

Business Practice Manual Change Management Notice of Appeal and Opening Brief Template

Submitted by	Organization	Date Submitted
Melanie Gillette mgillette@enernoc.com 916-671-2456.	Joint DR Parties	December 18, 2015

Please use this template to provide your Notice of Appeal and Opening Brief on the ISO’s decision regarding your proposed revision request or comments on any proposed revision request.

Submit Notice of Appeal and Opening Brief to bpm_cm@caiso.com.

Your Notice of Appeal and Opening Brief are due within ten (10) Business Days of the ISO’s published decision on the Proposed Revision Request.

Previous Comments on PRR

EnerNOC Inc., Johnson Controls Inc., EnergyHub, Comverge, Inc., and CPower (Joint Demand Response Parties or Joint Parties) actively participated in CAISO’s Business Practice Manual (BPM) Proposed Revision Request (PRR) process to raise strong objections to both the process and substance of PRR 854. We took advantage of all three opportunities to provide written comments:

- August 13, 2015 Initial Comments on PRR 854;
- September 16, 2015 Comments on CAISO’s September 1, 2015 Responses to Stakeholders’ Initial comments; and

- November 12, 2015 Comments on CAISO's October 28, 2015 and November 12, 2015 Modifications to PRR 854

Joint Demand Response (DR) Parties have raised objections to both the process and the substance of PRR 854 in that the change was proposed through a modification to a BPM, without a stakeholder process, which denied market participants the opportunity to understand the CAISO's motivation behind the change, how the change addressed CAISO's concerns or the practical implications to market participants, and whether those changes are supportable. Joint DR Parties challenged CAISO's intent and raised numerous questions to try to better understand the actual implications of the proposed Footnote 7 to the Reliability Requirement BPM. Individual members of Joint DR Parties have had conversations with staff and CAISO management to attempt to better understand the issue and brainstorm potential solutions.

Our comments addressed the following issues, which are the basis of our Appeal.

It is Not Reasonable for CAISO to Determine Resource Adequacy (RA) Eligibility through Insertion of a Footnote in a Business Practice Manual

In Section 7.2.3 of the BPM for Reliability Requirements, CAISO's only proposed modification to the section is to add a footnote to the section. The proposed section now reads:

The ISO will engage in procurement of Local Capacity Area Resources only where the portfolio of all Local Capacity Area Resources presented by all LSEs, after taking into account any Generating Units under Reliability Must-Run contracts, if any, and other Resource Adequacy Resources, whether or not such Resource Adequacy Resources are located in the applicable Local Capacity Area, demonstrate that the ISO is unable to comply with Applicable Reliability Criteria in that Local Capacity Area.¹ In addition to the foregoing, the ISO will forego

¹ Because of their unique use limited nature, RDRR and PDR resources must have a response time of 20 minutes or less and be able to sustain full output for a minimum of 4 hours to meet local capacity needs in accordance with NERC Reliability Standards (TOP-001, TOP-004), California ISO Planning Standards, Section VII, ISO Tariff Section 40.3.1.1. The 20 minute response time allows 10 minutes for operators to assess the contingency and trigger the RDRR and PDR resources, and complete necessary system adjustments within the required 30 minutes.

reliability procurement until further considering any supplemental procurement by LSEs, as may be permitted by the CPUC or Local Regulatory Authority, provided to the ISO within 30 days of the date the ISO informed Market Participants that a Local Capacity Area Resource deficiency exists.²

According to CAISO's website, BPMs "contain implementation details through which the California ISO and market participants conduct business in accordance with the Tariff."³ In PRR 854 of the Reliability Requirement BPM, however, CAISO essentially seeks to establish new operational requirements for PDRs and RDRRs, which are not in the CAISO tariff. CAISO presents no basis for this significant change to DR eligibility requirements. As noted above, this proposed modification is implemented through a footnote specifying that DR resources "must have a response time of 20 minutes or less." The 20-minute requirement is not supported by the CAISO tariff for PDR or RDRR.

