

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

Rulemaking 21-10-002
(Filed October 7, 2021)

**OPENING COMMENTS OF
THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL ON
PROPOSED DECISION ADOPTING LOCAL CAPACITY OBLIGATIONS FOR 2023-
2025, FLEXIBLE CAPACITY OBLIGATIONS FOR 2023, AND
REFORM TRACK FRAMEWORK**

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I. INTRODUCTION

The California Efficiency + Demand Management Council (the “Council”) respectfully submits these Opening Comments on the Proposed Decision Adopting Local Capacity Obligations for 2023-2025, Flexible Capacity Obligations for 2023, and Reform Track Framework (“Proposed Decision” or “PD”), mailed in this proceeding on May 20, 2022. These Opening Comments are timely filed and served pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure and the instructions accompanying the Proposed Decision. Attached as Appendix A to the Proposed Decision is the 24-Hour Slice Framework.

II. BACKGROUND

The Council is a statewide trade association of non-utility businesses that provide energy efficiency, demand response, and data analytics services and products in California.¹ Our member companies employ many thousands of Californians throughout the state. They include energy efficiency (“EE”), demand response (“DR”), and distributed energy resources (“DER”) service providers, implementation and evaluation experts, energy service companies, engineering and architecture firms, contractors, financing experts, workforce training entities, and energy efficient product manufacturers. The Council’s mission is to support appropriate EE and DR

¹ Additional information about the Council, including the organization’s current membership, Board of Directors, antitrust guidelines and code of ethics for its members, can be found at <http://www.cedmc.org>. The views expressed by the Council are not necessarily those of its individual members.

policies, programs, and technologies to create sustainable jobs, long-term economic growth, stable and reasonably priced energy infrastructures, and environmental improvement.

III. THE PROPOSED DECISION SHOULD ADDRESS THE CONCERNS RAISED BY THE COUNCIL AND CPOWER WITH REGARD TO THE RESOURCE ADEQUACY MEASUREMENT HOURS

The PD approves revised Resource Adequacy (“RA”) Measurement Hours that reflect the California Independent System Operator’s (“CAISO’s”) adoption in its 2023 Flexible Capacity Requirements Report (“FCR Report”) of updated Availability Assessment Hours for March and April from Hour Ending (“HE”) 17 – HE 21 to HE 18 – HE 22.²

As the PD acknowledges, the Council and CPower submitted joint comments on the FCR Report and recommended, among other things, that the Commission grandfather existing contracts that had been executed by this PD’s adoption date.³ As explained in the May 19 joint comments, this is a critical issue because the DR Load Impact evaluations that have already been completed for the 2023 RA year, and some DR providers have already executed RA contracts for the 2023 RA year, all based on the current RA Measurement Hours.⁴ The PD did not address this recommendation, so the Council respectfully reiterates its request that the Commission 1) defer adoption of any changes to the RA Measurement Hours to 2024 for DR resources and, 2) in turn, request the CAISO also defer its updated AAH when submitting the associated tariff revisions to the Federal Energy Regulatory Commission (“FERC”).

IV. THE PROPOSED DECISION SHOULD BE MODIFIED AS TO THE QUALIFYING CAPACITY OF DR RESOURCES

A. The Council supports the continuation of the California Energy Commission Working Group.

The Council agrees with the PD’s request that the California Energy Commission (“CEC”) Supply Side DR Working Group continue to develop long-term DR counting

² Proposed Decision, at pp. 14-15 and Ordering Paragraph (OP) 5.

³ *Id.*, at p. 14.

⁴ Comments of the California Efficiency + Demand Management Council and CPower on the California Independent System Operator Final Flexible Capacity Needs Assessment for 2023, at pp. 3-4.

recommendations for the 2025 RA year that conform with the adopted Slice-of-Day framework.⁵ The February 1, 2023 working group report deadline is reasonable and would allow what should be a sufficient amount of time for the working group process to deliver some well-developed DR counting proposals and to address the seven issues specified in the PD.

B. Clarification is needed of the Incentive-Based Method.

The Council is concerned that several of the observations made in the PD with regard to the Incentive-Based Method appear to reflect a misunderstanding of it. Fundamentally, it is meant to be a streamlined approach to DR counting that reduces the burden on DR providers, investor-owned utilities (“IOUs”), and Energy Division staff while providing greater certainty than currently seen under the load impact protocols (“LIPs”) that capacity commitments will actually be met. The streamlined elements involve allowing DR providers and IOUs to select the method of their choosing to quantify their proposed qualifying capacity (“QC”) values and provide these values in a single common template to the Energy Division rather than burdening them with hundreds of pages of documentation and analysis, unless requested by the Energy Division.

