

Decision 24-03-004 March 7, 2024

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

**DECISION DENYING PETITION FOR MODIFICATION
OF DECISION 23-06-029 BY THE CALIFORNIA
LARGE ENERGY CONSUMERS ASSOCIATION**

Summary

This decision denies the petition for modification of Decision 23-06-029, filed by the California Large Energy Consumers Association.

Rulemaking 21-10-002 is closed.

1. Background

The Commission issued Decision (D.) 23-06-029 on July 5, 2023. That decision clarified that the California Independent System Operator (CAISO) should be allowed to use Reliability Demand Response Resources (RDRR) as a Resource Adequacy (RA) resource for economic or exceptional dispatch upon the declaration of a day-of Energy Emergency Alert (EEA) Watch, or when a day-ahead EEA Watch persists in the day-of timeframe.¹ The Commission further stated that “when RDRR is dispatched pursuant to conditions described in this decision, CAISO should not need to escalate its grid emergency status to EEA 2

¹ D.23-06-029 at 96.

(an emergency condition), thus ensuring that RDRR is available to avoid a reliability emergency.”² The Commission determined that the clarification to the existing policy would be effective immediately.

On August 24, 2023, the California Large Energy Consumers Association (CLECA) filed a petition for modification of D.23-06-029 (Petition). Responses to the petition were filed by September 25, 2023 by: California Efficiency + Demand Management Council, Leapfrog Power, Inc., OhmConnect, Inc., CPower, Enel X North America, Inc., and Center for Energy Efficiency and Renewable Technologies (collectively, Joint Parties); Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE); and CAISO. CLECA filed a reply to parties’ responses on October 3, 2023.

2. Summary of Petition

In its Petition, CLECA alleges that multiple new facts developed after the adoption of D.23-06-029 that warrant modification of the decision. First, CLECA states that customers of the Base Interruptible Program (BIP) were previously allowed to opt out or change service if program parameters were changed mid-year.³ However, BIP participants were prevented from doing so in response to D.23-06-029 before new dispatch requirements took effect and CLECA states that its members and other BIP participants were “incensed” by their inability to opt out or change service. CLECA contends that this is a new fact that warrants modification of the decision.

Next, CLECA states that because the decision’s “significant operational change to the RDRR dispatch was ‘effective immediately,’” this led to chaos and

² *Id.* at 97.

³ CLECA Petition at 6.

risk to grid reliability on July 20, 2023.⁴ CLECA states that on that date, BIP events were called when RDRR was exceptionally dispatched during EEA 1 conditions for the first time, in violation of CAISO's then-current operating procedures. CLECA states that "[t]hough weather conditions were not extreme and loads were not near the peak, CAISO triggered emergency reliability events that lasted between 4 and 19 minutes, with the exact duration depending on each particular utility BIP program."⁵ CLECA states that the events occurred so quickly that customers providing RDRR were not properly informed of the change and that utilities, demand response (DR) providers, RDRR participants and CAISO operators were not properly trained on the new dispatch conditions. CLECA also states that the July 20th exceptional dispatch resulted in short BIP events as the EEA 1 was quickly cancelled by CAISO. As a result, CLECA argues that "[t]ons and tons of product critical to the state's economy were lost...."⁶

CLECA adds that CAISO needed to revise its operating procedures to comply with D.23-06-029 and that CAISO's revised operating procedures "underwent a tumultuous revision process..." with multiple versions, with limited opportunity to comment, and without adequate notice to stakeholders.⁷ CLECA states that this is also a new fact that warrants modification of the decision.

CLECA further states that CAISO's tariff is deficient and that following D.23-06-029 these deficiencies have a greater impact. CLECA states that the tariff does not allow for fixed start-up costs to be included in RDRR bids (unlike other

⁴ *Ibid.*

⁵ *Id.* at 7.

⁶ *Id.* at 9.

⁷ *Ibid.*

resources which are permitted to include start-up costs).⁸ In addition, CLECA states that the tariff limits the minimum run time to be set at no longer than one hour, which is not reflective of the physical characteristics of those who provide RDRR or the typical RDRR dispatch. CLECA states that while these were not fatal deficiencies when RDRR was bid and dispatched under EEA 1 and EEA 2 conditions, allowing them to be dispatched under EEA Watch conditions requires accurate representation of the physical and operational characteristics of these resources. CLECA states that the need for CAISO tariff changes is a new fact that warrants modification.

