

ALJ/KHY/jt2

**PROPOSED DECISION**

Agenda ID #12517 [Rev. 1](#)

Ratesetting

[12/5/2013 Item #46](#)

Decision PROPOSED DECISION OF ALJ HYMES (Mailed 10/25/13)

**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)

**DECISION ADDRESSING PETITIONS TO MODIFY DECISION 12-11-025**

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**DECISION ADDRESSING PETITIONS TO MODIFY DECISION 12-11-02025****1. Summary**

This decision addresses four petitions to modify Decision 12-11-025, which approved ~~several~~ policies for demand response direct participation into the California Independent System Operators wholesale market. This decision grants, in part, and denies, in part, petitions filed separately by 1) Pacific Gas and Electric Company (PG&E), Southern California Edison Company, San Diego Gas & Electric Company, Office of Ratepayer Advocates, EnerNOC, Inc., Johnson Controls, Inc., Converge, Inc., Alliance for Retail energy Markets (AReM), and Direct Access Customer Coalition (DACC); 2) PG&E; 3) EnerNOC, AReM, and DACC; and 4) EnerNOC. In addition, this decision closes Rulemaking 07-01-041.

**2. Background**

In Decision (D.) 12-11-025, the Commission resolved several policy matters regarding demand response direct participation into the California Independent System Operator's (CAISO) wholesale markets. These matters needed to be resolved in order for a final Electric Rule 24, Direct Participation Demand Response, to be refined and adopted. D.12-11-025 also required staff to hold workshops for parties to refine Rule 24.

During the course of the Rule 24 workshops, parties concluded that several changes to D.12-11-025 were necessary "to conform to operational realities with the CAISO system, clarify ambiguous language in the decision, and reflect the parties' consensus about a streamlined approach to facilitate direct participation

of demand response in CAISO's wholesale markets."<sup>1</sup> Parties identified issues in D.12-11-025, which they considered problematic, and reached consensus on some issues but not all.

## 2.1. Procedural Background

On August 9, 2013, the Commission received four petitions to modify D.12-11-025:

- 1) Joint Petition of ~~Pacific Gas and Electric Company (PG&E); Southern California Edison Company (SCE); San Diego Gas & Electric Company (PG&E, SCE, SDG&E); Office of Ratepayer Advocates (ORA); ORA,~~<sup>2</sup> EnerNOC, Inc.; Johnson Controls, Inc.; Comverge, Inc.; ~~Alliance for Retail energy Markets (AREM); and Direct Access Customer Coalition (, AREM, and DACC)~~ (together, Joint Petitioners) for Modification of D.12-11-025, Ordering Paragraphs 7, 12, and 21 (Consensus Petition);
- 2) PG&E Petition for Modification of D.12-11-025, Ordering Paragraphs 6, 8, and 35 (PG&E Petition);
- 3) Petition of EnerNOC, Inc., AREM, and DACC (EnerNOC-AREM-DACC Petition); and
- 4) Petition of EnerNOC, Inc. for Modification of D.12-11-025 (EnerNOC Petition).

Simultaneously, PG&E filed a motion requesting a shortened response time for parties to comment on the Consensus and PG&E Petitions. The assigned Administrative Law Judge (ALJ) found the request reasonable and granted the motion. The ALJ further required that parties file responses to all four petitions

<sup>1</sup> ~~Consensus Petition~~ Joint Petition of Pacific Gas and Electric Company (PG&E); Southern California Edison Company (SCE); San Diego Gas & Electric Company (SDG&E); Office of Ratepayer Advocates (ORA); EnerNOC, Inc.; Johnson Controls, Inc.; Comverge, Inc.; Alliance for Retail energy Markets (AREM); and Direct Access Customer Coalition (DACC) (together, Joint Petitioners) for Modification of D.12-11-025, Ordering Paragraphs 7, 12, and 21 (Consensus Petition) at 2.

<sup>2</sup> On September 26, 2013, the Division of Ratepayer Advocates (DRA) became the Office of Ratepayer Advocates through Senate Bill 96. Pleadings filed under the name of DRA throughout this proceeding will be considered filed by ORA.

no later than August 23, 2013. On August 22, 2013, the ALJ granted a request permitting each party to file a single document addressing all four petitions for modification.

