for 2014. Rather, for 2014, LSEs would be required only to report the amount of EFC associated with the RA procurement they make to meet their 2014 System and Local RA requirements. Similarly, resources whose capacity the LSEs have procured would be required to meet the appropriate requirements for Local and System RA capacity that exist today, but in 2014 these resources would not be required to make economic bids associated with their flexible capacity into the day-ahead and real-time markets from 5 a.m. to 10 p.m., as proposed under the Joint Proposal, except to the extent economic bids are required to meet their System and Local RA obligations.

Thus, 2014 would serve as a sort of trial run for the flexible capacity program. The basic framework of the Joint Proposal and Energy Division proposal would be in place, but there would be no penalties imposed on LSEs or resources for any failures to meet the

obligations associated with the program. The Commission and the parties could then use the remainder of 2013 to work out the many unresolved details of the Joint Parties' proposal.

IEP's recommended approach would allow the affected entities to gain valuable experience with the EFC obligation in 2014, and based on that experience, the Commission could make appropriate modifications and adjustments before implementing a fully enforceable program for the 2015 compliance year.

B. The Flexible RA Capacity Program Should Be Based on the Joint Proposal

At this point, the Energy Division's proposal has largely converged with the Joint Proposal's basic framework. IEP continues to have two concerns, one that is common to the Joint Proposal and the Energy Division's proposal, and one that is raised by the Energy Division's proposal.

1. Sales of Flexible and Inflexible Capacity

The common concern was raised but not entirely clarified during the March 20 workshop. This concern has to do with a generator's options with regard to its ability to sell the generic, non-flexible capacity below its Pmin and its flexible capacity above its Pmin. Energy Division's position, as described on page 7 of its revised proposal, seems to be 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. During the workshop discussion, representatives of the Joint Parties seem to say that their proposal would allow sales of generic capacity below the 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. However, subsequent discussions left IEP unclear about whether the Joint Proposal allows for these sorts of separate transactions.

From IEP's perspective, the flexible capacity initiative should result in a viable commercial product and maximum commercial flexibility. IEP understands and agrees with

Energy Division's basic concern, that the same MW should not be sold twice (once as generic capacity and again as flexible capacity), but that concern can be addressed in less restrictive ways through reporting, tracking, and verification rules. IEP also understands that a unit's flexible capacity cannot be dispatched unless the capacity below the unit's Pmin is also dispatched. However, a mandatory bundling of the inflexible generic capacity below Pmin and the flexible capacity above Pmin, as the Energy Division apparently proposes, would create inefficiencies that benefit neither generators nor ratepayers and would unnecessarily restrict generator's commercial and operational options.

Clearly, generators will have an economic incentive to sell both the inflexible capacity below a unit's Pmin and the flexible capacity above Pmin whenever possible. In some circumstances, however, it may make economic or operational sense for a generator to sell the flexible capacity even if the capacity below Pmin has not been sold, and to bear the resulting operational costs. 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.

For these reasons, the Commission should clarify that sales of flexible capacity are not tied to a sale of the associated inflexible capacity below Pmin. Generators should be allowed to sell the inflexible and flexible capacity in separate transactions and to different purchasers, 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 entire 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.

2. Contractual Definitions of Flexibility

Energy Division proposes that "LSEs satisfy their flexibility obligations through contractual arrangements that require 'flexible' resource to operate flexibly."[1] IEP understands that parties to contracts are free to include whatever terms they mutually agree to, but *requiring* contractual definitions of flexible operations creates a potential for differing and potentially inconsistent definitions of flexible operations. Instead, 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. LSEs could enter into contracts to purchase the defined flexible capacity product with confidence that the purchased product would count toward their EFC obligation.

3. DECA's Proposal

DECA's proposal was not fully developed, and IEP is unable to endorse the proposal in its present form. As IEP understands the proposal, DECA is concerned that unconventional resources may not be able to meet the requirements the Joint Proposal sets for EFC, *i.e.,* the ability to offer and maintain ramping capability for three hours and a 17-hour daily must-offer obligation. As a general principle, all resources should be treated alike, and unconventional resources that can provide EFC and meet the appropriate requirements should be able to participate in the flexible RA capacity program. To the extent unconventional or other resources are unable to meet the Joint Proposal's criteria, they may be able to qualify as use-

[1] Revised Energy Division Proposal, p. 5.

limited resources (discussed below) or to contribute to meeting flexibility needs by participating in energy and ancillary services markets. However, any accommodation of unconventional resources should not substantially modify the flexible capacity program design or undermine the value of the flexible capacity product or the reliability goals of the program.

Thus, in response to the ALJ's third question, IEP recommends that the framework for the June decision's implementation of a flexible capacity requirement should be framework endorsed by the Joint Proposal and Energy Division, subject to clarifications described in these comments.

