

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

Order Instituting Rulemaking to Consider Electric
Procurement Policy Refinements Pursuant to the
Joint Reliability Plan.

R.14-02-001
(Filed February 5, 2014)

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK
ON THE PRELIMINARY SCOPING MEMO**



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I. INTRODUCTION AND SUMMARY

Pursuant to Order Instituting Rulemaking (“OIR”) 14-02-001,¹ The Utility Reform Network (TURN) submits these replies to other parties’ comments on the OIR’s Preliminary Scoping Memo (“PSM”).²

Based on some parties’ comments regarding the PSM’s proposed schedule and issues, TURN provides the following recommendations to the Commission and the California Independent System Operator (CAISO):

- The Commission Should Match the Track 3 Schedule to the Related CAISO Stakeholder Process: Several parties agreed with TURN’s essential point that the PSM’s schedule for Track 3 should integrate with the CAISO’s schedule for its Reliability Services Initiative stakeholder process.
- The Commission Should Keep the Track 2 Reliability Analyses from Being Burdensome or Conflicting with Other CPUC Processes: TURN agrees with two other parties on this point.
- The Commission Should Consider the Benefits of Alternative Policies as Well as Their Costs: The benefits of alternative policies should be considered as well as the costs, consistent with the CAISO’s comments.
- The Commission Must Tightly Manage the Scopes of Tracks 1 and 3: To avoid expansion into a repeat examination of a full-blown Centralized Capacity Market or other

¹ See Ordering Paragraph 7 at p. 27.

² TURN received comments from eleven other parties: PG&E, SCE, SDG&E, IEP, NRG Energy, Calpine, California Energy Storage Alliance (CESA), Marin Clean Energy, CLECA, the CAISO, and (filing jointly) PacifiCorp and Liberty Utilities.

policies not intended by the Rulemaking, the Commission must carefully manage the scopes established in the OIR.

- The CAISO Should Obtain Access to Confidential Data and Welcome Consideration of Legal Issues: The CAISO should welcome (a) access to confidential data for its use in assessing alternative reliability proposals and its reliability function more generally, and (b) legal analysis of the implications for state policy and ratepayers of FERC-regulated market mechanisms, both as envisioned by the Rulemaking.

II. THE TRACK 3 SCHEDULE SHOULD BE EXTENDED TO MATCH THE RELATED CAISO STAKEHOLDER PROCESS

In its opening comments, TURN stated that the Rulemaking’s proposed schedule for Track 3 should match the CAISO’s envisioned schedule for its related Reliability Services initiative.³ Four other parties also commented on the need to coordinate these two processes.⁴ TURN again recommends the Commission match its Track 3 schedule to the related CAISO stakeholder process.

III. THE TRACK 2 ANALYSES SHOULD NEITHER SUPPLANT LTPP PROCESSES NOR OVERBURDEN PARTIES

In its opening comments, TURN provided suggested clarifications to the scope of Track 2, but noted that TURN did not believe that the “reliability planning assessment should be complex or burdensome to prepare.”⁵

IEP raised several concerns about the interaction of Track 2 analyses and the Long-Term Procurement Plan (LTPP) and the potential additional effort that might be required of parties.⁶

³ TURN’s Comments, pp. 5-6.

⁴ SDG&E’s Initial Comments, p. 3, PG&E’s Comments, pp. 1-2, IEP’s Comments, pp. 1-2 and NRG Energy’s Comments, pp. 1-3.

⁵ TURN’s Comments, pp. pp. 3-4.

PG&E commented that future reliability planning analyses “should complement the LTPP, not complicate, duplicate, or replace it”.⁷ PG&E also said the studies should take “full advantage of existing information available from other proceedings, stakeholder processes, or other regulatory venues” to produce a “snapshot” of future resource availability.⁸ TURN agrees with PG&E’s recommendations and believes that Commission action consistent with those recommendations will address, at least in part, IEP’s concerns.

IV. BOTH THE BENEFITS AND COSTS OF ALTERNATIVE POLICIES SHOULD BE CONSIDERED

In its opening comments, TURN stated that the potential risks of alternative policies should be quantified, rather than just identified.⁹ In its initial comments, the CAISO stated that the benefits of alternative policies should also be considered as well as their costs.¹⁰ TURN agrees that an accounting of both the benefits and costs of potential alternatives is appropriate, and notes that the Rulemaking appears to anticipate such a review in issue number 3 regarding Track 3.¹¹

V. THE COMMISSION WILL NEED TO MANAGE THE SCOPES OF TRACKS 1 AND 3 CAREFULLY TO AVOID “SCOPE CREEP”

The Rulemaking expressed the Commission’s intent not to revisit its decision to reject a centralized capacity market.¹² TURN applauds this finding. However, some parties’ comments show that the Commission will still need to be diligent to prevent this and other issues from arising in this docket.

⁶ IEP Comments, pp. 3-4.

⁷ PG&E’s Comments, p. 3.

⁸ *Id.*

⁹ TURN Comments, pp. 4-5.

¹⁰ CAISO Comments, pp. 9-10.

¹¹ Rulemaking, p. 15.

¹² *Id.*, pp. 4-5.

For example, Calpine’s comments reiterate the Rulemaking’s statements on this issue and states “Calpine supports consideration of a limited and/or residual centralized capacity market that would complement – not supplant – the state’s existing procurement policies and mechanisms”.¹³ But in the next sentence, Calpine goes on to suggest the market would play a much bigger role than meeting the “backstop” needs cited in the Rulemaking by saying “[s]uch a centralized market could serve as a useful platform for much of the procurement that currently occurs through bilateral resource adequacy transactions”.¹⁴ TURN does not believe that Calpine’s apparent vision of the CAISO’s market mechanism matches the Commission’s vision.

