

**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)

**FINAL PHASE 3 PROPOSALS OF THE INDEPENDENT
ENERGY PRODUCERS ASSOCIATION**

**INDEPENDENT ENERGY PRODUCERS
ASSOCIATION**

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As authorized by the *Assigned Commissioner and Administrative Law Judge's Phase 3 Scoping Memo and Ruling*, issued on September 13, 2016, and the *Administrative Law Judge's Ruling* issued on January 27, 2017, the Independent Energy Producers Association (IEP) offers its final proposals on Phase 3 issues. IEP's final proposal has two components. IEP proposes that the Commission should:

- Adopt an **annual reporting obligation** for all load-serving entities (LSEs) under the Commission's jurisdiction. The report would show the level of each LSE's contracted Resource Adequacy (RA) capacity for 1, 3, and 5 years forward. The Commission would then assemble the LSEs' reports and issue an *annual public summary* of the status of multiyear forward RA capacity procurement in light of forecasted need.
- Decide as a matter of policy what, if any, amount of RA capacity jurisdictional LSEs should aim to procure 3 and 5 years forward in light of changed circumstances and looming market uncertainties.

I. BACKGROUND

In its Preliminary Phase 3 proposals filed on December 16, 2016, IEP described how a high level of uncertainty and risk could result in a shortage of system, local, and flexible capacity needed to ensure grid reliability. Those uncertainties and risks include increasing reliance on emerging technologies, changes in the calculation of Net Qualifying Capacity for variable generation resources, the risk of retirement of existing thermal resources, and uncertain federal policies. IEP was concerned, and continues to be concerned, that individually and collectively these risks and uncertainties would lead LSEs—investor-owned utilities (IOUs), Community Choice Aggregators (CCAs), and electric service providers (ESPs)—to emphasize short-term commitments in their procurement of RA capacity, which would create a risk of a mid-term shortfall in the types of capacity needed to maintain reliability.

Moreover, IEP is particularly concerned that the rapid rise of CCAs could undermine timely procurement because of the volatility and related variability of load among the LSEs. The utilities view the threat of future CCA formation as significant. For example, the three large electric IOUs have pointed out that the time required to move from CCA exploration to actual implementation is shrinking, and they have indicated that, in aggregate, potential load departure could be up to 80% of total retail load.¹ The threat of future load departure may impede the forward procurement needed to help ensure a reliable grid. If the utility currently serving the load declines to procure RA capacity for potentially departing load, and there is no current or future CCA or ESP procuring capacity to serve that future departing load, then a procurement gap will result. A simple way for the Commission to begin to prevent a procurement gap from arising due to the existence or threat of future departing load is to require

¹ *Joint Utilities' Proposal on Competitive Neutrality Cost Causation Principles in Response to Administrative Law Judge Hymes' December 2, 2016 Ruling*, February 17, 2017, R.13-09-011; ex parte notice of PG&E, January 27, 2017, A.16-06-003,

all jurisdictional LSEs to report annually on the extent of their forward procurement of RA capacity as a primary tool for the Commission to minimize the uncertainty about whether jurisdictional LSEs are planning and procuring needed resources in a timely and effective manner.

Since IEP released its preliminary proposal, two events have confirmed that it is time for the Commission to consider a multiyear forward RA reporting obligation. First, the Commission's Energy Division released a Staff Paper, "An Assessment of Capacity Under Contract," which shows that the amount of system, local, and flexible capacity contracted declines incrementally year-over-year through 2025. For example, the Staff Paper reports that the amount of contracted system capacity declines by 16% in year 2 (*i.e.*, the year following the compliance year), and only 78% of the forecast need in year 2 is contracted. When assessing seven years forward (*i.e.*, 2023), nearly half of the forward capacity needs remains uncontracted. Local capacity and flexible capacity also show this downward trend in contracted capacity.²

Moreover, the Staff Paper followed up on the *Joint Reliability Plan Track One Staff Report* issued in October 2014. Comparing the two reports' surveys of forward procurement of RA capacity reveals a significant downward trend in the level of forward procurement. The Joint Reliability Plan Report concluded that as of May 2014, System RA capacity was nearly 90% contracted two years forward.³ By October 2015, procurement of System RA capacity two years forward had dropped to 78% of forecasted need (and to 69% of forecasted need three years forward).⁴ While the Staff Paper views this result as "consistent"

² California Public Utilities Commission, Energy Division Draft Staff Working Paper, "An Assessment of Capacity Under Contract," December 22, 2016, pp. 15-16.

