

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA



**FILED**

08/21/23

04:59 PM

R2110002

**Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Reforms and Refinements, and Establish Forward Resource Adequacy Procurement Obligations.**

**Rulemaking 21-10-002**

**(Filed October 07, 2021)**

**CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION  
RESPONSE IN SUPPORT OF JOINT APPLICATION  
FOR REHEARING OF DECISION 23-06-029**

Sam Harper  
Harper Advisory LLC  
1401 Lake Plaza Drive  
Suite 200-107  
Spring, TX 77389  
(214) 463-9423  
Sam@harper.energy

Consultant to the California Large Energy  
Consumers Association



August 21, 2023

Nora Sheriff  
Samir A. Hafez  
Buchalter, a Professional Corporation  
425 Market Street, 29th Floor  
San Francisco, CA 94105-2491  
415.227.3551 office  
415.227.0770 fax  
nsheriff@buchalter.com

Counsel for the California Large Energy  
Consumers Association



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

**Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Reforms and Refinements, and Establish Forward Resource Adequacy Procurement Obligations.**

**Rulemaking 21-10-002**

**(Filed October 07, 2021)**

**CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION  
RESPONSE IN SUPPORT OF JOINT APPLICATION  
FOR REHEARING OF DECISION 23-06-029**

Pursuant to Rules 16.1(d) and 16.3(b) of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, the California Large Energy Consumers Association (CLECA)<sup>1</sup> responds in support of the *Joint Application for Rehearing of Decision 23-06-029 by the California Efficiency + Demand Management Council, Leapfrog Power, Inc., Ohmconnect, Inc., CPower, Enel X North America, Inc., and Center for Energy Efficiency and Renewable Technologies* (the AFR), filed August 4, 2023.

---

<sup>1</sup> CLECA member companies produce goods essential for daily life including critical infrastructure, oxygen for hospitals and food distribution. CLECA's members represent the steel, cement, industrial and medical gas, beverage, minerals processing, cold storage, and pipeline transportation industries. Their aggregate electrical demand exceeds 500 Megawatts, which is equivalent to the electricity consumption of approximately 470,000 average California households. CLECA members are large, high load factor and high voltage industrial electric customers in California for whom the price of electricity is essential to their competitiveness and for whom the reliability of electricity service is critically important. For both reasons, CLECA member companies have participated for decades in the Base Interruptible Program (BIP), providing reliability demand response to the grid in times of need.

## I. INTRODUCTION

CLECA strongly agrees with The Joint Parties'<sup>2</sup> concerns regarding Decision (D.) 23-06-029 (the RA Decision), and its adverse impacts on Reliability Demand Response Resources (RDRR) and the Base Interruptible Program (BIP). CLECA urges the Commission to address these concerns expeditiously. The RA Decision's modification to the RDRR trigger level and elimination of the Transmission Load Factor (TLF) and Planning Reserve Margin (PRM) adders have been proven to be poor policy, and must be reversed. Crucially, the AFR, the record in this proceeding, and facts that have developed since the RA Decision's adoption demonstrate that the RA Decision's harmful impact on RDRRs and BIP risks a drastic reduction in the number of emergency resources available to support grid reliability during actual emergencies. To preserve the long-term viability and availability of these resources, the Commission should expeditiously grant the AFR.

Further, CLECA agrees that the AFR meets the requirements for oral argument and respectfully requests that the Commission grant the request so that, in addition to the Joint Parties, BIP stakeholders like CLECA can provide additional details concerning the RA Decision's adverse impacts on BIP participation.

## II. RESPONSE

CLECA submits this response to amplify the Joint Parties' "alert" of the significant legal errors in D. 23-06-029, and to underscore the drastic adverse impact these errors are already having on BIP participants who often provide the largest, most reliable contributions to this

---

<sup>2</sup> The Joint Parties are comprised of: The California Efficiency + Demand Management Council, ("the Council") Leapfrog Power, Inc. ("Leap"), OhmConnect, Inc. ("OhmConnect"), CPower, Enel X North America, Inc., and Center for Energy Efficiency and Renewable Technologies (CEERT).

emergency program essential for reliability. CLECA agrees that the RA Decision’s errors “undermine[] the DR market in California by sending mixed signals to current and potential DR participants,” and urges the Commission to address and reverse these errors expeditiously.<sup>3</sup> As the AFR notes:

[the RA Decision] effectively ignores the concerns expressed by numerous parties regarding the impact that utilizing RDRR in a non-emergency fashion would have on participating customers, including that it would be a change from current dispatch rules, could lead to attrition and thereby jeopardize reliability, could be a premature use of emergency DR, could be operationally challenging or infeasible, and could result in customer fatigue.<sup>4</sup>

Specifically, the RA Decision’s overbroad change to RDRR’s trigger, without allowing for adequate implementation, or for customers to change their participation level, endangers these emergency resources by exacerbating existing BIP customer fatigue and risking disenrollment. Further, the elimination of the TLF and PRM adders wrongly reduces the BIP incentive when it needs to be increased. The Commission should guard against a further decline in reliable, cost-effective BIP resources at a time when they are needed more than ever.

