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of
Recommended Changes to the February 21, 2014 Proposed Decision

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a) reflects the Commission’s current understanding of program characteristics, including dispatchability, but that this initial categorization will change over time as new resources are identified and characterized, and is subject to revision as more information becomes available throughout this proceeding;	
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Order Instituting Rulemaking to Enhance the Role of Demand Response in Meeting the State’s Resource Planning Needs and Operational Requirements (OIR), issued September 25, 2013 in R.13-09-011.

Joint Assigned Commissioner and Administrative Law Judge Ruling and Scoping Memo, filed November 14, 2013 in R. 13-09-011

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Sierra Club offers the following comments on ALJ Hymes’s February 21, 2014 Proposed Decision¹ (PD) addressing bifurcation of California’s demand response programs.

*

Overview. We support the PD’s basic concept of bifurcating Commission-regulated demand response programs into “load modifiers” and “supply resources.”. However, we recommend that the Commission correct certain technical or factual shortcomings in the PD’s proposed definitions of these terms in order to enhance clarity and avoid confusion in their application. Below, we propose additional specificity for those definitions.

We also agree that bifurcation concerns expressed in the parties’ December 2013 responses to foundational issues should not cause the Commission to abandon bifurcation, so long as the next steps in this proceeding afford opportunities to develop a full and complete record before making significant changes to California’s demand response programs and structures.²

However, Sierra Club is concerned that the PD may prematurely assign certain programs to a particular DR category before the factual and legal record necessary to support such categorization is developed. Specifically, this concern relates to the PD’s bifurcation of current demand response programs in Section 4.2.2, Table 2, and in Ordering Paragraph 4. If this proposed categorization is merely preliminary and will be subject to the review, exploration and analysis that the PD acknowledges must occur next, then it offers a reasonable point of departure for upcoming testimony and hearings. However, if its intended effect is to (i) assign existing demand response programs to the “load modifier” or “supply resource” category without evidence or argument as to resource attributes, values, needs alignment, accessibility, or suitability for either category, and/or (ii) predetermine which programs will be administered by the IOUs or bid into CAISO markets, then we believe it constitutes factual, legal and technical error within the meaning of Rule 14.3, for reasons explained below.

¹ *Proposed Decision of ALJ Hymes Addressing Foundational Issue of the Bifurcation of Demand Response Programs*, dated February 21, 2014, in this proceeding.

² PD, p. 7 and Findings of Fact 13-15, 17-18, and 20.

1. The PD’s proposed definitions of “load modifiers” and “supply resources” are not mutually exclusive, and should be refined to more clearly distinguish between demand response program categories.

The PD defines “load modifiers” as “resources that reshape or reduce the net load curve”, and “supply resources” as those that “can be scheduled and dispatched into the CAISO energy markets, when and where needed.”³ These definitions appear to overlap, rather than cleanly distinguish two discrete, analytically distinct classes of resources whose characteristics and capabilities can be aligned with specific grid management needs as this case proceeds. Thus, without refinement, we believe that these definitions constitute factual or technical error.

As proposed, the definition “load modifiers” definition seems to apply equally to *all* demand response resources, including those that can be scheduled and dispatched into CAISO or IOU markets, because all such resources reshape or reduce loads that affect the net load curve. To more precisely distinguish load modifiers from supply resources, we recommend refining the definition of “load modifiers” to reflect elements of CAISO’s own usage of the same term in its 2013 Demand Response and Energy Efficiency Roadmap (DR-EE-R),⁴ so that it reads as follows:

“Load Modifier demand response reshapes or reduces the net load curve, is incorporated in the California Energy Commission (CEC) load forecast, and is not seen or optimized by the ISO market.”

Similarly, we recommend refining the definition of “supply resource” to incorporate other distinctive elements from CAISO’s DR-EE-R definition of that term, as follows:

Supply Resource demand response can be scheduled and dispatched into the CAISO market when and where needed to balance load, manage congestion, and satisfy reliability standards, similar to conventional supply resources.⁵

We are recommending these changes to the PD definitions in order to add specificity by highlighting characteristics unique to each resource category, as well as the functions it serves.

In the supply resource definition, Sierra Club strongly recommends striking “into the CAISO market”, because that language implies that supply resources will be offered only through the CAISO market, and not through the IOUs. However, the Commission has already determined that the CAISO

³ PD, Ordering Paragraphs 2 and 3, p. 26.

