

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 OFFICE OF RATEPAYER ADVOCATES ON
PROPOSED DECISION ADOPTING LOCAL PROCUREMENT AND
FLEXIBLE CAPACITY OBLIGATIONS FOR 2015, AND FURTHER
REFINING THE RESOURCE ADEQUACY PROGRAM**

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Pursuant to Administrative Law Judge’s Proposed Decision (PD) issued on May 27, 2014, the Office of Ratepayer Advocates (ORA) submits these comments on issues discussed in the PD.

ORA supports the PD’s adoption of Local Resource Adequacy (RA) for 2015,¹ Qualifying Capacity and Effective Flexible Capacity for Energy Storage and Supply-Side Demand Response Resources,² and Refinements to the RA Program³ but has concerns with several areas. Those concerns primarily focus on the PD’s adoption of flexible capacity procurement obligations prior to the completion of the California Independent System Operator’s (CAISO) Flexible Resource Adequacy Criteria and Must-Offer Obligation (FRAC-MOO) tariff process including required approval by the Federal Energy Regulatory Commission (FERC).⁴

As detailed below and in the appendix to these comments, ORA recommends several modifications to the PD. First, the PD should not adopt flexible capacity procurement obligations for 2015 because (1) it is unlikely that the CAISO’s FRAC-MOO tariff will be adopted by FERC in time to allow implementation by load serving entities (LSEs) for the 2015 procurement period, and (2) flexible capacity procurement obligations are unnecessary for the 2015 procurement period. Second, the PD should be modified to characterize the flexible capacity framework as an ongoing evolution of the RA program, consistent with its history, rather than label it an “interim” process with a 2017 sunset date.

¹ PD, pp. 5-9.

² PD, pp. 26-36.

³ PD, pp. 36-56.

⁴ PD, p. 16.

I. DISCUSSION

A. **The Commission should defer adoption of mandatory flexible capacity procurement obligations because the CAISO has not yet submitted the FRAC-MOO tariff to FERC for approval and the need for additional procurement obligations in 2015 to maintain reliability has not been established.**

The Commission should not adopt a flexible capacity obligation for 2015 because (1) it is unlikely that the CAISO's FRAC-MOO tariff will be adopted by FERC in time to allow implementation by LSEs for the 2015 procurement period, and (2) the record does not demonstrate a need for flexible capacity obligations for 2015. The PD "recognize[s] that the CAISO's FRAC-MOO proposal is neither final nor adopted by FERC, and may change."⁵ Yet the PD requires a 2015 flexible capacity obligation when even the CAISO's FRAC-MOO draft tariff language does not contemplate annual flexible capacity compliance filings until 2016.⁶ As discussed below, adoption of flexible capacity obligations without a FRAC-MOO in place would burden ratepayers with increased costs for flexible capacity without commensurate benefits.

1. **Approval of the FRAC-MOO tariff will likely be delayed, resulting in undue ratepayer burden.**

The FRAC-MOO cannot be adopted in time for the 2015 procurement period because the CAISO must address numerous concerns posed by parties in the CAISO's stakeholder process, including critical jurisdictional issues raised by the Commission's energy division (ED) staff.⁷ For example, in written comments on the FRAC-MOO draft

⁵ PD, p. 16.

⁶ Draft Tariff Language- Flexible Resource Adequacy Criteria and Must-Offer Obligations, May 19, 2014, Section 40.10.5.1, available at http://www.caiso.com/Documents/DraftTariffLanguage_FRAC-MOO.doc

⁷ Draft tariff language for the proposal was submitted by the CAISO to stakeholders on May 27, 2014 followed by a stakeholder web conference on June 3, 2014. At the March 19-20 2014 CAISO Board of Governor's Meeting, the March 7, 2014 Revised Final Draft Staff Proposal was adopted.

tariff language, Pacific Gas and Electric Company (PG&E) noted “substantial concerns” and identified elements of the draft tariff that diverge from the FRAC-MOO “Revised Draft Final Proposal” as approved by the CAISO Board of Governors.⁸

ED staff comments on the most recent CAISO tariff language suggested that the FRAC-MOO tariff presents a “clear conflict with the CPUC’s Resource Adequacy proceedings.”⁹ The ED staff comments recommended that “[t]he CAISO should delay and further consider whether and how to allow the CAISO to re-run flexible capacity needs assessment in order to assure that such provisions do not create conflict with the CPUC’s Resource Adequacy program.”¹⁰ In addition, ED staff stated that it “agrees with the comments submitted by [Southern California Edison Company] and PG&E that a proposal for the CAISO to have unchecked authority to set an error term is inconsistent with policy development.”¹¹ ED staff also commented that the draft tariff language “lacks requisite deference to the CPUC’s statutory authority to determine resource adequacy requirements.”¹² Finally, ED staff noted that the draft tariff “proposed language that appears to overstep the CAISO’s statutory authority to determine Resource Adequacy requirements.”¹³ These are serious concerns. While the CAISO’s ambitious goal is to complete the final tariff language for submission to FERC by the end of June, addressing these significant stakeholder concerns may delay the submission date.¹⁴

⁸ See, Comments of Pacific Gas and Electric Company Flexible Resource Adequacy Criteria and Must-Offer Obligation, submitted to the CAISO on May 30, 2014.

