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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)
(Phase 3)

**ASSIGNED COMMISSIONER'S AND ADMINISTRATIVE LAW JUDGE'S
AMENDED SCOPING MEMO AND RULING**

In the Order Initiating Rulemaking that initiated this proceeding, we stated that we would consider modifications to demand response (DR) programs needed to support the California Independent System Operator's (CAISO) efforts to incorporate DR into wholesale market design protocols.¹ Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure, this Scoping Memo and Ruling sets a preliminary schedule, assigns the presiding officer, and addresses the scope of Phase 3 of this proceeding. In Phase 3 of this OIR, we will build a record to address the operation of the investor-owned utilities' emergency-triggered DR programs in the future electricity wholesale market. A prehearing conference on Phase 3 is set for August 20, 2008, at 10:00 a.m., Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102, to take additional appearances and develop the schedule for

¹ Order Instituting Rulemaking in R.07-01-041 (OIR), page 1 (January 31, 2007).

this phase of the proceeding. This ruling is appealable only as to category of these proceedings under the procedures in Rule 7.6.²

1. Background

On January 25, 2007, the Commission opened Rulemaking (R.) 07-01-041 to address several specific issues related to the Commission's efforts to develop effective DR programs for California's investor-owned electric utilities (IOUs). The Scoping Memo issued on April 18, 2007, divided the major work of this proceeding into two phases. Phase 1, which began in spring of 2007, focuses on the development of measurement and evaluation protocols and methodologies related to existing and possible future DR activities. Phase 2, which was formally launched by a joint assigned Commissioner's and Administrative Law Judge's (ALJ) Ruling on October 1, 2007, focuses on establishing new DR goals.

The original scoping ruling for this proceeding also noted the need to ensure that DR programs adapt to function within the day-ahead market that will be implemented with the CAISO Market Redesign and Technology Upgrade (MRTU). The CAISO plans to implement MRTU before the summer of 2009. The Commission has recommended that the CAISO account for existing DR in a way that does not promote procurement of redundant supply-side resources. A key to resolving this issue is identifying where there are disconnects or gaps between existing retail DR programs and the CAISO's operational needs for the wholesale market, both at this time and when MRTU will be implemented.³

² All references to rules are to the Commission's Rules of Practice and Procedures. These rules are available on the Commission's website at http://www.cpuc.ca.gov/word_pdf/RULES_PRAC_PROC/63835.doc.

³ OIR, page 8.

We will be mindful of how any decisions that are produced in this phase of the rulemaking will be integrated into any Commission approve IOU DR programs.⁴ If the Commission decides that changes to emergency-triggered programs are warranted, there may need to be a phasing in of those changes during the 2009-2011 DR program cycle.

The integration of DR programs is an important component of the CAISO's wholesale market development and an extension of the goals that are the subject of Phase 2 of this proceeding. The focus in this proceeding on the integration of DR into the planned MRTU is driven primarily by the September 21, 2006 Federal Energy Regulatory Commission (FERC) order that conditionally approved MRTU.⁵ The Commission supports FERC's effort and, in previous comments, has recommended that the CAISO account for existing DR in a way that avoids procurement of redundant supply-side resources.⁶ We have also recognized that there is a relationship between our resource adequacy counting rules related to DR programs, and the integration of those DR programs in the wholesale market.

⁴ A.08-06-001, A.08-06-002, A.08-06-003 address IOU's 2009-2011 DR programs.

⁵ 116 FERC ¶ 61,274 Order Conditionally Accepting the California Independent System Operator's Electric Tariff Filing to Reflect Market Redesign and Technology Upgrade, September 21, 2006.

⁶ Comments and Proposal of the California Public Utilities Commission for Incorporation of Demand Response into the CAISO Markets in Accordance with the Commission's September 21, 2006 Order Conditionally Accepting the California Independent System Operator's Electric Tariff Filing to Reflect Market Redesign and Technology Upgrade, dated November 20, 2006.

The April 2007 scoping ruling in R.07-01-041 anticipated that to the extent issues of integration of DR into MRTU are not addressed in the IOUs' 2009-2011 DR program and budget applications, an additional phase of this proceeding could be necessary to ensure that programs are transitioned to work within MRTU. One specific issue that arose in Phase 2 of this proceeding is whether to modify existing emergency-triggered DR programs in order to increase their compatibility with MRTU.⁷ In response to a Commission request for additional information on this issue,⁸ the CAISO provided its rationale for reducing the current amount of emergency-triggered DR. In an effort to reduce procurement of redundant supply-side resources, we are opening this third Phase of the rulemaking to examine more specifically the amount and type of emergency-triggered DR that is needed for system reliability⁹, and the amount that can or should be transitioned to programs that are triggered before a system Stage 1, 2, or 3 emergency is called. An alternative trigger could be linked to wholesale market prices. We also will examine what specific changes to existing emergency-triggered programs are appropriate or necessary to ensure the CAISO can count the megawatts attributable to DR towards meeting the CAISO's reliability needs once MRTU is implemented.

