

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Oversee the  
Resource Adequacy Program, Consider  
Program Refinements, and Establish Annual  
Local Procurement Obligations.

Rulemaking 11-10-023  
(Filed October 20, 2011)

**COMMENTS OF THE UTILITY REFORM NETWORK  
ON THE PROPOSED DECISION ADOPTING  
A FLEXIBLE CAPACITY FRAMEWORK**

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Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, The Utility Reform Network (“TURN”) hereby submits these comments on the Proposed Decision of Administrative Law Judge Gamson (“PD”). TURN will confine its comments to the flexible capacity issues addressed in the PD.<sup>1</sup>

TURN strongly supports the PD’s conclusion that there is no need for a flexible capacity requirement for 2014. However, because important issues remain to be resolved about the need for such a requirement in the future, the PD should be revised to reserve final judgment about whether a flexible capacity requirement – with its attendant and unknown ratepayer costs – should be adopted for 2015. TURN’s recommended changes to the PD’s Findings of Fact (“FOF”), Conclusions of Law (“COL”) and Ordering Paragraphs (“OP”) are attached in Appendix A.

**I. TURN SUPPORTS THE DETERMINATION THAT THERE IS NO NEED FOR A FLEXIBLE CAPACITY REQUIREMENT FOR 2014**

The PD correctly finds that the record does not demonstrate the need for a flexible capacity requirement for compliance year 2014. As TURN and several parties pointed out, and the California Independent System Operator (“ISO”) conceded, the ISO’s data shows sufficient flexible capacity to meet flexible capacity needs for 2014. (PD at 39.) The PD correctly concludes that imposing a flexible capacity requirement for 2014 would unreasonably increase ratepayer costs without a clear benefit. (PD at 40).

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<sup>1</sup> TURN also suggests a technical clarification to the fifth sentence in the first paragraph, so that the sentence would read: “*In some local areas and sub-areas, [s]ince less capacity exists than is required, all existing capacity must be acquired.*”

## **II. THE PD SHOULD BE REVISED TO RESERVE FINAL JUDGMENT ON WHETHER A FLEXIBLE CAPACITY REQUIREMENT WILL BE IMPLEMENTED FOR 2015**

The PD finds that, starting in 2015, there is a “reasonable likelihood” that additional flexible resources will be needed. (PD at 42.) At the same time, the PD acknowledges that TURN and many other parties have questioned the ISO’s assumptions in estimating flexible capacity needs and available resources; the PD expressly states that it is not making a determination about whether “the ISO’s assumptions are conservative, optimistic, or exactly correct.” (PD at 40-41). And, in denying the TURN/Sierra Club motion for evidentiary hearing, the PD states that it does not determine the levels of flexible capacity required to be procured by Load Serving Entities (“LSEs”) for 2015 and beyond. (PD at 35). Thus, the PD (for good reason) does not resolve fundamental issues that need to be determined before the Commission can conclude: (1) when the need for flexible capacity will exceed the flexible resources that will be available absent a flexible capacity requirement; and (2) the levels of flexible capacity that LSEs should be required to procure.

Nevertheless, the PD proposes not just to adopt an interim flexible capacity framework, but to implement such framework in 2015. (PD at 44.) TURN recommends that the PD be modified to avoid a definitive commitment to a 2015 start date. There is insufficient record evidence that there will be a need for such a requirement in 2015, and indeed, until the significant disputes among the parties about the validity of the ISO’s assumptions are resolved, there can be no such finding. Presumably, these disputed issues will be addressed in the coming year, but, until they are resolved, the Commission cannot support a conclusion that a flexible capacity requirement -- with its attendant and unknown ratepayer costs -- will be needed in 2015. TURN’s recommended changes to the Findings, Conclusions, and Ordering Paragraphs identify

suggested wording changes to indicate that the Commission’s final determination of when the adopted framework will go into effect will depend on the record developed in the coming year. Similar changes should be made to the text on pages 3 and 42-44 of the PD. For example, the sentence on page 3 that now reads, “In the upcoming year, there will be workshops and further proceedings to refine the flexible capacity requirement to go into effect in 2015” should be changed to, “In the upcoming year, there will be workshops and further proceedings to refine the flexible capacity requirement to go into effect in 2015 *if needed.*”

Notwithstanding the foregoing, TURN supports the adoption of a flexible capacity framework, particularly given the PD’s statements that such framework would be interim and subject to revision based on the record developed in the next year. (PD at 44, 48, 52). Adopting and refining such a framework prudently prepares for the time when a flexible capacity requirement is shown to be needed.

### **III. THE PD’S DENIAL OF THE REQUEST FOR EVIDENTIARY HEARINGS ONLY MAKES SENSE IF THE COMMISSION AFFIRMS THE PD’S CONCLUSION NOT TO ADOPT A FLEXIBLE CAPACITY REQUIREMENT FOR 2014**

The PD would deny the request of TURN and the Sierra Club for evidentiary hearings even though TURN and the Sierra Club identified several important, contested, and unresolved issues regarding the ISO’s estimates of available flexible capacity.<sup>2</sup> The PD reasons that these issues are neither material or in dispute because the PD does not find that a flexible capacity requirement is needed for 2014 or make findings regarding the levels of flexible capacity required to be procured in 2015. (PD at 35). In other words, because the PD does not determine

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<sup>2</sup> PD, pp. 30-31, citing the Sierra Club/TURN Amended Request for Evidentiary Hearings, March 28, 2013, pp. 4-5.

any specific levels of required flexible capacity, the disputed issues identified by TURN and Sierra Club and echoed by other parties do not come into play.