Contrary to the assertion made in the PD that it would require the Energy Division to learn every methodology used by IOUs and DR providers, the presence of the penalty structure would in effect act as a risk mitigation backstop to ensure that QC values are delivered, thereby eliminating the burden on the Energy Division of vetting these methodologies as carefully as they do today under the current LIP process.⁶ This is not to imply that the Energy Division would be expected to “rubber stamp” claimed QC values, only that its process need not be so intensive up-front because of the back-end penalty structure.

C. The proposed collateral requirement can be eliminated to reduce the burden on the Energy Division.

The Council acknowledges that the proposed collateral requirement in its Incentive-Based Method would impose an additional amount of responsibility on the Energy Division. This element of the proposal was included in good faith in order to provide a degree of comfort that DR providers would be able to pay any penalties they might be assessed. However, the Council has received only negative feedback from parties and the CEC on this design element,

⁵ Proposed Decision, at OP 11.

⁶ *Id.*, at p. 38.

and suggests that it can be removed from the proposal. The only Energy Division role would then be to review the Demonstrated Capacity template of each DR provider and IOU, and inform the penalized party and, in the case of third-party DR providers, notify the contracting LSE, if a penalty is owed. This would require far fewer Energy Division resources than managing several DR provider collateral requirements.

D. The Council’s proposed penalty structure has a demonstrated track record of effectiveness.

Criticism of the Incentive-Based Method penalty structure is puzzling considering that the penalty structure proposed by the Council has been in use for several years by PG&E for its capacity bidding program (“CBP”). The PD claims that the Council’s penalty structure “has not been sufficiently developed to ensure that the penalty structure provides necessary incentives for DRPs to reasonably estimate QC values.”⁷ This claim is contradicted by the fact that, to the Council’s knowledge, neither Pacific Gas and Electric (“PG&E”) nor the other IOUs have cited any failures of their own CBP penalty structures to incentivize DR providers to nominate realistic QC values. In fact, in its recent 2023-2027 DR program application, PG&E has proposed to revise its CBP penalty structure to only impose penalties if less than 50 percent of a DR provider’s nominated capacity is delivered.⁸ In contrast, the Council’s penalty proposal begins to impose penalties if less than 75 percent of nominated capacity is delivered. If PG&E believed that its current CBP penalty structure was not providing the necessary incentives, then the Council finds it hard to believe that PG&E would propose to revise it to be less, not more, rigorous in its 2023-2027 DR application.

The PD also cites concerns that the Incentive-Based Method would “lead to wide variability of capacity values.”⁹ It is unclear what the PD’s intent was here because only one QC assessment is ever made for an individual IOU or DR provider, so the notion of variability of QC values among different IOUs and DR providers is irrelevant. To illustrate that this variability is perfectly normal, consider a hypothetical example of an IOU retaining multiple consultants to create multiple versions of its annual Load Impact Evaluation for a given year. It is highly likely

⁷ Proposed Decision, at p. 38.

⁸ PG&E 2023-2027 Demand Response Programs, Pilots, and Budgets – 2024-2027 Full Proposal – Prepared Testimony, submitted in Application (A.) 22-05-002, et al. (DR Applications) on May 2, 2022, at p. 3-17, line 3 to p. 3-18, line 14.

⁹ Proposed Decision, at p. 38.

that each consultant’s analysis would recommend a different QC value because, even under the current LIP process, there will always be a certain degree of variation in how each consultant applies the LIPs.

To the extent the PD was referring to concerns about variability of QC values among DR providers, this is absolutely to be expected because each IOU and DR provider have uniquely different portfolios and therefore should have different QC values. What matters most in this instance is not whether there is “variability” (however way it is defined), but the accuracy of the IOU’s or DR provider’s QC value which would be enforced by a penalty structure. Therefore, all else being equal, it is far more likely that QC values under the Incentive-Based Method are delivered than under the current LIP-based approach.

E. The LOLE-Weighted LIP Method should not be adopted in isolation.

The PD proposes to maintain the current LIP process but leaves the door open to adopting the loss-of-load expectation (“LOLE”)-Weighted LIP Method by August 2022.¹⁰ This timeline is highly flawed because it creates uncertainty very late in the LIP process as to how much capacity a DR provider can sell. If the Commission is not prepared to approve any of the interim DR counting proposals in this decision, then it should simply retain the current LIP process until a long-term method can be adopted.

