

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**California Independent System) Docket No. ER10-765-000
Operator Corporation)**

**ANSWER TO MOTIONS TO INTERVENE AND COMMENTS, MOTION TO FILE
ANSWER, AND ANSWER TO LIMITED PROTESTS, OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“ISO”)¹ hereby files its answer to the motions to intervene and comments submitted in this proceeding in response to the ISO’s submittal on February 16, 2010 of an amendment to the ISO tariff (“PDR Tariff Amendment”) to implement the Proxy Demand Resource (“PDR”) product.² The ISO also hereby submits a motion to file an answer and its answer to the limited protests submitted in this proceeding by CMUA and the Six Cities.³

¹ The ISO is also sometimes referred to as the CAISO. Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the ISO tariff, as revised by the proposed tariff changes contained in the PDR Tariff Amendment. Except where otherwise specified, references to section numbers are references to sections of the ISO tariff as revised by the proposals in the PDR Tariff Amendment.

² The following entities filed motions to intervene and/or comments in this proceeding: California Department of Water Resources State Water Project (“SWP”); California Municipal Utilities Association (“CMUA”); California Public Utilities Commission; Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, “Six Cities”); City of Santa Clara, California, d/b/a Silicon Valley Power, and the M-S-R Public Power Agency (“SVP/M-S-R”); EnerNOC, Inc.; Golden State Water Company; Modesto Irrigation District; Northern California Power Agency (“NCPA”); NRG Power Marketing LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC, and Long Beach Generation LLC; Pacific Gas and Electric Company; Sacramento Municipal Utility District; Southern California Edison Company; and Wal-Mart Stores, Inc. (“Walmart”).

³ The ISO submits this answer pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213 (2009). The ISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the limited protests. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record

The ISO filed the PDR Tariff Amendment in order to increase the participation of demand response in the ISO market and to respond to stakeholders' requests for a demand response product that would facilitate the participation of retail demand programs in the ISO market. The tariff revisions implementing the Proxy Demand Resource product will also satisfy the directives in the Commission's Order No. 719⁴ that independent system operators develop the capability to permit an aggregator of retail customers ("ARC") to bid demand response on behalf of retail customers directly into the ISO market, to the extent permitted by applicable laws and regulations regarding retail customers.

The ISO does not object to any of the motions to intervene filed in this proceeding. Many of the comments filed in this proceeding express support for the PDR Tariff Amendment. Some comments, however, do seek modifications to the tariff revisions in that filing. For the reasons explained below, the Commission should accept the PDR Tariff Amendment as filed, with only the minor clarifications discussed below.

in this case. See, e.g., *Entergy Services, Inc.*, 116 FERC ¶ 61,286, at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124, at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005).

⁴ *Wholesale Competition in Regions with Organized Electric Markets*, FERC Stats. & Regs. ¶ 31,281 (2008) ("Order No. 719"), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 ("Order No. 719-A"), *order on reh'g and clarification*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

I. Answer

A. The PDR Tariff Amendment Only Requires the Customer to Seek Load Serving Entity Approval When Acting as Its Own Demand Response Provider

Walmart argues that end-use customers should not be required to seek approval from their load serving entities in order to participate as Proxy Demand Resources, but rather that the customer should have the sole choice as to whether it wishes to participate in the programs offered by the ISO or the utility.⁵

Walmart may misunderstand the approval obligations set forth in the PDR Tariff Amendment. The ISO does not propose to require that end-use customers seek approval from their load serving entities to have their demand qualify as a Proxy Demand Resource. Rather, the ISO's tariff amendment requires that only the *Demand Response Provider representing the end-use customer* obtain the necessary approval from the load serving entity. In this regard, proposed Section 4.13.2 of the ISO tariff states that "[e]ach Demand Response Provider is required to satisfy registration requirements . . . Registration of a Location for participation in Proxy Demand Resources requires the approval of the underlying Loads' Load Serving Entity and/or Utility Distribution Company."⁶ Therefore, an end-use

⁵ Walmart at 5.