CAISO's insistence that PRR 854 is consistent with the type of ministerial changes that are meant to be accomplished via the BPM is simply incorrect. The BPM change management process is NOT an appropriate venue to impose significant new restrictions on the eligibility of DR resources to meet local reliability needs. PRR 854 seeks to establish new operational requirements, and it seeks to do so through a footnote embedded in a BPM which is over 200 pages long. Specific resource eligibility requirements must be approved by the Federal Energy Regulatory Commission (FERC) and in the CAISO tariff. The Joint Parties find it inappropriate for the CAISO to put an "assumption" to its tariff within a footnote of a BPM. Making the change through a modification to the BPM denies stakeholders the opportunity to contest the change before the CAISO Board of Governors and to FERC. Process and stakeholder rights have

² CAISO did modify this footnote on October 28, 2015 and again on November 12, 2015 to add "clarification" and to remove specific references to PDR and RDRR.

³ <http://www.caiso.com/rules/Pages/BusinessPracticeManuals/Default.aspx>

been usurped. Stakeholders were neither given warning of this change nor have the responses of CAISO Staff addressed the stated concerns.

Changing Resource Adequacy Eligibility Requirements is a Major Change that must be Vetted by Stakeholders, Consistent with California Public Utilities Commission (CPUC) RA Rules and Approved by FERC

RDRR and PDR do not currently have a requirement to respond in 20 minutes.⁴ That is not a requirement in CAISO's tariff, and it is not a requirement at the CPUC. In fact, although CAISO has "clearly explained" and "provided testimony" in several CPUC proceedings to justify this requirement, the CPUC explicitly rejected the requirement in D.15-06-063. Stakeholders understand that this issue will be addressed in the CPUC's RA Rulemaking, Phase 3, but it is not currently a requirement for RDRR and PDR in the utility programs or in the Demand Response Auction Mechanism (DRAM) for 2016 or 2017.

Joint Parties believe it is important for CAISO to delay adoption of PRR 854 until the CPUC concludes Phase 3 of the RA Rulemaking to consider requirements for resources to qualify for local resource adequacy. The proposed policy change is not simply a clarification to an existing policy; it is a change that is in direct conflict with the current RA rules at the CPUC and attempts to place a requirement on resources outside of the CAISO Tariff. The CAISO Board has not voted to approve this policy following a stakeholder initiative, and FERC has not required or approved the policy.

The consequences of having two sets of rules for the same resources, particularly while parties are considering their willingness and ability to participate in DRAM pilots for 2016 and 2017, adds a layer of risk that may be unacceptable to DR providers. Since CAISO claims they

⁴ While CAISO modified Footnote 7 on October 28, 2015 and November 12, 2015 to remove the reference to RDRR and PDR, CAISO continued to insist that demand response is the only resource that does not currently meet the 20-minute notification requirement.

already treat DR this way, it is unclear why this 20-minute requirement is not in the tariff, or why it needs to be clarified now by adopting it into the BPM. There does not appear to be a downside to postponing this “clarification” and instead working toward a FERC-approved requirement that is consistent with CPUC RA rules.

CAISO should not abandon existing stakeholder assessments of demand response requirements to impose its preferred policies on the market. Instead, resolution should first occur in the CPUC RA proceeding where parties can have an opportunity to present arguments that are supported by evidence. After a final CPUC decision on the matter, the CAISO should change its requirements as necessary to be consistent with CPUC rules.

CAISO’s Proposal Discriminates against Demand Response

The proposed requirement justifies the new eligibility criteria of PDR and RDRR by citing “their unique use-limited nature” but offer no explanation for why these resources should be treated any differently than other use-limited resources. This change appears discriminatory because CAISO does not propose a similar requirement for other use-limited resources that may also be used to meet TOP-001 and TOP-004 NERC requirements. At a minimum, CAISO should explain why the use-limited nature of PDR and RDRR differs from the use-limited nature of other resources.

