

**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

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

The California Independent System Operator Corporation (ISO) hereby files these comments in accordance with the schedule established by the Order Instituting Rulemaking (OIR) issued on February 5, 2014, and consistent with Article 6 of the Commission's Rules of Practice and Procedure.

The OIR reflects the Commission's commitment to consider certain issues identified in the Joint Reliability Plan (JRP), which was adopted by the ISO Board of Governors and the CPUC to provide a framework for addressing emerging reliability challenges while accommodating the unique history and structure of California's energy and capacity markets. The JRP calls for both the ISO and CPUC to consider implementation of various aspects of the plan. The ISO recently initiated its Reliability Services stakeholder initiative to consider the aspects of the plan that it will be responsible for implementing.¹ The ISO stakeholder process will review holistically the ISO's backstop capacity procurement authority to ensure sufficient resources with the right capabilities are offered into the ISO markets to meet local, flexible, and system capacity

¹ More information on the ISO stakeholder process is available at:
<http://www.caiso.com/informed/Pages/StakeholderProcesses/ReliabilityServices.aspx>.

requirements. Through publication of the OIR, the CPUC has likewise begun considering implementation of its aspects of the JRP. The ISO's comments at this stage are focused on ensuring alignment between the scope and schedule of the CPUC rulemaking and the ISO stakeholder process.

I. Centralized Capacity Market

The ISO appreciates that the CPUC has provided a clear statement of its current position regarding a centralized forward capacity market.² As implementation of the JRP proceeds, it is helpful for all parties to understand the CPUC's position. The ISO agrees that consideration of a centralized capacity market is beyond the scope of this proceeding.

II. Track 1 – Three-year RA Requirement

A. Reliability Needs and Forward Resource Adequacy Obligations

The first question posed for track 1, item 1.a., asks whether California's reliability needs "justify adopting forward resource adequacy obligations?"³ The ISO respects that the Commission must consider the elements of the JRP through this rulemaking, in order to establish an adequate record, before the Commission can formally take action to adopt a particular element. A foundation of the JRP is that there is a need to ensure reliability and to secure the right capabilities beyond the current one-year resource adequacy planning horizon. The ISO strongly supports an enforceable obligation for load serving entities to demonstrate that they have secured these capabilities for a three-year forward

² OIR, at 4-5.

³ OIR, at 8.

period. For this reason, the ISO believes this issue is squarely within the scope of this proceeding, and furthermore that the need for such a forward commitment is a foundational principle of the JRP.

B. Ensuring Forward Obligations are Two and Three Years

The JRP states that the “CPUC’s new rulemaking will consider expanding the current resource adequacy requirements to include two- *and* three-year forward resource adequacy requirements”⁴ This is reflected multiple times in the OIR, referring to a “two- and three-year forward” obligation.⁵ In two instances, however, the OIR refers to “two- or three- years ahead”⁶ and “two- or three- year forward procurement.”⁷ The use of “or” rather than “and” in these cases could be read to suggest that the proceeding would consider adopting only a two-year forward obligation. The ISO recommends that these two instances be clarified with an “and” as the coordinating conjunction rather than an “or” to avoid any confusion over whether this proceeding will examine a three-year forward resource adequacy obligation for CPUC-jurisdictional load serving entities.

C. Clarifying Consequences of a Deficiency in Forward Procurement

Item 4.a. poses the following question:

What rules are needed for the Commission to verify compliance filings and determine if a deficiency exists in the resource

⁴ JRP, at 8 (italics added).

⁵ OIR, at 6, 8, 11, & 19.

⁶ OIR, at 9.

⁷ OIR, at 10.

adequacy compliance filings and, if so, when such deficiencies may trigger backstop procurement events by the CAISO?⁸

This question could be read to suggest that the CPUC resource adequacy rules determine when the ISO procures backstop capacity. A load serving entity's failure to procure sufficient resource adequacy capacity is a significant factor that influences whether there is a collective capacity deficiency, and therefore whether the ISO needs to procure backstop capacity. The ISO's decision to procure backstop capacity is, however, based on ISO operational analyses pursuant to the exercise of authority under its FERC-jurisdictional tariff and not solely based on whether a CPUC-jurisdictional load serving entity has procured insufficient resource adequacy capacity. For example, a deficiency by a non-CPUC-jurisdictional load serving entity could also trigger a collective deficiency that merits ISO backstop procurement, even if no CPUC-jurisdictional load serving entity were individually deficient.