⁶ See *also* Transmittal Letter for PDR Tariff Amendment at 2 (explaining that the ISO requests that the *pro forma* Proxy Demand Resource Agreement be made effective on April 19, 2010, in relevant part so that "demand response providers can begin to seek approval from the load serving entities ('LSEs') for retail customers to participate in proxy demand resources and demand response providers can begin to register proxy demand resources at the ISO").

customer will not be obligated to obtain the required approval *unless* the end-use customer is acting as its own Demand Response Provider.⁷

As the ISO discussed in the transmittal letter for the PDR Tariff Amendment, the California Public Utilities Commission (“CPUC”) opened a “Direct Participation Phase” of its ongoing demand response proceeding 07-01-041, in November 2009, in order to address the ISO’s Order No. 719 compliance activities to allow retail electric customers to bid demand response resources directly into the ISO’s wholesale electricity market. The CPUC’s Assigned Commissioner’s Ruling stated in relevant part that:

The comment process initiated in this Ruling aims to identify whether there are state laws and/or rules that either directly or indirectly prohibit retail customers from bidding into CAISO wholesale markets. This Ruling further seeks input on whether any such prohibitory laws and/or rules warrant modification in light of the potential benefits arising from additional Demand Response options in California, and if so, what modifications to state laws and/or rules are necessary to support the CAISO’s efforts to allow direct participation. Finally, this Ruling requests comment on technical and/or policy issues or challenges that the Commission should address that may arise from CAISO’s compliance with this FERC order, with specific proposals for how those challenges may be addressed.⁸

The Direct Participation Phase of the CPUC proceeding is also addressing jurisdictional issues relating to the interaction of Demand Response Providers

⁷ See *id.* at 28 (“So long as it meets the ISO’s requirements, an end-use customer may act as a demand response provider for its own load or on behalf of other retail customers.”).

⁸ “Assigned Commissioner And Administrative Law Judges’ Ruling Amending Scoping Memo, Establishing A Direct Participation Phase Of This Proceeding, And Requesting Comment On Direct Participation Of Retail Demand Response In CAISO Electricity Markets” (Nov. 9, 2009), at 2 (“Assigned Commissioner’s Ruling”). This ruling can be accessed on the CPUC’s website at: <http://docs.cpuc.ca.gov/efile/RULINGS/109611.pdf>.

with utility bundled customers. In this regard, the Assigned Commissioner's Ruling asked the parties to comment on the following issue:

[California] Public Utilities Code Sections 394.2 – 394.25 require the CPUC to attempt to resolve complaints by retail customers against electric service providers. Does the Commission have similar jurisdiction under these or other code sections over retail customer complaints involving demand response service providers?⁹

Thus, the requirement that Demand Response Providers must obtain approval as set forth in proposed Section 4.13.2 of the ISO tariff is consistent with the Commission's directives in Order Nos. 719 and 719-A. In Order No. 719, the Commission explained that it recognizes the "need for coordination of the activities of the ARCs and LSEs to ensure efficient operation of the markets."¹⁰ Pursuant to proposed Section 4.13.2, each Demand Response Provider (*i.e.*, each ARC in the language of Order No. 719) will be required to further the goal of efficient operation of the markets by obtaining the necessary approval from the relevant load serving entity and/or utility distribution company. Also, as explained in Section I.B, below, the ISO's requirements that Demand

⁹ This issue is Question 18 set forth in Appendix A to the Assigned Commissioner's Ruling at 8-9. On March 23, 2010, the CPUC issued a proposed decision in the Direct Participating Phase that, *inter alia*, directed "the Investor Owned Utilities (IOUs) to bid DR [demand response] from existing Participating Load Pilot programs into the California Independent System Operator's (CAISO) wholesale market, but prohibits further participation until ratepayer protections are developed." (This Commission approved Participating Load Pilot Agreements between the ISO and each of the three largest IOUs in California in Docket Nos. ER09-1361, ER09-1362, and ER09-1363.) With regard to ratepayer protections, the proposed CPUC decision also found (at page 20) that the CPUC "may, among other things, resolve customer complaints related to DRPs [demand response providers], establish financial responsibility standards for DRPs, and require DRPs to inform customers that enrolling with the DRP will mean that they will be unenrolled from DR programs offered by another carrier." This proposed CPUC decision is available on the CPUC's website at <http://docs.cpuc.ca.gov/efile/PD/115328.pdf>.

¹⁰ Order No. 719 at P 160.

Response Providers notify and obtain approval from the load serving entity are consistent with the notification requirements set forth in Order No. 719-A.