It continues to be our understanding, based on our experience across the country, that the TOP-001 and TOP-004 NERC requirements are consistent—30-minute rebalances of the system after a contingency event. However, no other ISO has applied these standards to a particular resource. Transferring CAISO’s requirement to meet NERC’s requirements to one resource type is discriminatory.

Although CAISO did modify PRR 854 to remove specific references to PDR, RDRR and demand response providers, the intent remains the same. Throughout the process of posting, modifying and discussing PRR 854, CAISO has made it clear that they believe demand response is the only resource in its market that does not currently comply with this requirement.

Imposing a 20-Minute Dispatch Notification Requirement is Unnecessary

CAISO argued for a 20 minute dispatch notification in the Long-Term Procurement Proceeding because they said they had no visibility or control over the amount of load modifying demand response capacity available. They never discussed application of this requirement to supply-side resources. Yet the CPUC has not adopted, and in fact they have rejected, a 20-minute dispatch requirement for DR resources to qualify as local capacity resources. Supply-side resources in the wholesale market have a day-ahead and/or a real-time must-offer obligation.

The CAISO will know how much DR is available and how much DR is scheduled to be dispatched as a supply-side resource.

For all of the aforementioned reasons, an inappropriate process to incorporate a significant operational change to one type of resource without an opportunity for stakeholder input, creating a discriminatory operational requirement on one resource type, ignoring instructions from the CPUC as to process, applying a standard to supply-side DR resources, which will be obligated to offer the resource into the CAISO's day-ahead and/or real-time markets, without knowing how that standard will interact with CAISO dispatch instructions relative to clearing in the day-ahead and real-time markets, the CAISO should not adopt this BPM change and should conduct a stakeholder process to discuss.

Reason for Appeal [Maximum 8 pages]

Joint DR Parties appeal PRR 854 to the BPM that changes resource eligibility requirements for DR resources in local capacity areas. The new BPM footnote now states:

“[W]hen evaluating resources that satisfy the requirements of the CAISO Local Capacity Technical Study, the CAISO assumes that local capacity resources need to be available in no longer than 20 minutes so the CAISO and ~~demand response providers~~ scheduling coordinators have a reasonable opportunity to perform their respective and necessary tasks and enable the CAISO to reposition the system within the 30 minutes in accordance with applicable reliability criteria.”⁵

Joint DR Parties oppose PRR 854 because it utilizes a footnote in a BPM to inappropriately subject DR resources to a new notification requirement that has not been vetted by stakeholders, is not consistent with CPUC RA rules, has not been approved by FERC and is not just and reasonable because it discriminates against DR resources. Joint Parties request that the Appeals Committee reject PRR 854 and require CAISO to bring its proposal to the CAISO stakeholder process for consideration and, as necessary, adoption of an appropriate and non-discriminatory change to the Tariff.

The opaque process followed by CAISO is fundamentally unfair to market participants, destroys public confidence in the neutrality of CAISO as an independent market operator, and wholly lacks transparency that market participants and regulators are entitled to expect and deserve from CAISO. The improper shortcuts taken in the development of PRR 854 further undermines the proper function of the CAISO stakeholder process to find the most efficient substantive solution to address the needs of the CAISO market. CAISO staff's course of action in this matter has denied stakeholders the opportunity to properly consider and vet solutions that would better serve the CAISO market and market participants. The short cut approach to making

⁵ Redlined modification to PRR 854, posted November 12, 2015 at 10:39 a.m.

substantive changes to resource requirements applicable to market participants that are *ultra vires* to the CAISO tariff is a very dangerous precedent to set, as it usurps the proper role of FEC to ensure that the CAISO tariff is just and reasonable. Footnote 7 is substantively flawed and will unfairly discriminate against DR and must be rejected. The fact that multiple diverse stakeholders are compelled to resort to this appeal process should signal to CAISO that this was an objectionable undertaking.

