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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies and Protocols for Demand Response Load Impact Estimates, Cost-Effectiveness Methodologies, Megawatt Goals and Alignment with California Independent System Operator Market Design Protocols.

Rulemaking 07-01-041
(Filed January 25, 2007)

**JOINT ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S
RULING SOLICITING RESPONSES TO QUESTIONS ARISING FROM
FEDERAL ENERGY REGULATORY COMMISSION ORDERS 745 AND 745A**

Summary

This Ruling requests parties to comment on certain remaining issues in the Direct Participation Phase (Phase IV) of this proceeding. Parties are asked to provide answers to questions resulting from two Orders, 745 and 745A, issued by the Federal Energy Regulatory Commission (FERC). Parties should file their responses to the questions by August 17, 2012 and replies by August 27, 2012.

Background

The Commission opened Phase IV to address the issues resulting from FERC Order 719, which required Independent System Operators (ISOs) to revise their tariffs to create direct bid-in opportunities for retail Demand Response (DR) providers in order to increase the adoption of DR. The California ISO (CAISO) submitted its tariff compliance filing (Proxy Demand Resource (PDR) tariff) pursuant to FERC Order 719 in April 2009. On June 3, 2010, the Commission issued Decision (D.) 10-06-002 establishing the initial conditions under which the

Commission will oversee bidding of retail DR directly into CAISO markets. That Decision also outlined the issues that must be resolved before allowing direct bidding into CAISO markets of DR provided by retail customers of the investor-owned utilities. Those issues include consumer protection, financial settlement, and communications policies. A December 16, 2010 decision, denying rehearing of D.10-06-002, confirmed the Commission's broad regulatory authority over energy matters and its jurisdiction, to a degree, over DR providers.

After a series of workshops, submission of proposals by the parties, and rounds of comments filed, the assigned Administrative Law Judge (ALJ) issued a Ruling asking for comments on a proposed Rule 24 developed by Commission staff. The proposed Rule addresses consumer protections and communications issues, but not the financial settlement issues. Parties submitted comments and reply comments to the proposed Rule on September 23, 2011 and October 7, 2011, respectively.

In comments to the Proposed Rule 24, Pacific Gas & Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (jointly, the Utilities) recommended that the Commission address several policy questions before adopting a final Rule for direct participation. Other parties also noted a need for certain policy questions to be addressed, most notably the question of financial settlements.

During approximately the same time period that the Commission developed the proposed Rule 24, the FERC issued Orders 745 and 745A, raising questions regarding the viability of the CAISO PDR tariff. Several parties expressed concern that these FERC Orders conflicted directly with the Commission's ongoing efforts to develop financial compensation rules between

DR providers, Load Serving Entities (LSEs) and retail end-use customers in accordance with the CAISO's PDR tariff that the FERC previously held to be just and reasonable. In March 2012, the CAISO submitted a revised tariff to the FERC. The revisions eliminate the Default Load Adjustment (DLA) for any bids above the Net Benefit Test (NBT).

Discussion

We agree that the Commission should address several policy issues prior to the adoption of a direct participation rule. These policy issues include the need for financial settlement, clarifications regarding the applicability of the proposed rule, and policies regarding credit requirements, access to customer data and oversight of DR providers. While the record of this proceeding contains a great deal of information to assist us in resolving these issues, we want to ensure that the record also captures the impact of the FERC Orders 745 and 745A as well as the CAISO's revised tariff. Thus, before the Commission can resolve these policy issues, it is necessary to update and inform the record in this proceeding. The following discussion includes several questions that the parties' comments should address. Opening comments should be filed no later than August 17, 2012 and reply comments should be filed no later than August 27, 2012.

Financial Settlement Issues Overview

The potential need for financial settlements arose because the DLA aspect of the CAISO's PDR tariff previously required an LSE to pay the CAISO both for its customers' actual energy use, which was met by generation, and also for the LSE's customers' potential energy use that was avoided by dispatch of a PDR.

If the LSE is an investor-owned utility, that utility can bill its customers only for energy actually used (i.e., "meter spin"), and cannot bill its customers

for potential energy use avoided by dispatch of a PDR. The difference between those two quantities, multiplied by an appropriate price, is the amount that parties have referred to in this case variously as the “missing money” or the revenue “under-collection.”

On November 8, 2010, the assigned ALJ issued a ruling soliciting comment from parties on DR direct participation issues primarily concerning the missing money problem and the potential for a financial settlement between DR providers and LSEs to alleviate the revenue shortfall. Parties submitted comments in November and December 2010, and workshops on the remaining direct participation issues were held in January 2011.

