



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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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)

**COMMENTS OF ENVIRONMENTAL DEFENSE FUND ON THE PROPOSED
DECISION REGARDING DIRECT PARTICIPATION OF RETAIL DEMAND
RESPONSE IN CAISO ELECTRICITY MARKETS**

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Dated: April 12, 2010

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I. INTRODUCTION

Environmental Defense Fund (EDF) appreciates the opportunity to comment on the Proposed Decision of ALJ Farrar on Phase Four Direct Participation Issues.¹ EDF is a leading national nonprofit organization representing more than 700,000 members across the country, including over 100,000 in California. Since 1967, EDF has linked science, economics, law and innovative private-sector partnerships to create breakthrough solutions to the most serious environmental problems. Our knowledge of energy policy nationwide persuades us that getting the rules for demand response right in California will be essential to getting the most from its smart grid investments and meeting the state's renewable energy mandates. The Proposed Decision fails to allow third party demand response providers to enter into the wholesale market on the same timeline as utilities, missing an important environmental opportunity for California.

¹ PROPOSED DECISION OF ALJ FARRAR ON PHASE FOUR DIRECT PARTICIPATION ISSUES, March 23, 2010, available online at <http://docs.cpuc.ca.gov/EFILE/PD/115328.htm> [*hereinafter* Proposed Decision].

II. THE PROPOSED DECISION SIDESTEPS KEY OPPORTUNITIES

As we detailed in our opening and reply comments in this proceeding, allowing direct bidding into DR markets will bring environmental and ratepayer benefits, which are multiplied when third parties are allowed to act as aggregators. Third parties bring innovation and cost-competitiveness to the markets, while recruiting more customers. Additionally, third party demand response programs can help ensure that consumers reap the full benefit of smart grid technologies – from direct participation in the program and from overall reduced energy costs. The benefits of third party participation have been proven on the East Coast and the FERC has documented that California could increase demand response capacity threefold by applying effective pricing and technology strategies.²

By allowing only pilot programs offered by utilities, the Proposed Decision fails to advance the role of third party demand response providers in the California wholesale market, seriously undercutting California's demand response potential. While we fully support utilities offering this type of demand response program, we believe that limiting this ability to utilities will ultimately hurt the market. The Proposed Decision's determination is based on the purported need to resolve "complexities" around ratepayer protections, communications, and settlement issues.³ We respectfully submit that this determination is unnecessary and indefinitely blocks ratepayers from receiving the benefits of third party demand response programs. Further, there does not seem to be any basis for this decision, other than the issues being "complex," nor any plans to resolve the

² "A National Assessment of Demand Response Potential," FERC, June 2009

³ Proposed Decision at 12 and 15

“complexities” - it does not take into account the suggestions raised in this proceeding to solve these “complexities.”

Rather than simply state that the “the complexities identified by parties in this proceeding cannot be resolved at this time” the Commission should seek to develop solutions based on the parties’ suggestions.⁴ For example, in order to open the “universe of customers not already enrolled in IOU-managed or AMP programs or on CPP tariffs,” Enernoc illustrated scenarios for dual participation based on experience in other states.⁵ If more information is needed on ratepayer protections, communications, or settlement issues, this decision must specifically identify a timeline to answer open questions and gather necessary information from parties. Ideally, these questions would be answered without a pilot period, using existing knowledge and expertise of the parties. If the Commission finds that a pilot period is necessary, it should identify the questions that the participants must answer through the pilots, the timeframe for conducting the pilots, and the Commission’s plans to ensure that the pilots meet these requirements. Otherwise, the pilot period simply defers answering the existing questions, without providing insight.

If the Commission decides to conduct a pilot period, it is essential that both third party DRPs and LSEs are able to conduct pilots. Third party pilots will help to resolve any remaining questions around third parties entering the market and allow third parties to build capacity and experience as market participants that can compete when the market

⁴ Proposed Decision at 12 and 15

⁵ Comments of Enernoc, Inc., Energy Connect, Inc., and C Power., Inc., (1) In Reply To Comments Filed December 4, 2009, and (2) On the Workshop Report Dated January 8, 2010, filed January 22, 2010, page 7, *available at* <http://docs.cpuc.ca.gov/efile/CM/112922.pdf>, stating “For the most part, the Eastern ISOs allow for reliability-based direct participation of retail customers as well as economic participation. Reliability-based ISO programs require a DR resource to be available either for a specific number of hours or under specific conditions. The DR resource can submit bids into the economic market and if the bid is accepted and the resource is running, even if an emergency condition arises, the DR resource will meet its run requirement. If the DR resource is not cleared on an economic basis and the emergency condition arises, the resource is required to run or face penalties,” and giving additional suggestions.

is expanded beyond the pilot period. The current proposal to only allow utilities to conduct pilots begins to lock third party DRPs out of the market before it even opens. Though third party pilots should be required to meet timelines and answer questions, their timelines should reflect the current stage of their programs, which may be different than that of utilities.

III. CONCLUSION

In our view, by only allowing utilities to offer pilot programs, without detailing the schedule and process for third parties to enter the system, the Proposed Decision undercuts the potential for California's demand response markets. FERC Orders 719 and 719A "required Independent System Operators to modify their tariffs to allow retail customers to bid demand response (DR) directly into their wholesale electric and ancillary services markets, either on their own behalf or through aggregators..."⁶ EDF respectfully asks that the Commission make clear its intention to implement these orders in the way that will provide the best platform for environmental and ratepayer benefits.