The Council agrees with the PD claim that, in comparison to the LIP-Informed Effective Load Carrying Capability (“ELCC”) Method, “[t]he LOLP-weighted LIP proposal is a simpler, more transparent methodology that does not require time-intensive or costly modeling of the reliability impacts of DR programs”, but strongly disagrees with the PD’s general statement that the LOLE-Weighted LIP Method is “an improvement over the current LIP process.”¹¹ As the DR Coalition explained in opening comments on the March 14, 2022 Ruling, “this methodology would do nothing to address the DR Coalition’s concerns about the LIP process” and that it should only be adopted “as one of the three interim methodologies for use by IOUs and DR providers.”¹² The PD should not adopt the LOLE-Weighted LIP Method on its own unless the CAISO were to agree that it warrants RAIM exemption, and only on the condition that the

¹⁰ Proposed Decision, at pp. 39-40.

¹¹ *Id.*, at pp. 38-39.

¹² Opening Comments of the California Efficiency + Demand Management Council, CPower, Enel X North America, Inc., and Leapfrog Power, Inc. on Administrative law Judge’s Ruling on Loss of Load Expectation Study and Supply-Side Demand Response Report, and Setting Comments Schedule, at p. 16.

FERC were to approve the CAISO's associated tariff revisions. Otherwise, it would introduce unnecessary uncertainty into the LIP process with no proven benefit.

V. THE DR COALITION TESTING PROPOSAL IS BEING HELD TO AN UNREASONABLE STANDARD AND SHOULD BE ADOPTED

The PD adopts the Energy Division's proposal that DR testing rules apply to third-party DR resources for all LSEs, rather than non-IOU LSEs only, while exempting third-party IOU DR programs, including the DR Auction Mechanism ("DRAM").¹³ DR providers would be required to conduct the test in the month with the highest NQC value for each sub-LAP.¹⁴ The PD also rejects the DR Coalition's proposed criteria for DR providers to graduate to biennial, rather than quarterly testing.¹⁵

The Council supports the application of the DR testing requirements to IOU-procured third-party DR as well as the exemption of the CBP, Base Interruptible Program ("BIP"), and DRAM. However, the Council respectfully disagrees with the PD's rejection of the DR Coalition proposal. The DR Coalition's proposal relies on the standard implicitly established by PG&E's CBP penalty structure that delivery of a minimum of 75 percent of the nominated capacity value constitutes acceptable performance. As the Council discussed above, there has been no indication that this standard is inadequate.

With regard to the PD's claim that "there is inadequate data to evaluate the performance determination, as proposed," the Council respectfully notes that the original DR testing requirements approved in D.20-06-031 were adopted with the intention that determining criteria to differentiate between "new and changing resources" and those with established track records would be discussed and adopted within a later track of the same proceeding.¹⁶ The decision, therefore, did not assume that rules around a less burdensome testing requirement would need to wait until real-world data were available. The fact that these rules were not actually scoped into Tracks 3 or 4 of R.19-11-009 appears to be an oversight and was not at all based on a Commission determination that it was too early to review proposals on the topic. The DR

¹³ Proposed Decision, at OP 12.

¹⁴ *Id.*

¹⁵ *Id.*, at p. 45.

¹⁶ Decision 20-06-031, at p. 40.

Coalition proposal should be adopted in this decision; the Commission can then monitor its success and reassess in the near future to determine whether any revisions are warranted.

VI. THE PD’S MINIMUM AVAILABILITY REQUIREMENT FOR USE-LIMITED RESOURCES IS OVERLY BROAD AND SHOULD BE REVISED

The PD proposes to adopt a 24-slice Slice-of-Day framework which would include retaining a minimum availability requirement for third-party DR contracts of four consecutive hours during the prevailing AAH, Monday-Saturday, and at least 24 hours per month, even if the Maximum Cumulative Capacity (“MCC”) buckets are ultimately eliminated.¹⁷

The Council supports adoption of the 24-slice framework and understands the desire to ensure that DR and other use-limited resources remain available for a minimum amount of time, but retaining this requirement proposed by the PD contradicts the entire purpose of a 24-slice framework. Under this framework, any use-limited resource should be free to meet an LSE’s RA requirement during any one or more hourly slices, regardless of whether those slices fall within the AAH. As an example, a DR resource should be able to provide RA capacity from HE 9 – HE 11 and not be subject to a four-hour availability requirement in general, and especially not during the AAH because the DR resource has not been contracted to deliver RA capacity during those hours. Furthermore, it would be completely unreasonable for a DR resource to be subject to a four-hour availability requirement when it was only contracted to provide RA capacity for a two-hour daily period.

