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 7, 2021)

REPLY COMMENTS OF THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL AND CPOWER ON ADMINISTRATIVE LAW JUDGE'S RULING ON CORRECTED VERSION OF CALIFORNIA ENERGY COMMISSION'S REPORT

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I. INTRODUCTION

The California Efficiency + Demand Management Council ("the Council") and CPower (collectively "the Joint Parties") appreciate this opportunity to submit their Reply Comments on the Administrative Law Judge's Ruling on Corrected Version of California Energy Commission's Report, issued in this resource adequacy ("RA") proceeding on February 24, 2023 ("February 24 Ruling"). Attached to the February 24 Ruling was the corrected and final version of the California Energy Commission's ("CEC's") Qualifying Capacity ("QC") of Supply-Side Demand Response ("DR") Working Group Report ("Final Report"). These Reply Comments have been timely filed and served pursuant to the Commission's Rules of Practice and Procedure and the instructions contained in the February 24 Ruling.

II. THE PRINCIPLES ADOPTED BY THE WORKING GROUP WERE NOT MEANT TO BE BINDING

In Opening Comments, several parties implicitly or explicitly characterize the degree to which a DR counting proposal conforms with the nine principles that were developed by the Working Group – as evidenced by the results of CEC's survey – as the sole appropriate determinant of the CEC's ultimate recommendation to the Commission. Therefore, these parties object to the CEC selecting its own modified proposal.[1] San Diego Gas & Electric Company ("SDG&E") stated that the Demand Side Analytics ("DSA")/SDG&E proposal "obtained the highest score amongst the active working group participants, while the CEC's proposal obtained

[1] *See, e.g.,* San Diego Gas & Electric Company Opening Comments, at p. 3 and Pacific Gas and Electric Company Opening Comments, at pp. 2-3.

the second lowest score. However, the CEC's Final WG Report dismisses these survey results and recommends implementation of the CEC's proposal."[2] PG&E's opening comments adopt a similar position.[3] California Large Energy Consumers Association ("CLECA") criticized the absence of weighting of the proposals based on compliance of the principles and argued that the principles did not include a preference for a penalty mechanism.[4] Finally, DSA argued that its proposal as well as CLECA's were "summarily dismissed by CEC in favor of its own [proposal]."[5]

The Joint Parties wish to clarify for the record a few key points about the principles and their role in the Working Group process. First, the principles were developed based on stakeholder feedback that was provided over several working group sessions, and CEC staff generally did well in fairly and accurately incorporating the majority sentiment into the principles. However, many parties participating in the Working Group opposed a penalty mechanism so, notwithstanding CLECA's arguments, it was highly unlikely that a penalty mechanism could have been included as a principle. The Joint Parties argue that had the Joint Parties or CEC staff, as proponents of a penalty mechanism, attempted to insert that principle, there would have been broad resistance to it and the CEC would be accused, as they are now by some parties, of placing a greater value on its own proposal. Second, CEC staff was very clear throughout the Phase 2 Working Group process that the degree of conformance by each proposal with these principles would *inform* but not *dictate* the CEC's recommendations. As the Commission can surely understand, there are instances in policymaking when the regulatory entity will take parties' feedback into account, but ultimately make determinations based on its own assessment of the best path forward. Parties may not always agree, and the Joint Parties have certainly been in that position on countless occasions, but the prerogative of the regulatory entity to be the ultimate decision-maker has to be respected as long as the decisions conform with applicable law.

For their part, the Joint Parties found that the nine Working Group principles were useful in that they provided specific "guideposts" that each proposal sponsor was able to use to inform the parameters of their respective proposals. However, there were a few shortcomings in how

[2] SDG&E Opening Comments, at p. 3.
[3] PG&E Opening Comments, at pp. 2-3.
[4] CLECA Opening Comments, at p. 10.
[5] DSA Opening Comments, at p. 2.

the principles were utilized which may have impacted their usefulness in determining the optimal DR counting proposal. Critically, it became clear at the October 6 Working Group discussion where stakeholders discussed how they had scored each proposal using the principles as a basis, that stakeholders had applied very divergent interpretations of most of the principles to their survey responses. Because of this subjectivity, the extent to which the proposals met the nine principles was subject to a large degree of interpretation by each stakeholder. The Commission should respect the CEC's prerogative to apply the amount of weight to the principles it deems appropriate, especially when doing do so does not contradict its stated intention for how it proposed to use them.

