

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

11-06-09
04:59 PM

Order Instituting Rulemaking to Oversee the
Resource Adequacy Program, Consider
Program Refinements, and Establish Annual
Local Procurement Obligations.

Rulemaking 09-10-032
(Filed October 29, 2009)

**PRELIMINARY COMMENTS OF THE UTILITY REFORM NETWORK
ON SCOPE AND SCHEDULE AND REQUEST FOR PARTY STATUS**

THE UTILITY REFORM NETWORK

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November 6, 2009

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PRELIMINARY COMMENTS OF TURN

Pursuant to the schedule established in the Order Instituting Rulemaking (OIR), The Utility Reform Network (TURN) respectfully submits these preliminary comments on the scope and schedule for Phase 1 of this proceeding to consider refinements to the Commission's Resource Adequacy (RA) program. TURN further requests that it be granted party status in this rulemaking as a representative of the bundled electric customers of the Investor Owned Utilities (IOUs). TURN has participated in virtually all aspects of this Commission's consideration of the RA program from the outset, with the goal of assuring reliable service to customers at the lowest possible cost.

TURN supports the preliminary categorization of this proceeding as ratesetting, and suggests that the Commission defer any decision on whether evidentiary hearings will be necessary until later in the proceeding. Past RA proceedings have been conducted through a workshop and comment process that has worked reasonably well, but the possible need for evidentiary hearings cannot be entirely ruled out at this time. TURN also supports the general outline of the schedule for Phase 1 set forth at page 7 of the OIR, but encourages the Commission to be sensitive to participants' travel plans during the late November and late December holiday periods.

With respect to the scope and priority of the issues to be considered, TURN generally agrees with the discussion set forth in OIR. In particular, given the pending limited reopening of Direct Access (DA) authorized by Senate Bill (SB) 695, TURN urges this Commission to give high priority to the related issues of Load Serving Entity (LSE) load forecasting based on the "current customer" approach, and the need for monthly adjustments to LSEs' local procurement obligations to reflect customer load

migration. Significant progress was made on these issues during early 2009 in R.08-01-025 (as discussed in D.09-06-028 at pages 30 to 41), and TURN submits that the time has come to promptly resolve these issues, given the likely increase in load migration that will result from the reopening of DA.

In connection with the consideration of the Standard Capacity Product (SCP) for RA compliance, TURN also believes that it is time to revisit the “replacement rule” for units subject to scheduled outages under the RA counting rules. The replacement rule currently provides that a resource *cannot be counted* as RA capacity if it has a scheduled outage of greater than a certain number of days in a particular month, and *an LSE that has contracted with a resource* subject to such an outage has “an obligation to procure replacement RA capacity.” TURN generally agrees the availability standards and financial incentives established by the CAISO under the SCP neither duplicate nor supersede the replacement rule, but that was never the basis for the argument that the replacement rule should not survive the adoption of an SCP. Rather, the point is that a truly fungible and tradable SCP **cannot exist** if an LSE is subject to losing the “countability” of that resource for RA purposes when the resource schedules an outage.

The whole notion of the SCP is that it creates a generic “RA tag” that can be freely purchased and sold, and ultimately counted by an LSE for RA compliance. The purchase of a sufficient number of such tags for a given month is supposed to assure the LSE that it has met its RA compliance obligation. But the replacement rule confounds this objective,¹ because an LSE holding a tag for a given unit would, under the

¹ TURN identified this potential problem with the proposed Standard Capacity Product in its initial comments submitted in the CAISO’s SCP stakeholder process, dated September 11, 2008, at page 2. Those comments can be found at <http://www.aiso.com/2040/2040ac3a37f30.pdf>.

replacement rule, be subject to a *continuing obligation* to monitor (somehow!) the status of the unit to make sure that it does not have a scheduled outage in a particular month. And if it were fortunate enough to discover such a planned outage for a unit whose RA tag it holds, the LSE would be required to purchase replacement (*i.e.*, duplicate) capacity.

The problem here should be apparent – an LSE, which may not even know the identity of the units whose RA tags it has purchased, cannot *practically* keep track of the outage schedules of all such units. Rather than representing the freely tradable and fungible “certificate of compliance” that it was intended to be, the RA tag would become a ticking time bomb for the LSE, subject to “disappearing” for RA counting purposes at any time, without the LSE’s knowledge or participation.