B. The ISO's Proxy Demand Resource Product Includes Features That Satisfy the Notification Requirements in Order No. 719-A and Address Concerns that Small Utilities Are Notified of Proposed Demand Response Provider Activity

NCPA argues that the Proxy Demand Resource registration process would best protect small utilities if the ISO were to be required to provide notice to the relevant load serving entity or the Local Regulatory Authority if a Demand Response Provider seeks to register the retail load of small utilities. NCPA notes that the Midwest Independent Transmission System Operator, Inc. ("MISO") recently submitted a compliance filing that included notifications to the load serving entity and the local regulator in instances where a Demand Response Provider sought to register retail customers of such an entity, allowing those entities a certain period of time to protest such registrations. NCPA asserts that subjecting the ISO to such a requirement would reflect the Commission's intent not to require that small utilities take affirmative action to protect their status, and would also protect the orderly administration of the markets by allowing time to protest a wrongful certification before such aggregation is implemented and costs are incurred.¹¹

The ISO's Demand Response System and corresponding business practices (which implement market participation by Proxy Demand Resources) will not permit the registration process to be completed until the small utility is notified and provides its approval to the ISO; this insures that each small utility is

¹¹ NCPA at 4-5.

given the notice sought by NCPA. As explained below, in order to gain an approved Proxy Demand Resource registration, any small utility (as well as any load serving entities in the territory) must be contacted by the ISO to arrange for the appropriate access to the Demand Response System, and without this access, the Proxy Demand Resource registration process cannot continue.

The ISO has previously submitted a filing with the Commission explaining how it will satisfy the applicable Commission requirements regarding notification. In Order No. 719-A, the Commission directed each independent system operator (“ISO”) and regional transmission organization (“RTO”) to submit a compliance filing that indicates how it would comply with the requirements set forth in Order No. 719-A, including the requirement to develop:

a mechanism through which an affected load-serving entity would be notified when load served by that entity is enrolled to participate, either individually or through an ARC, as a demand response resource in an RTO or ISO market and the expected level of that participation for each enrolled demand response resource.¹²

The ISO submitted a compliance filing on January 12, 2010 that detailed how the ISO will comply with the requirements of Order No. 719-A. As relevant here, the ISO explained that, in implementing the Proxy Demand Resource product, it will include a task list feature within the ISO’s Demand Response System. The ISO next described how the task list feature will work and stated that, once the relevant Demand Response Provider enters all key enrollment data into the Demand Response System, the Demand Response Provider will submit the enrollment for approval by various parties, including the load serving

¹² Order No. 719-A at P 69.

entity serving the load of the enrolled Proxy Demand Resource. The load serving entity will receive timely notification of the enrollment request, will have certain access rights to the Demand Access System, and can log into the system, as desired, to see all enrolled Proxy Demand Resources within its service territory, including those that require enrollment approval. If the load serving entity takes no action to approve an enrollment request within ten (10) days from the date the request is submitted, enrollment will be automatically approved.¹³

These features of the Demand Response System will fully satisfy the notification requirements of Order No. 719-A. The ISO plans to provide a separate notification of a proposed enrollment only in the circumstances discussed below. The Demand Response Provider is contractually required to have the appropriate agreements and permissions to represent end-use loads as a Proxy Demand Resource, as required by the Local Regulatory Authority.¹⁴ To ensure that a registration is appropriately reviewed and approved by the load serving entity and Utility Distribution Company, the Demand Response System, by default, will not be populated with the small utilities, and for this reason the system will not contain the small utilities among the menu of selections. Therefore, to successfully complete the Proxy Demand Resource registration (which includes a check box for the Local Regulatory Authority approval), any small utility (as well as any load serving entities in the territory) must be

¹³ ISO Compliance Filing, Docket Nos. RM07-19-001, *et al.* (Jan. 12, 2010), at 3-4. This compliance filing is pending before the Commission.

¹⁴ See Section 4.3 of the *pro forma* Proxy Demand Resource Agreement.

contacted by the ISO to arrange for the appropriate access to the Demand Response System.

NCPA notes that the MISO submitted its own filing to comply with the Order No. 719-A notification requirements. The MISO stated that it will comply with those requirements through certain revisions to its tariff.¹⁵ However, Order No. 719-A did not prescribe any specific mechanism that each ISO and RTO must use to satisfy the requirements, and the ISO has developed the business mechanism described above rather than addressing the requirement in the same manner as the MISO proposes. As explained above, the ISO's January 12, 2010 compliance filing already explains how the ISO will comply with Order No. 719-A. The tariff revisions contained in the PDR Tariff Amendment do not need to be modified to further document the ISO's compliance with this requirement.