III. PUBLIC ADVOCATES OFFICE'S CRITICISM OF AN INCENTIVE-BASED METHODOLOGY IS NOT LOGICAL AND ARE INCONSISTENT WITH THEIR PAST POSITIONS

Public Advocates Office ("Cal Advocates") argues against adoption of a penalty structure because it would be ineffective in ensuring that DR resources deliver their QC values. Cal Advocates states, "[a]n incentive-based QC value provides no guarantee that the resource would perform at its QC value, preventing the California Independent System Operator ("CAISO") from being able to rely on a DR resource's QC value."[6] Cal Advocates also states that a penalty mechanism would actually incentivize DR providers to overestimate their QC values, stating, "CEDMC states that a penalty system would ensure that procured capacity is delivered since a financial penalty would be otherwise incurred. [citation removed] This is not true if a DR provider finds that a high QC makes economic sense."[7] Cal Advocates' reasoning is not logical and directly contradicts its past positions on penalty structures for DR resources.

Cal Advocates is correct that an incentive-based DR counting methodology would not *guarantee* DR resources deliver their QC values. However, the exact same thing can be accurately said about the current Load Impact Protocols ("LIPs") or any other methodology that was proposed in the Working Group. For example, the inability of the LIPs to guarantee that DR resources deliver their QC values is demonstrated in the quantity of investor-owned utility ("IOU") DR programs bid into the CAISO market during the hottest days of 2022. As the CAISO Department of Market Monitoring ("DMM") demonstrated in its September 2022 Report on DR Performance, IOUs' bids of their DR programs in the CAISO market on the hottest days

[6] Cal Advocates Opening Comments, at p. 4.
[7] *Id.*, at p. 6.

of the year were far below their QC values.[8] Therefore, any expectation that a DR counting methodology will guarantee DR resources deliver their QC values is unrealistic.

Instead, the purpose of a penalty mechanism is to provide *greater motivation* for IOUs/load-serving entities ("LSEs") and DR providers to put forth QC values that they can realistically deliver. Even the CAISO DMM has recommended a performance-based penalty or incentive structure for DR providing RA.[9] In fact, Cal Advocates has also advocated for penalty mechanisms in the past precisely for this reason. In its opening comments on the November 15, 2019 proposed decision in Application ("A.") 17-01-012 et al, Cal Advocates stated in reference to the Demand Response Auction Mechanism ("DRAM") Pilot, "The minimum energy dispatch requirement and *associated penalty structure* are likely to disincentivize the type of bidding behavior in the CAISO markets that resulted in DRAM resources being the least utilized resources (emphasis added)."[10] The Commission should disregard Cal Advocates' arguments against a penalty mechanism.

IV. DSA'S CLAIMS THAT THE CEC'S RECOMMENDED APPROACH MAY BE MORE EXPENSIVE THAN THE CURRENT LIPS IS UNSUPPORTED AND SPECULATIVE

DSA questions the CEC's claim that its proposal would be less expensive than the current LIPs and argues that the opposite outcome would occur stating:

> "Nowhere did the CEC demonstrate that its approach is less expensive than the current approach. The CEC report simply asserts the third-party claims that difficult [sic], expensive, and opaque without any evidence. The cost of an evaluation is $50k-$100k per program (typically <2% of revenue, even for aggregators). Due to its complexity, we are concerned that the CEC recommended approach will in fact costs [sic] rather than reduce and make the process more complex rather than simpler."[11]

The Joint Parties do not dispute that the CEC proposal in its current form requires some additional clarity, which adds an element of uncertainty to the time and cost of implementing it, but the CEC's claims that its approach would be less expensive are well-founded if for no other

[8] *Demand Response Issues and Performance 2022*, Figure 2.1, Department of Market Monitoring, February 14, 2023

[9] *Demand Response Issues and Performance 2022*, at p. 6, Department of Market Monitoring, February 14, 2023

[10] Opening Comments of the Public Advocates Office on the Proposed Decision Refining the Demand Response Auction Mechanism, submitted in A.17-01-012, et al. (DR Applications) on December 5, 2019, at p. 1.