⁴ *Demand Response and Energy Efficiency Roadmap: Maximizing Preferred Resources* (December 2013), p. 6.

⁵ Strike-through text would be deleted from the PD definition s, and underlined text added.

should not have exclusive control of demand response, which must be available to address local as well as system-wide issues.⁶ Which resources will in fact be offered through the CAISO is a question for further consideration by the Commission. Moreover, there may be future supply resources that the CAISO chooses not to pursue in its market, but which utilities may wish to employ outside the CAISO market. Thus, while all dispatchable DR resources should be included in the supply resource category, it remains to be seen whether all supply resources can or will, in practice, be bid into and dispatched by the CAISO. The definition should not preclude utilities from availing themselves of such resources, so we recommend deleting the CAISO market reference.

2. The PD’s bifurcation of current demand response programs in Ordering Paragraph 4 offers a reasonable starting point for review, exploration and analysis in the next phase of this proceeding. However, to the extent it designates programs as load modifiers or supply resources, to be administered by the IOUs or bid into CAISO markets, respectively, it constitutes factual, legal and technical error within the meaning of Rule 14.3.

The PD’s definition limiting supply resources to those that “can be scheduled and dispatched into the CAISO energy markets”, taken together with Table 2 and Ordering Paragraph 4, could be interpreted to prematurely decide important issues that the PD itself acknowledges must be “reviewed, addressed, explored, analyzed, and resolved” before implementing California’s new vision for demand response.⁷ If that interpretation is correct, we believe that the combination of the PD’s supply resource definition and Ordering paragraph 4 directly contradict the views expressed in the Commission’s September 25, 2013 Order Instituting Rulemaking (OIR)⁸ in this proceeding, and therefore constitute legal error.

In the OIR, the Commission quoted from its April 2012 decision, which concluded that:

*the most prudent path forward is to continue to gather information to develop a better record before making lasting changes to the current structure. We will address these issues in the DR rulemaking proceeding, R.07-01-041 or its successor [this proceeding, R.13-09-011].*⁹

⁶ PD, p. 20; Finding of Fact 10, p. 24.

⁷ See PD §4.1.1, p. 7; §4.1.2, p. 8; §4.1.3, p. 9; §4.1.4, p. 10; §4.2.2, p. 20; Findings of Fact 2, 4, 9, 10, 13, 17,18, 20; and Conclusions of Law 4, 7.

⁸ *Order Instituting Rulemaking to Enhance the Role of Demand Response in Meeting the State’s Resource Planning Needs and Operational Requirements (OIR)*, issued September 25, 2013 in R.13-09-011.

⁹ OIR at p. 191, emphasis added; quoting D.12-04-045, *Adopting Demand Response Activities and Budgets for 2012 Through 2014*, issued April 30, 2012 in A.11-03-001, -002, -003.

The OIR further explained that

California needs demand response to have supply-side *operational characteristics and capabilities* in order to meet the State’s future system and market needs. ...

... an understanding of the *qualities that supply-side demand response resources can offer* and the *correct matching of these resources with the needs of the grid* is essential for successful program design and implementation. ...

... preferred resources, such as demand response, can also provide the needed reliability characteristics *if designed properly* [and]

... *this rulemaking will identify the criteria* that should be used to distinguish demand-side and supply-side demand response resources and determine whether there is an optimal mix that should be maintained.¹⁰

The Commission’s November 2013 Scoping Memo¹¹ for this proceeding likewise contemplated a careful and comprehensive analysis, based on testimony and evidence provided by the parties, as the critical phase of this rulemaking. It explained that:

Phase three will look at future demand response program designed to increase demand response participation and capacity certainty. Phase three will also look at competitive procurement mechanisms and enabling infrastructure. *We anticipate the bulk of work in this proceeding will be in resolving the technical aspects of phase three issues.*¹²

Consistent with the OIR and Scoping Memo, Sierra Club respectfully requests that the Commission clarify that the PD’s “supply resource” definition, combined with the bifurcation proposed in Table 2 and Ordering Paragraph 4, is not intended to predetermine issues such as the operational characteristics, capabilities, or qualities that particular demand response resources can offer, or the best design for reliability, or the criteria used to determine an optimal resource mix — which are all issues the Commission has targeted for review, exploration and analysis through testimony and evidentiary hearings still to come.

