

**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
(Filed September 13, 2013)

**REPLY COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION, SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E), SAN
DIEGO GAS & ELECTRIC COMPANY (U 902 E), PACIFIC GAS & ELECTRIC
COMPANY, ENERNOC, INC. COMVERGE, INC., JOHNSON CONTROLS, INC.,
SIERRA CLUB, ENVIRONMENTAL DEFENSE FUND, CLEAN COALITION,
OLIVINE, INC. AND CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION
ON THE MOTION TO ADOPT SETTLEMENT**

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I. INTRODUCTION

Pursuant to the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission" or "CPUC"), and in compliance with the Presiding Administrative Judge's August 13, 2014 ruling, the California Independent System Operator (CAISO), Southern California Edison Company (SCE), San Diego Gas and Electric Company (SDG&E), Pacific Gas & Electric Company (PG&E), EnerNOC, Inc., Comverge, Inc., Johnson Controls, Inc., Sierra Club, the Environmental Defense Fund, Clean Coalition, Olivine, Inc. and the California Large Energy Consumers Association (CLECA) hereby submit these reply comments to the comments on the Motion for Adoption of the Settlement Agreement filed by Calpine Corporation (Calpine) on August 25, 2014. This group of settling parties submits that Calpine has overlooked or misunderstood the Settlement Agreement's (Agreement's) multiple paths forward towards reaching the demand response (DR) goals embodied in the OIR and the April 2 Scoping Ruling. Instead, Calpine has focused on discreet aspects of the Agreement without acknowledging the delicate balance of diverse interests that would be undone if particular issue resolutions are rejected. For the reasons set forth below, this settling party group urges the

Commission to reject Calpine’s proposed changes and approve the Agreement as written, and as otherwise, unopposed.

II. THE COMMISSION SHOULD APPROVE THE SETTLEMENT AS REASONABLE AND IN THE PUBLIC INTEREST OVER THE OBJECTIONS OF CALPINE

The Commission’s Rule 12 requires a party contesting a settlement to specify the portions of the settlement that it opposes, the legal basis of its opposition, and the factual issues that it contests.¹ Calpine expresses concerns about resource adequacy,² CAISO market integration,³ and the process/timing of the Agreement.⁴ Contrary to Calpine’s arguments, the Agreement completely addresses the issues in the scoping memo and even addresses all the issues Calpine raises as objections. The process by which the settling parties followed the guidance provided by the OIR and the April 2 Scoping Ruling is described in detail in both the Motion for Adoption of the Settlement Agreement (“Motion”)⁵ and the Agreement set forth as Attachment A to the Motion.⁶ The Commission should disregard Calpine’s arguments because they are based on misunderstandings or misrepresentation of the settlement and/or the underlying rulemaking.

A. The Settlement Agreement Creates a Path For Integrating DR Resources into the CAISO Market, Consistent With Commission Policies and Precedent

Calpine’s assertion that “the Settlement Agreement is inconsistent with important Commission policies and precedent”⁷ lacks merit. Calpine appears to be under the mistaken belief that the Agreement completely ignores the Commission’s goal of prioritizing the

¹ See Rule 12.2.

² Calpine Comments, p.5.

³ *Id.*, p.7.

⁴ *Id.*, pp.5, 7.

⁵ See, e.g. Motion, pp. 9-12.

⁶ Agreement, recitals pp. 2-11.

⁷ Calpine Comments, p. 2.

integration of DR into the CAISO market. Calpine complains about the delay in fully integrating DR resources into the CAISO's market, which is the requirement for consideration as a supply-side resource, but ignores the existing impediments described in the testimony and at the workshops. Calpine argues that because bifurcation will be implemented with the 2017 DR program year, issues such as accelerated integration into the CAISO market and RA valuation should also proceed on that timetable.⁸ However, as explained in the Motion and the Agreement, the Settling Parties recognized that simply stating that bifurcation would occur, without addressing the underlying impediments, would not meet the Commission's objectives or the CAISO's needs.

Indeed, the Agreement was developed specifically to meet the goal of increased CAISO integration. It explicitly establishes a collaborative path forward to successful integration, including overcoming impediments to integration and the creation of a pilot for a DRAM, and provides for appropriate valuation of DR resources.

