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)

OPENING COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) ON PHASE 2 RESOURCE ADEQUACY ISSUES

Alvin S. Pak

San Diego Gas & Electric Company
101 Ash Street, HQ12C
San Diego, California 92101
Telephone: 619.696.2190
Facsimile: 619.699.5027
Electronic Mail: Apak@SempraUtilities.com

Attorneys for San Diego Gas & Electric Company

April 5, 2013
San Diego, California

#276807

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)

OPENING COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) ON PHASE 2 RESOURCE ADEQUACY ISSUES

Pursuant to the *Administrative Law Judge's Ruling Resetting Schedule for Comments on Phase 2 Resource Adequacy Issues and Scheduling a Prehearing Conference* ("*March 2013 ALJ Ruling*") issued on or about March 11, 2013, San Diego Gas & Electric Company ("SDG&E") files these opening comments on the issues raised in Phase 2 of this proceeding. SDG&E is among the proponents of the *Joint Parties' Proposal* which seeks to amend the Commission's resource-adequacy program by adding provisions addressing the needs of the California Independent System Operator ("California ISO" or "ISO") for resources with operationally flexible attributes.[1] These comments focus in large part on matters related to that proposal. SDG&E strongly recommends that the Commission adopt the *Joint Parties' Proposal* as part of the upcoming June order, with implementation commencing in Compliance Year 2014.

1. The Commission Should Amend the 2014 Compliance Obligations of Load-Serving Entities Subject to the Commission's Resource-Adequacy Program by Adding a "Flexible Capacity" Requirement.

SDG&E is among the parties who developed, submitted and advocate the immediate adoption of the *Joint Parties' Proposal* calling for the Commission to amend the existing resource-adequacy program by adding an interim "flexible capacity" requirement for Compliance Year 2014. SDG&E takes the opportunity of these comments to clarify certain matters raised in the most recent workshops and to respond to certain of the comments filed by other parties regarding the *Joint Parties' Proposal*.[2] In addition,

---

[1] See *Resource Adequacy and Flexible Capacity Procurement: Joint Parties' Proposal,* Rulemaking 11-10-023, October 29, 2012 ("*Joint Parties' Proposal*"); by California Independent System Operator ("California ISO" or "ISO"), Southern California Edison ("Edison"), and SDG&E. The *Joint Parties' Proposal* was filed and served upon the service list to this proceeding both by the Joint Parties and as an attachment to the *Phase 2 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* ("*December 2012 Scoping Memo*"), Rulemaking 11-10-023, December 6, 2012, Attachment A.

[2] See *Reporter's Transcript*, at p.9, lines 26 to p.10, line 7 (references to the Reporter's Transcript are hereinafter abbreviated using the following convention: "R.T. at 9:26 to 10:7").

SDG&E addresses several of the provisions of the Energy Division proposal differing from the *Joint Parties' Proposal*.[3]

a. The *Joint Parties' Proposal*

In amending the existing resource-adequacy program to add a "flexible-capacity" requirement, the Commission should adopt the specification of those requirements as described in the *Joint Parties' Proposal* and the schedule shown in the attached Appendix A.[4] By adopting the modified *Joint Parties' Proposal*, the Commission would be exercising the authorities and meeting the responsibilities set forth in Public Utilities Code Section 380, which describes the Commission's robust jurisdiction to meet system reliability requirements in a cooperative manner with the California ISO. There exists a largely concurrent and coextensive jurisdiction over such matters between the Commission and the California ISO, but for the reasons described later in these comments, SDG&E strongly supports the Commission taking the lead with respect to the adoption of flexible-capacity requirements so as to reduce the probability the ISO will act to procure resources under its federally approved authorities.

SDG&E recommends the Commission implement certain flexible-capacity requirements for the 2014 Compliance Year, and defer a limited set of issues for further consideration and implementation for the 2015 Compliance Year. The initial set of rules to be applied in 2014 would establish the basic parameters of the state's flexible-capacity requirement and are consistent with the similar and related requirements under development by the California ISO. In developing this initial set of rules, SDG&E attempted to avoid undue complexities as parties attempt to assimilate and comply with the new requirements during the first compliance year. The additional rules SDG&E would defer for further consideration would either complicate the launch of the requirements or could benefit from further discussion, so SDG&E recommends placing them into the next round of discussions where further resource-adequacy program refinements would be considered.

---

[3] The most recent version of the Energy Division proposal was distributed to the parties in advance of the workshop held on March 20, 2013. It was also appended to the *March 2013 ALJ Ruling* and served on the parties to the proceeding.

[4] In providing Appendix A, SDG&E illustrates the distinction between the Commission's jurisdiction and matters that would be left to the California Independent System Operator pursuant to the authorities, both present and future, granted to the ISO by the Federal Energy Regulatory Commission, and to the California Energy Commission. See R.T. at 10:23 to 12:5. In addition, SDG&E provides its recommendations as to the findings of fact and conclusions of law supporting the adoption of those modifications to the Commission's resource-adequacy program and the essential orders recommended by SDG&E to that end, in Appendix B. See R.T. at 12:6 to 12:14.

SDG&E recommends the following provisions be added to the Commission's resource-adequacy program for the 2014 Compliance Year:

- The flexible-capacity requirements described in the Joint Parties' Proposal should be adopted in the June 2013 decision for implementation in the 2014 Compliance Year;

- The Joint Parties' proposed methodology for determining monthly flexible-capacity needs should be adopted;

- The Joint Parties' and Energy Division's proposed methodology for allocating flexible-capacity requirements to load-serving entities on the basis of each load-serving entity's relative share of monthly system peak, similar to the manner that system resource-adequacy requirements are allocated among load-serving entities, should be adopted;

- The Joint Parties' "bundling concept" should be adopted, *i.e.*, for procurement purposes, the flexible-capacity attribute must remain bundled with the underlying generic capacity to which the attribute is tied;

- The Joint Parties' and Energy Division's proposal to differentiate flexible from generic capacity for "counting" purposes in the determination of whether a load-serving entity has met its allocable flexible-capacity requirement should be adopted;

- The Joint Parties' and Energy Division's proposed eligibility requirements for resources to qualify as flexible capacity, *i.e.*, that the resource must be capable of ramping and sustaining energy output for a minimum of three consecutive hours during an operating day, should be adopted; and,

- Pacific Gas and Electric's ("PG&E's") proposal regarding the eligibility criteria and minimum energy requirements applicable to determining the flexible capacity which may be procured and provided by hydroelectric resources should be adopted, but implemented during the year in which the California ISO's expected adoption of an enhanced must-offer obligation for flexible resource-adequacy resources is put into place, *i.e.*, the 2015 Compliance Year.

SDG&E recommends the following provisions be considered for the 2015 Compliance Year following further vetting and deliberations:

- The Joint Parties' proposal for an enhanced Must Offer Requirement associated with Flexible Capacity – including economic bidding requirements – should be deferred to further development in the upcoming California ISO stakeholder processes related to the ISO's flexible-capacity requirements and tariffs;

- Eligibility criteria encouraging the provision of flexible capacity by suppliers representing energy-storage technologies, demand response, renewable resources, and use-limited resources (other than hydroelectric generation which is addressed elsewhere) should be considered for the 2015 Compliance Year; and,

- Alternative methodologies for allocating the flexible-capacity requirement among load-serving entities which align more closely to cost-causation principles should be considered for the 2015 Compliance Year.