CLECA states that an additional new fact is SCE's analyses that there is a significant risk of customer disenrollments from BIP and that there will be high replacement costs for lost BIP after D.23-06-029.⁹

For these reasons, CLECA seeks to modify D.23-06-029 in the following ways:

- (1) To allow economic dispatch for a day-of EEA Watch but only allow exceptional dispatch of RDRR immediately prior to canvassing other balancing authorities, which occurs during EEA 2 conditions. Exceptional dispatch of RDRR need not result in CAISO entering EEA 2.
- (2) To defer the above modification until the Federal Energy Regulatory Commission (FERC) approves CAISO's tariff changes to allow inclusion of start-up costs for RDRR resources and minimum run times of at least three hours.
- (3) To allow BIP participants to opt out or change firm service level immediately.
- (4) To remove the elimination of the transmission load factor (TLF) and planning reserve margin (PRM) adder from BIP

⁸ *Id.* at 11.

⁹ *Id.* at 15.

incentives in 2024 and defer treatment of the adders and incorporate development into a comprehensive distributed energy resources (DER) policy in Rulemaking 22-11-013.

3. Summary of Party Responses

Joint Parties, PG&E, and SCE support CLECA's petition. PG&E states that BIP is an essential component of PG&E's DR portfolio and supports CLECA's goal of ensuring that important reliability DR programs can respond when called upon.¹⁰ PG&E states that it has previously expressed concerns regarding BIP customer participation, including in the investor-owned utilities' (IOU) applications for approval of respective DR programs for 2024-2027. PG&E states that despite increased BIP outreach efforts and incentive increases, BIP continues to suffer from attrition. PG&E expresses concern that D.23-06-029 may exacerbate program departures.

SCE supports CLECA's petition and recommends reinstating the RDRR framework that customers have relied on as a condition to participation and performance.¹¹ SCE shares CLECA's concerns about harm to participating RDRR customers and states that although SCE has not experienced RDRR program attrition, it expects customers are reevaluating participation in the RDRR program. Joint Parties agree with CLECA's concerns.¹² Joint Parties agree that there was confusion among customers and demand response providers (DRP), and confusion about the EEA Watch dispatch, that occurred after the issuance of D.23-06-029.

¹⁰ PG&E Response to Petition at 2.

¹¹ SCE Response to Petition at 1.

¹² Joint Parties Response to Petition at 3.

CAISO, by contrast, states that CLECA's issues with CAISO's tariff rules are beyond the scope of this proceeding, as these issues must be initiated and vetted through a CAISO stakeholder process and approved by CAISO and FERC.¹³ CAISO states that CAISO tariff issues, as well as issues with CAISO's operating procedure changes, should be raised directly with CAISO to be addressed in a stakeholder proceeding.

CAISO also provides clarifications in response to CLECA's assertions. CAISO disputes CLECA's statement that Commission precedent is clear that RDRR should only be triggered economically when prices move extremely higher as a proxy for emergency conditions, or triggered exceptionally only immediately before canvassing other balancing authorities.¹⁴ CAISO disagrees and states that Commission precedent "reflects that RDRR have always been available for in-market or exceptional dispatch under a Warning Stage, and do not require the CAISO to wait until immediately prior to canvassing neighboring balancing authorities."¹⁵

CAISO also disagrees with CLECA's summary of the July 20 event and states that the grid conditions on July 20 were not dissimilar to conditions under which CAISO utilized RDRR before D.23-06-029. CAISO states that the difference was merely procedural in that prior to D.23-06-029, CAISO had to declare an EEA 2 when it utilized RDRR. CAISO states that it "faced emergency conditions that necessitated deploying additional resources to mitigate intra-hour supply shortfalls during the July 20 Event."¹⁶ CAISO states that although

¹³ CAISO Response to Petition at 1.

¹⁴ *Id.* at 2.

¹⁵ *Ibid.*

¹⁶ *Id.* at 3.

the “rapid precipitation of real-time shortfalls was different in nature” from prior emergency events, the need for load reduction to maintain grid reliability was not different from prior events. CAISO notes that following the July 20 event, CAISO issued EEA Watch notices on July 25 and July 26 but “did not utilize RDRR or economically release RDRR bids into the real-time market.” July 20 was the only day CAISO dispatched RDRR this year outside of voluntary day-ahead RDRR participation.

