

**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

Rulemaking 14-02-001
Filed February 5, 2014

**Reply Comments of the California Independent System Operator Corporation on
the Order Instituting Rulemaking and Preliminary Scoping Memo**

I. Introduction

The California Independent System Operator Corporation (ISO) files these reply comments in response to opening comments filed by parties on February 20, 2014.¹ The ISO limits its reply comments to three topics: (1) scheduling and logistics; (2) the relationship of proceedings in other venues to Track 3 of this proceeding (*i.e.*, the CPUC's position on a proposed replacement of the ISO's existing Capacity Procurement Mechanism; and (3) categorization of Track 3.

II. Maintaining Consistent and Workable Schedules Between ISO and CPUC Processes

In its opening comments, the ISO highlighted the need for this proceeding and the parallel ISO stakeholder process to follow consistent timeframes. Other parties echoed the ISO concerns about making sure the schedules in the respective processes are aligned, especially with respect to Track 3.

In its opening comments, TURN suggested that the CPUC first create a "working version" of the joint planning assessment contemplated under Track 2 before beginning Track 1. The ISO does not believe that this is necessary and instead finds that the two

¹ The schedule established by the Order Instituting Rulemaking (OIR) called for reply comments to be filed February 27, 2014 but, per ALJ Gamson's ruling of February 27, 2014, the reply date was extended to March 7, 2014.

tracks can proceed in parallel, as contemplated in the OIR. The ISO thus recommends that this not be pursued.

NRG expressed concern in its comments that the ISO stakeholder process requires parties to work with the ISO to develop a multi-year backstop procurement mechanism before the CPUC reaches a final decision on whether to adopt new multi-year forward resource adequacy obligations. NRG's concern is unwarranted. The first part of the ISO stakeholder process will focus solely on a replacement to the ISO's existing Capacity Procurement Mechanism, which expires in 2016. The ISO will not consider a multi-year backstop mechanism until after the CPUC establishes new forward procurement obligations for its jurisdictional load serving entities.

III. There is No Basis for Linking Track 3 to Pending Legal and Regulatory Proceedings Regarding other ISOs and RTOs

Consistent with its opening comments, the ISO believes that the OIR should focus on parties working collaboratively to examine implementation of the Joint Reliability Plan. The Joint Reliability Plan does not contemplate implementing a centralized forward capacity market for the ISO balancing authority of the sort in place in the Eastern independent system operators (ISOs) and regional transmission operators (RTOs). Further, the OIR expressly declines to consider a centralized forward capacity market for California like those in place in the Eastern ISOs and RTOs. Thus, the challenges faced by Eastern ISOs and RTOs and the issues of particular concern to ORA that are pending in various court proceedings are not germane to the compact between the CPUC and the ISO set forth in the Joint Reliability Plan. Stated differently, the issues in those proceedings and the applicable capacity market design features in those ISOs and RTOs do not arise, and do not exist, in connection with the

specific design contemplated by the ISO and the CPUC. Rather, the Joint Reliability Plan builds on the state of California's existing resource adequacy structure and CPUC-directed forward procurement. For these reasons, the ISO reiterates its view that legal briefing in this proceeding on developments in other regions is unnecessary and irrelevant to what is contemplated in the OIR and the Joint Reliability Plan.

For similar reasons, the Commission should reject ORA's request that Track 3 be held in abeyance pending final resolution of all appeals of jurisdictional issues in the Eastern capacity markets and that the CPUC petition FERC for a declaratory order seeking guidance under what conditions the ISO backstop mechanism will be kept purely residual. ORA also suggests that the ISO consider extending the Capacity Procurement Mechanism beyond its current expiration date.

The CPUC does not need finality in disputed proceedings involving Eastern ISO/RTO capacity markets to move forward in this process. There is clear precedent establishing that FERC has legal authority to approve and regulate a centralized capacity market.² With that broad authority, it is clear FERC can oversee a more limited backstop procurement mechanism and rates for the procurement of that capacity of the sort contemplated in this proceeding. Further, it is unclear what would be gained by taking the time to petition FERC to issue a declaratory order, particularly because the details of the ISO proposal would not be established enough for FERC to offer anything more than general comments. Also, FERC has provided sufficient guidance in orders it