³ Staff Paper, p. 4.

⁴ Staff Paper, pp. 15-16.

with the May 2014 results, the fact is that procurement of System RA capacity two years forward declined by nearly 12 percentage points in less than 18 months.

The second key event to occur since the release of IEP's preliminary proposals was that the Commission on February 1, 2017, convened an en banc hearing addressing CCA issues. The en banc highlighted the rising level of uncertainty about future reliability and supply, long-term contracting, the provider of last resort, and the potential scale of departing load the utilities face due to the emergence of CCAs. The en banc confirmed the fact noted above, that the potential shift in retail load from the jurisdictional utilities to the CCAs is very significant, *i.e.*, up to 80%. While the level of risk varies by utility, each of the utilities faces a significant risk of losing load to CCAs.

IEP's multiyear forward proposal is designed as a planning and reporting tool to enhance the Commission's understanding of the changing dynamics of LSEs' procurement while positioning the Commission to consider and decide as a matter of policy what, if any, amount of RA capacity should be procured to meet forecasted need three and five years forward. At a minimum, the uncertainties and risks outlined above create a need for additional public information about the levels of RA capacity procurement 3 to 5 years forward. Additional public information will not only provide policymakers with additional insights for purposes of transparent planning and procurement, but it will also provide important information to stakeholders and market participants considering new investments in California's energy infrastructure.

II. WHAT IEP IS *NOT* PROPOSING

Some of the initial reactions to IEP's preliminary Phase 3 proposals displayed a misunderstanding of IEP's proposal. To help parties to understand IEP's proposal more clearly, IEP will briefly describe what IEP is **not** proposing.

First, IEP is not proposing a multiyear forward RA capacity **procurement** obligation. IEP’s proposal for reporting is intended to provide better public information about the state of procurement of the products needed for grid reliability in the mid-term. That information may or may not lead LSEs or the Commission to take further action to procure needed resources, but that step—procurement—is not part of IEP’s proposal.⁵

Second, IEP is not proposing a centrally administered capacity market.

Third, IEP is not proposing to redefine the RA products. IEP’s proposal accepts the definitions developed by the Commission and the California Independent System Operator (CAISO). IEP’s proposal would further accept any modifications to the Commission’s and CAISO’s definitions of RA capacity products. That is one reason that IEP’s proposal can be implemented even before the Commission arrives at a definition of a “durable” flexible capacity product. If the definition of any of the RA products changes, the next annual report would reflect the changed definition.

Fourth, IEP is not proposing the creation of a radically new reporting obligation or reporting format. LSEs are already required to report on their procurement of resources for the upcoming RA compliance year, which IEP’s proposal labels as Forward Year 1. IEP’s proposal would extend the existing obligation to additional years forward. IEP specifically proposes to extend the existing Forward Year 1 reporting obligation to include Forward Year 3

⁵ Some of the confusion on this point may derive from prior comments in which IEP suggested that the Commission should make a policy decision about what level, if any, of RA capacity LSEs should target for procurement 3 and 5 years forward. IEP illustrated its proposal by suggesting general guidelines for Forward Year 3 and Forward Year 5 procurement of 75% and 50%, respectively, of the appropriate procurement target. The existing reporting requirements for Forward Year 1 would be unchanged. These general guidelines appeared to be consistent with the actual state of LSE procurement in 2015, as reported in the Staff Paper, but the more important point is that under IEP’s proposal, the **Commission** should make a policy determination about what level of forward procurement of RA capacity is appropriate.

and Forward Year 5. The timing and format associated with the current RA reporting obligation would remain essentially unchanged.

Fifth, IEP is not proposing any changes to the current rules for allocation of the cost of RA capacity among various LSEs. While it may be timely for other reasons to consider how the costs of RA capacity will be allocated among LSEs, that issue is not included in IEP's proposal. Furthermore, a requirement merely to **report** on forward procurement of RA capacity, as IEP proposes, does not require any allocation of the costs of reported RA capacity procurement.

III. IEP'S PROPOSAL FOR AN ANNUAL REPORT OF THE EXTENT OF EACH LSE'S FORWARD PROCUREMENT OF RA CAPACITY

Currently, the Commission imposes a one-year forward RA reporting obligation on LSEs. Specifically, in late October, LSEs are required to make an annual compliance showing for the upcoming RA compliance year. For the System RA capacity showing, LSEs are required to demonstrate that they have procured 90% of their System RA obligation for the five summer months the coming compliance year. Additionally, each LSE must demonstrate that it meets 90% of its Flexible RA capacity requirement and 100% of its Local RA capacity requirement for each month of the coming compliance year.