1. The Working Group Process Created by the Settlement is Meant to Address Improvements to the Operational Integration of Both Types of DR with the CAISO, Supply Resource DR and Load Modifying Resource DR

Calpine cites the statement in the OIR that DR programs “‘are not bid into the CAISO market or subject to its Must Offer Obligations and penalties for non-performance’ and that they ‘have very limited visibility and dispatchability to the CAISO’s grid operator.’”⁹ Calpine cites the need to better integrate DR into the CAISO market in order to reduce the “operational challenges” associated with the CAISO dispatching Load Modifying Resource (LMR) DR during stressed system conditions.¹⁰ The Agreement recognizes these needs. That is why the Settling Parties created the Load Modifying Resource DR Operations Working Group.¹¹

⁸ See, e.g. Calpine Comments, pp. 5-6.

⁹ *Id.*, p. 3 (citing OIR, p. 8).

¹⁰ *Id.*, pp. 6-7.

¹¹ Agreement, pp. 19-20 and Attachment C to Agreement.

As the charter for this working group states, its purpose is to “[i]dentify and develop processes that allow the CAISO to better incorporate LMR DR into its operations so that LMR DR’s value is fully captured.”¹² According to the charter, the output of this working group is a series of proposals for: 1) providing greater operational visibility to the CAISO of load serving entity (LSE) use of LMR DR; 2) providing CAISO better tools to forecast the impact of LSE-dispatched event or non-event based LMR DR on CAISO loads in the day-ahead and real-time markets; and 3) improving the ability of the CAISO to call LMR DR when needed.¹³ Therefore, the problem that Calpine cites as justification for rejecting the Agreement is, in fact, actually addressed by the Agreement. If the Commission rejects the Agreement as Calpine argues, the problem Calpine cites may not be properly addressed in this proceeding.

The Agreement also creates a Supply Resource (SR) DR Integration Working Group to address the need to achieve effective resolution of technical issues needed for effective integration into the CAISO market. The results of this working group will do exactly what Calpine seeks: align RA requirements and CAISO requirements for DR resources that participate in the wholesale market as supply-side resources. Importantly, this working group, like the LMR DR Operations Working Group, is open to anyone who wants to participate and has the technical expertise to address targeted technical and IT problems with solutions.¹⁴ Neither of these working groups is a policy working group, but instead they are concerned with implementation and operational details. The settlement process in this case has demonstrated unmistakably that a collaborative working group format is far more conducive to resolving technical matters than a Commission evidentiary hearing or a formal stakeholder process. Therefore, the Settling Parties, through the proposed SMR and LMR Working Groups,

¹² See Attachment C to Agreement.

¹³ See Attachment C to Agreement.

¹⁴ In order to move as expeditiously as possible, these two working groups have started to meet. The Supply-Side DR Integration Working Group had its first meeting on August 25th. The Load Modifying Resource DR Operations Working Group met on September 5th for the first time.

are attempting to advance resolution of these technical and operational issues in a comprehensive, cooperative, open, effective and expeditious way that would not otherwise occur. As described in their respective charters, the output for both working groups will feed into Commission proceedings and CAISO stakeholder processes.¹⁵

2. The Settlement Supports Supply Side DR and Does Not Reduce the Role of the Demand Response Auction Mechanism

As described above, the CAISO and other Settling Parties recognize that major challenges still need to be worked through for successful DR market integration. The Agreement does not prevent, but in fact, encourages, resources to participate as supply-side resources as they are capable and as these barriers are removed. In other words, nothing in the Agreement prevents resources from participating as supply-side resources earlier than 2020, if the capability exists.

The Agreement addresses the OIR statement that “California needs [DR] to have supply-side operational characteristics and capabilities in order to meet the State’s future system and market needs.”¹⁶ In the Settlement Agreement, the Settling Parties commit to taking steps to increase the amount of DR in the CAISO market,¹⁷ creating the Demand Response Auction Mechanism (DRAM) Pilot,¹⁸ and allowing the IOUs to issue new RFOs for Supply Resource DR products.¹⁹

Calpine erroneously states that the Settlement Agreement reduces the role of the DRAM relative to what was originally contemplated in the Staff DRAM Proposal.²⁰ On the contrary, the Settlement Agreement creates a process for the DRAM to be developed successfully and

¹⁵ See Attachments A and C to Agreement.

¹⁶ Calpine Comments, p. 4 (citing OIR, p. 8).

¹⁷ Agreement, p. 19.

¹⁸ Motion, pp. 15-16, and Agreement, pp. 9-11.

¹⁹ Motion, p. 16, and Agreement, pp. 10, 26.

²⁰ Calpine Comments, p. 7.

establishes a schedule for it to be rolled out on a pilot basis.²¹ This incremental approach will improve the likelihood that a successful DRAM design can be developed while creating a mechanism for adjustments to be made.