SDG&E recommends the following provisions from the Energy Division's proposal be rejected in the upcoming June 2013 decision for the reasons stated:

- The Energy Division's proposal to require eligible flexible resources to submit economic bids for each hour between 5:00 a.m. and 10:00 p.m. of each operating day should be rejected. For 2014, eligible flexible resources, as resource-adequacy resources, would be subject to the existing ISO must-offer obligation and, for 2015, the Energy Division's proposal would be superseded by an updated Must Offer Requirement to be included in the California ISO tariffs. The updated must-offer obligation would be designed to meet the ISO's operational needs more precisely and in a manner amenable to the operations of eligible resources. It would add undue complexity and potentially inconsistent rules to the 2014 eligibility and compliance requirements and commercial transactions to include the Energy Division's proposal in advance of new ISO tariffs covering the same ground;

- The Energy Division's proposal that generators be permitted to refrain from offering or selling flexible capability should be rejected. Although the current expectation is that supply shortages are not likely to occur during 2014, those expectations may be incorrect. Additionally, shortages of flexible capacity are expected over time. The Commission should not adopt any rules sanctioning the withholding of supply until after (a) the California ISO's tariff-based must-offer obligation for flexible resources is defined and in place, and (b) an assessment and adoption of appropriate provisions mitigating market power concerns has occurred; and,

- The Energy Division's recommendation to adjust flexible-resource procurement obligations for load migration twice each year, although similar to the semiannual local resource-adequacy true-up process, should be rejected. This recommendation would unduly complicate the implementation of the 2014 flexible-capacity requirement by introducing considerable commercial complexity into resource-adequacy procurement since flexible capacity would be embedded in resource-adequacy capacity and parties, both suppliers and buyers, should be given some time to determine the manner in which such embedded attributes can be separately transacted in accordance with any true-up process.

As noted by the Presiding Administrative Law Judge at the prehearing conference held on March 20, 2013, comments on the *Joint Parties' Proposal* and its various elements and recommendations have been previously filed, and SDG&E will not reiterate its prior comments here. Rather, SDG&E will focus on program elements introduced after the close of the first round of workshops and comments and/or discussed at the latest workshops. These program elements include PG&E's proposed eligibility criteria for hydroelectric resources and the Energy Division's proposals to: (1) introduce a contractual must-offer obligation for flexible capacity in 2014; (2) implement twice-yearly true-ups of flexible-capacity

requirements; and (3) provide an option to resources physically capable of providing flexible capacity to refrain from selling those capabilities.

i. PG&E's Eligibility Criteria for Hydroelectric Resources

At the March 2013 workshop, PG&E explained its previously distributed proposal allowing certain hydroelectric generation capacity to qualify as flexible resources. Underlying PG&E's proposal is its concern that the expected California ISO tariff modifications related to the enhanced must-offer obligations owed by flexible resources will include a requirement that eligible resources submit economic bids into the ISO's markets during a predetermined set of hours (*e.g.*, 5:00 a.m. to 10:00 p.m.). While certain hydroelectric generating units are able to provide economic bids across these seventeen hours each day, PG&E is concerned that the idiosyncrasies of hydroelectric operations could prevent those units from actually providing continuous energy across the entire period. To address this concern, PG&E proposes that hydroelectric resources be eligible to provide flexible capacity if such a resource (a) bids across the predetermined set of hours (the seventeen-hour period in the foregoing example) and (b) provides energy for at least six hours per day, with the ISO determining the qualifying six hours under the ISO's system-optimization and dispatch protocols.

SDG&E believes PG&E's proposal is a creative solution that allows load-serving entities and consumers to access the inherent capacity attributes and value of hydroelectric generation, while acknowledging the production limitations applicable to those resources. SDG&E therefore agrees the proposal should be adopted. SDG&E also considers the practical principles underlying PG&E's proposal could be applied to other energy-limited resources – such as demand response and energy storage – in determining their eligibility to qualify as flexible resources. Given the link between the PG&E proposal and the ISO's expected amendments to its must-offer obligation addressing bidding requirements applicable to flexible-capacity resources, SDG&E submits the Commission should implement the PG&E proposal in the year during which the California ISO's enhanced must-offer obligation for flexible resources is adopted.

ii. The Energy Division's Proposal for a Flexible-Capacity Must-Offer Obligation

Currently, resource-adequacy resources can meet the California ISO's tariff-based must-offer obligations applicable to such resources through self-scheduling, although as explained by the Joint Parties, self-scheduling renders those resources "inflexible" for the ISO's operational purposes. As the Commission adopts flexible-capacity obligations, the Commission should recognize that the ISO's ability to

dispatch a resource to meet the ISO's operational needs is the key and distinguishing characteristic of flexible capacity. The California ISO is currently conducting a stakeholder process to define the parameters of an enhanced must-offer obligation applicable to flexible-capacity resources – these parameters are expected to include the requirement that eligible resources submit economic bids into the ISO's markets during a predetermined set of hours, which would preclude the self-scheduling of flexible capacity. While that stakeholder process is currently underway, the California ISO has unequivocally stated that the enhanced must-offer obligations and bidding requirements for flexible capacity will *not* be in place until the 2015 resource-adequacy compliance cycle. By deferring these new market requirements until 2015, the ISO has indicated it expects to meet its expected three-hour ramping needs in 2014 from the existing pool of resource-adequacy resources and, as a result, that there is little reason to limit self-scheduling or require economic bidding by flexible resources during 2014.

The Energy Division is now proposing that the Commission require resource-adequacy resources offering to provide flexible capacity to submit hourly bids in the ISO's energy market for all hours between 5:00 a.m. and 10:00 p.m. for the flexible portion of their capacity during the 2014 Compliance Year.[5] SDG&E believes this provision would unnecessarily and unduly complicate the implementation of a flexible-capacity requirement in 2014 and, more importantly, is likely to increase costs without providing any corresponding operational benefit to the ISO. As the Commission well knows, resource-adequacy contracts invariably cite the provisions of the existing California ISO tariff to define a resource's must-offer and performance obligations under these contracts – this has the salutary and intended effect of striking a consistency between contractual performance and market rules. In the event the Energy Division's proposed bidding rule were to be adopted for 2014, existing contracts with resources which could offer flexible capacity would need to be reopened and renegotiated to reflect the Energy Division's bidding requirements for 2014 since there are no corollary requirements or restrictions in the ISO's current tariffs. SDG&E would expect suppliers to require contract premiums to compensate them for the new performance obligations (*e.g.*, to offer hourly economic bids and/or forego self-scheduling to the extent of any flexible capacity they sell) in excess of the ISO tariff requirements. SDG&E submits these costs represent economic waste and should be avoided.

[5] See *Energy Division Flexible Capacity Procurement Revised Proposal*, March 11, 2013, at p. 5.