⁷ By "emergency-triggered DR programs" we mean DR programs that are not triggered by the IOUs in response to wholesale energy market prices, but are instead triggered during, or in anticipation of, the CAISO declaring a system emergency or during, or in anticipation of, a local transmission or distribution emergency.

⁸ R.07-01-041 Phase 2, ALJ Ruling dated June 9, 2008.

⁹ Some IOUs may be using emergency triggered DR to address local transmission/distribution system issues as well. We will also need to determine how many megawatts of these programs are needed to maintain local system reliability.

2. Categorization, Need for Hearings, *Ex Parte* Rules and Designation of Presiding Officer

The Commission preliminarily categorized this Rulemaking as ratesetting as defined in Rule 1.3(e) and anticipated that this proceeding would be conducted through written comments from the parties, workshops, and possibly limited evidentiary hearings on technical issues. The parties did not oppose the Commission's preliminary categorization of this proceeding. The *ex parte* rules as set forth in Rules 8.2 and 8.3 and Pub. Util. Code § 1701(c)¹⁰ apply. While we do not anticipate the need for hearings in Phase 3, we recognize the possibility that limited evidentiary hearings may be helpful in resolving certain issues, and so we affirm this possibility acknowledged in the original Order Instituting Rulemaking and the initial April 18, 2007 Scoping Ruling.

Pursuant to Rule 13.2(b), assigned Commissioner Chong has designated ALJ Timothy J. Sullivan as the presiding officer for Phase 3 of this proceeding. The provisions of § 1701.3(a) apply.

3. Scoping Memo

Parties are expected to frame their suggested approaches to the following issues in Prehearing Conference (PHC) statements, and should be prepared to discuss these issues at the PHC. Following the PHC, we expect to prepare a ruling setting a more detailed procedural schedule for addressing these issues. These statements and questions are not meant to represent the point of view of the Commission or staff:

¹⁰ All section references are to the Public Utilities Code unless otherwise indicated.

1. Can any of the existing emergency-triggered programs¹¹ be used prior to a CAISO declared stage 1, 2 emergency?
2. How are emergency-triggered programs useful for resource adequacy purposes?
3. What is the effect and usefulness of the emergency-triggered DR programs to mitigate scarcity pricing under MRTU?¹²
4. Should the emergency-triggered DR programs, as currently configured, be counted toward the Commission's Planning Reserve Margin? Why? or Why not?
5. Should the Commission direct the utilities to close existing Resource Adequacy (RA)-qualifying emergency-triggered DR programs to new entrants? Why or Why not?

¹¹ Commission approved emergency-triggered programs are as follows:

For SCE - I-6 30 minute option, I-6 15 minute option, BIP 30 minute option, BIP 15 minute option, Summer Discount Program (air conditioning (AC) cycling) ("SDP") Residential, SDP Commercial, SDP Enhanced residential, SDP enhanced Commercial, AP-I, OBMC.

For PG&E - BIP Option A, BIP Option B, SLRP, OBMC, Pilot OBMC, Smart AC.

For SDG&E - BIP, SLRP, Peak Generation, OBMC, Clean Generation, Summer Saver (AC Cycling).

¹² The CAISO defines Scarcity Pricing as a mechanism that lets market prices rise automatically, potentially beyond any applicable bid cap, when there is a shortage of supply in the market. Following the general practice in other ISO markets, shortage is defined as the inability of the CAISO to procure sufficient regulation or operating reserves through market mechanisms. For purposes of this question parties should refer to the CAISO's Final Reserve Scarcity Pricing Proposal, dated July 11, 2008, which can be found at: <http://www.aiso.com/2001/2001dfbd6bcd0.pdf>.

6. Should the Commission direct the utilities to transition customers on these emergency programs to price-responsive DR programs? In what time period should this happen?
7. Should there be an option for existing and new customers to provide non-RA qualifying emergency responsive DR? What would the attributes be for such a product?
8. How should the current IOU emergency-triggered DR programs be changed, if at all, to integrate better with MRTU? What changes might be appropriate?
9. How should utility emergency-triggered DR programs be changed, if at all, to help with the integration of intermittent renewable resources?

4. Schedule

The preliminary schedule for these initial issues is as follows:

| | |
|----------------|---|
| PHC Statements | August 15, 2008 |
| PHC | August 20, 2008, at 10:00 a.m. Commission Courtroom State Office Building 505 Van Ness Avenue San Francisco, CA 94102 |
| Workshops | Fall 2008 |

A PHC on Phase 3 is set for August 20, 2008, at 10:00 a.m., to take additional appearances and develop the schedule for this phase of the proceeding. On the basis of the discussion at the PHC, the assigned Commissioner may provide a more detailed schedule, and may modify this schedule as necessary to assure the efficient and effective conduct of this rulemaking. The assigned Commissioner or assigned ALJ may modify the schedule as necessary.

