

**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 and Flexible Procurement Obligations for the 2016 and 2017 Compliance Years.

Rulemaking 14-10-010
(Filed October 16, 2014)

**COMMENTS OF THE INDEPENDENT ENERGY
PRODUCERS ASSOCIATION ON THE PROPOSED
DECISION ADOPTING LOCAL AND FLEXIBLE
CAPACITY OBLIGATIONS FOR 2018 AND REFINING
THE RESOURCE ADEQUACY PROGRAM**

INDEPENDENT ENERGY PRODUCERS
ASSOCIATION
Steven Kelly, Policy Director
1215 K Street, Suite 900
Sacramento, CA 95814
Telephone: (916) 448-9499
Facsimile: (916) 448-0182
Email: steven@iepa.com

GOODIN, MACBRIDE,
SQUERI & DAY, LLP
Brian T. Cragg
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: bcragg@goodinmacbride.com

Attorneys for the Independent Energy Producers
Association

Dated: June 1, 2017

RECOMMENDED CHANGES TO THE PROPOSED DECISION

The Independent Energy Producers Association respectfully urges the Commission to modify the Proposed Decision to:

- Establish a new Phase 4 in Rulemaking 14-10-010 to be completed no later than December 31, 2017.
- Limit the scope of Phase 4 to consideration of a multi-year Resource Adequacy requirement for jurisdictional load-serving entities.
- Clarify that the adoption of a durable flexible capacity requirement is not a prerequisite for adoption of a multi-year Resource Adequacy requirement.

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The Independent Energy Producers Association (IEP) offers its comments on the Administrative Law Judge's Proposed Decision (PD) adopting local and flexible capacity obligations for 2018 and refining the Resource Adequacy (RA) program. As discussed in these comments, IEP respectfully urges the Commission to modify the PD to establish a Phase 4 in this proceeding to complete consideration of a multi-year RA requirement by year's end.

Specifically, IEP recommends the following changes to the PD:

- Establish a new Phase 4 in Rulemaking (R.).14-10-010 to be completed no later than December 31, 2017.
- Limit the scope of Phase 4 to consideration of a multi-year RA requirement for jurisdictional load-serving entities (LSEs).
- Clarify that the adoption of a durable flexible capacity requirement (FCR) is not a prerequisite for adoption of a multi-year RA requirement.

In these comments, IEP presents in detail specific concerns and recommendations regarding the PD.

I. MULTI-YEAR FORWARD RESOURCE ADEQUACY REQUIREMENT

The PD errs when it determines that it is not practical to adopt a multi-year RA requirement “at this time.”¹ The PD’s conclusion leads IEP to ask, “If not now, when?” The issue of whether to adopt a multi-year RA requirement as a matter of policy has been before the Commission for several years. Nearly seven years ago, in Decision (D.) 10-06-018, the Commission noted the potential benefits of a multi-year forward RA requirement:

A multi-year forward commitment has the potential to provide important reliability benefits. It would provide advance knowledge of impending reliability problems, years ahead of delivery, allowing planners to address those problems in a timely, cost-effective manner. Additionally, a multi-year forward commitment would be expected to stimulate merchant generator investment, supporting our policy not to rely solely on Commission-directed forward procurement by IOUs to provide the investment needed for new generation. Further, as the CAISO points out, a multi-year forward commitment would promote competition between new and existing resources as well as competition between transmission upgrades and generation supply additions. Such competition could yield more cost-effective outcomes. Having generation investment commitments made years in advance should also promote more cost-effective backstop procurement decisions. Finally, as CUE notes, a multi-year forward RA commitment applicable to all LSEs could be an effective way to ensure that all market participants shoulder the burden of promoting investment, which in turn would help to achieve the equitable allocation objective.²

Despite those benefits, the Commission concluded that it was “not ready” to implement a multi-year forward RA obligation, and it relegated the multiyear RA concept to further study, concluding that “the Commission may choose to include in an appropriate

¹ PD, Finding of Fact 5, p. 29.