As an aside, while SDG&E believes that additional supplier performance obligations should not be adopted for 2014, this does not affect the value of adopting a flexible-capacity requirement for 2014.[6] In the first place, an enhanced must-offer obligation reflecting the new flexibility requirements will be in place for 2015. Adoption of the flexible-capacity requirement, despite being in advance of the 2015 must-offer revisions, would provide both suppliers and load-serving entities with an early and valuable opportunity to consider and execute new offer and procurement strategies reflecting the flexibility requirement during the 2014 Compliance Year. Portfolio mixes will change from the new requirements. Flexible resources which might otherwise have been left out of a load-serving entity's monthly supply plan might now be included in order to meet the new requirements – where this occurs, the level of flexible resources available to the ISO will be enhanced. SDG&E would also expect significant changes to traditional fall and winter maintenance schedules since the California ISO's data indicate the forecasted need for flexible capacity is highest when planned maintenance outages historically have also been highest. Gaining experience with the management of planned outages and maintenance alone justifies imposing a flexible capacity requirement in 2014, even if new bidding obligations are not adopted simultaneously.

iii. The Energy Division's Proposal To Permit the Withholding of Flexible Capacity from the Market

The Energy Division agrees with the Joint Parties that, in order for a load-serving entity to satisfy its flexible-capacity requirement, the load-serving entity must "bundle" the flexible capacity a resource offers with the underlying generic capacity to which the attribute is tied.[7] In other words, a fifty-megawatt flexible resource could not sell fifty megawatts of flexible capacity to one load-serving entity and concurrently sell fifty megawatts of generic capacity to another load-serving entity.

The Energy Division goes on, however, to propose that "a generator may choose not to sell the flexible portion and instead sell the resource's entire capacity as generic capacity."[8] SDG&E believes this aspect of the Energy Division's proposal could give rise to the exercise of market power and urges the Commission to reject it for implementation in 2014. In the absence of well-defined (and yet-to-be-proposed) provisions mitigating the potential exercise of market power, Energy Division's recommendation

---

[6] SDG&E adds these comments only because it anticipates some parties will argue that there is an inconsistency in arguing for the immediate adoption of a flexible-capacity requirement while deferring the adoption of an enhanced must-offer obligation for flexible resources. SDG&E acknowledges that over the long run there is an interrelationship between the requirement and the must-offer obligation but, for the reasons provided in the text, SDG&E disputes that the requirement and the must-offer obligation must be adopted simultaneously.

[7] *Id.*, at p. 7.

[8] *Ibid.*

is premature and adverse to the public interest. Once a tariff-based, enhanced must-offer obligation specifically related to flexible capacity is in place, there could be legitimate reasons for an otherwise eligible flexible resource to elect to not sell flexible capacity. But under the *Joint Parties' Proposal*, new must-offer and bidding requirements would be deferred to 2015, undermining the reasonableness of any withholding strategies for 2014. Accordingly, the Energy Division proposal to allow withholding of flexible attributes from the market should be rejected and the parties should be directed to develop market-power mitigation measures for 2015 for the consideration of both the Commission and the California ISO.

iv. Energy Division's Proposal for Semiannual True-Ups

The Energy Division proposes to reset a load-serving entity's allocable flexible-capacity obligation twice per annual compliance cycle. This proposal would import the current semiannual true-up for the reallocation of *local* resource-adequacy obligations to account for load migration between load-serving entities.[9] SDG&E agrees with the Energy Division that reallocation is a logical component of a fair, robust and fully developed flexible-capacity requirement. But in order to minimize complexity in the initial implementation year, SDG&E suggests this program enhancement be deferred to a later date and not adopted for 2014.

b. Implementation for Compliance Year 2014

SDG&E strongly recommends that those elements of the *Joint Parties' Proposal*, in addition to those specific additional provisions described above, be adopted for Compliance Year 2014. Doing so will facilitate the appropriate adjustments market participants must make in order to assimilate the commercial implications of the flexible-capacity requirement. This would include, notably, developing the mutually agreeable terms and conditions pursuant to which, on the one hand, suppliers would deliver flexible capacity to the California ISO and, on the other hand, load-serving entities would be entitled to rely on a supplier to meet their compliance obligations. Doing so under conditions where the likelihood of market stresses, *e.g.*, supply shortages, is low poses obvious advantages. Similarly, the Commission's Energy Division and load-serving entities subject to the new requirements should be provided an opportunity to assimilate the compliance requirements, burdens and operational changes associated with the new requirements. For example, load-serving entities will need some experience in conforming the revised monthly resource-adequacy demonstrations to their daily scheduling of loads and resources, as well as to

[9] *Id.*, at p.4.

the terms and conditions of the contractual instruments describing the rights and obligations of suppliers and load-serving entities. Once again, doing so in the absence of market perturbations would facilitate the transition more readily than would be the case under conditions of resource shortages or, as discussed later in these comments, under circumstances where federal tariffs and rules have already been adopted and put into place.

Several parties have suggested that experience with the new requirements is either unnecessary or overrated. These parties argue that, in the absence of an imminent and credible threat to system reliability, the Commission should act deliberately and cautiously and put off modifying the resource-adequacy program to a time when the threat to reliability is more urgent. SDG&E submits that deliberation and caution may be appropriate in some circumstances, but not in the instant case. SDG&E reminds the Commission that the California ISO has previously applied to the Federal Energy Regulatory Commission ("FERC") for various authorities to backstop the California resource-adequacy program where necessary to address potential threats to system reliability.[10] As a result, the ISO possesses a considerable array of tariff authorities to procure resources meeting its current and future operational needs and spread the costs of those procurements to California consumers. The ISO has even proposed to procure resources well beyond the bounds of its tariff authorities under circumstances where the alleged reliability need was considered by most market participants to be highly speculative.[11] Additionally, the California ISO has

---

[10] In evaluating the ISO's showing of "need" related to these procurement authorities, FERC has applied a different standard for acting than the "deliberation and caution" urged by some parties in the instant Commission rulemaking. In approving the ISO's recent application for new tariffs implementing a capacity-replacement requirement addressing potential supply shortages caused by scheduled maintenance outages, the FERC said, "Reliability problems often occur unexpectedly. Thus, we find that it is appropriate for a control area operator to guard against potential reliability problems even where none have occurred in the past." See *Order Conditionally Accepting Tariff Revisions,* FERC Docket No. ER12-2669-000 [*California Independent System Operator Corporation (Replacement Requirement for Resource Adequacy Maintenance Outages)*], 141 FERC ¶61,135, November 19, 2012, at P.38. Equally important, FERC is inclined to confine its review to the four corners of the filings placed before it and turns a blind eye to the relative merits of any alternative proposals in determining whether a filing is just and reasonable. *Id.,* at P.44 (including footnote 43), citing Federal Power Act Section 205.

[11] See *Petition for Waiver of Tariff Provisions and Request for Confidential Treatment,* FERC Docket No. ER12-897-000 (January 25, 2012), regarding the granting of an extraordinary super-forward Capacity Procurement Mechanism designation for the Calpine Sutter Energy Center. The ISO withdrew the petition following this Commission's issuance of an intervening order, Resolution No. E-4471, which substituted a state solution for the proposed federal intervention.

already filed for further procurement authorities so that it may acquire resources to address its anticipated flexible-capacity requirements and can be expected to continue its pursuit of these authorities in the near term.[12]

SDG&E has consistently stated that, as a matter of policy and good regulatory administration, the Commission should shape the California resource-adequacy program so as to address long- and short-term reliability requirements through state-adopted programs and regulations. Effective state regulation obviates the need for federal regulatory intervention and/or expensive market interventions by the California ISO. To that end, SDG&E urges the Commission to address the ISO's operational needs for flexible resources by amending the existing resource-adequacy program to reflect and resolve those needs. By doing so, the Commission would enable California load-serving entities to self-determine the manner in which they would meet the ISO's requirements in light of the least-cost, best-fit principles under which these entities procure resources. SDG&E strongly prefers to conduct its own resource procurements and meet the resource needs of its customers without any supervening, extra-market "backstop" procurements conducted by the ISO at prices excess to market. Amending the Commission's resource-adequacy program to provide for flexible-capacity requirements greatly reduces the likelihood the ISO will intervene in the market in order to provide for its own operational requirements by creating the appropriate economic incentives for the state's load-serving entities to conform their resource-adequacy procurements to meet the ISO's requirements. This also concomitantly serves the public interest in system reliability, which is the fundamental purpose of the resource-adequacy program. As the California ISO determines its own next steps to address its need for flexible resources, the Commission, by taking the first steps to address that need, will have laid the foundation for California to shape the eventual solution in ways that might be lost if the gambit was left to be played by the ISO and FERC.