In its Reply, CLECA recognizes that the Commission does not have jurisdiction over CAISO tariff changes and operating procedures, but states that issues that arose with CAISO’s tariffs and operating procedure as a result of D.23-06-029 warrant a modification to the decision.¹⁷ CLECA disagrees with CAISO’s statement that Commission precedent does not require CAISO to wait until immediately before canvassing neighboring balancing authorities before RDRR exceptional dispatch. CLECA disputes CAISO’s assessment that the July 20 event was similar to events prior to D.23-06-029 and states that confusion and harm were still caused by the decision.

4. Standard of Review

Public Utilities (Pub. Util.) Code Section 1708 gives the Commission authority to “rescind, alter, or amend any order or decision made by it.” Modifying an existing decision, however, is an extraordinary remedy that must be carefully applied to keep with the principles of res judicata since “Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed.”¹⁸

¹⁷ CLECA Reply to Responses to Petition at 4.

¹⁸ 1980 Cal. PUC LEXIS 785, 24; *see also* 2015 Cal. PUC LEXIS 278, 7.

The Commission has consistently held that a petition for modification is not a substitute for legal issues that may be raised in an Application for Rehearing.¹⁹ The Commission “will not consider issues which are simply re-litigation of issues that were decided in [the original decision].”²⁰ As provided under Rule 16.4, “[a]ny factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.”²¹ As provided under Rule 13.10, “[o]fficial notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code Section 450 et seq.”

5. Discussion

As a preliminary matter, we note that this Petition was timely filed pursuant to Rule 16.4(c). We also note that a Joint Application for Rehearing of D.23-06-029 (Rehearing Application) was filed by the Joint Parties in this proceeding. The Rehearing Application addresses some overlapping issues raised in this Petition, and the Rehearing Application has since been denied by the Commission in D.23-12-038, issued on December 18, 2023.

5.1. Petition Provides Insufficient Basis to Warrant Modification of D.23-06-029

First, CLECA alleges that on July 20, 2023, BIP events were called when RDRR was exceptionally dispatched during EEA 1 conditions, in violation of CAISO’s operating procedures, resulting in chaos as DR providers, RDRR participants, and CAISO operators were not properly trained on the new

¹⁹ See 2011 Cal. PUC LEXIS 483, 4.

²⁰ *Ibid.*

²¹ Rule 16.4(b) of the Commission’s Rules of Practice and Procedure (Rules).

dispatch procedures. In support of its summary of the July 20 event, CLECA cites the Declaration of Sam Harper, a Principal for Harper Advisory LLC who serves as CLECA's consultant. The Declaration provides: "The RDRR event on July 20 occurred shortly after D.23-06-029 and before customers could be adequately educated and trained on the operational changes, leading to significant confusion."²² The Declaration further states: "The RDRR event on July 20 was dispatched in violation of posted CAISO operating procedures, causing significant confusion and questions regarding whether the dispatch signal was in error."²³

In response to CLECA's petition, CAISO disagrees with CLECA's assessment of the July 20 event and states that the grid conditions were not dissimilar to conditions under which CAISO utilized RDRR before D.23-06-029. CAISO states that the difference was merely procedural in that prior to the decision, CAISO had to declare an EEA 2 when it utilized RDRR.

Considering both CLECA's and CAISO's assessment of the July 20 event, the Commission is not persuaded that CLECA has provided sufficient basis to demonstrate that a modification of D.23-06-029 is warranted.

Next, CLECA alleges that a new fact is that there is a significant risk of customer disenrollments from BIP, which will result in high replacement costs for lost BIP, after D.23-06-029. In support of this statement, CLECA provides its Declaration of Sam Harper, and the result of CLECA's internal survey of its members. The Declaration provides that: "To quantify the potential loss of participation in RDRR programs like BIP, I conducted a survey asking two

²² Declaration of Sam Harper, Attachment A to Petition, at A-2, Para. 10.

²³ *Id.* at A-2, Para. 11.

questions of CLECA members that resulted in 11 customer responses between August 1-4.”²⁴ The Declaration further provides that:

I understand that SCE has estimated that 50% of its BIP customers may exit the program, resulting in a loss of approximately 250 MWs of lost resources. The CLECA survey results support the SCE estimate but indicate that it may be a somewhat conservative estimate.²⁵

Considering the internal survey of 11 CLECA members and Sam Harper’s understanding of SCE’s estimate, the Commission is not persuaded that CLECA has provided sufficient basis to demonstrate that a modification of D.23-06-029 is warranted.