² D.10-06-018, pp. 32-33.

proceeding consideration of the issue of whether and how to implement such a forward procurement obligation upon all LSEs.”³

That “appropriate proceeding” appeared to be R.14-02-001, the Joint Reliability Plan proceeding. On May 20, 2014, the scoping memo for that proceeding identified as Track 1 the issue of “Two- and/or three-year forward-looking resource adequacy procurement requirements.”⁴ However, after a series of reports and workshops, on January 16, 2015, the Assigned Commissioner and Administrative Law Judges in the proceeding issued a ruling suspending Track 1 and the consideration of a multi-year RA requirement “until further notice,” based on the presumption that it was necessary to develop a durable flexible capacity program before a multi-year RA requirement could be implemented.⁵ The Commission closed R.14-02-001 without addressing a multi-year RA framework, while providing parties the instruction that any further work on Track 1 should be assumed by either the Long-Term Procurement Plan proceeding or the RA proceeding.⁶

On January 29, 2016, IEP filed a Motion to Amend the Scope of R.14-10-010 to consider adoption of a multi-year RA framework.⁷ IEP identified a number of developments that warranted consideration of a multi-year RA framework, including an increasing reliance on new, emerging technologies; the growth of community choice aggregation; the growth of behind-the-meter generation; the increasing reliance on intermittent resources and adoption of an Effective Load Carrying Capacity (ELCC) methodology for calculating the Net Qualifying Capacity

³ D.10-06-018, p. 68.

⁴ *Scoping Memo and Ruling of Assigned Commissioner*, R.14-02-001, May 20, 2014.

⁵ *Assigned Commissioner and Administrative Law Judges’ Ruling Suspending Track 1*, R.14-02-001, Jan. 16, 2015.

⁶ D.16-01-033.

⁷ *Motion of the Independent Energy Producers Association to Amend the Phase 2 Scoping Memo and Ruling*, January 29, 2016.

(NQC) for wind and solar resources; and the risk of retirement of existing thermal generation capacity, including the retirement of once-through-cooling units by 2020. IEP's Motion was granted and the scope of R.14-10-010 was modified to consider a multi-year RA requirement.⁸ On December 16, 2016, IEP filed a specific proposal for a multi-year RA framework, including various RA reporting requirements.⁹ IEP re-submitted its proposal on February 24, 2017, for procedural reasons.

In spite of this lengthy procedural history and the ample record in R.14-10-010 in which specific multi-year RA proposals were submitted by IEP and others, the PD determines as a factual matter that it is "not practical" to adopt a multi-year RA requirement at this time. To reach this finding, the PD asserts that a durable Flexible Capacity Requirement (FCR) is a prerequisite for a multi-year RA requirement.¹⁰ The PD concludes that, because the PD declines to adopt a FCR, no reason exists to adopt a multi-year RA requirement or even address the substantive issues related to such requirement.¹¹ Moreover, without addressing the substantive issues underlying the IEP Proposal, the PD further concludes that the IEP proposal does not appear to be necessary at this time.¹²

⁸ *Assigned Commissioner and Administrative Law Judge's Phase 3 Scoping Memo and Ruling*, Sept. 13, 2016.

⁹ *Preliminary Phase 3 Proposals of the Independent Energy Producers Association*, December 16, 2016. This proposal entailed a specific multi-year RA Reporting Obligation while suggesting that the Commission as a matter of policy should consider a specific RA Procurement Obligation. On May 8, 2017, IEP circulated to the service list of R.14-10-010 a Notice of Ex Parte Communication. The Ex Parte Notice contained IEP's Comments related to the Joint Agency Workshop on Risk of Retirement for California Power Plants (Docket 17-IEPR-14) convened on April 24, 2017. In those comments, IEP recommended a multi-year RA Procurement Obligation coupled with a multi-year RA Reporting Obligation and pointed to evidence that a capacity shortfall could arise in the near term.

¹⁰ PD, p.18.

¹¹ PD, p.18.

¹² PD, p.18.

The PD's reasoning is unsupported by the facts and the record developed in this proceeding. Below, IEP addresses a number of statements of fact in the PD that are inconsistent with the record.

A. Adoption of a Multi-year RA Framework Is Not Dependent on Adoption of a Durable Flexible Capacity Requirement

The Phase 3 Scoping Memo and Ruling stated that Phase 3 will address four primary yet discrete issues: local and flexible RA requirements for 2018, a durable form of FCR, multi-year RA requirements, and an ELCC methodology for determining the effective capacity of wind and solar resources.¹³ The Scoping Memo clarified that, in spite of D.16-01-033, which postponed consideration a multi-year RA requirement pending adoption of a durable FCR, consideration of a multi-year RA requirement in Phase 3 was not dependent on the prior adoption of a durable FCR structure *precisely because* of the delays in moving forward with a durable FCR.¹⁴ The PD errs when it concludes that adoption of an FCR continues to be a prerequisite for a multi-year RA requirement.