Further, CAISO's argument that PRR 854 simply "clarifies existing, previously utilized CAISO processes and study assumptions"⁶ and "does not institute new operational requirements on any resources"⁷ is utterly specious and does not withstand honest scrutiny. All stakeholders who participated in this process, with the exception of Calpine, see through CAISO's obfuscation to recognize that PRR 854 is in fact a new discriminatory requirement on DR resources,⁸ and nearly all expressed strong opposition of this new requirement. As the opposing views represent parties that would be, or are, participants in the CAISO's energy markets with demand resources, the views expressed are credible and knowledgeable.

CAISO has failed to describe how resources that have a must-offer requirement in the energy markets (day-ahead and real-time) and follow the bid and dispatch instructions of those markets, must then be submitted to an additional requirement to be available with only 20-minute notification. As stated in the Joint Parties comments and reiterated herein, there are many questions about this changed requirement as to why it is required and how the new requirement will be implemented.

⁶ CAISO Round 2 Response, November 23, 2015, Response #1

⁷ Id at Response #2

⁸ See initial comments posted on August 13, 2015 by CLECA (page 1), Joint Parties (page 1), PG&E (page 1), SDG&E (page 1), and WPTF (page 1). See also comments posted on September 3, 2015 by SCE (page 1)

Burying a 20-Minute Response Requirement in a Footnote in a Business Practice Manual Is Not Justified or Appropriate and Must Be Rejected.

Stakeholders were nearly unanimous in their outrage that this “eligibility requirement for a specific resource type to provide Local Resource Adequacy benefits”⁹ was “buried on page 106 of the BPM for Reliability Requirements.”¹⁰ Stakeholders, including Joint Parties, have correctly noted that this footnote is a “significant change to DR resource eligibility criteria”¹¹ that “cannot be adopted just by adding a footnote under a BPM change.”¹² Joint Parties agree with other stakeholders that RA eligibility, clearly a substantive resource requirement for participation in the CAISO markets, should not be adopted without tariff authority through insertion of a footnote in a BPM. Further, this change should be consistent with, and not separate from, the RA requirements adopted by the CPUC, with the appropriate processes therein.

Respectfully, Joint Parties defy the CAISO staff to find language in its tariff that imposes a 20 minute requirement on any resource type, and certainly not on DR resources. CAISO is bootstrapping a new resource requirement on a tangentially related Tariff provision that is not applicable to individual resources, and is dictating the applicability of this requirement in a discriminatory way that harms only one type of resource. Specific resource eligibility requirements must be approved by FERC and in the CAISO tariff, and CAISO’s efforts to impose discriminatory treatment to DR are unjust and unreasonable.

In addition to inexplicably transferring its requirement under NERC to one particular resource type, PRR 854, in its first iteration by CAISO staff, was impermissibly vague as to the application of the requirement to DR resources. It was unclear as to how CAISO would apply

⁹ WPTF comments, August 13, 2015, at p. 1,

¹⁰ CLECA initial comments, at p. 1

¹¹ PG&E initial comments, at p. 1

¹² SDG&E initial comments, at p. 1

the 20-minute requirement to DR resources based upon the language of PRR 854. It was only once CAISO responded to the concerns expressed by the Joint Parties, and others, that they clarified the application of a 20-minute notification to be limited to a contingency event (N-1-1). The N-1-1 contingency has specific meaning as it relates to Southern California Edison Company's (SCE's) and San Diego Gas & Electric Company's (SDG&E's) service territory from the CPUC's Decisions¹³ in the Long-Term Procurement Planning (LTTP) Proceeding (R.12-03-014). It is important to clarify that this 20-minute notification would be limited to this defined N-1-1 contingency event for SCE and SDG&E. Also, it would be necessary to describe what the equivalent contingency would be for Pacific Gas and Electric Company (PG&E).

