



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Enhance the  
Role of Demand Response in Meeting the State's  
Resource Planning Needs and Operational  
Requirements.

Rulemaking 13-09-011  
(Filed September 19, 2013)

**REPLY COMMENTS OF SAN DIEGO GAS AND ELECTRIC COMPANY (U 902 E)  
ON 2018 DEMAND RESPONSE PROGRAMS**

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**A. INTRODUCTION**

San Diego Gas and Electric Company (SDG&E) hereby submits its reply to comments submitted in response to the Ruling of Administrative Law Judge Hymes Requesting Responses to Additional Questions in Regard to 2018 and Beyond Demand Response Programs that was issued on May 20, 2016 in the above-entitled proceeding (Ruling).

**B. THE OFFICE OF RATEPAYER ADVOCATES' DESCRIPTION OF COMPETITION IS CONFUSING AND CREATES AN UNFAIR PLAYING FIELD**

On the question of whether or not the California Public Utilities Commission (CPUC) should provide different goals for demand response (DR) between third parties and the utilities (Category 1, question 4), ORA contends that it supports the competitive procurement of DR. SDG&E agrees with that position and has articulated the same in its own comments. However, ORA goes on to support a DR framework that would unnecessarily limit the number of potential DR providers:

*In fact, ORA proposes to transition Supply DR away from utility administration to third-party providers to meet CAISO's ongoing resource needs. Competitive procurement will improve price discovery and reduce costs to ratepayers. Limiting the utility role to administration will make administrative costs more transparent. In addition, as administrator, the utility's incentives for ensuring performance from DR programs will align with shareholders' objectives; there will be a common interest in having DR shed the load they are under contract to provide. In this scenario, the utilities will continue to play an important role in*

*facilitating increasing amounts of third-party direct participation in the CAISO markets. The utilities should also continue to offer time-differentiated rates as load modifying DR that is embedded in the CEC's load forecast.<sup>1</sup>*

SDG&E submits that ORA's position is inconsistent with its stated support for competitive procurement of DR. ORA states that it believes that DR should compete to reduce costs, but then suggests a specific policy directive to say who can provide that DR. Reducing the number of participants directly undermines the downward pressure on prices and upward pressure on innovation that can result from competitive processes. In order to maximize downward pressure on prices and maximize incentives for continuous improvement and innovation, SDG&E submits utilities should not be precluded from competing. Instead regulatory oversight should focus on ensuring that the competitive playing field is level for all potential DR providers.

ORA suggests that the role of the utilities should be focused on facilitating direct participation in the California Independent System Operator (CAISO) market (presumably under Rule 32 for SDG&E, and Rule 24 for Pacific Gas & Electric and Southern California Edison respectively). This position assumes that there is a profitable market for DR providers in CAISO markets. Those markets for third parties are still uncertain, and it is not known today if companies bidding DR into those markets under Rule 32 will find this to be a profitable proposition in the long term. SDG&E submits that all parties should be permitted to compete and markets should be permitted to evolve, so that financial viability develops in a way that indicates who is best suited to provide that DR.

ORA also argues, at page 3 (regarding Rule 32), that the CPUC should evaluate the IOUs' effectiveness at facilitating direct participation. SDG&E welcomes this evaluation.

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<sup>1</sup> See, ORA Comments, at p. 2.

However, such an evaluation would be better done after a year or two of robust direct participation of third parties in the CAISO markets, and once the CAISO's APIs have been built and become fully operational, so that there is something to evaluate with any degree of meaning and context. The California Large Energy Consumers Association (CLECA) in its opening comments also stated that this market is uncertain.<sup>2</sup> It would not be a good use of ratepayer dollars to conduct such an evaluation prematurely.

**C. PARTIES WHO ARGUE FOR GREATER CUSTOMER DATA SHARING FAIL TO ADDRESS STATUTORY RESTRICTIONS TO SUCH DATA SHARING AND THE COMPLEXITIES AND COSTS ASSOCIATED WITH ADMINISTRATING DATA SHARING**

ORA, OhmConnect and the Joint DR Parties (JDRPs) all argued in opening comments for greater access to customer usage data to facilitate greater third party participation or to level the playing field as they perceive it.<sup>3</sup> SDG&E responds to those proposals below.

