

**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

**REPLY COMMENTS OF MARIN CLEAN ENERGY REGARDING
THE STAFF PROPOSAL ON THE IMPLEMENTATION OF THE FLEXIBLE
CAPACITY PROCUREMENT FRAMEWORK**

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Pursuant to the Administrative Law Judge’s February 27, 2014 email ruling, Marin Clean Energy (“MCE”) submits the following reply comments addressing comments on the February 10, 2014 Staff Proposal on the Implementation of the Flexible Capacity Procurement Framework (“Staff Proposal”). As discussed below, MCE shares a concern with numerous other parties that ambiguities within the Staff Proposal and inconsistencies between the Staff Proposal and the California Independent System Operator (“ISO”) Flexible Resource Adequacy Criteria and Must-offer Obligation (“FRAC-MOO”) straw proposal create significant regulatory risk and uncertainty. Unless the Commission takes steps immediately to address this concern, the Commission should consider delaying implementing a flexible capacity compliance program until 2016.

I. Regulatory uncertainty is a serious concern.

A. Lack of agreement between ISO and CPUC on procurement requirements, product characteristics, counting rules creates regulatory uncertainty.

There is a strong consensus among diverse commenting parties that the divergence between the Staff Proposal and the ISO FRAC-MOO proposal on key program elements is a concern. Implementing a framework that includes eligibility criteria and counting rules that diverge from CAISO requirements creates risk and regulatory uncertainty for both load-serving

entities (“LSEs”) and owners or developers of flexible capacity resources. Eliminating ambiguity and resolving differences that create regulatory uncertainty should be a high priority.

Among the issues that should be resolved if possible prior to implementation of the interim flexible capacity framework is the categorization, requirements, and limitations for use-limited flexible resources. Both ISO and the Staff recommend three flexible capacity procurement categories for use-limited resources, which are differentiated by must-offer obligations and energy limitations. However, the proposals diverge in that the Staff portfolio percentage limits are fixed, while the ISO’s will be adjusted monthly. There are also differences in required starts and run times. This creates conflicts in regulatory requirements that are not adequately addressed in the Staff Proposal. San Diego Gas & Electric Company correctly points out that this inconsistency “may result in Commission-jurisdictional load-serving entities procuring additional Category 1 resources not for reliability reasons but solely for administrative compliance purposes.”¹

There is similarly a lack of clarity (and in some respects a lack of agreement between the ISO and Staff) regarding counting criteria. These problems are discussed in comments on the requirement that a resource must operationally reach Pmin before it can sell capacity as flexible,² and comments addressing the lack of clarity regarding whether and how a resource that is eligible may be used to meet RA, Local RA and/or flexible capacity requirements by an individual or multiple LSEs.³

¹ SDG&E Comments at 11. See also SCE Comments at 3-4 (“A disagreement in how EFC values are determined could ultimately lead to a situation where an LSE meets its flexible capacity requirement within its LRA’s purview but is deficient within the CAISO’s purview. This situation could result in the CAISO procuring backstop flexible capacity on behalf of an LSE that has met its LRA’s requirement.”)

² CAISO Comments at 11; MCE Comments at 4; NRG Comments at 3.

³ See PG&E Comments at 4; NRG Comments at 6; Shell Energy Comments at 4; MCE Comments at 5.

MCE agrees with parties encouraging the Commission to resolve ambiguities and eliminate regulatory uncertainty to the extent possible before taking further steps toward implementing the flexible capacity framework for 2015. If the Commission is not able to expeditiously reduce regulatory uncertainty, MCE would support delaying flexible capacity obligations until the 2016 program year.

B. Shell’s suggestion to defer the 2015 procurement obligation unless CAISO identifies a specific need for flexible capacity merits consideration.

Shell Energy identifies as a threshold question whether a determination of need for a flexible capacity procurement obligation has been established for the 2015 RA compliance year.⁴

Shell Energy recommends that:

“[o]nly if a need for flexible capacity has been demonstrated should the Commission establish a procurement obligation and enforcement protocols for a flexible capacity program to be imposed on load-serving entities (“LSE”) for RA compliance year 2015.⁵

Shell Energy further observes that “[i]t may be more useful for the Energy Division to focus on the end state – the products that the ISO actually needs – as opposed to requiring all LSEs to spend a significant effort to procure and demonstrate compliance with a new interim mandate, when ultimately that mandate is not necessary.”⁶

These recommendations deserve consideration. Indeed, a pragmatic solution to the current situation, in which market participants are trying to plan for resource procurement without final compliance requirements in place, would be to simply delay implementation until 2016, and extend or revise the target 2014 flexible capacity target requirements for use in 2015.

⁴ Shell Energy Comments at 1.

⁵ Id.

⁶ Id. at 4.

C. Differences between the ISO and Staff Proposal should be discussed and resolved if possible in a transparent stakeholder process.