**A. The RA Decision’s Erroneous Modifications Will Drive BIP Customer Fatigue and Disenrollment**

The RA Decision revises the trigger level at which RDRR can be called in the California Independent System Operator (CAISO) market under the Energy Emergency Alert (EEA) system from EEA 2 to EEA Watch, “effective immediately.”<sup>5</sup> This change has already resulted in BIP

---

<sup>3</sup> AFR at p. 17.

<sup>4</sup> AFR at p. 12.

<sup>5</sup> D. 23-06-029, at 97 and 127; See [CAISO Operating Procedure 4420](#), ver. 14.0, at 7-8 (May 1, 2022) (CAISO OP 4420) (“CAISO issues an Energy Emergency Alert Watch (EEA Watch) notice (formerly known as an “Alert” notice) by 15:00 PPT the day before when the Day-Ahead analysis is forecasting that one or more hours may be energy deficient. . . . Note: EEA Watch can be issued after 15:00 or day of if a sudden onset event occurs.”)

events being triggered more often, and during significantly less serious grid conditions<sup>6</sup> than those specified in previous Commission decisions D. 10-06-034 and D. 18-11-029, both of which clearly held that RDRR should not be used prior to an emergency.<sup>7</sup> While the Commission may have intended for this change to help make DR resources “available when most needed,”<sup>8</sup> the RA Decision threatens to produce the opposite result.

As the AFR demonstrates, the RA Decision’s changes are unsupported by the requisite Findings of Fact, Conclusions of Law, or Ordering Paragraphs, which is “not only contrary to law, but will also lead to confusion as to how parties are to proceed.”<sup>9</sup> Indeed, only *fifteen* days after the RA Decision’s adoption, on July 20, 2023, the erroneous operational change already caused significant BIP customer confusion and operational costs.<sup>10</sup> On July 20, a BIP event was triggered when RDRR was exceptionally dispatched during EEA-1 conditions, and lasted between approximately 4 and 19 minutes, depending on the particular utility program’s 15- or 30-minute notification requirements.<sup>11</sup> Since CAISO’s operating procedures had not yet been updated to reflect the recent change in trigger conditions, the event caused considerable confusion among utilities and participating customers. Frustration with this poorly executed

---

<sup>6</sup> See *Notice of Ex Parte Communication of the California Large Energy Consumers Association*, R. 21-10-002, Aug. 17, 2023 at pp. 2-3 (the first BIP event to occur since the RA Decision’s adoption occurred on July 20<sup>th</sup> for a short duration, when weather conditions were not extreme); See also, Robert Mullin, *Ramping Shortfall Sparks CAISO’s 1<sup>st</sup> Summer Emergency*, RTO Insider, Jul. 23, 2023. (available at: <https://www.rtoinsider.com/50926-ramping-shortage-caiso-summer-emergency/>).

<sup>7</sup> AFR at p. 11 (*citing to* D.10-06-034, at p. 14 and Appendix A to D.10-06-034, at p. 5 and D.18-11-029, at p. 40).

<sup>8</sup> See D. 23-06-029 at Finding of Fact 22, Conclusion of Law 21.

<sup>9</sup> AFR at p. 21.

<sup>10</sup> See *Notice of Ex Parte Communication of the California Large Energy Consumers Association*, R. 21-10-002, Aug. 17, 2023 (CLECA Ex Parte Notice) at pp. 2-3.

<sup>11</sup> See CLECA Ex Parte Notice at pp. 2-3; see also, [Event History - Demand Response Event Status \(openadr.com\)](https://openadr.com).

implementation, the significant costs resulting from the brief event, and uncertainty as to how BIP will be utilized in the future, will likely contribute to increased customer disenrollment during the upcoming November opt-out period.

In the Commission's DR proceeding (A. 22-05-002, et al.), BIP stakeholders including CLECA, the Joint DR Parties, Pacific Gas & Electric Company (PG&E), and Southern California Edison (SCE) provide ample evidence demonstrating BIP's substantial contributions to the Commission's DR efforts and goals.<sup>12</sup> However, increased BIP reliance diminishes the program's value proposition to large, high load factor customers, which is driving a decline in BIP participation and enrollment.<sup>13</sup> Although BIP customers sign up to interrupt their operation, and are well prepared to do so, BIP events are nonetheless disruptive to industrial operations. The RA Decision will exacerbate BIP customer fatigue and attrition by triggering more frequent disruptive events to address non-emergency conditions, thus accelerating the decline in BIP resources available to support grid reliability during true emergencies over the 2024-2027 DR program cycle.

Currently, the Commission in the DR proceeding is considering various proposed modifications intended to address general BIP fatigue and enhance participation. However, the RA Decision's sudden change to the program, while simultaneously prohibiting customers to opt out or reduce their Firm Service Level in response to that change, risks hindering these efforts by causing long-time participants to view the program in a negative light. When large

---

<sup>12</sup> See, e.g., [Opening Brief of the California Large Industrial Customers](#), A. 22-05-002, et al., Jul. 14, 2023 at pp. 5-10; [Joint Phase II Opening Brief of CPower and Enel X North America, Inc.](#), A. 22-05-002, et al., Jul. 14, 2023 at pp. 30-32; [Opening Brief of the Industrial Pumping Customers](#), A. 22-05-002, et al., Jul. 14, 2023 at pp. 5-7.