This raises the question of what the Must Offer Obligation (“MOO”) would be under this scenario. More specifically, would the MOO begin one hour prior to HE 9 so as to overlap one hour before and one hour after the HE 9 – HE 11 contract period? If so, what if the contract period is for one or three slices or for non-contiguous slices? Also, what if the contract period is for more than four slices? It is reasonable to specify days of the week during which a use-limited resource must be available (currently, Monday-Saturday) as well as the current 24-hour minimum monthly capability. However, the Commission should otherwise only require that DR, and other use-limited resources, be available during the slices for which they are under contract.

¹⁷ Proposed Decision, at p. 98 and OP 24.

IV. CONCLUSION

The Council asks that the Proposed Decision be modified for the reasons stated above. Those needed modifications to the Proposed Decision are included in Appendix A (Proposed Modifications to Findings of Fact, Conclusion of Law, and Ordering Paragraph) attached and incorporated by reference hereto.

Dated: June 9, 2022

Respectfully submitted,

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APPENDIX A

THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS FOR THE PROPOSED DECISION ADOPTING LOCAL CAPACITY OBLIGATIONS FOR 2023- 2025, ADOPTING FLEXIBLE CAPACITY OBLIGATIONS FOR 2023, AND REFORM TRACK FRAMEWORK

The California Efficiency + Demand Management Council (the “Council”) proposes the following modifications to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs in the Proposed Decision Adopting Local Capacity Obligations for 2023-2025, Flexible Capacity Obligations for 2023, and Reform Track Framework, mailed in R.21-10-002 on May 20, 2022 (Proposed Decision).

Please note the following:

- A page citation to the Proposed Decision is provided in brackets for each Finding of Fact, Conclusion of Law, or Ordering Paragraphs for which a modification is proposed.
- Added language is indicated by **bold type**; removed language is indicated by **bold strike-through**.
- A new or added Finding of Fact, Conclusion of Law, or Ordering Paragraph is labeled as “NEW” in **bold underscored** capital letters.

PROPOSED FINDINGS OF FACT:

NEW. Modification of the RA measurement hours for DR in the 2023 RA year could create conflicts with the 2023 DR Load Impact evaluations and existing DR contracts.

NEW. The Incentive-Based Method can be modified to reduce its complexity and the burden on the Energy Division.

NEW. The DR Coalition’s proposal for tiered DR testing requirements is reasonable and based on an established standard of adequate performance.

PROPOSED CONCLUSIONS OF LAW:

NEW. Revised RA measurement hours for the spring months of March and April should be adopted in the 2024 RA year for DR.

NEW. The Incentive-Based Method DR counting proposal, as modified, should be adopted on an interim basis until a long-term method is adopted.

NEW. The DR Coalition’s proposal for tiered DR testing requirements should be adopted.

PROPOSED ORDERING PARAGRAPHS:

5. [113] The Resource Adequacy (RA) measurement hours are modified to 5:00-10:00 PM for March and April, and 4:00–9:00 PM for all other months. The modified RA hours shall be effective beginning in the 2023 RA compliance year **for all resources other than DR, for which the new RA measurement hours shall be effective in the 2024 RA compliance year.**

12. [116-117] Third-party demand response (DR) resources procured by all load-serving entities shall be subject to the following testing requirements:

- (a) The DR resource must dispatch for four consecutive hours during the Resource Adequacy (RA) measurement hours in every quarter of the delivery year.
- (b) The test must be done at the resource ID level and all resources within the same sub-Load Aggregation Point must be dispatched concurrently. If qualifying capacity values vary by month, within each quarter, the test shall be done in the month with the highest qualifying capacity for each sub-Load Aggregation Point.
- (c) **The criteria for the two testing Tiers are:**
 - **Tier 1 (biennial testing): An average Demonstrated Capacity of 75 percent or above of the aggregate Monthly Supply Plan capacity in two consecutive tests;**
 - **Tier 2 (quarterly testing): An average Demonstrated Capacity of below 75 percent of the aggregate Monthly Supply Plan capacity in two consecutive tests.**

The testing requirement for third-party DR resources shall be effective for the 2023 RA compliance year. The testing requirements do not apply to: (1) third-party DR resources procured via investor-owned utility (IOU) programs, such as the Capacity Bidding Program and Base

Interruptible Program, or contracted by an IOU under Commission-approved contracts prior to the effective date of this decision; and (2) third-party DR resources in the 2023 Demand Response Auction Mechanism pilot. This Ordering Paragraph replaces Ordering Paragraph 13 of Decision 20-06-031.

~~24. [119] All use-limited resources shall be subject to a minimum four-hour daily output availability.~~

NEW. The Incentive-Based Method DR counting proposal, as modified, is adopted on an interim basis until a long-term method is adopted.