TURN does not dispute that the mere existence of SCP and its availability provisions do not – and cannot – guarantee that a sufficient number of RA resources will be available in all circumstances. Scheduled outages may indeed lead to reliability concerns under certain circumstances. The point, however, is that *the LSE that purchases* an RA tag is not in any position to control the scheduling of unit outages (unless it happens to own the unit in question). Rather, it is the *generator* that establishes the outage schedule with the CAISO, and those two entities are the *only ones* in a position to control the timing of such scheduled outages. The LSE is clearly the “odd man out” in this situation, so placing the *responsibility for replacing* a unit that is subject to a scheduled outage on the LSE makes no sense whatsoever.

Some parties suggested during the earlier workshops that the CAISO should be able to control this situation through its Outage Coordination Protocol, and simply cancel the scheduled outage of an RA resources if it believes that such an outage would

endanger reliability. TURN is not prepared to say that this would necessarily represent a satisfactory solution to the problem. But there is another alternative, and that is to place the replacement responsibility on the party that has the most control over the scheduling of outages – the generator itself. If a generator plans to take scheduled maintenance in the month of March, for example, it could simply refrain from selling its RA capacity for that month. Alternatively, the replacement obligation could reside with the generator, such that if it had already sold its RA capacity for a given month (and presumably received compensation for it) and later decided to take a scheduled outage instead, that generator would have the responsibility to provide the CAISO with a replacement RA tag from another unit. The clear advantage of this approach is that it places the responsibility on a party that has significant control over the outage decision, as well as on a party that clearly has knowledge of the outage schedule. An LSE often will not have such knowledge, let alone control over the scheduling of the outage.

LSEs sometimes contract for RA capacity months or even years in advance, and could not possibly know at the time of such purchase that the generator will attempt to schedule an outage in a particular month of some future year. Only the generator and the CAISO itself will have the information and degree of control necessary to address this situation. The CAISO argued in its comments in R.08-01-025 that:

It is possible that LSEs will have an incentive to fulfill their capacity obligations by procuring resources that have a CAISO approved outage scheduled in the upcoming RA month. Such capacity would clearly have an attractively low price, because it is not expected to provide the capacity service for the full RA month.

That statement ignored the fact that LSEs are required to demonstrate the purchase of 100% of their Local RA obligations in October of the prior year, along with 90% of their System RA for the summer months. Thus, only a limited amount of RA procurement

takes place on the “month ahead” basis referenced by the CAISO. The suggested scenario could be more easily prevented by either barring the generator from selling RA capacity for the upcoming month when it has already has a scheduled outage, or else requiring the supplier itself to purchase the replacement capacity. Putting this obligation on the LSE simply places the responsibility on the party least able to anticipate and address the problem.

For all of these reasons, TURN respectfully submits that the adoption of the SCP compels a reassessment of the continued viability of the replacement rule. If indeed such a rule remains necessary, the replacement obligation should fall on the generator -- and not on the LSE, as is required by the current rule. Absent a change in the party subject to the replacement obligation, the SCP will NOT become a standard, freely tradable product as intended, and an RA tag will risk becoming a useless piece of paper if the generating unit to which it is attached decides to schedule an outage for a month when an LSE (which has presumably paid good money for it) attempts to use it to demonstrate RA compliance. This is clearly a problem that needs to be addressed in connection with the approval of the SCP as a means of demonstrating RA compliance.

At this point TURN has not identified any other specific issues beyond those mentioned earlier above that are raised by the passage of SB 695. However, the statute does require, in Public Utilities Code Section 365.1(c)(1), that other providers, such as ESPs and CCAs, shall be “subject to the same requirements that are applicable to the state’s three largest electrical corporations under any programs or rules adopted by the commission to implement the resource adequacy provisions of Section 380 . . .” The

Commission must keep this requirement in mind in considering all of the various elements of the RA program.

TURN looks forward to actively participating in this proceeding.

Respectfully submitted,

THE UTILITY REFORM NETWORK

November 6, 2009

By: _____ /S/ _____

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CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On November 6, 2009 I served the attached:

PRELIMINARY COMMENTS OF THE UTILITY REFORM NETWORK

ON SCOPE AND SCHEDULE AND REQUEST FOR PARTY STATUS

on all eligible parties on the attached lists **R.09-10-032 and R.08-01-025** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this November 6, 2009, at San Francisco, California.

/S/
Larry Wong

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