We ask that the Commission identify any open questions and commit to a schedule and process to address them, which would start immediately following this decision. Additionally, if the Commission finds that a pilot period is necessary, it should allow both utilities and third party providers to conduct pilots that answer specified questions within a specified timeframe. As written, the Proposed Decision misses the

⁶ Proposed Decision at 1

“fabulous gains” envisioned by FERC Commissioner Philip D. Moeller when vibrant wholesale electricity markets are married with consumers responding to market prices.⁷

Respectfully submitted,

/s/

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⁷ “Federal Report on Consumer Demand Response Underscores the Need to Stay the Course on Competitive Reforms in Electricity Sector,” COMPETE, <http://www.competecoalition.com/newsroom/federal-report-consumer-demand-response-underscores-need-stay-course-competitive-reforms-el>

APPENDIX A

PROPOSED FINDINGS OF FACT, AND ORDERING PARAGRAPHS

The following modifications to the findings of fact and ordering paragraphs of the Proposed Decision of ALJ Farrar in R.07-01-041 (DR (Direct Participation Phase)) are proposed Environmental Defense Fund. All additions are shown in bold and all deletions are shown in bold strikethrough. Only sections or paragraphs which EDF has addressed in its comments appear below – sections or paragraphs that are omitted below may also require amendments. The page number reference in brackets is to the page on which the original finding, conclusion, or order appears in the Proposed Decision.

PROPOSED FINDINGS OF FACT:

1. Non-IOU DRPs have the potential to provide substantial benefits to the California market, and the Commission should ensure that they are able to enter into the market on the same timeline as utilities. This potential has been proven in other electricity markets; without active non-IOU DRP participation, California is missing out on important environmental and ratepayer benefits.

2. ~~4.~~ [p. 19] There are ~~substantial~~ complexities associated with dual participation in the context of direct participation in the CAISO markets, **which can and should be addressed in the near term.**

3. ~~2.~~ [p. 19] **Current Commission policy requires the Commission to ~~should~~ consider issues related to develop and adopt rules under which dual (or multiple) participation after sufficient experience is gained with PDR between utility- and aggregator-managed programs and PDR may be permitted as soon as possible and for immediate application.**

4. ~~3.~~ [p. 19] IOUs should solicit and incorporate third-party DRPs into their 2010 PDR pilots as a way to gain experience with real-time DRP/LSE interaction. **The Commission shall allow non-IOU DRP pilots during the same time period.**

...

7. 6. [p. 19] ~~The reasons that an IOUs may reject a registration should be must~~ permit customers to register in PDR consistent with the rules to be adopted ~~enumerated~~ by the Commission in a subsequent phase of this proceeding.

...

9. 8. [p. 19] ~~The Commission should revisit the question of whether dual participation should be restricted at the retail level in a subsequent proceeding.~~ No record exists identifying any ratepayer harm that could result from dual participation. The complexity of these issues is not a sufficient basis for a finding of ratepayer harm, since ratepayers would benefit from the services of non-IOU DRPs.

10. 9. [p. 20] The details related to ~~whether participation by a customer with a non-IOU DRP results in a settlement to the IOUs, including any resulting benefits to participants and non-participants,~~ should be examined as well as information sharing, logistical system questions, and ~~other~~ ~~the conditions under which~~ dual participation is appropriate issues should be resolved in a subsequent proceeding to commence immediately.

11. 10. [p. 20] The PLP programs should be leveraged to incorporate PDR pilot programs for the summer of 2010 and include non-IOU DRPs. The Commission shall require pilots to answer specific questions, including those necessary for non-IOU DRP participation in the electricity market, and identify the timeframes for the pilots. The Commission should consider the current stage of development of IOU and non-IOU programs when determining appropriate timeframes.

PROPOSED ORDERING PARAGRAPHS:

....

2. [p. 20] ~~There shall be no dual or multi-party participation at the retail level.~~

....

4. [p. 21] ~~A Demand Response Provider shall inform customers that are in Investor Owned Utility demand response programs that they cannot directly participate without leaving the Investor Owned Utility's demand response program.~~

5. [p. 21] Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company will each file a tier 2 advice letter within 10 days of the effective date of this decision to modify its Participating Load Pilot program to Proxy Demand Response pilot programs for summer 2010 **and include DRPs in the PDR Pilot.**

Additional Ordering Paragraph:

6. Immediately following this decision, the Commission will issue an order to commence subsequent workshops and comment periods to identify and answer any questions necessary to:

- a. Allow non-IOU DRPs full access to the market on the same timeline as IOUs.**
- b. Allow dual participation between customers enrolled in utility- or aggregator-managed retail DR programs and PDR when appropriate.**
- c. Allow customers to receive DR services from multiple DRPs when appropriate.**
- d. Determine whether any cost recovery is appropriate resulting from non-IOU DRP participation, including the manner of cost recovery. Any cost recovery should take into account the overall financial benefit to ratepayers from non-IOU DRP participation.**

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day have served a true copy of COMMENTS OF ENVIRONMENTAL DEFENSE FUND THE PROPOSED DECISION REGARDING DIRECT PARTICIPATION OF RETAIL DEMAND RESPONSE IN CAISO ELECTRICITY MARKETS and Appendix A, on all parties identified on the attached official service list for Proceeding: R07-01-041.

Service was affected by serving an electronic copy on their email address of record, and by mailing a paper copy to parties without email addresses.

Executed on April 12, 2010 at Sacramento, California

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