On August 23, 2013, the following parties filed comments on one or more of the four petitions: DACC and AReM; EnerNOC, DACC and AReM; Environmental Defense Fund (EDF); ORA;<sup>3</sup> PG&E; SDG&E; and SCE.

## **2.2. Overview of the Four Petitions**

Each of the four petitions listed above are briefly described below.

### **2.2.1. Consensus Petition**

The Joint Petitioners request the Commission to approve the following three changes in D.12-11-025:

- 1) Modify Ordering Paragraph 7 to allow a demand response provider (Provider) to include a customer in a CAISO resource registration if the customer is not in another provider's confirmed registration during the same period.
- 2) Modify Ordering Paragraph 12 to clarify that it is the responsibility of the Meter Data Management Agent (Meter Agent) to provide Revenue Quality Meter Data (Revenue Data)<sup>4</sup> and the Provider's Scheduling Coordinator to provide Settlement Quality Meter Data (Settlement Data).<sup>5</sup>
- 3) Modify Ordering Paragraph 21 to confirm that it is the customer who controls access to their information.

### **2.2.2. PG&E Petition**

PG&E requests the Commission to approve the following three changes:

<sup>3</sup> ORA filed separate responses to all but the Consensus Petition.

<sup>4</sup> Revenue Data is the verified, edited and estimated data generated by the customers' meter and used by the Utilities to issue retail bills. The term, Utilities, in this proceeding, refers to PG&E, SDG&E, and SCE.

<sup>5</sup> Settlement Data for wholesale market participation requires adjustment to account for transmission losses and must be totaled according to resource registration.

- 1) Modify Ordering Paragraph 6 to revise the definition of the term, small commercial customer, to include small and medium commercial and agricultural customers on rate schedules without a billing demand and clarify that small agricultural customers are afforded the same protection as small commercial customers.
- 2) Modify Ordering Paragraph 8 to address timing elements related to managing the prohibition against dual participation in connection with direct participation and the default, opt-out Critical Peak Pricing program.
- 3) Modify Ordering Paragraph 35 to delay the timing for submittal of the Rule 24 advice letter.

### **2.2.3. EnerNOC-AReM-DACC Petition**

EnerNOC-AReM-DACC request the Commission to approve the following seven changes:

- 1) Modify Ordering Paragraph 8 to allow customers currently defaulted on the Critical Peak Pricing program to be automatically disenrolled upon registration for another program in the CAISO market.
- 2) Modify Ordering Paragraph 12 to sufficiently incorporate the Commission conclusion that Meter Agents are responsible *and, therefore, liable* for providing the actual Settlement Data to the Provider's Scheduling Coordinator.
- 3) Modify Ordering Paragraph 20 to ensure that the Customer Information Service Request Form (Customer Form) is based on the staff proposal, is consistent with D.11-07-056, and allows for a migration to electronic authorization.
- 4) Delete Ordering Paragraph 28 to correctly reflect updated financial security requirements adopted in Rulemaking (R.) 07-05-025.
- 5) Modify Ordering Paragraph 29 to correctly reflect updated security requirements adopted in R.07-05-025.
- 6) Modify Ordering Paragraph 31 to eliminate the California Solar Initiative (CSI) Handbook as the basis for enforcement.

- 7) Create a new Ordering Paragraph to ensure competitive neutrality in demand response direct participation.

#### **2.2.4. EnerNOC Petition**

EnerNOC requests the Commission to approve the following change:

- 1) Modify Ordering Paragraph 19 to recognize demand response provider services, for the purposes of bidding into the CAISO market, as a primary purpose if it supports system, grid, or operational needs.

### **3. Issues Before the Commission**

This decision determines 1) whether the requests in the four Petitions for Modification meet the requirements in the Commission Rules of Practice and Procedure (Rule) 16.4(b), which states:

A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

and 2) whether the requested changes in the Petitions are reasonable and should be adopted.

### **4. Discussion**

The four petitions we address in this decision were filed and served within one year of the effective [daydate](#) of D.12-11-025 and are, therefore, in compliance with Rule 16.4(c) and (d). Furthermore, all four petitions meet the requirements of Rule 16.4(b), as previously described.