⁹ Comments of the Staff of the California Public Utilities Commission on the May 19, 2014 version of the Flexible Resource Adequacy Criteria and Must-Offer Obligation Draft Tariff Language (CPUC Staff Comments), posted online by the CAISO on June 9, 2014, p. 2.

¹⁰ CPUC Staff Comments, p. 1.

¹¹ CPUC Staff Comments, p. 5.

¹² CPUC Staff Comments, p. 8.

¹³ CPUC Staff Comments, p. 26.

¹⁴ CAISO announced its intended timeline at its June 3, 2014 stakeholder web conference.

Even after submission to FERC, it is possible that, given the CAISO stakeholder comments discussed above, and the significant jurisdictional concerns raised by the Commission's ED staff, the FRAC-MOO tariff will be protested at FERC. A protest at FERC could delay the tariff approval process by many months. If implementation of the FRAC-MOO is delayed, a 2015 flexible capacity requirement would burden ratepayers with additional costs while providing no incremental grid reliability benefit. The CAISO's FRAC-MOO is a critical component in the flexible capacity framework because it requires flexible resources to submit daily economic bids during specific hours. Without implementation of the FRAC-MOO, daily economic bidding to provide resource availability is not required, and CAISO's ability to dispatch flexible resources would be limited to those resources with existing contractual provisions that allow CAISO dispatch.

As the PD points out, ratepayers will likely incur increased costs due to LSE procurement to meet flexibility capacity requirements.¹⁵ However, flexible capacity procured by the LSEs does not serve grid reliability needs unless it is linked with a must-offer obligation, which will not be in place until FERC approves the FRAC-MOO tariff.¹⁶ Ratepayers should not pay flexible capacity costs that do not provide increased reliability benefits. Moreover, the record shows no need to impose such requirements for the 2015 RA year. No party, including the CAISO, asserts that there is an inadequate supply of flexible capacity to meet 2015 RA needs. The purported benefit of mandatory flexible procurement obligations in 2015 is to assure that adequate flexible capacity supply is contractually available to the CAISO. However, the record contains no evidence to demonstrate that contractually available flexible capacity in 2015 will be

¹⁵ PD, Findings of Fact (FOF) 15, p. 68

¹⁶ The FRAC-MOO tariff's framework will include a study process to determine requirements, allocation of flexible requirements, requirements for RA showings, must-offer obligations for resources, and permission for the CAISO to backstop flexible capacity.

deficient in the absence of mandatory flexible procurement obligations.¹⁷ Ratepayers derive no benefits from the purchase of unnecessary capacity. Accordingly, the PD should be modified to eliminate flexible capacity procurement obligations for the 2015 RA year.¹⁸

2. Even if FERC approval of the FRAC-MOO tariff is not delayed, the tariff cannot be timely implemented by LSEs for the 2015 procurement period.

Even if the PD's assumption that the CAISO's FRAC-MOO proposal will not be delayed at FERC is correct,¹⁹ the current FRAC-MOO implementation timeframe would make it difficult for LSEs to contract for flexible capacity requirements in a timely manner. The earliest that FERC could approve the FRAC-MOO tariff is late August 2014. This assumes that the CAISO submits the draft FRAC-MOO tariff to the FERC by the end of June 2014 and that the FERC approves the FRAC-MOO tariff after a 60-day notice period²⁰ that includes the opportunity for parties to protest.²¹ If the CAISO submitted the tariff to FERC on June 30, 2014, approval before August 29 would be unlikely. Submission of the tariff after June 30 would likely result in a day-for-day delay

¹⁷ D.13-06-024, p. 39 stated "We agree with the comments of several parties that it is not reasonable to impose a new requirement on LSEs for flexible capacity in the 2014 RA year which would increase ratepayer costs without a clear benefit. For all of these reasons, it is not in the public interest to adopt a flexible capacity requirement for RA year 2014."

¹⁸ ORA lists references to adoption of flexible procurement obligations in the PD's Conclusions of Law, and recommended modifications, in Appendix A of these comments.