C. The Commission Should Not Require the ISO to Adopt a Minimum Bid Price at the Outset of the Proxy Demand Resource Market

The CPUC recognizes that the ISO has proposed a number of tools to mitigate the potential for gaming of the ISO market as a result of the addition of the Proxy Demand Resource product. Nevertheless, the CPUC argues that the Commission should order the ISO to impose an additional measure to address gaming – a minimum bid price that would apply to Proxy Demand Resources for at least one year after the PDR Tariff Amendment is implemented. The CPUC

¹⁵ See the MISO's "Filing re Aggregators of Retail Customers," Docket Nos. ER09-1049-002 and ER10-26-000 (Oct. 2, 2009), Transmittal Letter at 6-7. The MISO's compliance filing is pending before the Commission. Although this specific MISO compliance filing was not cited in NCPA's comments, counsel for the ISO obtained confirmation from counsel for NCPA that this is the compliance filing that NCPA was referencing.

proposes that, after the first year, the ISO and stakeholders could reevaluate whether the minimum bid price should continue.¹⁶

The Commission should not require the ISO to impose a minimum bid price for Proxy Demand Resources. As the ISO explained in its “Draft Final Proposal for the Design of Proxy Demand Resource,”¹⁷ at one point in the stakeholder process, the ISO itself entertained proposing a minimum bid price. After further analysis and discussion with stakeholders, however, the ISO ultimately decided that the PDR Tariff Amendment should not include a minimum bid price proposal. The ISO reached this conclusion for several reasons. First, the ISO determined that applying a minimum bid price or limit would not prevent the undesirable activity – the potential gaming opportunities that the ISO and stakeholders had identified. A minimum bid price only ensures that potential gaming can occur only above a certain price. Therefore, instead of adopting a minimum bid price or limit, the ISO proposed to address those gaming concerns through a combination of other prospective and retrospective evaluation measures.¹⁸ Moreover, the ISO was concerned that imposing a minimum bid price when the Proxy Demand Resource product was launched could limit

¹⁶ CPUC at 4-6.

¹⁷ “Draft Final Proposal for the Design of Proxy Demand Resource” (Aug. 28, 2009), at 16-18 (“Draft Final PDR Proposal”). As noted in the transmittal letter for the PDR Tariff Amendment (at footnote 34), the Draft Final PDR Proposal is available on the ISO’s website at <http://www.caiso.com/241d/241da56c5950.pdf>.

¹⁸ These anti-gaming measures include good-faith language in the *pro forma* Proxy Demand Resource Agreement, a morning adjustment cap as part of the customer baseline measurement, registration checks, automated metrics reporting, rescission of payment and suspension of the provision of Demand Response Services in the event that a bid from a Proxy Demand Resource does not represent an actual adjustment of load. Draft Final PDR Proposal at 17-18; Transmittal Letter for PDR Tariff Amendment at 22-25.

demand response participation in the ISO market and could result in market participants paying more for demand response than might be warranted.

Imposing a minimum bid price for Proxy Demand Resource bids would also run counter to Order No. 719's directive to promote comparability between Proxy Demand Resource bids and bids for energy and ancillary services from other types of resources.

The ISO and its Department of Market Monitoring will carefully monitor and review the operation of the markets once the Proxy Demand Resource product is implemented.¹⁹ If the ISO finds, based on market analysis and market participant behavior, that additional anti-gaming limitations need to be placed on Proxy Demand Resources, the ISO will discuss options for addressing that issue with stakeholders.

Based on these ISO findings, which are as valid today as they were when the ISO issued the Draft Final PDR Proposal during the stakeholder process, the Commission should reject the CPUC's minimum bid price proposal. Indeed, the CPUC's proposal to apply the measure first and then monitor market activity is the inverse of the optimal approach. At initial implementation, including a