Parties attending the PHC, in April 2007, expressed a nearly uniform view that workshops are the most appropriate venue for resolving the technical issues that comprise most of this proceeding.¹³ We believe that this is also true of the Phase 3 issues described above. We expect parties to work to resolve all issues as expeditiously as possible through workshops and informal discussions, and remind all participants that disagreement among parties on limited issues after workshops does not always necessitate formal hearings. The schedule for this phase of the proceeding, which will be discussed at the PHC, will provide ample opportunity for parties to communicate concerns through workshop participation or comments. The ruling to be issued after the PHC may define a process for parties to request hearings on specific issues if necessary to resolve remaining issues of fact after workshops and comments are complete.

Consistent with Pub. Util. Code § 1701.5, the Commission anticipates that this proceeding will be completed within 18 months of the date of this scoping memo.

5. Filing, Service and Service List

In this proceeding, there are several different types of documents participants may prepare. Each type of document carries with it different obligations with respect to filing and service.

Parties must file certain documents as required by the Rules or in response to rulings by either the assigned Commissioner or the ALJ. All formally filed documents must be filed with the Commission's Docket Office and served on the

¹³ The Division of Ratepayer Advocates and The Utility Reform Network supported the concept of workshops, but reserved the right to request hearings.

service list for the proceeding. Article 1 of the Rules contains all of the Commission's filing requirements. Resolution ALJ-188 sets forth the interim rules for electronic filing, which replaces only the filing requirements, not the service requirements. Parties are encouraged to file electronically whenever possible as it speeds processing of the filings and allows them to be posted on the Commission's website. More information about electronic filing is available at <http://www.cpuc.ca.gov/PUC/efiling>.

Other documents, including prepared testimony, are served on the service list but not filed with the Docket Office. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 of the Commission's Rules of Practice and Procedure for all documents, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, I require concurrent e-mail service to ALL persons on the service list for whom an email address is available, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: R.0701041-DR Phase 3. In addition, the party sending the e-mail should briefly describe the attached communication; for example, *Brief*. Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

The official service list for this proceeding is available on the Commission's web page. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office, the

service list, and the ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission's website meets that definition.

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

6. Intervenor Compensation

The PHC in Phase 3 of this proceeding will be held on August 20, 2008. Pursuant to § 1804(a)(1), a customer who intends to seek an award of compensation in Phase 3 of this proceeding should file and serve a notice of intent to claim compensation (NOI) not later than 30 days after the PHC, in this case September 19, 2008. Parties that filed an NOI in this proceeding subsequent to the April 2007 PHC and also intend to participate in Phase 3 should file an amended NOI addressing their planned participation in Phase 3.

As a reminder to parties, the Legislature has instructed us to administer the intervenor compensation program in a manner that "avoids unproductive or unnecessary participation of similar interests otherwise adequately represented ..." ¹⁴ We expect all parties to closely coordinate their work to avoid unproductive or unnecessary participation. Furthermore, we expect each party requesting compensation to distinguish its contributions from those of other parties in its request for compensation. Parties are also reminded that work on

¹⁴ Section 1801.3(f). D.06-12-041, pp. 13-14.

issues determined to be outside the scope of this proceeding will not be compensated. A separate ruling will address eligibility to claim compensation.

Therefore, **IT IS RULED** that:

1. This ruling categorizes Phase 3 of this proceeding as ratesetting and that limited hearings may be necessary. This ruling, only as to category, is appealable under the procedures in Rule 7.6.

2. The *ex parte* rules as set forth in Rules 8.2 (c), 8.3 and Pub. Util. Code § 1701.3(c) apply in this proceeding.

3. Administrative Law Judge Timothy J Sullivan is the presiding officer for Phase 3.

4. The scope of Phase 3 of this proceeding is as set forth in Section 3 of this Ruling.

5. A prehearing conference on Phase 3 is set for August 20, 2008, at 10:00 a.m., to take additional appearances and develop a detailed schedule for this phase of the proceeding.

6. The preliminary schedule of this proceeding is as set forth in Section 4 in this ruling; a more detailed schedule will be issued after the pre-hearing conference on Phase 3 is held.

7. Parties should serve all filings as set forth in Section 5 of this Ruling.

Dated July 18, 2008, at San Francisco, California.

/s/ RACHELLE B. CHONG

Rachelle B. Chong
Assigned Commissioner

/s/ TIMOTHY J. SULLIVAN

Timothy J. Sullivan
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated July 18, 2008, at San Francisco, California.

/s/ LILLIAN LI

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