The Staff has asked whether a workshop to discuss the Staff Proposal would be helpful.⁷ In response NRG suggests a staff-facilitated workshop to allow market participants to ask questions about the staff proposal and to facilitate dialog about the proposal, followed by post-workshop comments.⁸ TURN also suggests scheduling another workshop for purposes of clarification and discussion of the relationship between the Staff Proposal and the ISO's proposal.⁹

MCE agrees that a workshop may be helpful. First, it is clear from many parties' comments that there are factual aspects of the Staff Proposal that need clarification and explanation simply to ensure that everyone has the same understanding of definitions and requirements. Second, there appears to be willingness on the part of the ISO and the Staff (as well as many stakeholders) to further discuss and refine the elements of the flexible capacity framework now in order to avoid uncertainty and potential inefficiencies going forward. In light of the accelerated schedule for implementation of the flexible capacity framework for 2015, additional dialog will likely be useful, if only to ensure an accurate understanding of the Staff Proposal by all affected parties.

II. Flexible capacity procurement obligations should be based on cost-causation principles.

A number of parties share MCE's concern that the Staff's proposal to allocate flexible capacity obligation based on coincident peak load-ratio share is inconsistent with fundamental principles of cost causation and creates a distorted procurement incentive.¹⁰ Some parties

⁷ Staff Proposal at 18.

⁸ NRG Comments at 6.

⁹ TURN Comments at

¹⁰ See Comments of ISO at 12-13; Shell Energy Comments at 4-5; NRG Comments at 2.

(including the Staff itself) do not object to the Staff's proposed allocation methodology as an interim measure, but acknowledge the need to explore other methods of allocation based on causation "in the near future."¹¹

MCE urges the Staff to reconsider its proposed approach of implementing a short-term load ratio-based method for determining flexible capacity and then later replacing it with a causation-based method. If not, the Staff should commit to adopting a cost-causation methodology for the 2016 program year.

III. The Commission should clarify and adopt the exemption from use category limits for small LSEs.

In response to the Staff Proposal to exempt LSEs with a maximum monthly flexible obligation less than 25 MW from restrictions on use-restricted resources, the ISO asks for further clarification regarding the Staff's intent and assurance that sufficient quantities of flexible resources in Categories 1 and 2 will be procured.¹² MCE encourages the Staff to provide such clarification. First, the Staff should clarify that it does not propose to exempt small LSEs from all flexible capacity requirements, but only from the categorical restrictions on some use-limited flexible capacity resources.¹³ Second, the Staff should explain its objective of administrative simplicity and address the unique procurement challenges facing small LSEs.¹⁴

The other objections to the proposed small LSE exemption are focused on fairness.¹⁵ Again, the exemption only relates to application of the use-limited resource restrictions and not to the overall obligation to procure flexible capacity. Establishing this reasonable accommodation for small LSEs does not, as PG&E implies, violate the requirement under Public

¹¹ See Staff Proposal at 5; ORA Comments at 3.

¹² ISO Comments at 8.

¹³ It appears that Arem's objections are also based on a misperception that the Staff proposes to completely exempt small LSEs from all flexible capacity requirements. See Arem Comments at 5.

¹⁴ These issues are addressed in MCE Comments at 5.

¹⁵ See SCE Comments at 4; PG&E Comments at 3.

Utilities Code section 380(e) that all LSEs be subject to the “same requirements for resource adequacy.”

IV. The Commission should take care to develop program rules that encourage participation to the extent possible by preferred resources.

Several parties highlight the importance of establishing flexible capacity program requirements that are technology neutral and that complement the Commission’s preferred resource procurement goals and the California loading order.¹⁶ As these parties note, the interim approach outlined in the Staff Proposal may not adequately reflect the diverse characteristics (e.g. ramping characteristics) of preferred resources that could contribute to meeting flexible capacity needs, and the proposed framework may unintentionally exclude some preferred resources. These issues should be addressed to the extent possible prior to implementation for 2015, and the Commission should make every effort to craft definitions and eligibility requirements that facilitate participation by all preferred resources that can contribute to meeting system needs for flexible capacity.

V. Conclusion

The opening comments on the Staff Proposal reveal considerable confusion regarding the intent and meaning of certain provisions in the Staff Proposal, and concern that its divergence from the ISO’s proposed FRAC-MOO requirements will create compliance issues and regulatory uncertainty. As discussed above, MCE agrees that there is still work to be done to resolve inconsistencies to the extent possible and provide a reasonably workable 2015 framework for implementing interim flexible capacity requirements. While addressing flexible capacity needs is important, it should not be accomplished at the expense of regulatory order and workable compliance requirements.

¹⁶ EnerNOC Comments at 3-4; LSA Comments at 2-3; GPI Comments at 1-6.

Respectfully submitted,

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