On March 15, 2011, however, the FERC issued Order 745, which required grid operators such as the CAISO to pay DR providers the locational marginal price for DR bids that confer a “net benefit” to wholesale energy market participants. Bids conferring a net benefit would be defined as those above a bid threshold established each month by a “net benefits” test (NBT). Bids above the NBT are considered to lower the market clearing price sufficiently that the cost savings to load is greater than the payment made to DR providers, thus conferring a “net benefit” to market participants. Because Order 745 requires the costs of DR above the NBT to be allocated broadly to market participants, it calls into question the legality of the CAISO’s PDR tariff.

In the CAISO’s March 14, 2012 compliance filing to the FERC, the CAISO changed its tariff so that the original DLA provisions apply only when DR is dispatched below the NBT price, thus allocating the DR costs to the host LSE. When the CAISO market dispatches DR at or above the NBT, the DR costs will be allocated proportionately to metered demand participating in the CAISO market.

Because the CAISO's PDR tariff is now substantially different than it was when parties last filed comments on financial settlement issues, it is necessary to update the record and discern how parties' positions may have changed in light of the tariff revisions. Parties are requested to brief the Commission on financial settlement issues in light of the changes to the CAISO's PDR tariff. Parties' comments should address the following questions:

1. Financial Settlement Issues

- a) Given that the FERC rejected the DLA method when DR is dispatched at a price above the NBT, is there still a revenue shortfall or "missing money" problem for the Utilities when DR is dispatched above the NBT?
- b) If there is still a "missing money" problem when DR is dispatched above the NBT, is it possible for the Commission to institute a financial settlement to correct this problem given the participation of non-Commission jurisdictional entities in CAISO markets?
 - i. If so, should the Commission implement a financial settlement?
 - ii. If so, how should a financial settlement be calculated, collected and disbursed? Please propose a methodology following the guidelines set forth in Appendix A.
- c) If there is no "missing money" problem, does the CAISO's revised tariff create other problems or inequities that necessitate a financial settlement between the Utilities and DR providers? If so, please propose a methodology following the guidelines set forth in Appendix A.
- d) Should the Commission order a financial settlement to reconcile any "missing money" problem that occurs from bids below the NBT where the DLA is applied? If so,

please propose a methodology following the guidelines set forth in Appendix A.

2. Competition Issues Between the Utilities and DR Providers

- a) Would requiring DR providers to pay settlement charges to the Utilities create an unfair advantage for the Utilities over DR providers when competing for DR resources?
 - i. If so, what conditions and rules should be considered to create a level playing field?

3. Other Issues

- a) Are there other issues or problems arising from the CAISO's revised PDR tariff not addressed in this Ruling that the Commission should consider before allowing direct participation of the Utilities' retail customers in CAISO's markets?

IT IS RULED that:

- 1. Parties shall file comments addressing the questions included in the discussion of this Ruling.
- 2. Opening comments shall be filed no later than August 17, 2012 and reply comments shall be filed no later than August 27, 2012.

Dated July 27, 2012, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

/s/ KELLY A. HYMES

Kelly A. Hymes
Administrative Law Judge

APPENDIX A

Guidelines for Proposals on Conducting a Financial Settlement

Proposals for conducting financial settlements between DR Providers and the Utilities should address the following questions:

1. What would be an appropriate method to determine the amount one party would pay another party?
 - a. Specify the formula to calculate the amount and whether a method should apply to revenues received when DR is dispatched below, or equal to and above NBT.
 - b. Identify sources of variables and levels of granularity or precision.
2. If the financial settlement formula involves a capacity or demand quantity, specify the precise method of determining that capacity quantity, including:
 - a. Baseline used;
 - b. Source of meter data;
 - c. Averaging period or granularity (one hour, five minute); and
 - d. Geographic specificity (Default Load Aggregation Point, Custom Load Aggregation Point, other geographic unit).
3. Should the financial settlement process take the form of a Commission-approved standard contract, tariff, or some other vehicle? Be specific.
 - a. What form of billing and payment procedure should be used for a financial settlement (i.e., included within the CAISO settlement system, through Commission jurisdictional mechanisms or bilaterally)?
 - i. Over how many days should PDR transactions be netted and totaled for rendering settlement bills?
 - ii. Within how many days after the end of a billing period should payment for the period's net PDR transactions be received?

4. What venue and procedures should be used to address and resolve disputes about settlement procedures and transactions?
5. What credit and/or collateral requirements should apply to Commission-jurisdictional parties participating in CAISO's PDR market?
6. What additional conditions or situations not mentioned above should be included in a settlement system/protocol?

(END OF APPENDIX A)