When CAISO modified footnote 7 on November 13, 2015, it included this language: "CAISO assumes that local capacity resources need to be available in no longer than 20 minutes so the CAISO and scheduling coordinators have a reasonable opportunity to perform their respective and necessary tasks." Joint Parties find it completely inappropriate for the CAISO to put a wholly unsupported "assumption" about its Tariff within a footnote of a BPM. CAISO cannot, consistent with the Federal Power Act and FERC decision, make up a new tariff requirement out of whole cloth and "assume" it into existence through a footnote in a BPM.

Joint Parties strongly request that the Appeals Committee direct CAISO to reject PRR 854, as requested by nearly all stakeholders, and create a stakeholder initiative to appropriately address the matter and align CAISO's RA rules with those adopted by the CPUC.

By Choosing Not to Engage in a Transparent Stakeholder Process on the 20-Minute Requirement CAISO Missed a Significant Opportunity to Vet the Issue and Potentially Discover Alternative Solutions that Could Have Improved the Process.

¹³ D.13-02-015 and D.14-03-004

The tragedy of CAISO's choice to take a short cut around its tariff and legal obligations is the lost time and opportunity to address the issue of DR performance requirements in an appropriate manner. By seeking to address this matter through an opaque inside process, CAISO has created its own Frankenstein of controversy and regulatory uncertainty concerning its market rules and operations. This Appeals process represents the last opportunity for CAISO to make a course correction before CAISO's procedural errors will be on full display in FERC litigation.

Aside from it being a legal requirement, a stakeholder process followed by a tariff amendment has numerous advantages over the PRR process. It is an open, transparent exchange that allows for brainstorming and problem solving as well as robust question and answer opportunities. There are often presentations to work out the technical issues associated with particular proposed solutions, and alternatives and modifications are presented, considered, and adopted. When CAISO recognized that stakeholders were clearly not on the same page as CAISO, and did not consider PRR 854 a simple 'clarification,' CAISO missed the opportunity to prudently reexamine the process in the proper manner. As a result, rather than move forward expeditiously with regulatory certainty, CAISO's obstinacy and refusal to address its issues in a proper forum has put CAISO on a course of certainty of litigation at FERC, and created discordant provisions between CPUC requirements and an *ultra vires* footnote buried in a BPM. In one stroke of the pen, in the small print of a footnote, CAISO seems intent upon usurping the proper role of both FERC and the CPUC.

CAISO's PRR 854 Is Not Consistent with the CPUC's RA Rules.

DR does not currently have a requirement to respond in 20 minutes in order to qualify as a local capacity resource in the resource adequacy dockets adopted by the CPUC. As stated in Section 1 of this Appeal, although CAISO has advocated for a 20-minute notification as the basis

for its failure to recognize any existing DR resource as meeting a local capacity requirement in the LTPP Proceeding (R.12-03-014), the Commission has not adopted the CAISO's rationale. The CPUC has, instead, adjusted the CAISO's counting convention to include resources that CAISO has disqualified. In addition, the CPUC addressed and explicitly rejected the 20 minute requirement for DR in D.15-06-063.¹⁴ The CPUC is the arbiter of what does and does not qualify for resource adequacy, including local resource adequacy. While the CPUC relies upon information provided by the CAISO for input into that process, ultimately, it is the CPUC that makes the decision. This is how resource adequacy rules and requirements have been developed since the onset in 2004 and 2005.

On December 17, 2015, the CPUC issued a proposed resolution on pending advice letters for approval of a 2017 DRAM pilot specifically rejecting the 20 minute requirement in the pro forma contract, consistent with CPUC D.15-06-063. In doing so, the CPUC noted that CAISO had only "proposed" such a requirement, "that a pro forma contract in a pilot program is an inappropriate venue in which to resolve any conflict between regulatory requirements," and, further, that such "language potentially delegates to the CAISO authority over the RA program design, which is assigned to the CPUC by Public Utilities Code Section 380."¹⁵