Across the four petitions, there are 14 requested changes referencing 11 current ordering paragraphs and one potential new ordering paragraph. This

decision will address the 11 current and one new ordering paragraph in numerical order.

#### 4.1. Ordering Paragraph 6

PG&E requests the Commission to revise the definition of the term, small commercial customer, in Ordering Paragraph 6 to include small and medium commercial and agricultural customers on rate schedules without a billing demand and clarify that small agricultural customers are afforded the same protection as small commercial customers. Providing alternate language, PG&E contends that the current definition is not flexible enough to be consistently administered across all utilities that will add Rule 24 to their tariffs.<sup>6</sup>

SCE supports PG&E's requested change to Ordering Paragraph 6, stating that the revisions define small commercial customer consistent with the Utilities' common Rule 1 tariff definition.<sup>7</sup> DACC and AReM oppose PG&E's modification, claiming that the change would undercut the principle of a standardized Rule 24 because of varying definitions in each of the Utilities' Rule 1.<sup>8</sup> DACC and AReM also allege that PG&E raised a similar argument earlier in this proceeding.<sup>9</sup>

We agree with DACC and AReM that PG&E argued for the same change earlier in this proceeding. Specifically, PG&E requested that the Commission allow each utility to adopt its own definition that is most appropriate for that utility's system.<sup>10</sup> In D.12-11-025, we stated that "it is important that the Commission be consistent in defining this term."<sup>11</sup> As a result, we adopted one

<sup>6</sup> PG&E Petition at II.

<sup>7</sup> SCE Response to Petitions at 3-4.

<sup>8</sup> DACC and AReM Response at 2.

<sup>9</sup> *Ibid.*

<sup>10</sup> D.12-11-025 at 27, referencing PG&E's Reply Comments to proposed Decision

Adopting Policies for Demand Response Direct Participation, November 19, 2012 at 4.

<sup>11</sup> *Id.* at 27.

definition for the term, small commercial customer, which all of the Utilities are required to use. PG&E's requested change would lead to a different definition for each of the Utilities. PG&E provides no new circumstances that would lead us to change our adopted policy. However, we acknowledge PG&E's concern that small agricultural customers may not be afforded the same protection as small commercial customers. This aspect was not considered previously and would likely impact demand response programs designed for agricultural customers. Thus, we find it reasonable to revise Rule 24 to define a small commercial customer as *any* (emphasis added) non-residential customer that has a maximum peak demand of less than 20 kilowatts.

#### **4.2. Ordering Paragraph 7**

The Joint Petitioners request a revision to Ordering Paragraph 7 to allow a Provider to place a customer account in the resource registration in CAISO's Demand Response System if the customer is not in another Provider's confirmed registration during the same period. Contending that the intent of Ordering Paragraph 7 is to prevent dual participation,<sup>12</sup> the Joint Petitioners claim that the requested revision clarifies that while multiple Providers can register a customer location into the CAISO Demand Response System, only one Provider may actively bid the account into the CAISO market. The Joint Petitioners contend this modification retains the intent of the original decision but improves the coordination with the CAISO process. No party opposes this request.

As we discussed in D.12-11-025, the purpose of Rule 24 is to provide the administrative, technical, and financial mechanisms to allow Providers to bid resources directly into the CAISO market while protecting customers and

<sup>12</sup> Dual participation is defined as the same customer account with more than one Provider at the same time in CAISO's market. See Consensus Petition at 4.

ratepayers.<sup>13</sup> We find the proposed change to Ordering Paragraph 7 clarifies technical deficiencies to improve the coordination with the CAISO system. Clarity of the technical mechanisms is important to the success of the demand response direct participation process and, thus, we find it reasonable to adopt the requested revisions to Ordering Paragraph 7.