CLECA next alleges that a new fact is that CAISO needed to revise its operating procedures to comply with D.23-06-029 and that this resulted in a revision process that failed to provide stakeholders with sufficient notice and opportunity to comment. The Declaration of Sam Harper provides that: “The currently posted CAISO Operating Procedure 4420 for System Emergency effective August 1, 2023 was posted publicly in its final form on August 1, 2023. The draft changes to the operating procedures underwent significant revisions without adequate posting, stakeholder feedback, or notice period of final draft language.”²⁶

CLECA also alleges that CAISO’s tariff is deficient in that the tariff does not allow for fixed start-up costs to be included in RDRR bids and the tariff limits the minimum run time to be set at no longer than one hour. CLECA states that

²⁴ *Id.* at A-4, Para. 17.

²⁵ *Id.* at A-4, Para. 21.

²⁶ *Id.* at A-1, Para. 5.

these deficiencies now have a greater impact following D.23-06-029. In support of this, CLECA cites to the Declaration of Sam Harper, which provides that:

I understand that SCE and PG&E have disengaged from the CAISO dispatch system at times to prevent the risk of CAISO errantly ordering the return to service prior to the cessation of emergency conditions. This is partly due to limitations in the CAISO tariff to optimize RDRR resources based on their physical operating parameters and fixed start-up costs.²⁷

CLECA's issues with CAISO's operating procedure changes and tariff rules are beyond the scope of this proceeding and should be raised directly with CAISO to address in a stakeholder proceeding. The Commission cannot determine whether CAISO's revision process failed to provide stakeholders with sufficient notice and opportunity to comment, and whether CAISO's tariff is deficient following D.23-06-029. The Commission finds that CLECA has failed to demonstrate that a modification of D.23-06-029 is warranted.

Lastly, CLECA alleges that a new fact is that BIP customers were previously allowed to change service mid-term if program parameters were changed; however, BIP customers were not permitted to do so in response to D.23-06-029 because the changes took effect immediately. The Commission disagrees that this is a new fact. In comments prior to the issuance of D.23-06-029, parties, including CLECA, commented that BIP participants should be given sufficient time to opt out or change their firm service level. In D.23-06-029, the Commission considered these comments and stated that, "We do not modify the decision to incorporate these requests. As the Commission is clarifying an existing definition, the operationalization is effective

²⁷ *Id.* at A-3, Para. 14.

immediately.”²⁸ As such, this is not a new fact and this issue was considered by the Commission prior to issuing D.23-06-029. As the Commission has previously stated, a petition for modification “will not consider issues which are simply re-litigation of issues that were decided in [the original decision].”²⁹

In addition, we note that the Commission initiated allowing an additional adjustment window beyond the ordinary November period, in Application (A.) 22-05-002, et al. In that proceeding, the Commission recently issued D.23-12-005, in which the Commission temporarily re-opened the BIP disenrollment period for 30 days following the issuance of that decision.³⁰

For the foregoing reasons, the Commission finds insufficient basis to warrant modification of D.23-06-029. Accordingly, CLECA’s petition is denied.

6. Comments on Proposed Decision

The proposed decision of ALJ Debbie Chiv in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed on February 15, 2024 by CLECA.

CLECA’s comments generally relitigate arguments made in the petition and in response to the petition. CLECA comments that the proposed decision incorrectly states that CAISO “opposes aspects of CLECA’s petition” and states that rather, CAISO was not opining on the merits of the petition but was “provid[ing] clarification on issues CLECA raises regarding CAISO processes...”³¹ The Commission modifies the decision to state that CAISO was

²⁸ D.23-06-029 at 127.

²⁹ *Ibid.*

³⁰ D.23-12-005 at Ordering Paragraph 22.

³¹ CLECA Comments on Proposed Decision at 3.

providing clarifications in response to the petition. No other modifications have been made to the decision.

7. Assignment of Proceeding

Alice Reynolds is the assigned Commissioner and Debbie Chiv is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Rule 16.4(a) requires that a petition for modification concisely state the justification for the requested relief.

Conclusions of Law

1. The petition for modification failed to provide sufficient basis to warrant a modification of D.23-06-029.

2. The petition should be denied.

O R D E R

IT IS ORDERED that:

1. California Large Energy Consumers Association's petition for modification of Decision 23-06-029 is denied.

2. Rulemaking 21-10-002 is closed.

This order is effective today.

Dated March 7, 2024, at San Francisco, California.

ALICE REYNOLDS
President
DARCIE L. HOUCK
KAREN DOUGLAS
JOHN REYNOLDS
Commissioners

Commissioner Matthew Baker recused himself and did not participate in the discussion and vote on this item.

/s/ MATTHEW BAKER
Commissioner