II. KEY COMPONENTS OF THE FLEXIBLE CAPACITY PROGRAM REMAIN UNRESOLVED

The reason that IEP recommends a trial run of the flexible RA program in 2014 is that key issues and components of the program remain unresolved. IEP addresses some of the major unresolved issues in this section.

A. Existing Contracts

Many generation resources have existing multiyear contracts that convey "all capacity," "capacity products," "capacity attributes," or similar terms, to the purchaser. These contracts may have been executed at a time when only generic capacity was purchased and sold. The added value associated with the flexible capacity product will not be reflected in the contract terms agreed to before there was any thought of a flexible capacity product. Meeting the must-offer requirements for the flexible capacity product as proposed in the Joint Proposal will require generators to incur additional costs not contemplated when the contract was entered into. It would be inequitable to construe these contracts as requiring the seller to provide flexible capacity, as defined in the Joint Proposal, when flexible attributes were not contemplated by the parties or sold to the LSE in the existing contracts.

To address this problem, the Commission should clarify that exiting contracts for generic capacity or for System or Local RA capacity do not convey flexible RA capacity and that the conveyance of "all capacity," "capacity products," "capacity attributes," or similar terms does not include a conveyance of flexible capacity unless the contract expressly provides otherwise. Silence in the contract does not imply that flexible capacity is included with the purchased product. The contract will delineate the obligations of the seller and the buyer, and the Commission should not disrupt the parties' bargain by imputing new terms that do not expressly appear in the contract. This principle is particularly important if the flexible RA capacity product includes a must-offer obligation, which would alter the performance contemplated under the existing contract.

A related issue is the treatment of projects that have contracts specifically for System or Local RA capacity but also have the capability of providing flexible RA capacity. In those cases, the buyer would have no claim to the flexible attributes (beyond what is already included in the purchased System or Local RA capacity), but the seller and buyer could negotiate a separate or amended agreement to purchase and sell the flexible portion of the capacity. If the existing contract included all of the facility's RA capacity, it would not be possible for the seller to sell the flexible portion of its capacity to anyone other than the purchaser of the System or Local RA capacity, because of the principle that the same MW of capacity can only be sold once.

B. Use-Limited Resources

How use-limited resources should be treated in a flexible capacity program was the subject of considerable discussion at the March 20 workshop. Pacific Gas and Electric Company (PG&E) presented a proposal for treatment of hydroelectric resources, but no specific proposal emerged for other types of use-limited resources. In the Joint Parties' proposal of October 29, 2012, the Joint Parties recommended no special treatment for use-limited thermal

resources and suggested that a use-limited resource that exhausted its run-time or starts for a given month would have to provide a substitute resource or face non-availability charges,[2] but it is unclear if this is still the position of all the Joint Parties.

This topic requires and deserves further discussion. Use-limited resources constitute a significant fraction of the generation fleet, especially in urban local reliability areas with strict air quality regulations, and their ability to contribute flexible capacity should not be disregarded merely because they are subject to some operational limitations.

IEP opposes barriers to participation in utility solicitations and procurement, and supports treating use-limited resources in procurements of flexible RA capacity in a manner consistent with their ability to provide the attributes needed to maintain grid reliability. The Commission should not attempt to force resources that cannot provide the necessary attributes to fit into the overall flexible RA capacity framework, but neither should it exclude flexible resources just because they have limitations. Special provisions may be required to incorporate use-limited resources into the overall framework for flexible capacity in specific circumstances, but the Commission should not dismiss the ability of use-limited resources to provide value in the form of flexible capacity, especially if the limitations do not materially affect the resource's ability to provide the necessary flexible attributes. For example, a resource with a monthly or daily run-time or start limit may still be able respond to the CAISO's dispatch instructions and to provide flexibility equivalent to an unlimited resource, even if it may not be able to bid into the CAISO markets for 17 hours of every day. The Commission should strive to make the flexible RA capacity product uniform without unnecessarily excluding resources from participation, and all resources that can provide the defined product, including use-limited resources, demand response, or storage, should be encouraged to participate in the market.

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[2] *Resource Adequacy and Flexible Capacity Procurement: Joint Parties' Proposal,* October 29, 2012, p. 20.

PG&E suggests that hydroelectric resources should be treated differently from other use-limited resources. Rather than refining a proposal that creates a special treatment or status for hydroelectric resources, however, the Commission should focus its efforts on developing a standard metric or approach that can be applied to the various types of use-limited resources, including hydroelectric resources. PG&E's proposal, in its present form, would have the effect of relieving hydroelectric units from some of the obligations that other units with flexible capacity are required to meet, which suggests that some adjustment is appropriate to reflect the reduced obligations and presumably lower value of hydroelectric units. To the extent that use-limited resources are less useful in meeting flexible capacity needs, the treatment of use-limited resources might include a lower price or a reduction of the resource's EFC to reflect that lesser value. The Commission should develop the criteria and mechanism for accommodating the limitations and possible reduced value of use-limited resources, and the treatment of use-limited resources should aim to be applicable to all types of use-limited resource and fair to all varieties of flexible capacity.