¹⁹ See, e.g., PDR Tariff Amendment, Attachment D (Declaration of Margaret Miller), at 13 ("The ISO has included in its proxy demand resource software requirements the ability to monitor certain metrics once the proxy demand resource program goes into effect. These metrics will include, but are not limited to, statistically high adjustment factors, statistically high revenues, statistically low bids, and statistically poor baseline model fits. Should a proxy demand resource repeatedly fall outside of identified ranges, or fail multiple metrics, the ISO will perform a study to determine if there is a likelihood that the proxy demand resource has been compensated for demand response that was not really provided to the market."). Also, pursuant to proposed Section 4.13.1 of the ISO tariff, the ISO will accept Submissions of Energy Self-Schedules only from Proxy Demand Resources that have provided Submissions to Self-Provide Ancillary Services. The ISO propose to accept Submissions of Energy Self-Schedules from Proxy Demand Resources subject to that requirement so that the ISO's ability to monitor actual energy bids more closely is enhanced.

minimum bid price measure may *create* barriers to market participation and stifle market development before it has had a chance to grow. Only after the Proxy Demand Resource market product has been in effect for a sufficient amount of time to allow the ISO to draw meaningful conclusions will the ISO be able to evaluate market performance to determine whether any further anti-gaming measures may be needed. The ISO believes that the various tools that the ISO already plans to employ when the Proxy Demand Resource product is first implemented will be adequate to prevent gaming. However, if monitoring indicates that the existing anti-gaming tools need to be augmented, the ISO will discuss that issue with stakeholders in order to develop further, specifically targeted anti-gaming measures. The Commission should reject the CPUC's proposal that the ISO impose a minimum bid price from the initial implementation of the Proxy Demand Resource market product.

D. The Commission Should Approve the Pricing and Payment Requirements Set Forth in the PDR Tariff Amendment

SWP notes that the Commission has directed the ISO to replace the existing Default Load Aggregation Points ("LAPs") with more granular load aggregations that will provide more accurate price signals than exist under the ISO's current market design. SWP argues that the PDR Tariff Amendment exacerbates the issue of inaccurate price signals associated with Default LAPs by requiring underlying load that may provide Proxy Demand Resources to be charged at the Default LAP price and requiring Proxy Demand Resources that provide services to be paid at a more granular Custom LAP price. SWP asserts

that the Commission should require the ISO to pay Proxy Demand Resources at the same node or Sub-LAP as the underlying load is charged.²⁰

The Commission should not require the ISO to modify the pricing and payment requirements set forth in the PDR Tariff Amendment. The ISO already has a work plan in place to address the Commission's directive that the ISO increase the granularity of pricing to account for locational variation in an enhancement after the initial release of the ISO's new market.²¹ SWP has raised the issue of the granularity of LAPs before, with regard to the ISO's tariff amendment in Docket No. ER09-240-000. In that proceeding, the Commission rejected SWP's concerns and approved the ISO's current work plan, stating:

Regarding the level of granularity of load aggregation points, the Commission continues to find that the CAISO's commitment to develop increased granularity of sub-load aggregation points for MRTU Release 2 is a sufficient timeline to address State Water Project's concerns.²²

SWP does not identify any changed circumstances that would justify the Commission's revisiting this conclusion.

When the ISO implements increased granularity in an enhancement to the ISO's new market, the resulting improvement in the accuracy of price signals will extend to improved price signals for Proxy Demand Resources. Until that time, however, the ISO should apply to Proxy Demand Resources the pricing and payment requirements explained in the PDR Tariff Amendment. The ISO

²⁰ SWP at 1-6.

²¹ *California Independent System Operator Corp.*, 116 FERC ¶ 61,274, at P 611 (2006).

²² *California Independent System Operator Corp.*, 126 FERC ¶ 61,147, at P 103 (2009).

anticipates that charging load at the Default LAP price and paying Proxy Demand Resources at the Custom LAP price will have a minimal financial impact, given that the PDR Tariff Amendment includes measures to address concerns about the potential for load arbitrage between Default LAPs and Custom LAPs.²³ The issue was considered as the Proxy Demand Response product was developed, and stakeholders reached a general consensus that any minimal financial impacts of potential arbitrage between Default and Custom LAPs are more than offset by the benefits of a more flexible demand response product that will facilitate the participation of retail demand programs in the ISO market. Consistent with the general agreement among stakeholders described above, SWP is the only party that has raised an issue in this proceeding regarding the pricing and payment requirements pertaining to the use of the Default and Custom LAP.