First, ORA makes the following recommendation to facilitate greater levels of DR:

*....based on the findings of the Interim Report, the utilities should create databases of customers within each sector with eligible end-uses that have large potential load reduction, and a propensity to participate for their own use and also make such information available to third party DR providers.*

If the utilities were to create, periodically refresh, and make such databases available, there would be costs associated with that effort. ORA does not address privacy concerns in suggesting that the IOUs turn such data over to third parties, which is of great concern to

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<sup>2</sup> See, Comments of the California Large Energy Consumers Association Responding to ALJ Hymes Ruling of May 20, 2016, p. 17. CLECA argues that the Commission needs information about how the third party DR resources are meeting must-offer obligations, how often they are dispatched, whether they are bidding competitively, etc.

<sup>3</sup> See, ORA Comments at p. 4; JDRP Comments at p. 13; and OhmConnect Comments at p. 4 in Response to Administrative Law Judge's Ruling Requesting Responses to Additional Questions in Regard to 2018 and Beyond Demand Response Programs.

SDG&E, given that there are legal restrictions on sharing such data.<sup>4</sup> Nor does ORA suggest how to make this data sharing fair for a competitive environment while arguing earlier in comments for that competition.

OhmConnect similarly argued that to level the competitive playing field between utility and non-utility DR programs, non-utility DR providers should be able to access customers' interval meter data and basic demographic information before incurring marketing and customer enrollment costs.<sup>5</sup> Again, OhmConnect fails to offer any compelling arguments for how this could be done in a way that complies with California's privacy rules or in a way that is competitively neutral. IOUs' load shape data is available by NAICS code and customer type statewide. There is no compelling reason offered why an IOU should be obligated to provide more data to third parties at ratepayer expense, prior to a firm contract being executed.

JDRPs' specific recommendations on data sharing between IOU and other entities to target customers for DR, raise privacy as well as business model issues that have not been considered in the comments. The Joint DR Parties advocate in support of two possible data sharing scenarios. First, the JDRPs suggest:

*The solution for this problem may be for the IOUs to identify a select number of customers with the compatible load characteristics and to make that information available to eligible DR providers, who could target those customers for program participation. The Joint DR Parties recommend that the Commission, along with the IOUs and DER providers, further evaluate to what level of granularity the DR Potential Study data can be made available while respecting the Data Privacy Rules.<sup>6</sup>*

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<sup>4</sup> The underlying statute governing the sharing of customer usage data can be found here: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=08001-09000&file=8380-8381>.

<sup>5</sup> See, OhmConnect Comments, at p. 4.

<sup>6</sup> See, JDRP Comments, at p. 13.

This approach presents significant legal challenges. First, the privacy statute and CPUC directives do not currently allow the IOUs to do this. Specifically, this approach would not be valid unless the IOU was to obtain customer permission and then, in that case, the customer would have to initiate the process instead of the utility. Covered information such as load shapes and electric usage data, coupled with identifying information, can be shared with companies for primary purpose activities or with customer consent for secondary purposes. The approach offered by the JDRPs does not fall cleanly in the category of primary purpose. Therefore, under such a scenario, customer permission would be required.

The Joint DRPs go on to suggest:

*Alternatively, the IOUs can identify the customers that will make good DR candidates, by virtue of their load shape, send a notification to the customer that they are a good candidate, and refer the customer to the list of registered aggregators on the Commission website. This approach would allow customer self-selection without impeding on the customer's privacy.<sup>7</sup>*

From the perspective of privacy, this approach could be accomplished without a change in the current statute or its corresponding CPUC decisions. Customer action would be required for this activity, which would be considered a secondary purpose. This approach does raise additional issues however, which would need to be considered, and significant challenges may lie in those details. Considerations include how the registry would work, if such a registry would be appropriate for the CPUC to manage or outsource, how to operate such a registry in a fair and transparent manner, and, lastly, how the costs of the registry should be allocated. At least one other registry exists where companies have undergone some type of scrutiny to serve the purposes of CPUC policy: the clearing house for registering diverse business enterprises, which is outsourced to a third party to administrate. This approach also adds additional administrative

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<sup>7</sup> See, JDRP Comments, at p. 13.

costs and burdens which would be designed to enable a market whose viability is currently unknown. Those risks need to be weighed. As the entity which would be providing the analysis, SDG&E must be allowed to recover the costs it incurs should the Commission implement any of the forgoing proposals.