As a practical matter, the IEP proposal for a multi-year RA framework is not dependent on a durable FCR. While a durable FCR may be laudable as a policy objective, IEP observed that realizing a “durable” FCR may be unachievable given the dynamic nature of the electric grid.¹⁵ It is precisely because of the dynamic nature of the electric grid, and the risks of

¹³ *Assigned Commissioner and Administrative Law Judge's Phase 3 Scoping Memo and Ruling*, September 13, 2016, p. 2.

¹⁴ *Assigned Commissioner and Administrative Law Judge's Phase 3 Scoping Memo and Ruling*, pp. 7-8: “While some of the specifics of the [IEP] Motion are now moot due to the passage of time, IEP's primary request (addressing multi-year RA in this proceeding) has not yet been resolved in a ruling. *We find that, in light of the delay in resolving the durable FCR structure, there may be benefits to a coordinated consideration of multi-year RA. . . .* Following that report [Energy Division staff report addressing the status of forward capacity], we will consider party comments and proposals on a multi-year RA.” (Emphasis added.)

¹⁵ *Comments of the Independent Energy Producers Association on Flexible Capacity Requirement Study Plans*, Sept. 23, 2016.

a procurement gap identified in IEP's Motion to consider a multi-year RA framework, that IEP sought a de-coupling of the adoption of a durable FCR from consideration of a multi-year RA requirement. To the extent that RA obligations or RA product definitions change over time (e.g., as a result of the adoption of a durable FCR), then these changes need to be integrated into a multi-year RA framework. The policy of whether to impose a multi-year RA requirement on LSEs need not and should not be dependent on a final determination of the ever-changing RA product definitions.

B. The Benefits of a Multi-year RA Reporting Obligation Far Outweigh the Costs of Data Collection

The PD errs when it concludes that imposing an RA Reporting Obligation on Commission-jurisdictional load-serving entities (LSEs) is too burdensome and that it does not appear to be necessary at this time.¹⁶ As a practical matter, an RA Reporting Obligation imposes little incremental burden on reporting entities. For example, resources eligible under the Renewables Portfolio Standard (RPS) will soon represent 50% of the LSEs' energy portfolio. Under a recent ruling, all Commission-jurisdictional LSEs are now obligated to include an assessment of annual and multi-year portfolio supplies and demand in relation to RPS requirements over a 20-year time frame and a 10-year detailed planning horizon in their 2017 RPS Procurement Plans. This obligation requires reports on multi-year RPS portfolio supplies and on how the proposed renewable energy portfolio will align with expected load curves and durations and system requirements.¹⁷ The ruling applies to all LSEs, including Electric Service providers (ESPs) and Community Choice Aggregators (CCAs), because additional information regarding procurement activities will assist the Commission in meeting its system planning and

¹⁶ PD, p. 18

¹⁷ *Assigned Commissioner Ruling and Assigned Administrative Law Judge's Ruling Identifying Issues and Schedule of Review for 2017 Renewables Portfolio Standard Procurement Plans ...*, R.15-02-020, May 26, 2017, pp. 9-10.

Integrated Resource Planning obligations.¹⁸ Furthermore, all LSEs currently have an RA reporting obligation in which they report the start and end dates for all their RA capacity contracts. As San Diego Gas & Electric Company acknowledged, “the data contemplated by IEP can be easily derived from the LSE compliance report,” but is currently submitted in a different form.¹⁹ Requiring RA reporting on a multi-year basis is not an additional burden, yet it will make the reporting more routine and greatly enhance the transparency of RA procurement.

Finally, the PD errs by misconstruing the purpose of a multi-year forward RA Reporting Obligation proposed by IEP. The purpose of imposing an RA Reporting Obligation is to enable the Commission to more accurately track LSE forward procurement against forward RA need to ascertain the extent to which procurement gaps may arise due to CCA formation, changing dynamics of the grid, delayed infrastructure additions, and other factors. The information collected from the reporting is a critical input into the Commission’s decision-making on maintaining the reliability of a rapidly changing electric grid. Any burden associated with collecting this information is outweighed by the higher levels of information and transparency available to the Commission.

