

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

Order Instituting Rulemaking to Enhance
the Role of Demand Response in Meeting
the State's Resource Planning Needs and
Operational Requirements.

Rulemaking 13-09-011

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
RESPONSE TO APPLICATIONS FOR REHEARING OF DECISION 15-11-042**

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Pursuant to Rule 16.1(d) of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the California Independent System Operator Corporation (CAISO) files this response to the applications for rehearing of Decision (D.) 15-11-042 filed by Comverge, Inc., CPower, EnerNoc, Inc., EnergyHub, Inc., and Johnson Controls, Inc. (“Joint Parties”)

I. Introduction

The CAISO strongly supports the Commission’s Decision 15-11-042 (Decision) and believes the Joint Parties application for rehearing does not adequately consider the framework developed in the Commission’s bifurcation decision, D.14-03-026. The conclusions reached in the Decision are entirely consistent with the Commission’s foundational bifurcation policy. The Commission should reject the Joint Parties application for rehearing. .

II. Standard of Review

Public Utilities Code (“PU Code”) Section 1757(a) establishes the standard for determining whether the Decision is unlawful or erroneous, and specifies that review by a court shall not extend further than to determine, on the basis of the entire record, whether any of the following occurred:

- (1) The Commission acted without, or in excess of, its powers or jurisdiction;
- (2) The Commission has not proceeded in the manner required by law;
- (3) The Decision is not supported by the findings;
- (4) The findings in the Decision are not supported by substantial evidence in light of the whole record;

(5) The Decision was procured by fraud or was an abuse of discretion; or

(6) The Decision violates any right of the petitioner under the Constitution of the United States or the California Constitution.

The Joint Parties requesting rehearing allege legal error based on the standards in PU Code Sections 1757(a)(2), (3), (4) and (5). In assessing whether the Commission proceeded in the manner required by law, courts apply “a strong presumption of the validity of the [C]ommission’s decisions.”¹ The Commission’s interpretation of its own rules and regulations “is entitled to consideration and respect by the courts.”² A reviewing court will not interfere with the Commission’s choice of procedures “absent a manifest abuse of discretion or an unreasonable interpretation of the statutes governing its procedures.”³ In addition, if the court concludes that the Commission has failed to proceed in the manner required by law, the court “will annul its decision only if that failure was prejudicial.”⁴

In assessing whether the findings in the Decision are supported by substantial evidence in light of the whole record, “[t]he court must consider all relevant evidence in the record,” but “[i]t is for the agency to weigh the preponderance of conflicting evidence.”⁵ “Courts may reverse an agency’s decision only if, based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency.”⁶ “[T]he findings of fact by the [Commission] are to be accorded the same weight that is given to jury verdicts and the findings are not open to attack for insufficiency if they are supported by any reasonable construction of the evidence.”⁷ “When conflicting evidence is presented from which conflicting inferences can be drawn, the [Commission’s] findings are final.”⁸

¹ *Utility Reform Network v. Public Utilities Comm’n.*, 223 Cal. App. 4th 945, 958 (2014); *Utility Consumers’ Action Network v. Public Utilities Comm’n.*, 187 Cal.App.4th 688, 697 (2010).

² *Southern California Edison Co. v. Public Utilities Comm’n.*, 85 Cal.App.4th 1086, 1096 (2000).

³ *Pacific Bell v. Public Utilities Comm’n.*, 79 Cal.App.4th 269, 283 (2000).

⁴ *Utility Reform Network v. Public Utilities Comm’n.*, 223 Cal. App. 4th 945, 958 (2014), citing *Southern California Edison Co. v. Public Utilities Comm’n.*, 140 Cal.App.4th 1085, 1106 (2006).

⁵ *Clean Energy Fuels Corp. v. Public Utilities Comm’n.*, 227 Cal.App.4th 641, 649 (2014).

⁶ *Id.*, citing *SFPP, L.P. v. Public Utilities Comm’n.*, 217 Cal.App.4th 784, 794 (2013).

⁷ *Id.*

⁸ *Id.*, at 649-650, citing *Toward Utility Rate Normalization v. Public Utilities Comm’n.*, 22 Cal.3d 529, 537-538 (1978).