In other regulatory proceedings, SDG&E has proposed to meet the terms and objectives of the California Renewable Portfolio Standard ("RPS") by conducting the entirety of its procurement activities through the consistent application of "least-cost, best-fit" procurement principles. More specifically, while the California RPS statutes are generally indifferent to how load-serving entities should meet RPS energy

---

[12] See *California Independent System Operator Corporation (Interim Flexible Capacity and Local Reliability Resource Retention Mechanism),* FERC Docket No. ER13-550-000. On March 29, 2013, FERC rejected the ISO proposal, but directed its staff to conduct a technical workshop so as to coordinate the efforts of FERC, the Commission and the California parties in resolving the reliability issues raised by the ISO in its filing. See *Order on Tariff Revisions,* 142 FERC ¶61,248, *id.*, March 29, 2013; at PP.2, 68 to 69. In a promising development, FERC expressed its dissatisfaction at the development of "an out-of-market approach" to resource procurement, but also indicated that the ISO should make an effort to develop and implement "a durable, market-based mechanism that provides incentives to ensure that resources with the adequacy and operational needs CAISO requires are available." *Ibid.,* at P.68. SDG&E fully expects the California ISO to take FERC's invitation and make a further filing.

requirements, load-serving entities and their customers are finding that there are significant market and operational distinctions between different renewable-resource technologies. The flexible-capacity requirement is a case in point. While all renewable energy is fungible, certain renewable resources cannot address certain fundamental system operating requirements. As the California ISO studies have shown, the integration of increasing levels of intermittent resources places the ISO system at risk to system disruptions when energy production from intermittent resources fluctuates conversely or inversely to loads. Thus, the ISO is seeking, both here at the Commission and from FERC, the approval of some regulatory mechanism assuring that resources capable of maintaining reliable power flows, despite the loss of intermittent producers, will be available to compensate for those losses.

In considering the California ISO's pursuit of the best regulatory solutions to the flexible-capacity shortage the ISO foresees, SDG&E has considerably more confidence that the Commission, in implementing and managing the numerous California public policies regarding the production, delivery and consumption of electricity, can and will better coordinate and harmonize those policies in a manner consistent with least-cost, best-fit principles than would be the case for the ISO or FERC. SDG&E has in the past articulated a renewable-procurement goal of acquiring "the right renewables" rather than aggregating those resources randomly. To the extent the Commission takes responsibility for assuring that a sufficient level of flexible capacity is delivered to the California ISO, it can coordinate the flexible-capacity requirement with the procurement of renewable resources, specifically those providing "capacity value", and even "flexible-capacity value", to load-serving entities. A flexible-capacity program under the direct supervision of the Commission would not only address the ISO's reliability issues, but could also be shaped to serve the interests of the various California constituents with an interest in the other public policies under the Commission's jurisdiction. To do otherwise would risk federal usurpation of various aspects of resource-procurement jurisdiction, without addressing other policies of importance to California but not to Washington, D.C., and likely at higher costs to consumers.

Finally, because SDG&E believes the greater part of Compliance Year 2014 is not likely to be marked by any market stresses stemming from a shortage of either resource-adequacy resources or flexible capacity, SDG&E does not believe there will be significant cost implications from implementing the proposed flexible-capacity requirement in and for Compliance Year 2014. For future years, SDG&E believes the implementation of the requirement for Compliance Year 2014 will provide the Commission with the earliest possible opportunity to consider and address the implications of the flexible-capacity requirement from both a cost and operational perspective in the other Commission proceedings, notably

the upcoming long-term procurement proceeding and the various energy-cost proceedings of the investor-owned utilities, scheduled for 2014.

2. Miscellaneous Revisions to Resource-Adequacy Requirements

SDG&E recommends the Energy Division's proposal, applicable to all resource-adequacy procurement generally, allowing load-serving entities to include resource-adequacy resources under construction in their year-ahead resource-adequacy compliance filings should be adopted. SDG&E further recommends modifying the Energy Division's proposal so as to allow load-serving entities to substitute capacity from a currently operating local resource-adequacy resource for the capacity of another currently operating local resource-adequacy resource in order to meet their year-ahead and month-ahead local resource-adequacy obligations.

The current resource-adequacy rules require load-serving entities to submit or commit local resource-adequacy resources in their year-ahead demonstrations – those resources are then deemed committed for each month of the compliance year. Where a load-serving entity procures another local resource-adequacy resource following the approval of its year-ahead demonstration, current program rules do not permit that load-serving entity to substitute the newly procured resource as part of any month-ahead compliance filing for resources previously included in the year-ahead demonstration. In limiting its substitution proposal to resources under-construction, the Energy Division unduly differentiates resources already in service and included in the year-ahead resource-adequacy demonstrations from resources under-construction. Broadening the proposed substitution rule to include in-service resources is likely to result in lower costs, a benefit not captured by the narrower Energy Division proposal. The California ISO assesses standard capacity product availability charges to a resource-adequacy resource where the resource's availability during any month is lower than the amount of capacity the resource is committed to provide. Where the load-serving entity's contract with a seller assigns those charges to the load-serving entity, the load-serving entity can in some instances avoid those charges by substituting another resource whose contract includes availability charges in the contract price or where the seller agrees to assume the availability charges. SDG&E's modification to the Energy Division proposal facilitates those savings and should be adopted.

Finally, the Energy Division's proposal, applicable to all resource-adequacy procurement generally, to reverse the Commission's previous decision regarding the "rounding convention" should be rejected. The Commission very recently held that the rounding convention now being reanimated by the Energy

Division had previously caused discrepancies between the California ISO's and the Commission's (Energy Division's) separate determinations regarding whether a load-serving entity had met its resource-adequacy obligations.[13] The Commission adopted the California ISO's rounding convention to reduce the potential for these discrepancies and SDG&E strongly recommends that the Commission not return to the prior paradigm of confusion and inconsistent regulations.

3. The Commission Should Deny the Amended Request for Evidentiary Hearings.

The Commission should deny the *Motion for Evidentiary Hearing* and the more recent *Amended Request Evidentiary Hearings of Sierra Club and The Utility Reform Network* ("TURN").[14] At the prehearing conference, counsel for TURN articulated two deficiencies in the existing record related to the *Joint Parties' Proposal* which might be cured through evidentiary hearings. First, counsel indicated that the current state of the record in this rulemaking would not permit parties "to thoroughly address the flexible capacity issues in their comments," such "issues" later described as including the definition of flexible capacity and the impacts of those definitions on the state's goals such as reliability and greenhouse-gas reductions, and then more specifically, (a) how much flexible capacity is needed and when and (b) how much flexible capacity is available and would be provided absent changes to the resource-adequacy program.[15] Second, counsel indicated the Commission did not have "a full record to make a fully informed decision on this very important change."[16]

With respect to the complaint that there is a factual deficiency regarding both the general meaning of and the more specific compliance obligations under the proposed flexible-capacity requirements, the actual position of TURN and the Sierra Club is somewhat confused by their further complaint that they have received so much information that it had become "an enormous challenge working through all those files of data."[17] Movants' real issue appears to be that the information provided to them, as well as to the Commission and the other parties, has not been, but must be, tested by cross-examination. Despite being

---

[13] See *Decision Adopting Local Procurement Obligation for 2013 and Further Refining the Resource Adequacy Program*, Decision 12-06-025 in Rulemaking 11-10-023, June 21, 2012; printed opinion at pp.29 to 30.