**D. THE JOINT DR PARTIES ERRONEOUSLY ASSUME THAT THE DRAM PROCESS PLACES IOUs IN CONTROL OF ENROLLING CUSTOMERS**

The Joint DRPs err in concluding that the DRAM process places the control of enrolling customers with the IOUs:

*By removing the DRP's ability to control their own user experience (usually a competitive advantage), and placing that control with the IOUs, the DRP will not be able to drive adoption or innovation.*<sup>8</sup>

In the DRAM process that SDG&E has participated in to date, SDG&E only fulfills its obligations by:

1. Ensuring that customer privacy is protected;
2. Confirming authentication of that customer through the processing of the CISR-DRP form; and,
3. Performing the required due diligence of ensuring no dual participation is taking place with any customer concurrently in an event-based utility DR program and as a part of the market DR resource in violation of SDG&E's tariffs.

SDG&E is not involved in the recruitment, enrollment, or the approval of customers in any third party DRAM DRP DR offer. SDG&E recognizes the JDRPs may be referring to the authentication process. However, a click-through process for authentication was required in the

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<sup>8</sup> See Comments of Converge, CPower, Enernoc and EnergyHub (Joint DR Parties) on Administrative Law Judge's Ruling Requesting Responses to Additional Questions In Regard to 2018 and Beyond Demand Response Programs, at p. 29.

recent Decision in the Rule 24/32 proceeding (D. 16-06-008). Pursuant to SDG&E's Electric Rule 32, SDG&E is in compliance with the competition neutrality requirements of that rule.

Additionally, the JDRPs have recommended implementation of a "centrally administered clearing price market" as follows, without providing a specific description of what would be entailed in such a competitive solicitation process:

The Joint DR Parties will note that a centrally administered clearing price market, administered by a third party for the DRAM, could contribute further to transparency and fairness, while ensuring the most efficient price and helping to encourage the significant investments of third parties required to grow the market.<sup>9</sup>

To the extent the JDRPs are recommending adoption of a solicitation process that would result in public disclosure of market clearing prices for the purpose of promoting "transparency and fairness while ensuring the most efficient price and helping to encourage the significant investments of third parties required to grow the market," SDG&E submits that the JDRP recommendation is ill-founded and unnecessary. A fair competitive solicitation involving an adequate number of bidders results in the most efficient price and helps to encourage significant investments by third parties, without the unnecessary public disclosure of competitively sensitive clearing prices. On the other hand, public disclosure of competitively sensitive market clearing prices would create opportunities for bidders to bid on the basis of the highest price that they believe is likely to be accepted rather than on the basis of the lowest price they are able to accept. This would result in unnecessary cost increases to the detriment of electricity customers, without any corresponding benefit.

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<sup>9</sup> See JDRP Comments, at p. 30.

**E. SDG&E AGREES WITH JDRP THAT THERE ARE IMPORTANT FACTORS AND QUESTIONS NOT POSED IN THIS RULING THAT WILL IMPACT THE FUTURE OF DEMAND RESPONSE**

The Joint DR Parties recommend that additional factors that have not been addressed in Response to the Ruling should be considered:

*Consideration should be given to factors in addition to the DR Potential Study that may delay the transition period that were not considered by the March 4 ALJ's Ruling, including prohibited resources, an analysis of the Demand Response Auction Mechanism (DRAM), cost effectiveness, cost allocation, resource adequacy, and the Integrated Distribution Energy Resources (IDER) and Distribution Resource Plans (DRP) Rulemakings.<sup>10</sup>*

SDG&E agrees that the factors listed above should also be considered when determining the roadmap for demand response in California. In particular, SDG&E agrees that the outcomes of the Integrated Distributed Energy Resources (IDER) and Distribution Resource Plan (DRP) rulemakings are crucial in determining the process for how often and by whom DERs are identified as the solution for distribution system problems as well as to understand the ways DERs can and should be integrated. Further, the DRAMs need evaluation after there is available data on their performance as well as cost effectiveness against other resources to be able to determine how effective they are.

It is not clear how decisions could be made about the role of third parties without this initial evaluation on performance and further experience under Rule 24/32 as well as the DRAMs. And most of all, it is important that an overall cost effectiveness framework be developed in the IDER proceeding that could be used for all solicitations, when the emphasis can be placed on requiring All Source RFOs for procurement to ensure there are robust competitive selection processes. Lastly, the ability to level the playing field for true competition seems all but impossible to do in a vacuum within a proceeding for one resource, such as DR. Such

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<sup>10</sup> See JDRP Comments, at p. 2.

discussions deserve a broad stakeholder forum with informed constituents where the playing field can be determined with a “bigger picture” perspective.

**F. CONCLUSION**

SDG&E appreciates the opportunity to submit the forgoing reply comments.

Dated: July 15, 2016

San Diego Gas & Electric Company

*/s/ Thomas R. Brill*

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