The ISO should not be required to wait until there is increased granularity before it implements Proxy Demand Resources. It is already March of 2010, and the high-demand summer months will arrive shortly. As proposed in the PDR Tariff Amendment, the Proxy Demand Resource product should be permitted to go into effect prior to the summer of 2010, so that market experience can be gained and the product can enhance the ISO's existing demand response capability, provide greater market liquidity, and help to mitigate potential market power concerns as soon as possible.²⁴ Moreover, ISO stakeholders providing

²³ See Transmittal Letter for PDR Tariff Amendment at 23-24.

²⁴ See *id.* at 5-7, 30.

comments on the design of the Proxy Demand Resource product and of refinements to the Participating Load product to comply with Order No. 719 have expressed a strong preference that the ISO implement the Proxy Demand Resource product prior to implementing the Participating Load refinements, which are expected to go into effect in the first quarter of 2011.²⁵

E. Enabling Market Participation Through the Proxy Demand Resource Product Before Participating Load Enhancements Are Completed Does Not Result in Undue Discrimination

SWP argues that the design of the Proxy Demand Resource product is unduly discriminatory in that it denies Participating Load comparable rights or encouragement to participate. SWP asserts that: (1) any cost imbalances or insufficiencies created by the Proxy Demand Resource design should not be allocated to Participating Load; (2) Participating Load should be allowed to bid in the Real-Time and Residual Unit Commitment (“RUC”) markets at the same time that Proxy Demand Resources are given that right; (3) the Participating Load Agreement should be revised to recognize that Participating Load should not be subject to the same contractual requirements as generation; and (4) the same tariff definitions and treatment should apply to both Proxy Demand Resources and Participating Load.²⁶

The Proxy Demand Resource product is not unduly discriminatory. After the Proxy Demand Resource product is implemented, SWP will be free to switch

²⁵ See “Answer of the California Independent System Operator Corporation to Comments of the California Department of Water Resources State Water Project on Third Annual Demand Response Report of the California Independent System Operator,” Docket Nos. ER06-615-000 and ER07-1257-000 (Feb. 22, 2010), at 4-5.

²⁶ SWP at 2, 6-9.

any of its resources from a Participating Load to a Proxy Demand Resource, so long as it can satisfy the applicable tariff and contractual requirements. Section 3.2.2 of both the *pro forma* Participating Load Agreement and the *pro forma* Proxy Demand Resource Agreement gives the market participant the right to terminate the agreement with written notice to the ISO.²⁷ As a result, market participants representing loads have an equal opportunity to take part as Proxy Demand Resources and/or Participating Loads.

Moreover, the Commission should not take any of the four actions that SWP requests. As to SWP's first proposed action, the ISO anticipates (as explained in Section I.D, above) that the financial impact of implementing the Proxy Demand Resource product will be minimal and will be offset by the benefits of implementing an additional demand response product that responds to stakeholder-identified needs.

As to SWP's second proposed action – implementing the market features of the Proxy Demand Resource product and the Participating Load enhancements simultaneously – the ISO's own resource constraints mean that the only way to accomplish that would be to delay implementation of the Proxy Demand Resource product until the Participating Load enhancements are completed. It is not possible for the ISO to accelerate the launch of the Participating Load enhancements by 11 months, from the first quarter of 2011 to

²⁷ A market participant can also make some of its resources subject to a Participating Load Agreement and other of its resources subject to a Proxy Demand Resource Agreement. However, the same resource cannot be subject to both a Participating Load Agreement and a Proxy Demand Resource Agreement at the same time. Each resource can only be subject to one agreement or the other.

next month. Developing the software functionality necessary for the Proxy Demand Resource product required the ISO to contract with a new software vendor to develop software applications specific to the Proxy Demand Resource design, which is distinctly different from the Participating Load design. While the ISO believes that some components of the newly designed Demand Response System may also be suitable for use in the Participating Load enhancements effort, Proxy Demand Resource and Participating Load are distinctly different products and, thus, must be developed separately. Accordingly, development of Participating Load enhancements will largely be a separate effort that is distinct from the Proxy Demand Resource effort. For the reasons explained above, the Commission should not require the ISO to delay the Proxy Demand Resource product. SWP may participate in the Proxy Demand Resource product as soon as it becomes available, which will allow SWP to submit bids to curtail load in RUC and the Real-Time Market.

Regarding SWP's third and fourth proposed actions, the Participating Load product and the Proxy Demand Resource product differ from one another in significant ways. Indeed, the Proxy Demand Resource product was designed to provide an alternative mechanism from the Participating Load product for participation in the ISO market by demand response resources.²⁸ Therefore, it is entirely appropriate, and not unduly discriminatory, that the tariff provisions and agreements applicable to those products differ from each other in some ways.