<sup>13</sup> See, *Id.*

commercial and industrial (C&I) customers enrolled in BIP, they did so with the reasonable expectation that the program would be called only in emergencies. The RA Decision now allows for BIP events to be triggered under non-emergency conditions, resulting in a fundamental change to program's parameters that participants did not envision when they enrolled. Unlike with past mid-term changes to BIP parameters,<sup>14</sup> the Commission in the RA Decision prevented current BIP participants from opting out or adjusting their firm service level (FSL) in response to the new reality.<sup>15</sup> This seeming lack of concern for the impact on current BIP participants gave rise to considerable consternation and frustration among BIP customers who may no longer feel that participation is worthwhile.<sup>16</sup>

Similarly, the AFR correctly identifies that the RA Decision's elimination of the TLF and PRM adders is without record support, and serves to harm the Commission's goals for increasing DR.<sup>17</sup> The RA Decision not only fails to identify substantial evidence of "administrative burden" to justify the change, but it also fails to account for this unsupported change's adverse impact on the availability of historically reliable BIP resources. BIP is SCE's largest RDRR program, having delivered "over 100% of load drop commitments during emergencies."<sup>18</sup> However, despite the program's value and dependability, BIP's compensation would be reduced by approximately 10% as a result of eliminating the TLF and PRM adders.

---

<sup>14</sup> See [Res. E-4220](#) (Jan. 29, 2009) (authorizing "adjustment period . . . to give BIP participants the opportunity to adjust their Firm Service Level (FSL) or to opt-out of the program" *after* "customers ha[d] been notified that the proposed new trigger . . . was being considered.").

<sup>15</sup> D. 23-06-029 at 127 (making the change immediately effective and declining to allow participants to opt out or change their firm service levels).

<sup>16</sup> See *Notice of Ex Parte Communication of the California Large Energy Consumers Association*, R. 21-10-002, Aug. 17, 2023 at p. 2.

<sup>17</sup> See AFR at pp. 12-16.

<sup>18</sup> *Opening Comments of California Large Consumers Association on Proposed Decision*, R. 21-10-002, June 14, 2023 at p. 12.

Reducing BIP compensation while increasing BIP reliance will further diminish the program's value proposition to customers, and thus hinder the Commission's goals for increasing BIP enrollment and participation.

Thus, the Commission must grant the Joint Parties' requested rehearing of D. 23-06-029 to address and reverse the erroneous changes adopted therein, and the resultant adverse impacts on BIP participants. Further, the Commission must act swiftly to signal its intent to rectify these errors prior to the November BIP opt-out period. Failure to do so risks driving an even steeper decline in BIP enrollment, thus reducing the total amount of available RDRR to provide any grid reliability benefits in the future.

**B. The Joint Parties' Request for Oral Argument Is Appropriate and Must Be Granted**

Pursuant to Rule 16.3(d), CLECA responds in support of the Joint Parties' request that the Commission schedule oral argument on the AFR.<sup>19</sup> Oral arguments will materially assist the Commission in resolving the AFR by allowing BIP stakeholders like the Joint Parties and CLECA to detail the myriad arguments demonstrating the RA Decision's "broad and dangerous precedent."<sup>20</sup> CLECA concurs that the AFR meets the criteria set forth in Rule 16.3(a), as the AFR clearly raises issues of major significance given its discussion of the RA Decision's adverse impact on the long-term viability and availability of RDRR, including BIP.<sup>21</sup> The AFR further highlights that the RA Decision departs from long-standing Commission precedent concerning when, and how often, RDRR events are triggered<sup>22</sup> without providing adequate explanation,

---

<sup>19</sup> AFR at pp. 26-27.

<sup>20</sup> AFR at p. 27.

<sup>21</sup> Rule 16.3(a).

<sup>22</sup> Rule 16.3(a)(1)(2).



and results in an adverse impact to the public due to its detrimental impact on grid reliability efforts.<sup>23</sup> Moreover, CLECA believes that the AFR and the RA Decision present issues of exceptional controversy and complexity, in addition to the grid reliability issues of public importance; oral argument would afford the stakeholders the opportunity to explain their view of the complex, intertwined issues to the Commission; these explanations in turn should help the Commission to resolve the AFR.<sup>24</sup> Accordingly, CLECA respectfully requests that the Commission grant the AFR's request for oral argument, and that CLECA be permitted to participate.<sup>25</sup>

### III. CONCLUSION

CLECA appreciates this opportunity to respond in support of Joint Application for Rehearing of Decision 23-06-029.

Respectfully submitted,  
Buchalter, A Professional Corporation  
By:



Nora Sheriff  
Counsel for the California Large Energy  
Consumers Association



August 21, 2023

---

<sup>23</sup> Rule 16.3(a)(3).

<sup>24</sup> Rule 16.3(a)(3).

<sup>25</sup> See Rule 16.3(e) ("Participation in the oral argument will ordinarily be limited to those parties who have filed or responded to the application for rehearing.").