¹⁹ The PD states that "...we do believe we need to act on the premise at this time that the FRAC-MOO proposal will be delayed at FERC." ORA contacted ED staff to clarify its assumption that the PD unintentionally left out the word "not" but was instructed to note this in comments.

²⁰ 16 U.S. Code § 824d (d) provides in part that "Unless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days' notice to the Commission and to the public." The Commission, for good cause shown, may allow changes to take effect without requiring the sixty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published."

²¹ 18 CFR § 385.210.

of FERC approval. The Commission’s annual June Decisions in the RA proceedings inform LSEs of modifications and changes they must address in their capacity procurement. Flexible capacity will become a procurement obligation for 2015 if the Commission adopts the PD as written. Unfortunately, the LSEs will not have certainty regarding the details of the flexible capacity program until FERC adopts the FRAC-MOO. Annual LSE RA filings showing evidence of procurement that satisfy capacity obligations are due at the Commission on the last working day of October.²² The failure to have the FRAC-MOO in place will greatly shorten the LSE timeframe for procuring flexible capacity and, in the best-case scenario, procurement could not begin until late August. The shortened timeframe to procure the new flexible capacity product will place an undue burden on LSEs and may increase ratepayer costs in a hurried timeframe for contracting to meet procurement obligations.

B. The flexible capacity framework should be characterized as part of the ongoing evolution in the RA program, rather than an “interim” process.

The record in this proceeding does not support an interim status or a date certain when a RA flexible capacity policy will not be needed.²³ No party offered any support or rationale for an interim timeframe for the flexible capacity framework.

Adoption of a flexible capacity requirement as an ongoing part of the RA program is, for several reasons, preferable to creating a program with a short-term sunset date. The PD refers to an interim program from 2015 to 2017.²⁴ However, the CAISO data

²² The PD prescribes penalties for late or deficient filings showing flexible capacity procurement. (PD, Appendix A, pp. 8-9.)

²³ The RA flexible capacity framework was created in last year’s decision as an interim framework for 2014 to 2017. (D.13-06-024, issued July 3, 2013, pp. 10-53.)

²⁴ PD, p. 2.

indicates a significant increase in flexible capacity needs after 2017,²⁵ suggesting that the flexible capacity product may be needed on a long-term basis. Moreover, the PD's reference to an "interim" program fails to recognize that adoption of a flexible capacity requirement on a long-term basis would create the regulatory certainty required for LSEs to procure flexible capacity in a cost-effective manner via long-term contracts. Finally, annual adjustments to the RA program allow the Commission to modify or eliminate policies and requirements as necessary. The extensive modifications necessary to enable energy storage and supply-side demand response to contribute to flexible capacity requirements called for in next year's proceeding²⁶ highlight the ongoing evolution of the flexible framework.

Therefore, ORA recommends that the Commission modify the PD to eliminate references to the flexible capacity framework being an "interim" policy.²⁷

II. ORA RECOMMENDATIONS

In summary, ORA recommends:

- (1) The Commission should not mandate flexible capacity obligations for 2015; and
- (2) The Commission should treat the flexible capacity framework as a new feature of the RA program subject to annual revisions rather than as an interim program with a 2017 sunset date.

²⁵ California Independent System Operator Corporation Initial Comments on Workshop Issues, dated April 8, 2013, pp. 26-27.

²⁶ PD, p. 35.

²⁷ See Appendix A of these comments.

Respectfully submitted,

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APPENDIX A

ORA Proposed Modifications to the PD's Conclusions of Law

ORA proposes the following modifications to the PD's Conclusions of Law:

Conclusions of Law

3. With the exception of provisions that impose a flexible capacity requirement on LSEs in 2015, ~~the revised Staff Flexible Capacity Proposal, as modified herein in light of comments, is reasonable to adopt for a detailed flexible capacity program as part of the RA program for RA years 2015 through 2017.~~

4. ~~It is reasonable to impose flexible obligations to ensure that LSEs contract for flexible resources and bid them into the CAISO market.~~

11. ~~Consistent with D.13-06-024, flexible capacity procurement obligations should be established for all Commission jurisdictional load serving entities for 2015.~~

14. In the absence of a FERC adopted FRAC-MOO tariff, ~~it is not~~ reasonable to impose a new requirement on LSEs for flexible capacity starting in the 2015 RA year.

15. In the absence of a FERC adopted FRAC-MOO tariff, ~~it is not~~ reasonable to cause increased ratepayer costs by imposing a flexible capacity requirement starting in 2015 because there will not be commensurate or greater benefit from improved reliability.