[14] The motion for evidentiary hearings was filed in this docket on March 7, 2013, under the terms of the *December 2012 Scoping Memo*, and superseded by the *Amended Request for Evidentiary Hearings of Sierra Club and The Utility Reform Network* ("*Amended Request*"), filed on March 28, 2013, under instructions from the Presiding Administrative Law Judge to identify the specific "disputed facts" which would require evidentiary hearings. See R.T. at 42:25 to 43:24, and R.T. at 53:15 to 53:28.

[15] R.T. at 24:13 to 24:17, and R.T. at 24:25 to 25:10.

[16] R.T. at 24:17 to 24:21.

[17] R.T. at 25:14 to 26:7. SDG&E acknowledges that TURN and the Sierra Club may have received data from the California ISO late and may not have had an adequate opportunity to satisfy themselves that the data are accurate and relevant. As counsel for TURN indicated during the prehearing conference, familiarity with those data may settle the disputes raised in the request for evidentiary hearings.

given additional time to clarify and identify the "disputed facts" which would be the subject of evidentiary hearings, TURN and the Sierra Club fail to do so in their *Amended Request*. In the first instance, TURN and the Sierra Club utterly fail to provide anything approaching an offer of the evidence either party would submit which contradicts or otherwise disputes the factual underpinnings presented by any other party in support of a flexible-capacity requirement. In lieu of such a demonstration, TURN and the Sierra Club continue to express their lack of confidence in the facts upon which the Joint Parties (and now presumably the Commission's Energy Division which has largely embraced the *Joint Parties' Proposal*) based their proposal.

While TURN and the Sierra Club are fully entitled to disagree with and reject the facts placed at their disposal, their dissatisfaction with the materials in their possession is an insufficient basis upon which to insist on quasi-judicial hearings. Moreover, in providing the exemplary "factual disputes" upon which their request for evidentiary hearings is based, TURN and the Sierra Club reveal that their dissatisfaction with the proofs provided by the Joint Parties is more a matter of differing opinions than disputed facts. A simple review of the four "factual disputes" described in the Amended Request demonstrates the absence of any such disputes:

- TURN and the Sierra Club disagree with the Joint Parties' position that only dispatchable capacity should be considered to be operationally available.[18] They go on to dispute the reasonableness of the Joint Parties' position.[19] In describing this issue, TURN and the Sierra Club contest the credibility of the ISO's information and the conclusions drawn from that information. But in doing so, they fail to state what "facts" are really in dispute here – rather, TURN and the Sierra Club only pose potentially differing opinions and policy recommendations and fail the instruction of the Presiding Administrative Law Judge to identify the contested, dispositive "facts" that must be adduced by cross-examination or that would be provided through their own testimony which are relevant or salient to the different conclusion they may have reached;

- TURN and the Sierra Club next dispute the reduction of flexible capacity forecasted by the California ISO for the Year 2015.[20] Since the Commission's decision in this proceeding would be limited to the setting of flexible-capacity obligations for Compliance Year 2014, the dispute raised by TURN and the Sierra Club is in large respects irrelevant. Data

[18] See *Amended Request*, at p.4. To this end, TURN and the Sierra Club provide the opinion that "an 800-megawatt combined cycle facility [receiving] resource-adequacy payments for only 300 megawatts of its capacity … should be expected to provide at least some portion of its additional 500 megawatts of remaining capacity should that capacity be needed." *Ibid.* This opinion plainly states the position of TURN and the Sierra Club. The credibility of their "expectation" can be weighed against the Joint Parties' contrary insistence that the reliability of the California electricity grid should not rely on such speculations but rest upon the operational characteristics reserved by contractual commitments. SDG&E is at a loss to understand what "facts" are in dispute here and what additional "facts" the Commission would need to reach a conclusion about the manner in which uncontracted and/or nondispatchable capacity should be counted.

[19] *Ibid.*

[20] See *Amended Request*, at pp.4 to 5.

related to 2015 were presented to the workshop participants as indicative of the trends in the hourly supply-demand imbalances which prompted the California ISO's concerns regarding the deficient level of flexible capacity that might be delivered via the existing resource-adequacy program – importantly, TURN and the Sierra Club do not argue that the trend or its implications are incorrect, but only take issue with a portion of a forecast which does not have specific implications for the 2014 obligations the Joint Parties propose be adopted by the Commission in this phase of the instant rulemaking. Moreover, TURN and the Sierra Club once again raise a difference in opinions, *i.e.*, whether there will or will not be a loss of effective flexible capacity in 2015, rather than any immediate dispute related to facts whose resolution would benefit from quasi-judicial hearings;

- As to the third "factual matter" TURN and the Sierra Club would send to evidentiary hearings, they once again mischaracterize a difference of opinion as a "factual dispute", *i.e.*, whether self-scheduled resources should or should not be considered dispatchable and, concomitantly, operationally flexible.[21] Although the Joint Parties have made clear that the inability of the California ISO to rely on self-scheduled resources to meet system ramping and operational requirements under the current structure of the California energy markets should disqualify those resources from being counted as flexible capacity, TURN and the Sierra Club fail to point to any "disputed facts" which could be resolved through hearings and, more importantly, which might bear on the reasonableness of the Joint Parties' position. Rather, TURN and the Sierra Club raise a legal dispute, *i.e.*, whether self-scheduling could violate Public Utilities Code Section 380(c).[22] The suppositions supporting such a reading of the statute, which SDG&E considers misguided and misplaced, can be argued in briefs, and in any event cannot be transformed into the basis for a "factual dispute" by referencing some speculative "fossil-fuel resource's technical or operational limitations" as the source of the Joint Parties' position; and,

- Finally, TURN and the Sierra Club dispute the level of deductions proposed by the California ISO for certain hydroelectric generation resources.[23] TURN and the Sierra Club go on to argue that an actual adjustment for water conditions could be determined by a load-serving entity in advance of the month-ahead resource-adequacy showing, rendering the ISO's deduction inappropriate.[24] Having considered this position and the additional articulation of a similar point by PG&E and the Energy Division, SDG&E has responded by supporting the alternative approach suggested by those parties. But returning to the issue of whether evidentiary hearings must be held on this issue, SDG&E submits this revision to the *Joint Parties' Proposal* can be (and in fact was) fully evaluated without the benefit of evidentiary hearings – TURN and the Sierra Club fail to point to any additional facts they would present to make the case for any specific revision they might propose. SDG&E points out that the Commission's existing resource-adequacy program in many cases relies on rules which assume certain forecasted conditions, which in turn may vary from actual conditions. At heart, TURN and the Sierra Club point to a proposed rule which may add yet another variance, but for the purposes of addressing the *Amended Request*,

---

[21] See *Amended Request*, at p.5.
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*

> SDG&E submits that the Commission can determine, guided by its sense of prudence and without conducting evidentiary hearings, the degree to which it would prefer as a matter of policy to adopt a year-ahead or month-ahead adjustment to hydroelectricity capacity as a part of the flexible-capacity requirements.

