

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

Order Instituting Rulemaking to Enhance the
Role of Demand Response in Meeting the
State's Resource Planning Needs and
Operational Requirements.

Rulemaking 13-09-011

**COMMENTS OF THE
CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION
REGARDING PROGRAMS FOR BRIDGE FUND YEARS**

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May 5, 2014

SUBJECT INDEX OF RECOMMENDED CHANGES

CLECA respectfully recommends the following changes be made to correct errors of fact and meet statutory requirements; these recommended modifications accurately reflect the record. The finding that ORA's concerns with the placement of BIP for dispatch in the CAISO's Operating Procedure are valid should be modified to reflect the fact that parties disputed those concerns; CLECA noted multiple facts that demonstrate a lack of validity of ORA's concerns. The PD should also be modified to permit PG&E to change the DBP dispatch window and dispatch the program, as it is a voluntary program with no penalty for not participating in events; there is no burden on DBP customers for increasing the number of events because DBP customers can choose to participate or not without penalty.

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Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure, the California Large Energy Consumers Association¹ (CLECA) submits these comments on the Proposed Decision (PD). CLECA supports expeditious adoption of the PD with modifications to Findings of Fact 16, 40 and 41 and Conclusions of Law 14 and 15; Ordering Paragraphs 5 and 6 should also be modified accordingly. The recommended modifications are needed to correct factual error, comply with the law and accurately reflect the record.

I. COMMENTS

A. Finding Of Fact 16 Should Read "Parties disputed ORA's concerns regarding the placement of BIP in the CAISO Operating Procedure 4420."

The Commission is obligated to engage in open decision-making.² Parties must

¹ The California Large Energy Consumers Association is an organization of large, high load factor industrial electric customers of Southern California Edison Company and Pacific Gas and Electric Company. CLECA member companies are in the cement, steel, industrial gas, beverage, pipeline and mineral industries. CLECA has been an active participant in Commission regulatory proceedings and Commission Demand Response Programs since 1987.

² SB 1488 (2004 Cal.Stats., Ch. 690 (Sept. 22, 2004)).

be able to understand the bases for the Commission's decisions on all material issues.³ This understanding must come through the separately stated findings of fact and conclusions of law and those findings must be supported by the evidence in light of the record as a whole.⁴ Here, ORA's factual contentions regarding the placement of BIP were disputed by parties, including CLECA, in comments. CLECA stated:

ORA's claims raise questions of fact, evidentiary matters than cannot be addressed through a comment-only process. Finally, based on a limited review permitted by a ten day comment period, ORA has asserted as fact information that is incorrect.⁵

CLECA further detailed the problems with ORA's purported concern; CLECA noted that ORA had contradicted itself on the ratepayer cost of Capacity Procurement Mechanism designations⁶ and moreover that ORA's list of CPM events appear unsuited to mitigation by a BIP event.⁷ PG&E also disagreed with ORA's concern.⁸ The PD errs by failing to consider the whole record, which encompasses these parties' comments, in coming to its finding. If these points were considered, then the PD errs by failing to explain its reasoning for finding validity in ORA's concerns despite the parties' explanations why the concerns do not appear valid.⁹ Simply summarizing disparate positions does not suffice to explain why one position is deemed valid and others are, by implication, deemed not valid. Finding of Fact 16 should be modified to reflect the fact that parties disputed ORA's concern.

³ PUCode §1705.

⁴ PUCode §1757(a)(4).

⁵ Reply Of The California Large Energy Consumers Association To Opening Comments On Proposals For Revisions To Demand Response Programs For Bridge Fund Years, (CLECA Reply Comments) (3/13/2014), at 2.

⁶ See CLECA Reply Comments, at 3-4.

⁷ *Id.*, at 4-5.

⁸ See Reply Comments Of Pacific Gas And Electric Company (U 39 E) On Assigned Commissioner And Administrative Law Judge's Ruling Providing Guidance For Submitting Demand Response Program Proposals, (3/13/2014), at 7-8.

⁹ See PD, at 12-13.

Further, given these disputes of fact regarding the assertions by ORA in comments, the Commission should avoid making a finding of validity in the absence of evidentiary hearings. Comments do not substitute for testimonial evidence; the disputed facts were not tested in an evidentiary hearing. Both CLECA and PG&E explained the critical flaws in ORA's position.¹⁰ The Commission cannot judge such disputed questions of fact in an evidentiary vacuum, without testimony, cross examination and opportunity for trier of fact to weigh and assess the evidence. California courts have recognized that questioning by one party of an adverse party's testimony is "a major method for establishing the accuracy and reliability of direct testimony."¹¹ The Commission has an interest in ascertaining the veracity of ORA's claims prior to finding them valid; this cannot be done through the limited comment period. And, as the PD rightly notes, for the bridge funding period the focus is on changes that can be implemented by 2015 with no additional time taken.¹² Accordingly, CLECA recommends that finding of fact 16 be modified before the PD is adopted.

B. DBP Is a Voluntary Program with No Penalties For Not Participating, So PG&E's Requests Should Be Granted

The PD raises concerns with the burden placed on demand response participants from a proposed expansion of the Demand Bidding Program dispatch windows and control by PG&E over DBP dispatch.¹³ This concern regarding participant burden is greatly appreciated as it recognizes that customers – those participating in the

¹⁰ See PD, at 13 (describing PG&E's disagreement with ORA's concerns).

¹¹ See *McCarthy v. Mobile Cranes, Inc.*, 199 Cal.App.2d 500, 506, 18 Cal.Rptr. 750 (1962); see also V Wigmore on Evidence §1367 ("[Cross examination] is **beyond a doubt the greatest legal engine ever invented for the discovery of truth.**")(emphasis added).

¹² See PD, at 5-6.

¹³ See PD, at 26-27.

programs – are the ones providing the demand response. In this instance, however, the concern is somewhat misplaced; all DR programs are not equal in terms of the participant burden. Some, like the Base Interruptible Program, have severe penalties for not performing during events: that is, in addition to a carrot - an incentive for participation - BIP also has a stick – a costly penalty for not performing. Other programs, like DBP, are purely voluntary and have no penalties for not performing during events: that is, there is only a carrot – an incentive for participation in DBP. Accordingly, there should be no burden placed on customers from expansion of the dispatch window; customers could simply choose to not participate in that specific dispatch of DBP, without consequence. The PD should be modified to reflect this.

II. CONCLUSION

For these reasons, CLECA respectfully recommends modification of the PD prior to its adoption.

Respectfully submitted,



Counsel to the California Large Energy
Consumers Association

May 5, 2014

RECOMMENDED CHANGES TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

FOF 16: Parties disputed ~~We find validity in~~ ORA's concerns regarding the placement of BIP in the CAISO Operating Procedure 4420.

FOF 40: The request by PG&E to expand the DBP dispatch window could not place an unfair burden on participants as participation in DBP events is voluntary.

FOF 41. PG&E did not need to present evidence that the benefits of expanding the DBP dispatch window would counterbalance the participant burden as there is no additional participant burden since participation in the DBP events is voluntary and there is no penalty for not participating.

COL 14. It is ~~not~~ reasonable for PG&E to be allowed to call a DBP event at its own discretion.

COL 15. It is reasonable to ~~deny~~ approve the PG&E request to expand the DBP dispatch window.