This conclusion only makes sense if the Commission adopts the PD's conclusion that no flexible capacity requirements should be imposed for 2014. If, contrary to the PD, the Commission were to consider adopting a 2014 requirement, then evidentiary hearings would be necessary first in order to resolve the material disputed issues of fact regarding the amount of available flexible capacity.

**IV. THE COMMISSION SHOULD TAKE PROACTIVE STEPS TO ENSURE A TIMELY AND COMPLETE RECORD FOR THE IMPORTANT ISSUES THAT STILL NEED TO BE ADDRESSED REGARDING A FLEXIBLE CAPACITY REQUIREMENT**

The PD would require several important issues to be resolved in the coming year before a flexible capacity requirement could go into effect. In addition to the eight items listed on pages 55 and 56 of the PD, these issues include:

- Determination of LSE flexible capacity requirements, which, as noted above, necessarily requires resolving a host of factual issues concerning available flexible capacity resources and ramping needs for the coming years;
- Definition of the “error term” in the flexible capacity need formula;<sup>3</sup> and
- Determination of modified eligibility criteria and removal of other participation barriers for use-limited and/or preferred resources, including demand response, energy efficiency, and energy storage.

To address these issues (the importance of which the PD seems to underestimate by referring to them as “details”), the PD indicates that the Commission will gather and analyze information, hold workshops, and build a record for a June 2014 decision. (PD at 57).

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<sup>3</sup> PD, Appendix A, p. 1, fn. 76

TURN recommends that the Commission emphasize in its final decision that it does not wish to experience again the record-development problems that preceded this June 2013 decision. As TURN has detailed in its comments, key data in support of the Joint Parties' flexible capacity requirement proposal was long delayed and not available for adequate consideration or discussion at workshops.<sup>4</sup> If such delays occur again, there will be an inadequate record to meet the PD's goal of adopting LSE flexible capacity requirements for 2015.

The PD states that "there will be notice to parties and an opportunity to comment" before the Commission adopts flexible capacity needs and requirements for 2015 and beyond. (PD at 36). However, to allow for effective vetting of the unresolved disputes regarding calculation of flexible capacity requirements, the Commission should, at a minimum, provide ample opportunity for analysis and discovery and for record discussion of parties' differing views. If workshops are to be the forum for such discussions, data to be addressed in each workshop should be presented well in advance to allow opportunity for analysis, and workshops should continue as long as necessary for parties to ask all of their questions on all relevant issues. Firm deadlines to produce data and proposals should be set, with identified consequences for failure to meet such deadlines.

## **V. CONCLUSION**

For the reasons set forth above, the Commission should adopt the PD with the changes to the text recommended above and the changes to the FOFs, COLs and OPs recommended in Appendix A to these comments.

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<sup>4</sup> See, e.g., Post-Workshop Comments of TURN, April 5, 2013, pp. 2-5.



Date: June 17, 2013

Respectfully submitted,

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## APPENDIX A

### TURN'S RECOMMENDED CHANGES TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

#### Findings of Fact

11. The ISO's projections for 2015 and beyond show a strong likelihood of need for *more* flexible resources than for 2014, although the exact need cannot be determined at this time.
16. Flexible capacity needs *are expected by the ISO to* increase year over year in non-peak months, with this increase almost exclusively reflected by 3-hour ramp caused by intermittent generation, not increase in peak load or changing patterns of customer load.
17. The Joint Parties' Proposal provides a ~~fully~~ detailed flexible capacity framework *that can serve as the foundation for a flexible capacity program.*
20. There are a number of ~~details~~ *issues* remaining to be determined to fully implement the Joint Parties' Proposal, as appropriately modified, for a mandatory flexible capacity framework starting, *if needed*, in RA year 2015, including counting of use-limited resources and preferred resources *and defining the error term.*

#### Conclusions of Law

5. The issues raised by Sierra Club/TURN in their Amended Request for Evidentiary Hearings are not material and in dispute *because the Commission does not impose a flexible capacity requirement for 2014 or adopt levels of required flexible capacity procurement for any other year.*
7. There is a reasonable likelihood of a need for additional flexible capacity starting in 2015, *though such need must be reviewed with care and confirmed by this time next year before imposing an enforceable flexible capacity requirement in 2015.*
8. It is reasonable to cause increased ratepayer costs by imposing a flexible capacity requirement starting ~~in~~ *as early as* 2015 because there will be commensurate or greater benefits from improved reliability, once there is a demonstrated need for flexible capacity.
9. It is reasonable to adopt an interim flexible capacity framework at this time, which ~~will~~ *may* lead to a flexible capacity requirement in the 2015 RA year. Specific flexible capacity requirements for each LSE for RA year 2015, *if any*, should be determined through the RA proceeding in this docket or its successor in 2014.
12. *Subject to a showing of need*, flexible capacity procurement obligations should be established for all Commission-jurisdictional load serving entities for 2015. The flexible capacity procurement obligations should be determined based on the Joint Parties' Proposal and the revised Energy Division proposal, as modified and outlined in Appendix A.

16. The Commission should use the time between now and June 2014 to refine a flexible capacity framework for ~~mandatory~~ *potential* implementation in RA year 2015.

17. The adopted flexible capacity requirement starting *potentially* in 2015 should be interim through 2017 in order to determine the efficacy of the framework and consider additional flexibility requirements.

#### Ordering Paragraphs

5. The Resource Adequacy (RA) program is modified by adoption of a flexible capacity framework as shown in Appendix A for all Load Serving Entities, as defined by Public Utilities Code Section 380(j). *Subject to a showing of need*, the flexible capacity framework will be mandatory starting with RA compliance year 2015. The adopted framework shall be in effect through RA compliance year 2017.