Finally, TURN and the Sierra Club also allege the workshop format used in the resource-adequacy workshops "is not conducive to addressing all of the issues and allowing all the parties to get answers to all of their questions."[25] Here, TURN and the Sierra Club argue the Commission could not, in the absence of transcripts or a formal evidentiary record, "adopt any kind of decision that had any operational impact" or "that required changes in procurement…meeting particular requirements."[26] The Commission should reject this notion out of hand. In the context of setting the resource-adequacy requirements and obligations imposed on load-serving entities, the Commission has adopted each and every provision of those requirements and obligations without first requiring formal evidentiary hearings. As a principal example, SDG&E notes that the adoption of "local" resource-adequacy requirements, a significant program change with considerable operational impacts and that required extensive changes in SDG&E's procurement practices and compliance activities, were vetted solely by workshops and through filed comments, and later adopted without the benefit of any evidentiary hearings.[27] Additionally, those workshops were conducted and the comments filed in 2006, followed by the adoption of an extensive and complicated set of new rules which were then immediately effective for Compliance Year 2007.

The Commission's practice and procedure in the resource-adequacy context is wholly consistent with its generally applicable rules of practice and procedure and relevant statute. Rule 6.1 of the Commission's Rules of Practice and Procedures fully sanctions the use of rulemakings, *inter alia*, to "amend rules, regulations, and guidelines for a class of public utilities or of other regulated entities" or "to modify prior Commission decisions which were adopted by rulemaking." The Commission's rules go on to provide that the record developed in a rulemaking may be comprised either of "comments" *or* through

---

[25] R.T. at 26:8 to 26:20.

[26] R.T. at 28:27 to 29:8.

[27] See *Opinion on Local Resource Adequacy Requirements,* Decision 06-06-064 in Rulemaking 05-12-013 [*Order Instituting Rulemaking to Consider Refinements to and Further Development of the Commission's Resources Adequacy Requirements Program*], June 29, 2006; printed opinion at pp. 7 to 10. As is the case with SDG&E's proposals for the flexible-capacity requirement, the new resource-adequacy rules related to local capacity requirements were proposed and adopted on the basis of a study by the California ISO related to its operational requirements – those requirements were not satisfied by the Commission's then-existing resource-adequacy program and the Commission acted swiftly to address the program deficiencies by rulemaking. *Id.,* at pp.12 to 16. The Commission adopted the rules for application in the immediately ensuing compliance year (2007), despite the Commission's further findings that additional rules and refinements would be required for future compliance years. *Id.*, at p.4, also pp.27 to 31.

testimony adduced at hearings.[28] Where comments contain factual assertions, the Commission may receive those facts as evidence upon verification by the party submitting them.[29] For rulemakings such as the instant proceeding, it is simply not the case that the provision of sworn testimony adduced during formal hearings is the sole manner by which the Commission may gather and evaluate those facts upon which its decisions might be based. Furthermore, the instant rulemaking has also been categorized as a ratesetting proceeding. In such proceedings, the Commission's rules and apposite statute fully provide that the Commission may receive *ex parte* communications, subject to certain reporting requirements, indicating the Commission, with the Legislature's knowing approval, will entertain communications beyond those received in the quasi-legislative processes conducted in furtherance of the proceeding.[30] The effect of the combination of the Commission's rules and applicable statute wholly undermines the mistaken claim made by TURN and the Sierra Club that evidentiary hearings and the taking of sworn testimony are required in order for the Commission's orders in this proceeding to survive judicial scrutiny. The Commission may rely on those facts, opinions and arguments brought before it to resolve the issues in this proceeding where, in the Commission's sole judgment, they are true, credible and of record by virtue of verification or pursuant to the ethical obligations imposed on those participating in its proceedings.

Finally, SDG&E submits there are unique aspects of the resource-adequacy proceedings that make evidentiary hearings awkward and inappropriate. Various elements of the Commission's resource-adequacy program are subject to coordination with the California ISO, a party which is nonjurisdictional to the Commission's resource-adequacy program and which has independent statutory and regulatory authorities to develop and implement resource-adequacy requirements under the supervision of FERC. Similarly, the California Energy Commission is a vital participant to the resource-adequacy proceedings, although that agency does not participate as a "party" except in such limited form and under such limited circumstances as it might determine of its own accord. And, of course, the Commission's Energy Division, to which the Commission has delegated considerable policy and administrative responsibilities with respect

---

[28] See Rule 6.2 of the Commission's Rules of Practice and Procedure; accord, Sections 1701(a) and 1701.1(a) of the Public Utilities Code describing the Commission's broad authority and discretion to make determinations as to categorization of any proceeding, the character of any hearings which might be conducted for any proceeding (*e.g.*, "quasi-legislative" or, more colloquially "paper hearings" comprised of comments and reply comments), and the evidence upon which the Commission may rely in rendering its decisions and orders.

[29] *Ibid.* See also Rule 1.1 of the Commission's Rules of Practice and Procedure, the omnibus requirement that parties may "never … mislead the Commission or its staff by an artifice or false statement of fact or law." SDG&E submits the Commission's workshop processes in the resource-adequacy rulemakings are governed by this rule inasmuch as the Commission's Energy Division moderates and, occasionally with the Commissioners, the Presiding Administrative Law Judge and other Commission officials in attendance, actively participates in them.

[30] See Rule 8.3 of the Commission's Rules of Practice and Procedure; accord, Public Utilities Code Section 1701.1(c).

to the supervision of the Commission's resource-adequacy program, participates both in an administrative role and as a key participant in these rulemakings; indeed, the Energy Division has submitted several of its own unique proposals throughout this and prior proceedings to address the California ISO's flexible-capacity needs. TURN and the Sierra Club cite various disagreements with the *Joint Parties' Proposal* in support of their request for hearings, but the request for hearings would bring into play whether the Commission may compel or should require the California ISO, the Energy Commission and/or its own Energy Division to present testimony or forego their opportunity to influence the ultimate outcome of the proceeding.

Since TURN and the Sierra Club do not suggest they would submit any testimony of their own in this proceeding, SDG&E must assume the movants are only seeking to have others justify their proposals through testimony. As suggested previously, the California ISO might decide to appear at the hearing by providing its witnesses as a matter of interagency comity, but it is questionable as to whether the Commission may compel the production of the ISO's witnesses since, in any event, the ISO would not be foreclosed by any Commission decision from filing before FERC a proposal for an ISO-managed, federally jurisdictional, flexible-capacity requirement in the event the Commission delays addressing such a requirement or adopts what the ISO considers to be an ineffective or incomplete solution. Likewise, the Energy Division has cast its own stake in the proceeding by submitting its own flexible-capacity proposals. Assuming hearings are ordered, would the Commission contemplate that the Energy Division, which has additional, vital responsibilities to advise the Commission and the Presiding Administrative Law Judge, must be required to support its proposals through testimony? While these procedural issues might be easily dismissed if TURN and the Sierra Club had identified the precise and limited nature and scope of the testimony they would provide themselves or would require of the other parties to this proceeding, this is not the request they have made. Rather, they have expressed a general dissatisfaction with the lateness and the credibility of the information upon which certain parties have presented their proposals and further criticize the conclusions those parties have drawn from their studies of future market conditions,[31] so we are left to consider whether the ISO, the Energy Commission and the Energy Division should be required to present their assessment of those studies before the Commission may proceed to adopt any requirements