There were innumerable questions raised by stakeholders to CAISO in the PRR 854 black box process that have not been addressed, and perhaps the CPUC RA proceeding is the appropriate place to get answers. Regardless, CAISO has a duty to address the issues raised by stakeholders. Joint Parties attempted to clarify what resources, beyond DR resources, have to

¹⁴ CPUC Decision 15-06-063, at p. 35

¹⁵ Draft Resolution E-4754, at p. 13.

meet the 20 minute requirement currently. CAISO's answer is not responsive and vague and clearly seeks to obfuscate the issue:

The CAISO is unaware of other similar-situated use limited resources that cannot start in 20 minutes. To the extent that similar use limitations apply to other resources, the CAISO would apply the same requirement. CAISO integrated supply demand response resources that are submitted to the CAISO and have substantially less restrictive use limitations than traditional demand response resources, the ISO will assess the applicability of the 20 minute response time requirement to those resources. We have updated the footnote accordingly.¹⁶

The implication is that all "similar situated use limited resources" can start in 20 minutes or that there are no other "similar-situated use limited resources." Several parties tried to get at these unique use limitations,¹⁷ but CAISO's answers did not clarify the issue:

Local capacity resources can meet this requirement by either (1) responding with sufficient speed, allowing the operator the necessary time to assess and redispatch resources to effectively reposition the system within 30 minutes after the first contingency, or (2) have sufficient energy available for frequent dispatch on a pre-contingency basis to ensure the operator can meet minimum online commitment constraints or reposition the system within 30 minutes after the first contingency occurs."

What does "frequent dispatch" mean to CAISO? DR has a daily must-offer obligation already.

What else is CAISO looking for? And why do resources need to be dispatched frequently if the contingency addressed by local capacity resources is N-1-1, which is very infrequent? It is critical that stakeholders understand when CAISO is actually having a contingency event. Absent that information, it is completely opaque under what conditions CAISO would trigger the 20 minute obligation. In addition to questions raised by Joint Parties, CLECA, PG&E, SDG&E and SCE submitted significant questions and requests for clarification in their Round 2 Comments.¹⁸

¹⁶ CAISO September 1 Response to Stakeholders

¹⁷ CAISO September 1 Response to Stakeholders

¹⁸ CLECA Comments at p. 3; PG&E Comments at pp.1-23; SCE Comments at pp.1-2; SDG&E at p. 1 – all posted November 12, 2015

The PRR process clearly did not simply clarify an existing practice. It raised a myriad of serious questions from the majority of stakeholders who did participate in the process. The logical next step seems to be for all parties, including CAISO, to participate in the CPUC's RA proceeding.

PRR 854 Discriminates Against Demand Response.

While CAISO modified the language in Footnote 7 of the BPM to remove specific references to DR, staff made it clear in their responses and in conversation that DR is the only resource they are aware of that has these "unique use limitations" that require the 20 minute notification. This change was nothing more than form over substance, a fig leaf that seeks to cover the discriminatory effect of the new BPM imposed requirement. Many resources, use-limited or not, long, medium or short start, that cannot be dispatched within 20 minutes do qualify as local resources. Requiring specific types of resources but not others, to meet a more stringent requirement to qualify as local RA unfairly discriminates against those resources.

As SDG&E explained in its comments, the local RA requirement is meant to ensure sufficient resources are contracted to mitigate a Category C (N-1-1) contingency during a 1-in-10 year peak load forecast. DR can be called upon to mitigate that contingency during a 1-in-10 year peak load event and should continue to qualify as local RA resources. NERC reliability requirements specify a recovery time of 30 minutes but do not reference any qualifications of Local RA attributes.¹⁹

In summary, Joint Parties request that the Appeals Committee reject PRR 854 and establish a stakeholder process upon issuance of the CPUC's June 2016 RA decision to align CAISO's local capacity assumptions with the CPUC's RA requirements.

¹⁹ SDG&E Initial Comments, posted on August 13, 2015