D. Enhanced Access to Forward Procurement Information Does Not Replace Need for Forward Procurement Requirements

The OIR encourages the ISO "to secure authorizations to review confidential utility data on the amount of forward procurement that occurs relative to forecast reliability needs in the absence of express forward resource adequacy procurement requirements" and suggests that "access to such information will be critical to allowing the [ISO] to understand the potential reliability and cost-related impacts of any staff or party proposals to set forward procurement

⁸ OIR, at 10.

requirements.”⁹ The ISO agrees that access to forward procurement information will provide helpful data when evaluating system capacity needs. However, without express forward procurement requirements, the procurement data is of limited use since it does not ensure that capacity is procured and retained with the right capabilities and in sufficient quantities when and where needed. Thus, while having access to contract procurement data would be beneficial, it does not obviate the need for the ISO and CPUC to continue pursuing implementation of the various elements of the JRP.

III. Track 2 – Unified Long-Term Reliability Planning Assessment

The ISO believes that the scope of Track 2 as defined in the OIR is generally appropriate.

IV. Track 3 – ISO Backstop Procurement and Voluntary Auction

A. Voluntary Procurement is Part of the Capacity Procurement Mechanism

A key element of the JRP is that the ISO’s capacity procurement mechanism would be for both backstop *and* voluntary procurement. The OIR focuses almost exclusively on backstop procurement and does not sufficiently reflect how it will examine the issues involving voluntary participation in any ISO reliability services auction.

The only indication in the OIR related to considering voluntary procurement is the following statement: “We will also consider adopting rules relating to the extent to which CPUC-jurisdictional LSEs are authorized to utilize

⁹ OIR, at 17-18.

the market-based mechanism to procure capacity to satisfy minimum resource adequacy procurement requirements.”¹⁰ The ISO understands that this statement indicates that the OIR will consider whether CPUC-jurisdictional LSEs will be allowed to procure capacity voluntarily through an ISO-administered market mechanism. However, because the word “voluntary” appears nowhere in the OIR, interested parties would benefit from greater clarity on this aspect of the JRP under consideration in this proceeding.

B. Purpose of Track 3 and Risk of Duplicative Proceedings

The ISO is concerned that Track 3, as proposed, poses the risk of creating duplicative regulatory processes that ultimately may be counterproductive and contrary to the collaborative spirit of the JRP. In conducting its stakeholder process, the ISO looks forward to close collaboration between the ISO and CPUC and all interested parties that will inform the ISO stakeholder process. The ISO believes that this ongoing communication, along with CPUC staff’s active involvement in the ISO stakeholder process, will provide the CPUC a robust opportunity to vet its positions well in advance of the ISO filing tariff amendments for FERC’s consideration. Notwithstanding this concern, the ISO appreciates that the CPUC may desire to accept comments from interested parties to inform its formal position on any ISO tariff amendment.

¹⁰ OIR, at 12.

C. Scheduling and Logistics

The OIR states that the CPUC expects to consider the ISO policy proposal on a timeframe consistent with the ISO stakeholder process.¹¹ To the extent this proceeding formally considers the ISO proposal, the ISO has concerns regarding the consistency of the timeframes.

The ISO process will proceed in two phases. Phase 1 will consider policies to: (a) standardize eligibility criteria and must-offer requirements for local and system RA resources; (b) create a durable pricing mechanism for backstop capacity procurement; and (c) enhance incentive mechanisms for market participation of resource adequacy resources. Phase 2 will consider policies to: (a) update the ISO backstop capacity procurement in light of multi-year resource adequacy obligations; and (b) enhance the ISO's risk-of-retirement backstop procurement authority. The ISO anticipates that the straw proposal for Phase 1, which will contain an initial proposed policy framework, will be issued in March 2014. The issuance of that straw proposal will mark the beginning of a stakeholder process devoted to considering the details needed to complete that framework. The ISO will not have a final policy proposal for Phase 1 until it publishes its draft final proposal, which is expected to be completed in December 2014 for consideration by the ISO's Board of Governors in the first quarter of 2015. The ISO anticipates that Phase 2 of its stakeholder process will commence concurrently with publication of the draft final proposal of Phase 1 (*i.e.*, December 2014).