[31] As an aside, SDG&E acknowledges that any study of future California energy-market conditions is inherently fallible to error. TURN and the Sierra Club, in finding four contestable assumptions and recommendations, produced nothing more remarkable, insightful, dispositive, or compelling than to suggest that forecasts are subject to some margin of error. In the absence of a more definitive suggestion that the California ISO's concerns with future deficiencies in flexible resources are either misguided or wholly incredible, however, the Commission should dismiss the request for evidentiary hearings, especially after specifically requiring TURN and the Sierra Club to be more definitive as to the nature of the *factual disputes* they would seek to resolve through those hearings.

in the resource-adequacy program related to flexible-capacity needs. In the absence of any compelling reason to consider these awkward procedural issues, the Commission should simply avoid them by denying the request for evidentiary hearings outright and continue to develop the record through written comments and the advice of the California ISO, the California Energy Commission and the Commission's Energy Division.

Because TURN and the Sierra Club have failed to raise any dispute as to any material fact and, further, because the record developed in this proceeding fully supports the amendment of the Commission's resource-adequacy program to include requirements related to addressing the California ISO's operational need for flexible capacity, the Commission is left without substantial reason to grant the motion for evidentiary hearings and should proceed to the issuance of its decision on the record before it. Finally, as even TURN and the Sierra Club acknowledge, evidentiary hearings would essentially preclude the Commission from considering whether to adopt a flexible-capacity requirement for 2014 since the accommodation of those hearings would push the schedule for any Commission decision well past the practical deadline for implementing the flexible-capacity requirement for the foreseeable future. The Commission should preserve its ability to adjudicate that issue on the merits, rather eviscerate that ability by procedural default, by denying the motion for hearings.

Respectfully submitted,

/s/ Alvin S. Pak

Alvin S. Pak

Alvin S. Pak
Attorney for San Diego Gas & Electric Company

101 Ash Street, HQ 12B
San Diego, California 92101
Direct Telephone: 619.696.2190
Facsimile: 619.699.5027
Electronic Mail Address: APak@SempraUtilities.com

San Diego, California
April 5, 2013

APPENDIX A

RESOURCE ADEQUACY PROGRAM SCHEDULE
COMPLIANCE YEAR 2014

RESOURCE ADEQUACY PROGRAM SCHEDULE
COMPLIANCE YEAR 2014

Date	Entity	Event	Process
05/01/13	CAISO	California ISO issues final Effective Flexible Capacity determinations	RA
06/21/13	CPUC	Commission adopts Local and Flexible Resource Adequacy Requirements for 2014	RA
07/10/13	CPUC	Energy Division issues Local, Flexible and System Resource-Adequacy Filing Guides and Compliance Templates for year-ahead and month-ahead compliance demonstrations	RA
07/23/13	CPUC	Energy Division conducts web-based workshop to answer questions related to Resource-Adequacy Filing Guides and Compliance Templates	RA
07/31/13	CPUC	Local, Flexible, and System Resource-Adequacy Requirement allocations sent to Load-Serving Entities	RA
08/19/13	LSEs	Final date for Load-Serving Entities to file revised load forecasts for 2014	RA
09/17/13	CPUC	Load-Serving Entities receive revised 2014 resource-adequacy obligations	RA
10/31/13	LSEs	Load-Serving Entities file Final Local Resource-Adequacy compliance demonstrations, and year-ahead Flexible and System Resource-Adequacy Demonstrations	RA
11/18/13	LSEs	Load-Serving Entities file month-ahead Resource-Adequacy compliance demonstrations, including local and flexible resources	T-45
11/22/13	CAISO	California ISO analyzes demonstrations for residual Local Resource-Adequacy needs based on effectiveness factors; reports any residual needs to Load-Serving Entities	RA
12/22/13	LSEs	Load-Serving Entities Revised Final Local Resource-Adequacy demonstrations and year-ahead Flexible and System Resource-Adequacy compliance demonstrations	T-45
12/31/13	CAISO	California ISO, if necessary, conducts backstop procurement to resolve local and flexible deficiencies	RA

APPENDIX B

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS

PROPOSED FINDINGS OF FACT

1. Defining "flexible capacity" as that portion of a resource's capacity capable of ramping and sustaining energy output to meet system-ramping and contingency requirements for a minimum of three consecutive hours during an operating day will meet the operational needs of the California Independent System Operator.

2. The assumptions, processes and criteria underlying the California ISO's assessment of its three-hour ramping requirements for the period 2014 through 2016 were discussed in the workshops held in this proceeding and in various stakeholder meetings conducted by the California ISO.

3. The California ISO's assessment of its three-hour ramping requirements presented during the workshops in this proceeding establishes the ISO's need for a certain minimum level of supply resources with flexible attributes, principally among these being ramping capability, in order to meet its operating requirements and its obligations to maintain the reliability of the California electricity system and transmission grid.

4. The minimum level of flexible resources needed by the California ISO during off-peak hours and months is increasing and will continue to increase as intermittent resources are added to the California resource portfolio.

5. The expected, imminent retirement of fossil-fired generation related to the implementation of California regulations limiting the use of marine and estuarine waters for powerplant cooling will decrease the supply of flexible resources available to the California ISO.

6. Amending the Commission's resource-adequacy program so as to address the California ISO's need for resources with operationally flexible attributes will address the reliability issues posed by the ongoing addition of intermittent resources and the expected, concurrent decline in the supply of fossil-fired generation declines.

7. The California ISO's three-hour ramping assessment indicates there likely will be sufficient resources with operationally flexible attributes to meet the ISO's operating requirements during most months and hours in 2014.

8. Although the California ISO's forecasts indicate there likely will be sufficient resources with operationally flexible attributes to meet the California ISO's operating requirements during most of 2014, amending the Commission's resource-adequacy program to include minimum flexible-resource requirements in the annual and monthly resource-adequacy demonstrations that each load-serving entity must file for and during 2014 will provide load-serving entities with a valuable opportunity to address and assimilate the regulatory and administrative

compliance protocols and practices relevant to such requirements in advance of any market stresses, market anomalies and/or supply shortages.

9. Although the California ISO's forecasts indicate there likely will be sufficient resources with operationally flexible attributes to meet the California ISO's operating requirements during most of 2014, amending the Commission's resource-adequacy program to include minimum flexible-resource requirements in the annual and monthly resource-adequacy demonstrations that each load-serving entity must file for and during 2014 will provide load-serving entities with a valuable opportunity to develop and implement commercial terms and conditions relevant to such requirements in advance of any market stresses, market anomalies and/or supply shortages.

10. Although the California ISO's forecasts indicate there likely will be sufficient resources with operationally flexible attributes to meet the California ISO's operating requirements during most of 2014, amending the Commission's resource-adequacy program to include minimum flexible-resource requirements in the annual and monthly resource-adequacy demonstrations that each load-serving entity must file for and during 2014 will decrease the likelihood the California ISO will exercise its authorities as provided in its tariffs and/or by such extraordinary authorities as might be approved by the Federal Energy Regulatory Commission, and thereby incur costs allocable to market participants, in order to meet the ISO's need for flexible resources and the ISO's obligations to assure the reliability of the California electricity system and transmission grid.