We suggest that any confusion on this score can be minimized by modifying the PD’s supply resource definition as recommended above, and by inserting the following or equivalent language on page 20 of the PD following the sentence ending “...this determination in the future”:

¹⁰ OIR at pp. 8-9, 11, and 17, respectively; emphasis added.

¹¹ *Joint Assigned Commissioner and Administrative Law Judge Ruling and Scoping Memo*, filed November 14, 2013 in R. 13-09-011

¹² *Id.*, pp. 1-2; emphasis added.

In summary, we have placed existing Demand Response measures into one of two categories – Load Modifying or Supply -- based on our understanding of the characteristics of the Demand Response measures at this time, essentially whether they are dispatchable. This Table 2 will change over time as new Demand Response resources are identified and characterized. Further, this initial categorization is subject to future revision as additional information becomes available, including at the conclusion of Phase 3 of this proceeding.

Importantly, although we have adopted an initial classification of Demand Response measures, we have not determined which Supply DR resources (or what fraction of any Supply DR resource) will be required to be bid into the CAISO market. The categories simply delineate which DR resources are capable of being integrated into the CAISO.

In this proceeding, we have the twin goals of ensuring the success of the CAISO market and maximizing the amount of Demand Response deployed in our state, whether through the CAISO market or by utilities on their system and outside the CAISO system. We think these twin goals are mutually achievable, and we will proceed in Phase 3 to develop the regulatory and market mechanisms to meet both goals.

Conclusion. Sierra Club is concerned that the PD’s definitions of “load modifiers” and “supply resources” overlap and may cause unnecessary confusion in the next phases of this proceeding. We believe that the Commission and the parties will benefit from more precise definitions, and we recommend language to better distinguish these two categories of demand response resources.

We are also concerned that Ordering Paragraph 4 and Table 2, together with the PD’s limitation of “supply resources” to those that “can be scheduled and dispatched into the CAISO energy markets” could be interpreted to decide prematurely some of the key issues in this case. The OIR and Scoping Memo anticipated that resolving technical aspects of these issues would comprise the main work of this four-phased proceeding, and that matching resource characteristics with grid needs would be essential for successful program design and implementation. We therefore recommend additional language to clarify that the PD’s initial categorization of demand response programs will not foreclose the full exploration, review and analysis that the OIR contemplated as the basis for implementing California’s new vision for demand response.

Respectfully submitted,

/s/ John Nimmons
Counsel for Sierra Club

/s/ Suma Peesapati
Counsel for Earthjustice

APPENDIX

Proposed Conclusions of Law and Ordering Paragraphs

Strike-through text would be deleted, and underlined text added.

Conclusions of Law

...

5. It is reasonable to adopt the following definitions for bifurcating the demand response programs: Load Modifier demand response reshapes or reduces the net load curve, is incorporated in the California Energy Commission (CEC) load forecast, and is not seen or optimized by the ISO market. ~~and~~ Supply Resource demand response can be scheduled and dispatched ~~into the CAISO market,~~ when and where needed to balance load, manage congestion, and satisfy reliability standards, similar to conventional supply resources.

6. It is reasonable to initially categorize the current demand response programs ~~to avoid the double counting problem,~~ subject to revision as more information becomes available, in order to delineate which resources are capable of being integrated in the CAISO markets, and without determining at this point which should or must be bid into those markets.

...

Ordering Paragraphs

...

2. Load modifiers are defined as resources that reshape or reduce the net load curve, are incorporated in the California Energy Commission (CEC) load forecast, and are not seen or optimized by the ISO market.

3. Supply resources are defined as resources that can be scheduled and dispatched into the California Independent System Operators energy markets, when and where needed to balance load, manage congestion, and satisfy reliability standards, similar to conventional supply resources.

4. Current demand response programs are initially bifurcated as such, subject to revision as more information becomes available, and without determining which resources should or must be bid into the CAISO markets:

...

VERIFICATION

I am the attorney for Sierra Club in this proceeding. Sierra Club is not located in the County of Marin, California, where I have my office, so I make this verification for that reason.

The foregoing:

**SIERRA CLUB OPENING COMMENTS
ON
PROPOSED DECISION OF ALJ HYMES ADDRESSING FOUNDATIONAL ISSUE
OF THE BIFURCATION OF DEMAND RESPONSE PROGRAMS**

has been prepared and read by me and its contents are true of my own knowledge and based on information furnished which I am informed and believe to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 13, 2014, at Mill Valley, California.

/s/ John Nimmons
Counsel for Sierra Club