¹¹ The ISO issue paper is available at: <http://www.caiso.com/Documents/IssuePaper-ReliabilityServices.pdf>.

The proposed schedule for Track 3 of the CPUC rulemaking calls for the Commission to issue a decision on the ISO proposed backstop procurement mechanism in September 2014, based on workshops that will consider the ISO's initial policy framework, rather than the final ISO policy proposal. The final CPUC decision regarding the CPUC position on the ISO proposal will thus be made three months before there is a final ISO policy proposal and at least four months before the ISO Governing Board will decide whether ISO staff has authority to proceed with a tariff amendment filing at FERC. The ISO suggests that commencement of Track 3 of the CPUC process be tied to a specific milestone in the ISO process, rather than a specific date. An appropriate milestone would be either publication of the draft final proposal or consideration of the final policy by the ISO Board of Governors. This alignment will ensure that the CPUC process considers the actual and final ISO policy, rather than an inchoate policy framework.

D. Legal Analysis on Jurisdictional Issues

The OIR states that in the scope of considering the ISO proposal, the CPUC will:

look to receive legal analyses from parties on the viability of maintaining a residual role for a market-based procurement mechanism, in light of the extensive litigation over the Federal Energy Regulatory Commission's (FERC) administration of market rules and legal challenges to state procurement programs in regions subject to FERC-regulated organized capacity markets.¹²

¹² OIR, at 13.

The ISO believes legal briefing on these issues is unnecessary. Litigation in other regions generally involves centralized capacity markets, which is a policy approach that already has been defined as out of scope. It is thus unlikely that any conclusions meaningful to implementation of the JRP could be drawn from that body of precedent. Further, in the cases from the other ISO/RTO markets, the resolution of complex jurisdictional questions were highly dependent on the unique market design features that each ISO/RTO ultimately adopted. Without a fully developed and implemented procurement mechanism, it would be difficult to reach any clear conclusions on these important questions of state and federal authority. This request also creates a distraction to the work at hand – examining a joint reliability plan. At the appropriate time, the CPUC may consider these issues after receiving advice of counsel.

V. Categorization of the Tracks

The ISO concurs in the categorization of tracks one, two, and three as ratesetting, quasi-legislative, and quasi-legislative, respectively. To ensure compliance with *ex parte* rules, it will be helpful as the proceeding moves forward to have clear definition of what issues are deemed to fall within the scope of track 1, as opposed to tracks 2 or 3, and how issues that overlap among the tracks will be addressed for these purposes.

VI. Additional Issues – Focus on Costs *and* Benefits

Many of the questions throughout the three tracks raise issues pertaining to the potential costs of pursuing elements of the JRP. Missing from these questions are the costs of inaction and the benefits of taking action to ensure

reliability during this transformative period. Framing only “cost” questions leaves the “benefits” questions untended. Accordingly, the ISO recommends that where a question poses an element of the JRP as potentially posing a risk, the CPUC amend the question to call also for comment on the potential risks of inaction and/or the benefits of taking action.

VII. Conclusion

The ISO believes the initiation of this proceeding marks an important milestone towards implementing the vision outlined in the JRP. The ISO looks forward to working with the Commission and all interested parties as this matter proceeds and California takes important steps towards ensuring long-term electric system reliability.

Respectfully submitted,

By: /s/ David S. Zlotlow

Roger E. Collanton

General Counsel

Anna McKenna

Assistant General Counsel

David S. Zlotlow

Counsel

California Independent System

Operator Corporation

250 Outcropping Way

Folsom, CA 95630

Tel: (916) 608-7007

Fax: (916) 608-7222

dzlotlow@caiso.com

Attorneys for the California Independent
System Operator Corporation

Dated: February 20, 2014