Additionally, through the workshops and settlement discussions in this proceeding, parties were able to identify existing barriers to a successful DRAM implementation.²² The Settling Parties developed proposals to change some of the requirements associated with bidding SR DR into the CAISO market in ways that could reduce cost and complexity without creating operational difficulties for the CAISO.²³ Agreement on modifications to these various requirements for direct participation, and their adoption by CAISO and the Commission, would significantly facilitate participation by third parties using retail load for DR.²⁴ Once the DRAM Pilots are implemented and lessons learned identified, then issues regarding DRAM implementation on a larger scale can be addressed and resolved. Simply adopting an accelerated schedule for implementing the DRAM will not ensure success, and Calpine has provided no evidence to support such a proposition.

B. Calpine Misunderstands Provisions on Resource Adequacy In The Rulemaking and In the Settlement Agreement

Calpine cites the OIR to claim that the Commission has found that “[d]emand response as Resource Adequacy resources should be held to the same requirements as generation resources for system reliability and economic efficiency.”²⁵ However, DR treatment for RA purposes is established through the Commission decisions in the annual RA Proceedings. Any future requirements for DR will also be developed in those future RA proceedings and not in a general DR rulemaking.

²¹ Agreement, pp. 24-30.

²² *Id.*, p. 9.

²³ Agreement, p. 9.

²⁴ Agreement, p. 9.

²⁵ Calpine Comments, p. 3 (citing OIR, p. 9).

In addition, the language Calpine cites is not a finding, but instead is part of a discussion describing challenges the Commission faces in its demand response programs. The Commission notes that “there is an ongoing tension between supply-side and demand-side requirements for demand response,” raised by Resource Adequacy requirements and “the needs and technical capabilities of customers and providers [which] need to be considered in program design.”²⁶ Unlike Calpine, the Settling Parties recognized the tension between these two points and agreed to ease it by temporarily maintaining the RA treatment of existing DR programs. In so doing, the Settlement provides regulatory certainty for DR customers and providers while the working group proceeds with resolving the technical barriers that preclude DR customers and providers, from integrating more supply-side DR resources into the CAISO market.²⁷ The Commission should reject Calpine’s criticisms of the Agreement as Calpine apparently misunderstands what it says about RA.

1. Calpine’s Recommendation to Update the Local RA Counting Rules Belongs in the RA Proceeding

Calpine recommends that the CPUC “should require that the local RA counting rules for DR be periodically updated to reflect the CAISO’s evolving policies on how non-conventional resources contribute to meeting reliability requirements.”²⁸ Again, RA counting rules are appropriately addressed in the RA proceeding, not here in this proceeding.

2. Calpine’s Assertion That There is a “More Accurate” RA Treatment of DR Resources is Unsupported

Calpine takes issue with the Agreement provision that allows for DR programs to retain current system and local RA valuation, based on existing methodology, through 2019.²⁹ Referring to CAISO testimony in R.12-03-014 and CAISO’s consideration of non-conventional

²⁶ OIR, p. 9.

²⁷ Motion, p. 14.

²⁸ Calpine Comments, p. 5.

²⁹ *Id.*, p. 3.

resources in the transmission planning process, Calpine argues that if the CAISO is unwilling to count specific DR programs towards meeting reliability requirements for planning purposes, these resources should not count towards RA requirements.³⁰ Calpine states, “[T]here is no justification, and the Settlement Agreement does not offer one, for delaying use of a more accurate treatment of DR resources for RA purposes until 2020.”³¹ Implicitly or explicitly, the Agreement in no way advocates for a less “accurate” RA treatment of DR resources during the time period prior to 2020. This provision of the Agreement only allows time for the LMR DR Valuation Working Group to work with parties, the California Energy Commission (CEC), Energy Division and the CAISO to determine exactly how the RA value of Load Modifying Resource DR programs would be accounted for in 2020 and beyond.³² The Agreement specifically states the “justification” for taking this “measured approach” to implementing bifurcated DR and direct participation in the CAISO market:

“To avoid rushing into implementation and creating unintended consequences at odds with D.14-03-026, the Settling Parties sought to address and solve valuation, integration, process and cost questions unearthed during Workshops and settlement discussions--difficulties that could diminish DR, instead of increasing and enhancing it to meet future needs. Accordingly, the Settling Parties have generally agreed to a measured approach to implementing bifurcated DR and direct participation in the CAISO market and have reached a Settlement Agreement on the issue areas that focuses on the process for going forward.”³³

The Settling Parties acknowledge that D.14-03-026 directed DR program bifurcation to begin in 2017 with the next demand response program application cycle; however, the settling parties simply agreed that the current methodology to calculate the IOU’s system and local RA credits for their existing DR programs should be retained through the transition period while RA and the other value streams are identified, assessed and embodied in working group

³⁰ *Id.*, p. 4.