C. Multiyear RA Obligation

Another significant issue considered in Track 2 of this proceeding is whether the Commission should institute a multiyear RA procurement obligation. The multiyear obligation would promote increased use of multiyear contracts for RA capacity, which in turn will support increased investment in upgrades to existing units.

IEP urges the Commission to consider the role of multiyear flexible RA capacity obligations in the context of the flexible RA capacity program.[3] While a decision on a multiyear RA capacity obligation does not have to be issued as part of the June 2013 RA decision, a

[3] On September 20, 2012, PG&E filed a motion asking the Commission to shift consideration of a multiyear forward procurement requirement from Track 3 of the Long-Term Procurement Plan proceeding (R.12-03-014) to this proceeding.

multiyear RA obligation could help support the investment needed to increase flexible capacity from existing resources.

D. Development of a Viable Commercial Product

The discussion of flexible capacity can get abstract at times, but the result must ultimately be a "product"—a collection of requirements or attributes—that can easily be used by buyers and sellers to complete transactions. 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.

E. Backstop Procurement of Flexible Capacity

The CAISO's proposed backstop procurement authority for flexible capacity should be incorporated into its existing Capacity Procurement Mechanism (CPM). It should be relatively easy to incorporate backstop procurement of flexible capacity into the CPM framework.

F. What Procedures Should the Commission Follow Leading up to a Decision in June 2013?

To issue a decision in June 2013, the ALJ would most likely have to issue a proposed decision in May, which as a practical matter means that any procedures involving the parties would need to be concluded by the end of this month. As discussed above, it is not practical to attempt to develop the details of a flexible RA capacity procurement requirement for

2014 in the short time available. The Commission can adopt the sort of trial run flexible RA procurement program described in these comments for 2014, but the focus after the June decision should be on workshops, written proposals, comments, and evidentiary hearings (if needed) to resolve the details of the flexible RA capacity program and product so that it can be implemented in 2015.

IEP has reviewed the Amended Request for Evidentiary Hearings filed by Sierra Club and The Utility Reform Network (TURN) on March 28. IEP is not persuaded that evidentiary hearings are necessary. The points that the Request identifies as factual disputes requiring evidentiary hearings concern the "CAISO's reductions to its estimate of the supply of available operational flexible capacity."[4] Estimates of future supply are by their nature not inherently factual and are not readily susceptible to resolution in evidentiary hearings. IEP also recalls that the Local RA program was developed, refined, and implemented without the need for evidentiary hearings. In this case, it appears that additional workshops or written comments would be adequate to address and resolve the issues the Amended Request identifies.

If the Commission nevertheless concludes that evidentiary hearings are necessary, IEP and other parties will need adequate time to prepare for them. Because the issues raised in the Amended Request are not factual at their core, it will take longer to develop the foundation and models needed to derive estimates of "the supply of available operational flexible capacity" than merely to identify relevant facts.

For these reasons, IEP recommends denial of Sierra Club and TURN's request. If the request is granted, hearing should not be scheduled before the fourth quarter of 2013.

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[4] Amended Request, p. 4.

III. RESOURCE ADEQUACY DELIVERABILITY FOR DISTRIBUTED GENERATION

Events appear to have overtaken the Commission's consideration of deliverability for distributed generation (DG). The CAISO circulated a compliance proposal on March 25 and proposed tariff language on April 2. After conducting stakeholder calls, receiving comments, and making appropriate modifications, the CAISO intends to file tariffs with the Federal Energy Regulatory Commission (FERC) on April 15.

IEP has reviewed the compliance proposal and finds that the CAISO has developed a reasonable response to the FERC orders on deliverability for DG. In particular, the CAISO's proposal is sensitive to the situation of existing generators and to the commercial need for certainty.

For that reason, IEP no longer has any need to comment on the CAISO's earlier proposals or on the workshop on deliverability for DG.

IV. CONCLUSION

As described in these comments, IEP urges the Commission to take the remainder of 2013 to focus on developing a clear definition of the flexible RA capacity product and a clear delineation of the performance and market obligations associated with the defined product. Attempting to institute a flexible RA capacity obligation for 2014 without a clear definition and understanding of the associated responsibilities will likely produce little useful information and much market confusion. For 2014, the Commission should adopt only the sort of trial run program described in these comments.

Respectfully submitted this 5th day of April, 2013 at San Francisco, California.

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