[11] DSA Opening Comments, at p. 5.

reason than it would eliminate the voluminous LIP reporting requirements which, by all accounts throughout the Working Group discussions, are expensive and time-consuming. In fact, DSA's proposal, by adding more complexity to the current LIPs, would very likely add to the cost of developing DR QC values. Furthermore, DSA's assertion of a cost range of $50,000-$100,000 per DR provider for a LIP analysis is understated based on several statements made by DR providers participating in the Working Group, who estimated $100,000 as the *minimum* cost, even for a comparatively small DR portfolio. Finally, its assertion that this cost represents less than 2 percent of revenue for DR providers is speculative and implies that DR providers should be willing to spend that amount of money for the privilege of operating in the California RA market. The Commission should reject these arguments.

V. THE COMMISSION SHOULD REJECT ANY ATTEMPTS TO REPLAY THE WORKING GROUP PROCESS

DSA attempts to take another "bite of the apple" by recommending that the Commission allow DSA and CLECA, and only DSA and CLECA, to resubmit their proposals with added penalty structures.[12] The Commission should reject this effort and move forward with the information currently in the record because stakeholders have already had several months to develop their proposals.

DSA proposes that the DSA and CLECA proposals, as the two highest ranking based on the Working Group principles, be allowed to be updated to include a penalty mechanism so as to conform with the CEC's recommendation for an incentive-based DR counting methodology.[13] DSA states:

> "If the CPUC elects upfront forecasts with back-end rigor and penalties (Option A), we recommend that it allow the two highest scoring proposals (DSA and CLECA's) to modify the proposals to comply with the new criteria if they so choose. [footnote omitted] We recommend that the CPUC provide DSA and CLECA three weeks to modify their proposals."[14]

For the Commission to approve this would be fundamentally unfair to the other proposal sponsors. In addition, DSA's recommendation misses the fundamental point of the CEC's proposal which is to replace a front-loaded, heavily quantitative methodology that lacks any consequences for a failure to deliver on QC values with a methodology that relies on less upfront

[12] DSA Opening Comments, at p. 6.
[13] *Id*.
[14] *Id*.

quantitative analysis but is back-loaded with a penalty mechanism that will impose consequences for failure to deliver on QC values. Allowing DSA and CLECA to compound the serious shortcomings of their LIP-based proposals by overlaying a penalty mechanism on top of them will only make them more objectionable than they already are. Any attempt by DSA or any other party to turn back the clock should be denied.

SDG&E makes a similar recommendation stating, "SDG&E recommends that at least one core working group be convened to further analyze the DR QC proposals. SDG&E proposes a timeline of ten to twelve weeks to accommodate the recommended working group process… "[15] The Commission should deny this recommendation because, again, it would unfairly give select parties another bite at the apple. Once the Commission decides on a proposal with which to move forward, it should convene a process to fill in any outstanding gaps just as it did with the Slice-of-Day ("SoD") framework.

VI. SOUTHERN CALIFORNIA EDISON COMPANY'S ARGUMENT AGAINST THE CEC RECOMMENDATION THAT DR SHOULD NOT BE CONSTRAINED TO AVAILABILITY ASSESSMENT HOURS IS FLAWED AND SHOULD BE DISREGARDED

The Joint Parties recommend that the Commission disregard Southern California Edison's ("SCE's") opposition to the CEC recommendation to allow DR capacity to meet RA requirements outside of the Availability Assessment Hours ("AAH") and not be subject to a specified number of hours.[16] SCE claims that DR is needed during the AAH when capacity needs are greatest.[17] However, this argument does not account for the fact that DR capacity exists outside of the AAH; in other words, not all DR potential lays within the 4:00-9:00 p.m. window. Confining DR to this small number of hours would lock out any other DR capacity that may not be available during the AAH from providing RA. SCE's argument also appears to ignore that, under a SoD framework, capacity requirements exist in every hour, not only the AAH. DR resources should be allowed to meet these needs when they are capable of doing so. Even if DR is allowed to provide RA outside the AAH, it is likely that DR resources will continue to be concentrated in the AAH because RA prices will be highest for these slices. The Commission

[15] SDG&E Opening Comments, at p. 12.
[16] SCE Opening Comments, at p. 7.
[17] *Id*.

should disregard SCE's concern and allow DR to be delivered during all hours and for any number of slices it is capable.

VI. CONCLUSION

The Joint Parties appreciate the opportunity to provide these Reply Comments.

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Respectfully submitted,

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