² See *Mississippi Power & Light Co. v. Mississippi*, 487 U.S. 354 (1988); *Connecticut Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477 (D.C. Cir. 2009); *New Jersey Bd. of Pub. Utilities v. FERC*, No. 11-4245 (3d Cir. Feb. 20, 2014) ("After reviewing the FERC Orders at issue here and the relevant case law, we conclude that FERC did not exceed its jurisdiction in eliminating the state-mandated provision."); *Maine Pub. Util. Comm'n v. FERC*, 520 F.3d 464 (D.C. Cir. 2008), *rev'd in part sub nom. NRG Power Mktg., LLC v. Maine Pub. Utilities Comm'n*, 558 U.S. 165 (2010).

has already issued. FERC has clearly stated that there is no one-size-fits-all model for ISOs and RTOs when it comes to capacity markets and resource adequacy programs,³ and FERC has backed that statement up by approving both voluntary capacity markets and centralized capacity markets that provide for an opt out mechanism. FERC specifically rejected requests to impose a mandatory centralized capacity market in MISO, finding instead that MISO's voluntary capacity market design was just and reasonable for the MISO footprint.⁴

ORA suggests that there could be a slippery slope from *any* kind of ISO market-based backstop procurement mechanism because once even a voluntary auction or backstop procurement mechanism exists, FERC could later mandate that the ISO alter the market design to make a voluntary auction mandatory. ORA ignores the fact that under Section 206 of the Federal Power Act, FERC has the authority to order a centralized capacity market whether or not a voluntary capacity market is already in place. If ORA were interested in avoiding imposition of a centralized forward capacity market, the best approach it can take is to work closely with the ISO, CPUC, and interested parties to put in place a workable and defensible multi-year forward program like that reflected in the Joint Reliability Plan.

Simply making the existing Capacity Procurement Mechanism a permanent market feature, as ORA suggests, is not a realistic alternative to proceeding with

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199, P 38 (2012).

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,060, P 39 (2008) (“We reject arguments that a mandatory auction or a mandatory centralized capacity market is necessary to ensure resource adequacy. Well-structured financial settlement provisions can create appropriate incentives for LSEs to invest in and contract for sufficient capacity to meet their resource adequacy needs. Therefore, we will not require the Midwest ISO to adopt a capacity market with a downward-sloping demand curve in the mold of PJM and the New York ISO.”).

consideration of the forthcoming ISO proposal. The Capacity Procurement Mechanism was always intended to be a temporary measure. Furthermore, the Capacity Procurement Mechanism was implemented as part of a black box settlement reached among parties after a contentious process before FERC. Any proposal to extend the current settlement or file new tariff provisions to mimic the existing terms of the settlement would likely involve similar debate and lead to either another settlement or a contested proceeding that would extend beyond the time available. There is no guarantee that what would result from either process would mirror the current Capacity Procurement Mechanism.

IV. Categorization of Track 3

Under CPUC Rule 1.3(d) quasi-legislative proceedings “establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities.” In contrast, under CPUC Rule 1.3(e), ratesetting proceedings involve “rates for a specifically named utility . . . or establishes a mechanism that in turn sets the rates for a specifically named utility” Based on these definitions, Track 3 should not be recategorized as ratesetting.

Track 3 will not involve consideration of a specific utility’s rates nor will it establish a mechanism to set rates for a specific utility. Instead, Track 3 will consider general policies about the methods through which CPUC-jurisdictional electric utilities might procure capacity to meet obligations established elsewhere. Unlike the rulemakings that ORA mentions (long-term resource adequacy, renewable portfolio standards, and greenhouse gas compliance), Track 3 will neither direct how much or what kind of a capacity product utilities need to procure. Instead, Track 3 will examine the following:

- the Commission's *policy position* on a proposed replacement of the existing Capacity Procurement Mechanism;
- *rules* relating to the extent to which CPUC-jurisdictional LSEs are authorized to utilize the market-based mechanism to procure capacity to satisfy minimum resource adequacy procurement requirements; and
- *how* such participation in a CAISO-run capacity market will affect or relate to procurement authorized through existing Commission policy mandates (in particular preferred resources).

As reflected in the OIR, the scope of Track 3 will address policies and rules affecting a class of regulated entities. Thus, Track 3 falls in the heart of what constitutes a quasi-legislative proceeding.

V. Conclusion

The ISO appreciates this opportunity to reply to the parties' opening comments. The ISO looks forward to having the scope of this proceeding finalized so that the substance of the proceeding can begin.

Respectfully submitted,
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