³¹ *Id.*, p. 5.

³² Motion, p. 14, and Agreement, pp. 8, 11, 18-23.

³³ Agreement, p. 6.

recommendations.³⁴ The Agreement establishes a reasonable timeline for addressing the concerns around implementing the bifurcation policy raised in this proceeding, yet it still maintains the intent of D.14-03-026 that these concerns should not cause abandonment of the concept of bifurcation.³⁵

C. The Settlement Addresses DR Goals Contrary to Calpine’s Assertion

Calpine criticizes the Agreement for not setting goals or timelines for increasing DR participation in the CAISO markets,³⁶ ignoring its provisions concerning DR Goals (Issue Area #1).³⁷ Additionally, the Agreement provides for an interim DR goal, and a process and criteria for establishing firm DR goals.³⁸ As is the case with most of Calpine’s criticisms in its Comments, the Agreement actually addresses the issues of goals and timelines that Calpine cites.

D. The Commission Should Approve the Agreement as Reasonable in Light of the Record as a Whole

Settling Parties reached this agreement based on the record of this proceeding, including direct and rebuttal testimony of parties, and the workshops and hearings, as well as weeks of intensive settlement discussions. The Settling Parties represent diverse interests and worked diligently to reach a settlement by mutually accepting concessions and trade-offs.³⁹ The Agreement that ultimately emerged addresses all of the key issues within the scope of this Rulemaking.

³⁴ *Id.*, p. 8.

³⁵ *See* D.14-03-026, pp. 6, 7.

³⁶ Calpine Comments, p. 7.

³⁷ Agreement, pp. 15-17 (Settling Parties agree to firm goals after a DR potential study).

³⁸ Agreement, pp. 12-15.

³⁹ Agreement, p. 4.

1. Calpine’s Suggestions to Revise or Reject Parts of the Settlement Would Nullify the Agreement

Calpine’s request that the Commission excise parts of the Agreement fails to acknowledge that the Agreement is explicitly offered to the Commission as “a unified, integrated agreement.”⁴⁰ The Settling Parties intend that the Agreement be treated as a package solution, parts of which cannot be altered without affecting the entire agreement.⁴¹ Any change or modification would nullify the agreement and the Commission should reject this suggestion.

2. The Agreement Meets the States Goals, CAISO’s Operational Needs, and Is in the Public Interest

The Agreement establishes a thoughtful, deliberate path to successfully move DR forward to meet the State’s goals and CAISO’s operational needs. All Settling Parties agreed, despite their initial, divergent litigation positions, that the proposals as set forth in the Agreement would be the most appropriate path forward to achieve the goals outlined in the OIR. Calpine, however, is asserting a litigation position which the CAISO shared once but has moved beyond to establish a process to push forward the Commission’s DR goals.

3. The Process and Timelines Established in the Settlement Agreement Are Reasonable and Necessary

The Agreement sets a timeframe informed by the parties’ determination of the steps and time needed to develop infrastructure and processes to ensure a successful future for DR and proper coordination among different state agencies and relevant proceedings. These timelines and working groups were developed by approximately two months of near-daily, deep-dive conversations, email communications, and lengthy in-person meetings. It is unprecedented in California’s long history of DR for 19 parties representing diverse interests to commit to the interwoven, intricately-balanced compromise embodied in the Agreement. The basis in compromise of these parties’ divergent litigation positions renders the Agreement reasonable in

⁴⁰ Agreement, p. 33.

⁴¹ *Id.*, p. 4.

light of the record as a whole. It should not be disregarded, nor should the commitment of the settling parties to work together to support and grow demand response to meet the State's needs and goals.

III. CONCLUSION

Southern California Edison Company's (U 338-E), San Diego Gas & Electric Company, Pacific Gas & Electric Company, EnerNOC, Inc., Comverge, Inc., Johnson Controls, Inc., Sierra Club, the Environmental Defense Fund, Clean Coalition, Olivine, Inc., and California Large Energy Consumers Association have authorized the CAISO to sign this reply brief on their behalf. We appreciate the opportunity to provide these reply comments on the Agreement.

Respectfully submitted,

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