²⁸ Transmittal Letter for PDR Tariff Amendment at 4-5.

F. The Commission Should Approve the ISO's Proposed Measurement Method for Determining Ancillary Services Performance

The ISO proposes to use a meter-before-meter-after measurement method for determining whether the Proxy Demand Resource performed as expected or failed to perform (in which case, it should be subject to a No Pay settlement, for non-compliance, and have all, or a portion of, its capacity payment rescinded).²⁹ The No Pay settlement is distinct from *the energy settlement*. The quantity of energy dispatched behind the ancillary service award, no matter its duration, will be calculated using the ISO's standard baseline methodology, not the meter-before-meter-after measurement method.

The CPUC voices support for using the meter-before-meter-after measurement method for short-duration dispatches of less than one hour. The CPUC agrees that, in short-term intervals, the measurement method will likely provide an accurate measurement of a Proxy Demand Resource's performance. However, for dispatches of an hour or more, when the dispatch is for the energy behind the ancillary service, the CPUC thinks a different measurement and payment is more appropriate than the meter-before-meter-after method, and requests the Commission to order the ISO to develop a different methodology in that situation. The CPUC supports its request by arguing that the current ISO

²⁹ See Draft Final PDR Proposal at 27. In other words, the ISO will only use the meter-before-meter-after measurement to determine if a Proxy Demand Resource's ancillary service capacity award should be subject to the ISO's No Pay settlement for undelivered capacity when a resource either fails to reserve the awarded ancillary service capacity or, when dispatched, fails to provide the energy behind its ancillary service capacity award.

proposal purportedly risks underpaying and/or overburdening Proxy Demand Resources that provide ancillary services.³⁰

The ISO believes that the CPUC may not appreciate that the ISO is only applying the meter-before-meter-after measurement method to determine if the awarded ancillary service capacity was actually available and/or delivered. The meter-before-meter-after measurement method is not used to determine *how much the resource is paid for the energy delivered*. Because the CPUC's request appears to be based on a misunderstanding, the Commission should not require the ISO to develop a different measurement methodology and payment system for energy dispatched from ancillary services.

There is a second reason why the CPUC's request for modifications in circumstances of longer-duration dispatches is inapt: the situation is unlikely to happen, because the ancillary service dispatches for Proxy Demand Resources are expected to be for short durations only. Ancillary service dispatches for contingency-only reserves are short-term in nature. Stakeholders recognized in Proxy Demand Resource Working Group discussions that the majority of demand response resources participating in the ISO's ancillary services market to provide contingency-only reserve would be energy-limited resources, which would not be dispatched for long durations consisting of multiple hours. This is because the optimal use for operating reserves is short-term. They provide an immediate response that covers system operation needs for enough time to enable *other resources* to ramp up and/or until quick-start resources can come

³⁰ CPUC at 6-7.

online. Once those other resources are operating, the demand resources and other similarly situated resources offering operating reserves can return to schedule, which allows the ISO to recapture their capacity for use as operating reserves, thus maintaining operating reserves at the required level.³¹ Logically, therefore, the CPUC's concern regarding long-duration dispatches addresses an unlikely circumstance. The meter-before-meter-after measurement method is an appropriate method for determining the availability of ancillary service capacity. Significantly, the CPUC correctly acknowledges the appropriateness of the ISO's proposed measurement method for short-duration dispatches, the situation that the stakeholders recognized was the situation to be addressed.

The CPUC's discussion also suggests that the ISO's proposed measurement method would always require a dispatched Proxy Demand Resource to remain at its curtailment level *for the whole of an hour*.³² This is not how ISO energy dispatches work. Absent some reason particular to the resource that requires the dispatched Proxy Demand Resource to maintain its curtailment level for the hour (*e.g.*, it has a minimum run-time constraint), the ISO dispatch will require the resource to remain at its curtailment level only for the duration of its dispatch, a time frame which is typically much shorter than one hour.³³ While

³¹ The same is true of generating resources providing contingency-only reserves. When a generating resource provides such capacity, the goal is to keep it as capacity and not dispatch it as energy, in order to maintain required operating reserves.