IEP's Final Proposal is quite simple. Building off of the existing RA reporting structure, IEP proposes that the Commission should:

1. Require each jurisdictional LSE to submit an annual report regarding the level of the LSE's forward procurement of RA capacity (system, local, and flexible) for three and five years into the future, thereby simply extending the existing RA showing into two additional timeframes.

2. Direct the Energy Division to collate the information submitted to it, and then summarize the status of forward RA capacity procurement in a non-confidential format that provides useful public information about the level, location, and attributes of forward RA capacity procurement for one, three and five years forward.

An annual reporting obligation as proposed by IEP has two primary benefits. First, an annual reporting obligation helps provide transparency and clarity during a time of increasing uncertainty. An annual **report** of forward procurement of RA capacity by LSEs would provide the Commission, interested parties, and the public with an appropriate and helpful early warning of potential mid-term shortfalls in the types of capacity needed to maintain the reliability of the electric grid. This reporting function takes on particular significance during a time when several factors combine to create uncertainty about what level of RA capacity will be needed in future years and what RA capacity will be available to meet that need. Second, an annual reporting obligation will help the Commission mitigate the risk the the RA program will fail to perform its key function of ensuring that adequate resources are available when and where they are needed. A reporting requirement covering RA capacity procurement three and five years forward would provide the Commission with greater assurance that California has enough capacity to maintain reliability over at least the term of the reporting obligation. If the forward RA capacity procurement reports show that sufficient RA capacity has been procured, then the Commission and the public can be confident that grid reliability will be maintained for the next few years.

The Commission's summary of multiyear capacity procurement will depend on the nature of the RA capacity product and will reflect the Commission's rules on confidentiality.

The LSE's report to the Commission should provide sufficient detail about the LSE's procurement of RA capacity to allow the Commission to draw informed conclusions about the need for additional procurement of RA capacity in the mid-term. The Commission's summary report would address separately each of the RA capacity products approved by the Commission.

A. System RA Capacity

For System RA capacity, the report should show the percentage of the expected RA obligation that the LSE has procured one, three, and five years forward.

For Forward Year 1, the current approach to determining each LSE's System RA requirement would continue to apply until changed by the Commission. The methodology Energy Division used to derive the total System RA capacity requirement is a reasonable approach for establishing the procurement targets for Forward Year 3 and Forward Year 5. Energy Division used information developed by the California Energy Commission (CEC) in its current Integrated Energy Planning Report (IEPR). Energy Division started with the mid-energy demand case, mid-Additional Achievable Energy Efficiency Savings (mid-mid) results, adjusted for the CAISO's 1-in-2 weather year Coincident Peak Demand Forecast, further adjusted for the August load share of Commission-jurisdictional LSEs, and added the 15% Planning Reserve Margin to arrive at the forecasted System RA capacity requirement.⁶ Energy Division focused on RA capacity procurement in August, typically the month of peak system demand.

With some adjustments to account for data that is not available for later years, the same approach could be used to develop forecasts of System RA capacity requirements for Forward Year 3 and Forward Year 5.

⁶ Staff Paper, pp. 6-8.

B. Local RA Capacity

For Local RA capacity, the LSE's report should show the percentage of the LSE's forward RA capacity procurement measured against its annual requirement based on the CAISO's most recent (at the time of the reporting) Local Capacity Technical (LCT) Analysis.⁷ If the CAISO develops three- and five-year forecasts of Local RA capacity requirements in coordination with the annual LCT Analysis, then the forward RA capacity procurement reported by LSEs should be measured against the CAISO's assessment for the appropriate forward years. In the absence of additional CAISO studies of forward Local RA capacity needs, the Forward Year 3 and Forward Year 5 procurement targets for Local RA capacity should be based on the most recent annual Local RA capacity technical study. If technical studies are available for both Forward Year 1 and Forward Year 5, the target for Forward Year 3 should be the result of a simple interpolation of the results for years 1 and 5.

In the Staff Paper, Energy Division focused on the aggregated need of Northern California and Southern California local areas and did not study the needs of sub-areas within the local areas.⁸ The capacity available within individual local areas and sub-areas could become very important to mid-term reliability, however, and a public discussion of any forecasted local capacity shortfalls could provide the information needed to avoid impending reliability problems and to stimulate investment in the generation and transmission infrastructure required to eliminate the conditions that define the local area or sub-area. For that reason, the LSE's report should include information about the level of forward procurement of Local RA capacity for each local area and sub-area.