II. ELCC METHODOLOGY

As noted by the PD, Public Utilities Code section 399.26(d) charged the Commission with determining the effective load carrying capacity of wind and solar resources to establish the contribution of wind and solar resources toward meeting RA requirements.²⁰ While noting the narrowing of differences between the two primary ELCC proposals in this proceeding, the PD adopts the Energy Division’s second proposal (ED 2nd Proposal) for purposes of 2018 RA counting.

¹⁸ *Id.*, p. 6.

¹⁹ *San Diego Gas & Electric Comments on Final Phase 3 Proposals*, March 10, 2017, p. 5.

²⁰ PD, p. 18.

While it is important to implement ELCC as soon as practical, the rationale presented for adopting the ED 2nd Proposal stems from a perceived need to ease the transition from the current RA counting methodology to the newly adopted ELCC methodology.²¹ The ED 2nd Proposal eases this transition by removing the effect of over 6,000 MW of behind-the-meter solar from the calculation, presumably boosting the RA capacity credited to solar resources.

Little evidence is presented in the PD to support the adoption of one proposed ELCC methodology rather than another based on the extent to which the adopted methodology imposes a burden on LSEs. The consideration of an ELCC methodology has taken six years. Senate Bill X1 2, adopted by the legislature in 2011, directed the Commission to determine the effective load carrying capacity of wind and solar energy resources to support the integration of intermittent renewable electrical generation into the electric grid beginning July 1, 2011.²² This matter has been debated in the current RA proceeding since its inception. LSEs certainly have had ample notice for some time of the changes associated with moving to an ELCC methodology.

The Commission ought to be adopting an ELCC methodology that best measures the RA capacity associated with intermittent resources. In adopting the ED 2nd Proposal, the PD adopts a methodology that consciously attributes a greater level of RA capacity from intermittent solar resources than physically exists, due to the removal of the effects of behind-the-meter solar in the overall solar calculation. This suggests that the PD made a trade-off of flexibility and convenience over reliability without citing any compelling evidence in support of this determination. IEP urges the Commission to more fully explain its selection criteria with regard to the adoption of the ELCC methodology required by statute.

²¹ PD, p. 20.

²² Pub. Util. Code § 399.26(d).

III. ESTABLISHING A PHASE 4 TO FINALIZE CONSIDERATION OF A MULTI-YEAR RA REQUIREMENT BY YEAR'S END

IEP understands the need to render a timely decision in R.14-10-010 to establish the Local and Flexible Capacity Requirements for 2018 so that LSEs can procure the necessary resources to meet their RA obligations. The need to issue a decision on 2018 RA capacity requirements should not delay decisions on the other key issues, particularly consideration of a multi-year RA requirement.

The PD defers until some future date the consideration of a number of issues within the scope of R.14-10-010, including action on the fast dispatch of slow response resources, defining “dispatchable,” removing the Path 26 constraint, and, presumably, consideration of a multi-year forward RA requirement.²³ The PD sets these issues for further workshops or other informal processes of some indeterminate timeframe in spite of evidence that the risks identified by IEP in its Phase 3 multi-year RA proposal are real and increasing, including the increasing reliance on new, emerging technologies; the growth of community choice aggregation; the growth of behind-the-meter generation; the increasing reliance on intermittent resources and adoption of an ELCC methodology for calculating the Net Qualifying Capacity for wind and solar resources, effective 2019; and the risk of retirement of existing thermal generation capacity including the OTC units by 2020.

IEP respectfully urges the Commission to make the following modifications to the PD:

- Establish a new Phase 4 in R.14-10-010 to be completed no later than December 31, 2017.

²³ PD, pp. 21-28.

- Limit the scope of Phase 4 to consideration of a multi-year RA requirement for jurisdictional LSEs.
- Clarify that the adoption of a durable FCR is not a prerequisite for adoption of a multi-year RA requirement.

Respectfully submitted June 1, 2017, at San Francisco, California.

GOODIN, MACBRIDE,
SQUERI & DAY, LLP
Brian T. Cragg
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: bcragg@goodinmacbride.com

By /s/ Brian T. Cragg

Brian T. Cragg

Attorneys for the Independent Energy Producers
Association