

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

Order Instituting Rulemaking Regarding
Policies and Protocols for Demand Response,
Load Impact Estimates, Cost-Effectiveness
Methodologies, Megawatt Goals and
Alignment with California Independent System
Operator Market Design Protocols

Rulemaking 07-01-041
(January 25, 2007)

**REPLY BRIEF OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION ON
JURISDICTIONAL ISSUES**

Pursuant to the timeframe established by the assigned Administrative Law Judges' Ruling memorializing schedule modifications in the direct participation phase of Rulemaking 07-01-041 and the Commission's Rules of Practice and Procedure¹, the California Independent System Operator Corporation (the ISO) submits this reply brief on jurisdictional issues.

I. The ISO's tariff does not govern the relationship between Demand Response Providers and retail customers.

In their opening brief, EnerNOC, Inc.; Energy Connect, Inc. and CPower, Inc. (the Joint Parties) argue that any consumer protection rules should be placed in the ISO Tariff:

Consumer protection rules, if needed, should be embedded in the tariffs approved by the California Independent System Operator (CAISO) for direct participation by demand response resources in the CAISO's wholesale markets. (Joint Parties' Opening Brief at pp. 19-20.)

¹ Rule 13.11 of the CPUC's Rules of Practice and Procedure.

The ISO disagrees with the Joint Parties. The ISO is a balancing authority for a bulk power system under federal jurisdiction. The ISO's tariff includes matters significantly affecting the rates, terms and conditions of ISO service under Section 205 of the Federal Power Act.² While the ISO tariff may establish rules governing the participation by demand response providers in the ISO's wholesale markets, consumer protection rules applicable to the relationship between demand response providers and retail customers fall outside the scope of the ISO's tariff. The ISO remains willing to provide input and work collaboratively with the Commission and all stakeholders to develop appropriate consumer protection rules, as necessary.

II. The Commission should establish eligibility rules for why a load serving entity or utility distribution company can reject a demand response provider's registration of customer service accounts

In its opening brief, Southern California Edison (SCE) states:

“...the Commission should still find that it has the authority to dictate the terms and conditions under which the investor-owned utilities (IOUs) can (or must) approve the participation of an IOU procurement customer in a program of a DR service provider that bids directly into the CAISO markets.” (SCE Opening Brief at p. 3)

Pacific Gas and Electric Company (PG&E) states:

The CAISO is not proposing to take on the responsibility [of resolving complaints], and in any event is not suited to perform this consumer protection role. Because the retail-end use customer-DRP relationship is so closely intertwined with the retail end-use customer-IOU relationship, the Commission is the appropriate entity to take on these complaints if they arise.” (PG&E Opening Brief at p. 3.)

² See e.g. *California Independent System Operator Corp.*, 122 FERC ¶ 61,271 (2008) at P 16.

The ISO concurs with both SCE and PG&E. Demand response providers must have clear and explicit instructions from the “relevant retail authority” that is responsible for determining the eligibility of retail customers to participate in the ISO markets. A demand response provider must understand the predefined reasons why a load serving entity or utility distribution company may reject a registration. Adopting these rules will advance the registration approval process for new demand response resources, mitigate disputes, and reduce barriers to greater demand response participation.

The Federal Energy Regulatory Commission (FERC) has emphasized the role of the local regulatory authority in establishing clear eligibility rules for retail customers participating in demand response resources at the wholesale level. Importantly, FERC has stated that ISOs should not have to interpret rules and regulations that are, appropriately, the purview of the relevant retail authority. In its June 17, 2009 Order on Rehearing in Wholesale Competition in Regions with Organized Electric Markets, FERC states that:

The RTO or ISO should not be in the position of having to interpret when the laws or regulations of a relevant electric retail regulatory authority are unclear. While we leave it to the relevant retail authority to decide the eligibility of retail customers, their decision or policy should be clear and explicit so that the RTO or ISO is not tasked with interpreting ambiguities.³

We recognize that demand response is a complex matter that is subject to the confluence of state and federal jurisdiction. The Final Rule's intent and effect are neither to encourage or require actions that would violate state laws or regulations nor to classify retail customers and their representatives as wholesale customers, as Ohio PUC asserts. The Final Rule also does not make findings about retail customers' eligibility, under state or local laws, to bid demand response into the organized markets, either independently or through an ARC [Aggregator of Retail Customers]. The Commission also does not intend to make findings as to whether ARCs may do business under state or local laws, or whether ARCs' contracts with their retail customers are subject to state and local

³ *Wholesale Competition in Regions with Organized Electric Markets*, 128 FERC ¶ 61,059 (2009) (“Order No. 719-A”) at P 50.

law. Nothing in the Final Rule authorizes a retail customer to violate existing state laws or regulations or contract rights. In that regard, we leave it to the appropriate state or local authorities to set and enforce their own requirements.⁴

FERC's order clarifies that the ISO should not need to set or interpret eligibility rules that are established by the local regulatory authority for retail customers. The local regulatory authority should provide clear recourse to resolve any dispute arising from a load serving entity and/or utility distribution company rejecting the registration of a demand response provider. For this reason, the ISO urges the Commission to establish eligibility and dispute resolution rules as a priority issue.⁵

Dated: January 29, 2010

Respectfully submitted,

By: /s/ **Baldassaro "Bill" Di Capo**

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⁴ Id. at P 54.

⁵ The CAISO contemplated this concern during the design phase of its Proxy Demand Resource product. In its *Draft Final Proposal for the Design of Proxy Demand Resource* policy paper, the CAISO explained that:

In general, the LSE or UDC may reject a Registration request on the ground that it is inaccurate or forbidden by regulation. Some examples^[FN] of possible rejection reasons include:

- Incorrect information listed in the application [registration]
- Resources(s) [customer service accounts] not associated with the LSE/UDC
- Resource(s) [customer service accounts] registered with another CSP [Demand Response Provider] for the same product/time
- Conformance with local regulatory agency [authority] requirement
- Absence of necessary commercial agreements between parties

[FN] These are guidelines as to why a registration could be rejected and is not meant to be an exhaustive list.

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2010 I served, on the Service List for Proceeding R.07-01-041, by electronic mail and United States mail, a copy of the foregoing

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Executed on January 29, 2010 at
Folsom, California

Anna Pascuzzo

Anna Pascuzzo,
An employee of the California Independent
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