⁷ See, e.g., the Final Local Capacity Technical Analysis for 2017 the CAISO submitted in this proceeding on April 29, 2016.

⁸ Staff Paper, p. 8.

C. Flexible RA Capacity

Each year, the CAISO performs an assessment of flexible capacity needs for the RA compliance year and two subsequent years.⁹ The Forward Year 1 and Forward Year 3 Flexible RA capacity targets should be based on the results of the most recent CAISO assessment. In the absence of additional forecasting of flexible capacity needs for Forward Year 5, the assessment for Forward Year 3 should also be the target for Forward Year 5.

For Flexible RA capacity, the LSE's report should include information about the location and attributes of procured Flexible RA capacity, in addition to a report of the percentage of the LSE's obligation that it has procured three and five years forward. An LSE's report on its forward procurement of Flexible RA capacity should be grouped by ramp rate, duration, and any other attribute that becomes part of the Flexible RA capacity product.

IEP does not propose to change the Commission's definition of Flexible RA capacity. If the definition changes, the reporting requirement would incorporate the revised definition, and LSEs would report the extent of their procurement of Flexible RA capacity as then defined.

Some parties have reacted to IEP's proposal by asserting that they are unable to procure Flexible RA capacity until the definition of a durable Flexible RA capacity product is settled. IEP responds to these concerns by emphasizing that its proposal is for a **reporting** requirement, and the only obligation the proposal would impose on LSEs is to report the level of RA capacity procurement as then defined. In addition, although the definition of flexible capacity products is under discussion in Phase 3, the general contours of needed flexibility are unlikely to change precipitously. Consequently, LSEs should not avoid forward procurement of

⁹ The CAISO was unable to complete its assessment of flexible capacity needs for 2018 and 2019 in time to include those years in its flexible capacity needs assessment for 2017.

modest amounts of flexible capacity as currently defined. If anything, the CAISO's recent experience (*e.g.*, an upward 3-hour ramp of 12,960 MW on Sunday, December 18, 2016) suggests that procurement of higher levels of flexible capacity—however defined— will be needed sooner than expected. In other words, the electric grid is unlikely to require less flexibility in the future, and forward procurement of relatively more flexible resources is almost certain to benefit the grid and help maintain reliability.

In the public report on forward procurement of RA capacity that IEP proposes, LSEs' procurement of multiyear Flexible RA capacity should be grouped by ramp rate, duration, and any other attribute that becomes part of the Flexible RA capacity product. Information about these attributes will be needed to identify any impending threats to reliability.

IV. IEP'S RECOMMENDATION THAT THE COMMISSION ADOPT A POLICY ESTABLISHING AN APPROPRIATE TARGET FOR PROCUREMENT OF FORWARD RA CAPACITY

The issue of the development of an enforceable forward procurement *standard* for RA capacity is outside the scope of IEP's proposal. However, to complement IEP's multiyear forward reporting proposal, the Commission should provide policy guidance as to what, if any, level of forward, mid-term RA capacity procurement by individual LSEs is appropriate. As required by the Public Utilities Code, **all** LSEs subject to the Commission's jurisdiction—IOWs, ESPs, CCAs—must be subject to the same RA obligations, and the Commission must enforce its RA requirements in a nondiscriminatory way.¹⁰ The same principles should apply to the policy guidance on the level of forward RA capacity procurement and to any targets the Commission

¹⁰ Pub. Util. Code § 380(e): "The commission shall implement and enforce the resource adequacy requirements established in accordance with this section in a nondiscriminatory manner. Each load-serving entity shall be subject to the same requirements for resource adequacy . . . that are applicable to electrical corporations pursuant to this section, or otherwise required by law, or by order or decision of the commission."

establishes for forward procurement of RA capacity, even if those targets are not expressed as requirements or enforceable standards.