Similarly, the comments of the California Energy Storage Alliance (CESA) showed interest in a broader scope for a new multi-year forward procurement requirement than the Commission apparently intends. For example, CESA states:¹⁵

“...long-term resource adequacy would be a vital part of a robust market for preferred resources, including energy storage. Extended time-frames, with inclusion of those over three years, provide greater market certainty that would incent developers of all forms of energy resources to pursue forward RA contracts.”

The issue of whether three years is an adequate forward commitment window is within the scope of this proceeding.¹⁶ But there is no intimation in the Rulemaking that it will facilitate long-term commitments more properly addressed in other proceedings, such as the LTPP or technology-specific dockets.

The above examples illustrate why the Commission must be vigilant in minimizing possible “scope creep” beyond the focused vision of the Rulemaking.

¹³ Calpine Comments, p. 2.

¹⁴ *Id.*

¹⁵ CESA Comments, p. 4.

¹⁶ Rulemaking, p. 9, Question 2.f.

VI. THE CAISO SHOULD BE ENCOURAGED TO SEEK ACCESS TO CONFIDENTIAL PROCUREMENT DATA OF VALUE AND TO WELCOME LEGAL ANALYSES OF KEY RISKS OF FERC-REGULATED “MARKET MECHANISMS”

Two aspects of the CAISO’s comments merit specific replies.

A. The CAISO Should Sign Confidentiality Agreements to Gain Access to Commission Confidential Procurement Data

In response to the Commission’s request that it sign authorizations to allow it to review confidential procurement data, the CAISO said that access to such data – while good – still “does not ensure that capacity is procured and retained with the right capabilities and in sufficient quantities when and where needed”¹⁷ But the CAISO does not state if and when it will take the modest steps needed to gain access to confidential procurement data.

TURN wonders why the CAISO bothered to make this observation. It is obvious that access to procurement data and a forward procurement requirement are not the same thing. Nor did the Rulemaking suggest that they are the same thing. In fact, the Rulemaking – in language quoted in the CAISO’s comments – said that “access to such information will be critical to allowing the CAISO to understand the potential reliability and cost-related impacts of any staff or party proposals to set forward procurement requirements”.¹⁸ That is, the Rulemaking invited the CAISO to take advantage of its (as yet unused) access to confidential data so that it would better understand the alternative forward procurement requirements that may be implemented. Yet the CAISO – after many months of consideration – still seems reluctant to do so. TURN sees no good reason for the CAISO to keep delaying this step. The CAISO should be

¹⁷ CAISO Comments, p. 5.

¹⁸ *Id.*, pp. 4-5, quoting Rulemaking, pp. 14-15.

encouraged to sign the agreements needed to review the Commission’s confidential procurement data so that it may more effectively participate in Track 1.

B. The CAISO Should Welcome Legal Analysis of Key Risks Associated with Various FERC-Regulated “Market Mechanisms”

The CAISO also suggested that “legal briefing” of state-federal jurisdictional issues is “unnecessary” and would be a “distraction” from examining the joint reliability plan.¹⁹ Again, the CAISO’s words make it appear that the CAISO misunderstands the very language it quotes from the Rulemaking. According to the Rulemaking, the Commission is concerned that “participation in a CAISO-run capacity market will affect or relate to procurement authorized through existing Commission policy mandates (in particular preferred resources)”.²⁰ It thus asks for:²¹

“legal analysis from the parties on the viability of maintaining a residual role for a market-based procurement mechanisms in light of the extensive litigation over the Federal Energy Regulatory Commission’s (FERC’s) administration of market rules and legal challenges to state procurement programs in regions subject to FERC-regulated organized capacity markets.”

In other words, the Commission believes that what the CAISO calls “the work at hand – examining a joint reliability plan”²² – particularly the FERC-regulated residual market mechanism – requires an assessment of the risks of exposing state policies and ratepayers to federal jurisdiction. All California energy decision-makers – including the CAISO²³ – should

¹⁹ CAISO Comments, pp. 8-9.

²⁰ Rulemaking, p. 13. TURN also believes the Commission is concerned about the rate implications of a FERC jurisdiction, such as the possible imposition of a Minimum Offer Pricing Rule, as discussed in TURN’s Comments at pp. 4-5.

²¹ *Id.*, also quoted at CAISO Comments, p. 8.

²² CAISO Comments, p. 9.

²³ Though it is a private corporation, the CAISO is often treated as a “state agency” for purposes of making state energy policy. For example, the Rulemaking’s invitation to the CAISO to gain access to

wish to understand these risks before opining on a new, FERC-governed market mechanism.²⁴

TURN looks forward to the CAISO's contributions to these legal analyses in this Rulemaking.

VII. CONCLUSION

For the reasons set forth above and in TURN's opening comments, TURN recommends that the PSM be modified as recommended in TURN's pleadings.

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Respectfully submitted,

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confidential information was categorized under "Interagency Consideration". (See Rulemaking, Section 5, pp. 17-18.)

²⁴ TURN recognizes that such legal analyses will not be determinative of the outcomes of future Commission or court litigation over such issues. As the CAISO pointed out at p. 9 of its Comments, such outcomes will depend on many specific details of procurement policy and a "market mechanism." But the Commission and other state energy leaders would be well-served to understand which such policies and "market mechanisms" will best preserve the state's authority and protect the state's ratepayers.