³² CPUC at 6 ("For example, if an Ancillary Services Proxy Demand Resource is called to dispatch one megawatt of energy for one hour, dropping from five megawatts to four megawatts, . . . [t]he proposal seems to require the resource to stay at four megawatts for the duration of the hour, or be subject to a 'no-pay' penalty").

³³ For information regarding the ISO's historic dispatch of contingency reserves, see "Revised Draft Final Proposal for Participation of Non-Generator Resources in California ISO

the length of the dispatch will typically be much less than an hour, the Proxy Demand Resource, will be paid for the ancillary service capacity *for the entire hour* it was awarded (subject to No Pay for non-availability), because the ISO ancillary services awards are hourly awards.

G. The ISO Agrees to Make Minor Clarifications in a Compliance Filing to the Tariff Language Contained in the PDR Tariff Amendment

Several parties assert that Section 8.3 of the proposed *pro forma* Proxy Demand Resource Agreement should be modified to harmonize that section with Section 4.3 of the *pro forma* Proxy Demand Resource Agreement and the requirements of Order No. 719-A. These parties note that the Commission stated in Order No. 719-A that the relevant electric retail regulatory authority (*i.e.*, the relevant Local Regulatory Authority under the ISO tariff) must specifically authorize third-party aggregation of demand bids through aggregators of retail customers (*i.e.*, Demand Response Providers under the ISO tariff) within the service territory governed by the Local Regulatory Authority if the relevant load serving entity distributes 4 million MWh or less of load.³⁴ The parties argue that, although Section 4.3 of the *pro forma* Proxy Demand Resource Agreement is clearly consistent with these requirements, Section 8.3 of the *pro forma* Proxy Demand Resource Agreement could be interpreted as being out of compliance with the requirements because the section requires specific action by a Local Regulatory Authority of a load serving entity that distributes 4 million MWh or less

Ancillary Services Markets (Mar. 8, 2010), available on the ISO's website at <http://www.caiso.com/2753/275383f257220.pdf>.

³⁴ Order No. 719-A at PP 51, 60.

of load in order to prohibit bidding by Demand Response Providers into the ISO markets.³⁵

The ISO agrees that minor clarifications should be made to Section 8.3 of the *pro forma* Proxy Demand Resource Agreement to ensure that it cannot be interpreted as being out of compliance with Order No. 719-A. The ISO's intent in drafting that Section 8.3 was to comply with Order No. 719-A and thus any potential for non-compliance was inadvertent. The ISO proposes to revise Section 8.3 of the *pro forma* Proxy Demand Resource Agreement in a compliance filing so that it tracks the phrasing of Section 4.3 of the *pro forma* Proxy Demand Resource Agreement and satisfies the requirements of Order No. 719-A, as follows:

8.3 Local Regulatory Authority. The Demand Response Provider represents and warrants that, with respect to any and all Proxy Demand Resources for which it shall submit Bids or otherwise act under this Agreement, the applicable Local Regulatory Authority which regulates the Proxy Demand Resources ~~does not prohibit~~ has authorized the participation by the Proxy Demand Resources as contemplated in this Agreement or in the CAISO Tariff.

Also, the ISO, in reviewing the PDR Tariff Amendment after it was filed, found that the ISO's proposed revision to the definition of the term Ancillary Service Provider inadvertently contained an incorrect word – the revised definition included the addition of the phrase “or Proxy Demand Response [*sic*],” when instead the ISO intended to add the phrase “or Proxy Demand *Resource*.” The ISO proposes to revise the definition of an Ancillary Service Provider to make that clarification.

³⁵ CMUA at 3-6; NCPA at 3-4; Six Cities at 2-3; SVP/M-S-R at 6-8.

II. Conclusion

For the reasons explained above, the Commission should accept the PDR Tariff Amendment as filed, with only the minor clarifications discussed above.

Respectfully submitted,

Nancy Saracino
General Counsel
Sidney M. Davies
Assistant General Counsel
Baldassaro "Bill" Di Capo
Senior Counsel
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 351-4400
Fax: (916) 608-7296
E-mail: nsaracino@caiso.com
sdavies@caiso.com

/s/ Bradley R. Miliauskas
Sean A. Atkins
Bradley R. Miliauskas
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: (202) 756-3300
Fax: (202) 654-4875
E-mail: sean.atkins@alston.com
bradley.miliauskas@alston.com

Attorneys for the California Independent System Operator Corporation

Dated: March 24, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 24th day of March, 2010.

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas