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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Demand Response programs, Pilots and Budgets for Program Years 2018-2022

Application 17-01-012

And Related Matters.

Application 17-01-018
Application 17-01-019

ADMINISTRATIVE LAW JUDGE'S RULING GRANTING MOTION TO STRIKE AND DENYING MOTIONS OF PG&E, SCE, AND PUBLIC ADVOCATES OFFICE TO FILE UNDER SEAL

Summary

Three motions to file under seal are denied: 1) the December 6, 2018 motion by Southern California Edison Company to file under seal its *Nexant Audit Report*; 2) the December 12, 2018 motion by Pacific Gas and Electric Company to file under seal its confidential *PG&E Summary of 2018-2019 DRAM RFO Audit Analysis, Results of December 4, 2018*; and 3) the March 29, 2019 motion by the Public Advocates Office of the Public Utilities Commission (Public Advocates Office) to file under seal Attachments A and B of the confidential version of the *Response of the Public Advocates Office on the Administrative Law Judge's Ruling Directing Responses to Questions Resulting from the February 11- 12, 2019 Demand Response Auction Mechanism Workshop and Comments on Proposals to Improve the Mechanism* (Public Advocates Office's Response). Further, the April 10, 2019 joint motion of CPower, Enel X North America, Inc.,

and EnergyHub to strike portions of the Public Advocates Office's Response is granted, as described herein.

Background

On December 6, 2018, Southern California Edison Company (SCE) filed a motion requesting to make the *Nexant Audit Report* a part of the Commission's Energy Division's final evaluation of the Demand Response Auction Mechanism (Evaluation Report). SCE separately filed a motion requesting to file the audit report under seal. Subsequently, on December 12, 2018, Pacific Gas and Electric Company (PG&E) filed a motion requesting that its confidential *PG&E Summary of 2018-2019 DRAM RFO Audit Analysis, Results of December 4, 2018* be made part of the Evaluation Report. Separately, PG&E also filed a motion requesting permission to file its audit report under seal. CPower, Enel X North America, Inc., and EnergyHub (jointly, the Joint Demand Response Parties) filed a response to the motions as did the California Large Energy Consumers Association (CLECA), OhmConnect, Inc., and Olivine.

A January 4, 2019 ruling denied the requests by SCE and PG&E to make their audit reports part of the Evaluation Report but did not specifically address the related motions to file the audit reports under seal. The Ruling stated that the audit reports would be discussed during the January and February 2019 workshops.

On March 29, 2019, the Public Advocates Office of the Public Utilities Commission (Public Advocates Office) filed a motion for leave to file, under seal, the confidential version of the *Response of the Public Advocates Office on the Administrative Law Judge's Ruling Directing Responses to Questions Resulting from the February 11-12, 2019 Demand Response Auction Mechanism Workshop and Comments on Proposals to Improve the Mechanism* (Public Advocates Office's

Response). Joint Demand Response Parties filed a motion on April 10, 2019 requesting the Commission strike portions of the Public Advocates Office's Response because the response references the PG&E and SCE audit reports. In their April 10, 2019 motion, the Joint Demand Response Parties highlight that the January 4, 2019 Ruling denied the SCE and PG&E motions to make the audit reports part of the Evaluation Report and contend that the Ruling also had the result of denying the requests to designate the audits confidential and file the audits under seal. The Joint Demand Response Parties maintain that the Public Advocates Office's reliance on the SCE and PG&E audit report in its response, despite the previous January 4, 2019 Ruling, violates the notice and opportunity to be heard by all stakeholders on the audit reports. SCE with the California Large Energy Consumers Association filed a response on April 24, 2019 and the Public Advocates Office filed a response on April 25, 2019. Both responses oppose the motion to strike. PG&E also filed a response on April 24, 2019 supporting the inclusion of the audit reports in the Public Advocates Offices' Response.¹ SCE and CLECA contend the Commission should ensure that the record takes into account all evaluations of the Auction Mechanism.² The Public Advocates Office seeks to ensure that the Commission is apprised of the risks that the current structure of the Auction Mechanism can place on ratepayers.³

Discussion

The January 4, 2019 Ruling denied the requests by SCE and PG&E to include the audit reports in the Evaluation Report. Furthermore, as correctly

¹ PG&E Response to Motion to Strike, April 24, 2019.