III. CAISO Response

The Commission's finding that event-based load modifying demand response has no capacity value is supported by both the legal and the factual construct adopted by the Commission in its bifurcation decision, D.14-03-026. The bifurcation decision recognized that only two types of demand response programs will exist after implementing bifurcation: (1) load modifying resources which "are defined as resources that reshape or reduce the net load curve;" and (2) "supply resource" which are defined as "resources that are integrated into the California Independent System Operators energy markets."

Consistent with the bifurcation decision, D.15-11-042 finds as follows:

15. Existing soft triggers for event-based load modifying demand response programs do not provide dependable reductions in load, procurement obligations, or avoided cost.

And,

23. At this time, there is no viable methodology for valuing and accounting for event-based load modifying demand response in the CAISO market.

The Valuation Working Group Report concluded "there was no consensus on how 'hard triggers' for LMR DR programs should be set for System RA/LTPP and how LMR DR should be incorporated into the RA, LTPP and transmission planning processes so that their value is properly captured"⁹ In other words, there was no consensus among the parties about how or whether event-based load modifying resources should be valued under any proposed hard or existing soft-trigger. Because there was no consensus and no compelling evidence supporting a different approach, the Commission rightly reinforced its earlier bifurcation decision in only attributing "capacity value to demand response programs that are integrated into the California Independent System Operators wholesale market or embedded in the California Energy Commission's unmanaged/base case load forecast."¹⁰ Reaching this conclusion was entirely consistent with the Commission's demand response bifurcation policy in D.14-03-026. Indeed, to reach the contrary conclusion, *i.e.*, that load-modifying demand response has capacity value, the Commission would have needed sufficient evidence to modify the bifurcation decision and

⁹ See Load Modifying Resource Demand Response Valuation Working Group Compliance Report, May 1, 2015, at p. 5 of 145 (emphasis added).

¹⁰ D.15-11-042, Ordering Paragraph 1, pg. 70.

create a new third category of demand response. Put simply, event-based load modifying-demand resources do not qualify as demand response under the bifurcation decision and there is insufficient evidence in this record to modify that decision.

D.15-11-042 rightly dismissed the notion of introducing a new “trifurcation” option that would assign value to a third-type of demand response that is not integrated into the CAISO market and does not reshape or reduce the net load curve by being embedded in the CEC’s load forecast.¹¹ Assigning value to demand response that does not fall within one of the two defined demand response categories would have been antithetical to the Commission’s prior bifurcation decision in D.14-03-026.

To reinforce its bifurcation policy, the Commission could consider adding the following Findings of Fact and Conclusions of Law to the Decision:

Findings of Fact:

- D.14-03-026 adopted the bifurcation of current demand response programs into load modifying resource and supply resources. Load Modifying Resource demand response reshapes or reduces the net load curve and Supply Resource demand response is integrated into the CAISO market.
- Event-based load modifying demand response is neither integrated into the CAISO market nor does it reshape or reduce the net load curve by being embedded in the CEC’s load forecast. Therefore, it is not consistent with the Commission’s bifurcation decision in D.14-03-026, and it cannot provide capacity value.

Conclusions of Law:

- Event-based load-modifying resource programs do not reshape or reduce the net load curve and therefore do not qualify as a Load Modifying Resource as defined in D.14-03-026.
- Event-based load-modifying resource programs are not integrated into the California Independent System Operator’s markets and therefore do not qualify as a Supply Resource as defined in D.14-03-026.

¹¹ An event-based load modifying resource does not remain embedded in the CEC load forecast and does not cause the load to be reshaped or reduced because it would be reconstituted or “added back” by the CEC into the base load prior to the making the load forecast. Reconstituting prior year demand response events removes the reshaping or reducing effect of demand response on the load curve.

These additional findings are not necessary, but they provide important perspective on the legal and factual background supporting the Commission's finding that event-based load modifying demand response has no capacity value.

IV. Conclusion

For the foregoing reasons, the CAISO respectfully requests that the Commission deny the rehearing request filed by the Joint Parties.

Respectfully submitted,

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