IEP suggested some forward procurement targets in its Preliminary Proposal. At that time, IEP illustrated its proposal by suggesting general guidelines for Forward Year 3 and Forward Year 5 procurement of 75% and 50%, respectively, of the appropriate procurement target. The existing reporting requirements for Forward Year 1 would be unchanged. These general guidelines appeared to be consistent with the actual state of LSE procurement in 2015. IEP notes that if the Commission adopts the targets suggested by IEP, the Commission would be endorsing essentially the status quo for forward procurement by the utilities. The focus of the reporting requirement in that case would be on determining whether other jurisdictional LSEs will procure comparable percentages of RA resources, to reduce the risk of a procurement gap emerging. On the other hand, the percentages in the target represent a reasonable and valuable tool the Commission can use to ensure grid reliability. Increasing the target percentages for Forward Years 3 and 5 will have the likely effect of altering LSEs' current procurement behavior and providing greater assurance that the LSEs have contractually secured a portion of the capacity resources forecast to be needed in the near future.

V. **UNCERTAINTY ABOUT FUTURE DEMAND IS PRECISELY WHY A REPORT ON FORWARD PROCUREMENT OF RA CAPACITY IS NEEDED**

Some LSEs have opposed IEP's proposal because the level of their retail customers' future demand is uncertain. ESPs, for example, may not have contractual commitments from their retail customers for more than one or two years. Newly formed CCAs are unsure about the level of participation of their target populations and their longer-term ability to retain customers. IOUs are similarly unsure about how many customers they will lose to CCAs over the next decade. All LSEs appear to share the underlying concern that customers

may precipitously shift from one supplier to another (*e.g.*, from a CCA to an IOU, as the provider of last resort), resulting in sudden shortfalls or surpluses of procured RA capacity.

IEP has two responses to these concerns. First, IEP reiterates that its proposal is for a **reporting** obligation that does not require a contractual commitment to procure RA capacity. LSE's sole obligation under IEP's proposal is to report the level of forward procurement of the various types of RA capacity that it has secured as of the date of the report.

The more important point, however, is that uncertainty about individual LSE's future loads is precisely why a reporting obligation is needed. IEP is concerned that the potential for significant shifts in load among various LSEs, without actually changing overall load patterns, could create a procurement gap. The utilities legitimately view the threat of future CCA formation as significant, and this threat of future load departure leaves the IOUs reluctant to enter into forward procurement of capacity to meet customer demand that may not materialize in the form of bundled customer demand. The IOUs currently do not have an incentive (and arguably do not have a responsibility) to procure capacity to meet the needs of customers they are unlikely to serve, even if additional procurement is clearly needed to help ensure a reliable grid.

For example, in a reference case prepared for analysis of the proposal of Pacific Gas and Electric Company (PG&E) to retire its Diablo Canyon Power Plant, PG&E projects that loss of customers to CCAs and to Direct Access will reduce its bundled customer sales by over 34,000 GWh by 2025.¹¹ Southern California Edison Company and San Diego Gas & Electric Company have also indicated that future CCA growth in their service territories imposes a risk of significant load shift over a similar timeframe.

¹¹ Diablo Canyon Retirement Joint Proposal Application: Workshop on Replacement Procurement and Cost Allocation (PG&E Presentation), Slide 8, December 8, 2016.

However, on a systemwide basis, this “departing” load is not disappearing; the retail provider of power to meet this load would simply shift from the utilities to another LSE. However, if the utility currently serving the load declines to procure RA capacity for that potentially departing load, and there is no current or future CCA or ESP procuring capacity to serve that future departing load, then a procurement gap will result. A simple way for the Commission to begin to protect against a procurement gap arising due to the existence or threat of future departing load is to require all LSEs to report the extent of their forward procurement of RA capacity.

In addition, the general procurement guidelines that IEP has presented in its proposal decline in the later forward years, in recognition of the uncertainty all LSEs face about the level of future load. The uncertainty associated with forecasts of capacity needs in future years is accounted for by reducing the guideline percentage in the forward years. If the Commission adopts targets or requirements for forward procurement, it would also be appropriate for those targets or requirements to decline in the later forward years.

VI. CONCLUSION

IEP respectfully urges the Commission and the parties to consider its final proposal on issues related to multiyear RA capacity requirements. As part of Phase 3, the Commission should:

- Adopt an **annual reporting obligation** for all jurisdictional LSEs showing each LSE’s contracted RA capacity for 1, 3, and 5 years forward. The Commission would then assemble the LSEs’ reports and issue an *annual public summary* of the status of multiyear RA capacity procurement in light of forecasted need.

- Decide as a matter of policy what, if any, amount of forward RA capacity jurisdictional LSEs should aim to procure 3 and 5 years forward in light of changed circumstances and looming market uncertainties.

Respectfully submitted February 24, 2017, at San Francisco, California.

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