² SCE and CLECA Response to Motion to Strike, April 24, 2019 at 4.

³ Public Advocates Office Response to Motion to Strike, April 25, 2019 at 2.

noted by the Joint Demand Response Parties and PG&E, no action has been taken to receive the audit reports in any form, including under seal. The January 4, 2019 Ruling indicated that parties would have an opportunity to comment on the two audit reports and results during discussions at the January and February workshops.⁴ During the January 16, 2019 public workshop to discuss the demand response auction mechanism evaluation report, the subject of the audit reports was raised but the contents of the audit reports could not be discussed because they contained confidential material.

A determination of the value of the audit reports could not be accomplished in the public workshop as previously anticipated by the January 4, 2019 Ruling. Hence, a determination must be made based on the PG&E and SCE motions and the filed responses to the motions.

SCE explains in its December 6, 2018 motion that its audit report is a review of a single demand response auction mechanism (Auction Mechanism) Seller's claimed demonstrated capacity to verify the data upon which the Seller based its claim.⁵ According to the December 6, 2018 motion, the results of the audit indicate that the Seller's load was very similar to its estimated capacity and that it is not reasonable to expect 100 percent of the load to be curtailed during a demand response event. SCE states that the Seller has disputed the preliminary audit findings.⁶ SCE contends that it is unreasonable for a Seller to claim that it is capable of curtailing customer load to a degree that exceeds the load available to

⁴ January 4, 2019 Administrative Law Judge Ruling at 3-4.

⁵ SCE December 6, 2018 Motion for Inclusion of Audit Report in Evaluation Report at 1.

⁶ *Id.* at 2.

curtail. SCE asserts that the results of this audit should be included in the Evaluation Report and request the audit report be filed under seal.

PG&E explains in its December 12, 2018 motion that it conducted audits of the demonstrated capacity for three Auction Mechanism Sellers who had submitted invoices for June 2018, in order to verify the data upon which the invoices were based. PG&E explains that for two of the Sellers, the audit found “nothing to which to take exception or noted a correction to use the appropriate baseline for California Independent System Operator wholesale settlements.”⁷ For the third Seller, PG&E found that a number of individual customers were moved into and out of Proxy Demand Resources, resulting in the use of the same customer for multiple difference tests or dispatches in the same month.⁸ PG&E believes that these results should be included in the Evaluation Report to ensure the procurement and operational framework for potential future auctions produce reliable resources for the Auction Mechanism. PG&E requests the audit report be filed under seal.

Four parties filed responses to one or both motions. The Joint Demand Response Parties’ and OhmConnect’s objections focused on a lack of transparency due to the confidential nature of the PG&E and SCE audit reports and an alleged generalization that the audit paints all Sellers with the same brush of alleged non-performance.⁹ CLECA and Olivine support the inclusion of the

⁷ PG&E December 12, 2018 Motion for Inclusion of Audit Report in Evaluation Report at 2.

⁸ *Ibid.*

⁹ Joint Demand Response Parties Response, December 21, 2018 at 2-3; Joint Demand Response Parties Response, December 27, 2018 at 2-3; OhmConnect Response, December 19, 2018 at 1-2; and OhmConnect Response, December 20, 2018 at 1-2.

Footnote continued on next page

two audit reports in the record to help inform future and necessary reforms to the Auction Mechanism. However, CLECA calls for making the audit reports public and, thus, transparent.¹⁰

PG&E, SCE, and Olivine support including the confidential audit reports in the record to ensure that demonstrated capacity is accurately documented in order to produce reliable resource adequacy. While the Commission has not adopted a goal for the Auction Mechanism, D.16-09-056 established a policy that the Auction Mechanism shall serve as the main procurement mechanism for resource adequacy capacity from all third-party demand response supply sources.¹¹ Hence, reliable resource adequacy is necessary to the success of the Auction Mechanism. However, in D.16-09-056, the Commission also stated that the Auction Mechanism evaluation process shall ensure transparency and due process.¹² Furthermore, in response to CLECA and the Joint Demand Response Parties' concern that bad actors should not reflect poorly on good demand response performers, the Commission must ensure that the evaluation is fair.¹³ The result is competing policies.

