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02-17-11
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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking regarding policies and protocols for demand response load impact estimates, cost-effectiveness methodologies, megawatt goals and alignment with California Independent System Operator Market Design Protocols.

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

**ADMINISTRATIVE LAW JUDGE'S RULING PROVIDING
GUIDANCE FOR THE DEVELOPMENT OF DIRECT PARTICIPATION RULES,
FORMS, AND REQUIREMENTS**

As noted in Decision (D.) 09-08-027 and D.10-06-034, as part of its general mandate to increase California's reliance upon Demand Response resources, the California Public Utilities Commission (Commission) intends to better integrate Investor Owned Utilities (IOU) Demand Response programs into the California Independent System Operator (CAISO) price-based markets.¹ Specifically, in D.10-06-002 (the Direct Participation Decision) the Commission directed the IOUs to prepare to bid demand response into the CAISO wholesale markets

¹ D.09-08-027, *Decision Adopting Demand Response Activities and Budgets for 2009 Through 2011* at 30-31, 121-122 and Findings of Fact 4, Ordering Paragraphs 24-27; D.10-06-034, *Decision Adopting Settlement Agreement on Phase 3 Issues Pertaining to Emergency Triggered Demand Response Programs* at 3.

using Proxy Demand Resource (PDR) pilot programs.² D.10-06-002 also identified several issues that needed to be resolved before the Commission would allow direct bidding of IOU retail customers' Demand Response capabilities by third-party Demand Response Providers (DRPs) into the CAISO's markets. The Administrative Law Judge's (ALJ) ruling dated November 8, 2010 solicited further input from parties on consumer protection, financial settlement and communication, and other issues. Today's ruling takes an additional step in this direction by scheduling working group meetings to craft the documents that are needed to support direct participation. Specifically, workshop participants will be directed to: 1) Draft proposed direct participation rules that can be filed as IOU tariffs; 2) Develop proposed pro forma service agreements for use between IOUs and DRPs; and 3) Develop a proposed Commission registration process and other proposed consumer protection rules for DRPs. A determination on the need for financial settlement agreements has not yet been made.³ I expect to issue a proposed decision on this matter by May 24, 2011. Parties should not construe this as a deterrent to ongoing financial settlement negotiations.

So as to expedite the tasks of the working group, as an initial step the IOUs will submit a joint draft of the direct participation rules that will govern

² *Decision on Phase Four Direct Participation Issues*, issued on June 3, 2010 in Rulemaking (R.) 07-01-041, available at http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/118962.DOC. The decision noted that pilot PDR participation by the IOUs can occur only after Federal Energy Regulatory Commission (FERC) approval of CAISO's PDR tariff, and a subsequent Commission order that finds CAISO's approved tariff to be acceptable.

³ Parties are not, at this time, being asked to address this matter in the working group.

PDR-related interactions between IOUs and third-party DRPs, and IOUs (acting as a DRP) and non-IOU Load Serving Entities (LSEs), as well as end-use customers. Among other things, the preliminary draft submitted by the IOUs will set forth the roles and responsibilities of the aforementioned parties. In particular, the IOUs shall address, at a minimum, the following issues:

Direct participation rules that will be filed as IOU tariffs

- General obligations of the IOU, including discharging its responsibilities under the tariff in a neutral manner in areas that are subject to customer choice.
- Procedures for a DRP to qualify to provide PDR service in the IOU's territory, including any credit requirements.
- Standard contract terms describing the rights, responsibilities, and recourse methods of the parties to the agreement.
- Terms describing the circumstances under which the service agreement can be terminated, and the procedures for doing so.
- Rules that address violations of the Direct Participation rules, including a process for Commission suspension or termination of a DRP's registration, and a process by which the IOU-DRP service agreement can be severed.
- Rules governing the provision of customer-specific data by the IOU to authorized parties (i.e., from IOU to DRP, and from IOU (acting as DRP) to the non-IOU LSE).
- Limitations on the types of customers that may participate in a PDR (such as dual participation).
- Roles and responsibilities of parties that will ensure that there is no dual participation by end-use customers in PDR.

Pro forma service agreements for use between IOUs and DRPs

- Data that must be exchanged between authorized parties for day-to-day operation of PDRs.

- The format(s), process, and timing for data exchanges between authorized parties.
- Information (and format) that DRPs (or customers acting as their own DRP) will submit to the LSE to indicate that the customer has elected to participate in or cease participating in a PDR.
- Procedures that govern the submission of the participation/non-participation information, including acknowledgment of its receipt by the LSE, and acceptance or rejection of the form by the LSE.
- The rules that govern Meter Data Management Agent.
- Terms binding the parties to abide by the provisions of the Direct Participation rules.

Commission registration and other consumer protection rules for DRPs

- The rules that address potential consumer protection issues, such as informing customers on choices, terms, and conditions, etc..
- Rules similar to the Energy Service Provider (ESP) rules that are applicable to DRPs.
- The requirements for registration at the Commission that are applicable to DRPs that solicit residential and small commercial/agricultural customers (including the definition of small commercial and agricultural customers), and a list of required documents (i.e., Commission registration form, proof of valid CAISO registration, proof of financial responsibility, etc.).
- Identification of separate, less onerous, registration requirements for bundled customers.⁴

⁴ In comments submitted on Feb. 11, 2011 EnerNOC reiterates its assertion that the Commission has already determined that consumer protection rules extend only to residential and small commercial customers. EnerNOC's position is based on its reading of the Commission's Order on Rehearing (D.10-12-060). Similarly, the Alliance of Retail Energy Markets' Feb. 11, 2011 comments recommend that consumer protection be applicable only to bundled customers.

- Providing proof of valid CAISO and Commission registration.
- Obtaining customer's written consent for participation in DRP services.
- Obtaining customer's authorization on personal and usage data access.
- Security measures to protect confidential data.
- Rules prohibiting the misuse of customer information (including use or sale of data without customer consent/knowledge).
- Rules related to deceptive, unfair, or abusive business practices.
- Customer dispute and complaint procedures.

In comments submitted on December 13, 2010 some parties suggested that the IOUs should use existing Direct Access rules as an initial framework to draft the Direct Participation rules, making adjustments as appropriate. I agree with this line of reasoning and urge the working group to use existing Direct Access rules as an initial framework to draft the Direct Participation rules where practicable. The IOUs are further directed to consult with the parties during the initial stages of developing the draft rules and service agreements to the greatest practical extent. Also, where practicable, the IOUs should incorporate the customer data protection requirements being developed in the Smart Grid R.08-12-009.

IT IS RULED that:

1. Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company must jointly develop a draft of the direct participation rules that will govern PDR-related interactions between IOUs and third-party DRPs, between IOUs (acting as a DRP) and non-IOU LSEs, and with end-use customers, and serve the draft on all parties by March 15, 2011.

2. Energy Division must staff and establish a working group or groups to develop direct participation rules that will govern PDR-related interactions between IOUs and third-party DRPs, between IOUs (acting as a DRP) and non-IOU LSEs, and with end-use customers.

3. The working group(s) established by Energy Division must begin meeting no later than March 21, 2011.

4. Any party to this proceeding may participate in the working group(s).

5. The working group(s) must file the direct participation rules it proposes on or before May 2, 2011.

6. Parties may file comments on the direct participation rules produced by the working group no later than May 9, 2011.

Dated February 17, 2011, at San Francisco, California.

/s/ DARWIN E. FARRAR

Darwin E. Farrar
Administrative Law Judge