11. Delay in the implementation of flexible-resource requirements for another year could thwart the long-term achievement of the resource-adequacy program goals and objectives.

12. The California ISO needs the ability to prepare for any necessary backstop procurement after the load-serving entities have made all of their procurement demonstrations, and it must have sufficient time to review any additional procurement demonstrations and determine if backstop or supplemental procurement by the ISO is required to meet any deficiencies in the procurement of flexible capacity.

PROPOSED CONCLUSIONS OF LAW

1. It is reasonable to implement a flexible-capacity requirement for 2014 based upon the record taken and developed in this rulemaking.

2. Parties had an adequate opportunity to participate in the workshops conducted in this rulemaking, to submit comments and replies on the various flexible-capacity proposals, and to make their substantive concerns about the proposals known to the Commission.

3. For the purposes of establishing a flexible-capacity requirement as part of a load-serving entity's resource-adequacy requirement, defining "flexible capacity" as that portion of a resource's capacity capable of

ramping and sustaining energy output to meet system-ramping and contingency requirements for a minimum of three consecutive hours during an operating day is reasonable.

4. The method proposed by the California ISO for determining monthly flexible-capacity requirements is reasonable.

5. It is reasonable to rely upon the California Independent System Operator's assessment of its three-hour ramping requirements for the period 2014 through 2016 as the basis for establishing new resource-adequacy obligations related to flexible-supply requirements for 2014 applicable to Commission-jurisdictional load-serving entities.

6. It is reasonable to amend the Commission's resource-adequacy program so as to address the California ISO's need for flexible resources in order to address the reliability issues posed by the ongoing addition of intermittent resources and the expected, concurrent decline in the supply of fossil-fired generation declines.

7. The method proposed by the Joint Parties to determine the flexible capacity which may be procured from a resource is reasonable.[32]

8. It would be prudent to provide load-serving entities with the earliest opportunity to address and assimilate the regulatory and administrative compliance protocols and practices relevant to flexible-supply requirements in advance of any market stresses, market anomalies and/or supply shortages.

9. It would be prudent to provide load-serving entities with the earliest opportunity to develop and implement the commercial terms and conditions relevant to flexible-supply requirements in advance of any market stresses, market anomalies and/or supply shortages.

10. It is reasonable to allocate flexible-capacity requirements to load-serving entities on the basis of each load-serving entity's relative share of monthly system peak.

11. It would be prudent for the Commission to adopt flexible-capacity requirements in order to reduce the need for the California ISO to intervene in supply markets and incur costs in order to address the ISO's need for flexible resources.

12. The Commission has jurisdiction to amend the resource-adequacy program to include minimum flexible-capacity requirements pursuant to the police powers described in Public Utilities Code Section 380 and 365(c)(1).

13. The Energy Division should be authorized and directed to do the following:

---

[32] The California ISO recently published its preliminary assessment of the amount of flexible capacity each eligible resource might offer. That preliminary assessment is available on the ISO's public website at http://www.caiso.com/Documents/R.11-10-23%20(Order%20instituting%20rulemaking%20to%20oversee%20RA%20program).

a. Notify the load-serving entities subject to this order of each load-serving entity's flexible-capacity procurement obligations for 2014, if any, reflecting the annual and monthly requirements for flexible capacity as may be determined by the most recent studies and analyses of the California Independent System Operator;
b. Make appropriate revisions to the compliance filing templates and filing guides previously adopted by the Commission for the resource-adequacy program as necessary for orderly program implementation; and,
c. Notify load-serving entities as to whether their flexible-capacity compliance filings have been approved.

14. No party has demonstrated the need for evidentiary hearings and all motions requesting such hearings should be denied.

PROPOSED ORDERS

1. Flexible-capacity requirements are hereby adopted as part of the Commission's resource-adequacy program and shall be implemented in accordance with the foregoing discussion, findings of fact, and conclusions of law:
   a. Flexible Capacity Need is that quantity of flexible capacity identified as needed by the California Independent System Operator to meet system ramping and contingency reserves;
   b. Each load-serving entity shall procure that quantity of flexible capacity need allocated to it on the basis of the ratio of its relative share of monthly system peak to the monthly system peak;
   c. The quantity of flexible capacity procured by a load-serving entity shall be limited to that portion of a resource's capacity capable of ramping and sustaining energy output to meet system-ramping and contingency requirements for a minimum of three consecutive hours during an operating day; and,
   d. For the purposes of complying with its procurement obligations and making its demonstrations, the flexible capacity procured by load-serving entities must be "bundled" with the underlying capacity to which it is tied.
2. The following load-serving entities are subject to the flexible-capacity requirements adopted herein and shall comply with all decisions, rulings, and directives pertaining to the program:

a. Pacific Gas & Electric Company ("PG&E"), San Diego Gas & Electric Company ("SDG&E"), and Southern California Edison Company ("Edison") (collectively, "investor-owned utilities" or "IOUs"); and,

b. Electric service providers ("ESPs") and community choice aggregators ("CCAs") that serve retail customers within the service territory of one or more of the IOUs through direct access or CCA transactions.

3. Pursuant to the flexible-capacity requirements adopted herein, the Commission's Energy Division shall timely calculate and provide to each and every load-serving entity subject to this order a statement of the minimum level of flexible-supply resources the load-serving entity must procure in meeting its resource-adequacy obligations as described by the Commission's orders. In preparing these statements, the Energy Division shall receive the best estimates of and from the California Independent System Operator and the California Energy Commission related to the California Independent System Operator's annual and monthly operational requirements for flexible-supply resources and the reasonably allocable share of such monthly operational requirements for flexible-supply resources attributable to the loads served by each load-serving entity to which the statement is delivered.

4. The Executive Director shall ensure the Energy Division performs the responsibilities assigned to the Energy Division and described herein in accordance with the foregoing discussion, findings of fact, and conclusions of law.

5. Commencing with the compliance year beginning on January 1, 2014, each and every load-serving entity subject to the Commission's jurisdiction shall file with the Commission's Energy Division and the California Independent System Operator:

a. As part of its annual demonstration that the load-serving entity has procured resources meeting its resource-adequacy requirements for local and system resources, a further demonstration that the load-serving entity has procured flexible resources not less than ninety percent (90%) of its allocable month-by-month share of flexible resource need identified by the California ISO as necessary to maintain the reliability of the California electricity system and transmission grid; and,

b. As part of its monthly demonstration that the load-serving entity has procured resources meeting its resource-adequacy requirements for local and system resources, a further demonstration that the load-serving entity has met one hundred percent (100%) of its allocable monthly share of flexible-resource need identified by the California ISO as necessary to maintain the reliability of the California electricity system and transmission grid.

6. The system and local resource-adequacy program and associated requirements adopted in Decision 06-06-064 for compliance year 2007, and continued in effect by Decision 07-06-029, Decision 08-06-031, and Decision 08-06-031 and Decision 09-06-028 for compliance years 2008, 2009 and 2010, respectively, Decision 10-06-036 for compliance year 2011, Decision 11-06-022 for compliance year 2012, and Decision 12-06-065 for compliance year 2013, are continued in effect for compliance year 2014, subject to the modifications, refinements and flexible-resource requirements adopted in the ordering paragraphs of this decision.

7. All pending motions in this docket not granted by this decision are hereby denied.

8. This order is effective today.