In order to balance the competing policies of transparency and ensuring reliable resource adequacy, while also ensuring a uniform and consistent evaluation, we look to the Evaluation Report. The Evaluation Report also

¹⁰ CLECA Response, December 21, 2018 at 3-4.

¹¹ D.16-09-056 at 70.

¹² *Id.* at 66.

¹³ CLECA December 21, 2018 Response at 4-5 and Joint Demand Response Parties December 21, 2018 Response at 2 and 3; and Joint Demand Response Parties December 27, 2018 Response at 2 and 3.

expresses concerns regarding reliable resource adequacy, recommending stricter demonstrated capacity requirements.¹⁴ To address this concern, demonstrated capacity requirements was the subject of several discussions during the February Workshops.¹⁵ Furthermore, a February 28, 2019 Ruling directed parties to respond to several questions regarding invoicing for demonstrated capacity, further recognizing the concerns by all parties and the need to improve invoicing and ensure reliable resource adequacy.

The overarching concern of reliable resource adequacy expressed by all parties, as well as the Energy Division, has been and can continue to be addressed without the introduction of the two non-transparent, non-public audit reports. This maintains a balance between the competing objectives of ensuring reliable resource adequacy and ensuring a transparent and fair evaluation process with appropriate due process. Accordingly, the motions by PG&E and SCE to file their respective Auction Mechanism audit reports under seal are denied.

As a result of denying the motions by PG&E and SCE, the motion by Public Advocates Office requesting to file under seal the confidential version of the Public Advocates Office's Response is also denied. Relatedly, the motion filed by the Joint Demand Response Parties to strike the portions of the Public Advocates Office Response that reference the two audit reports is partially granted. Denying the Public Advocates Office's request to file under seal a confidential version of its March 29, 2019 response eliminates the need to strike references to the audit reports in the confidential version of the Public Advocates

¹⁴ Evaluation Report, January 4, 2019 at 83-84, 102, 107-108, and 111-112.

¹⁵ See February 28, 2019 Ruling.

Office's Response. However, we grant the request by Joint Demand Response Parties to strike all references to the audit reports in the public version of the Public Advocates Office's Response.

IT IS RULED that:

1. The December 6, 2018 motion of Southern California Edison Company to file the *Nexant Audit Report* under seal is denied.
2. The December 12, 2018 motion of Pacific Gas and Electric Company for permission to file the *PG&E Summary of 2018-2019 DRAM RFO Audit Analysis as of December 4, 2018* under seal is denied.
3. The March 29, 2019 Motion of the Public Advocates Office of the Public Utilities Commission to file confidential version of the *Response of the Public Advocates Office on the Administrative Law Judge's Ruling Directing Responses to Questions Resulting from the February 11-12, 2019 Demand Response Auction Mechanism Workshop and Comments on Proposals to Improve the Mechanism* under seal is denied.
4. The April 10, 2019 motion of CPower, Enel X North America, Inc., and EnergyHub to strike portions of the public version of the *Response of the Public Advocates Office to the Administrative Law Judge's Ruling Directing Responses to Questions Resulting from the February 11-12, 2019 Demand Response Auction Mechanism Workshop and Comments on Proposals to Improve the Mechanism* (Public Advocates Office's Response) is granted. All references to Southern California Edison Company's *Nexant Audit Report* and Pacific Gas and Electric Company's *PG&E Summary of 2018-2019 DRAM RFO Audit Analysis as of December 4, 2018* are stricken from the Public Advocates Office's Response.

Dated May 3, 2019, at San Francisco, California.

/s/ KELLY A. HYMES
Kelly A. Hymes
Administrative Law Judge