#### 4.3. Ordering Paragraph 8

Two Petitions request changes to Ordering Paragraph 8, which addresses dual participation in the CAISO market. Both PG&E and EnerNOC-AReM-DACC request that Ordering Paragraph 8 be revised to allow for customers enrolled in Critical Peak Pricing<sup>14</sup> (a default program with an opt-out provision) to withdraw from Critical Peak Pricing and enroll in another Providers' demand response service. The difference between the two petitioners' requests lies in the process of withdrawal. PG&E, supported by SDG&E ~~and SCE~~, suggests revisions that would allow a Provider to register an existing Critical Peak Pricing customer, with no tariffed or contract obligations, for direct participation *after* the Utility notifies the customer that it will be removed from the program and that customer does not object. EnerNOC-AReM-DACC, supported by EDF, suggests revisions that allow the customer to be automatically disenrolled from Critical Peak Pricing upon the resource registration in the CAISO's Demand Response System.

ORA ~~and SCE~~ also ~~support~~ support the ability of a customer to withdraw from Critical Peak Pricing, but opposes both PG&E and EnerNOC-AReM-DACC's proposed disenrollment processes. ORA ~~suggests~~ and SCE recommend that the customer should proactively withdraw from Critical

<sup>13</sup> D.12-11-025 at 20.

<sup>14</sup> Critical Peak Pricing is called Peak Day Pricing in PG&E's tariffs. See PG&E Petition at footnote 4.

Peak Pricing, ensuring that the customer is aware of the potential loss of any benefits the program provides, including bill protection during the first year of participation. Alternatively, if the Commission chooses to approve EnerNOC-AReM-DACC or PG&E's language, ORA requests that a well-defined process for notification to the customer should be established.<sup>15</sup>

Critical Peak Pricing and its opt-out provision existed prior to the adoption of D.12-11-025, but the issue of treating Critical Peak Pricing differently because of the default or opt-out provisions has not previously arisen in this proceeding. PG&E contends that the Commission should consider Critical Peak Pricing to be different from other demand response programs because customers do not actively enroll in the program.<sup>16</sup> EnerNOC-AReM-DACC claim that, in D.10-02-032, the Commission already determined that customers should be able to automatically opt-out of Critical Peak Pricing if they want to participate in another demand response program.<sup>17</sup> Furthermore, EnerNOC-AReM-DACC argue that the more complex the process to move into another program, the more likely a customer will decide to stay put; being enrolled in a default program should not serve as a barrier to customers who affirmatively choose to actively manage their energy consumption.<sup>18</sup> EnerNOC-AReM-DACC request the Commission 1) to allow automatic disenrollment from Critical Peak Pricing and 2) to utilize the small customer notification letter adopted in D.12-11-025 to educate customers on the loss of benefits such as bill protection.<sup>19</sup> ORA points out that, while D.10-02-032 allowed for the opt-out provision in ~~the~~ Critical Peak

<sup>15</sup> ORA Response to PG&E Petition at 4 and ORA Response to EnerNOC-AReM-DACC Petition at 5.

<sup>16</sup> PG&E Petition at 5.

<sup>17</sup> EnerNOC-AReM-DACC Petition at 8.

<sup>18</sup> *Id.* at 7 and 10.

<sup>19</sup> *Id.* at 9.

Pricing ~~program~~, there was never a discussion that the opt-out provision be automatic.<sup>20</sup> In comments to the proposed decision, SCE recommended that the Commission revise the requested language change such that it is consistent with the way the majority of rate changes are accomplished.<sup>21</sup>

First, we acknowledge that Critical Peak Pricing is different from other demand response programs in that it has default and opt-out provisions. We also acknowledge that customers defaulted onto this program may not be aware that they are enrolled in the program. As discussed by several parties, D.10-02-032 states that customers should be allowed to withdraw from Critical Peak Pricing at any time, if they withdraw to enroll in another demand response program. We, therefore, find it reasonable to specifically address Critical Peak Pricing in the context of dual participation rules because it has default and opt-out provisions that other demand response programs do not have. Consistent with D.10-02-032, we allow customers to withdraw from the Utilities' Critical Peak Pricing at any time if they do so to enroll in another Utility-based or Provider demand response service.

Second, we consider it our duty to protect customers but we also want to improve access to demand response direct participation and limit barriers to enrollment. We agree that a streamlined automated process will facilitate customer participation in demand response but, as ORA pointed out, we need proper notification to the customer. In D.12-11-025, we found that the notification letter sent to customers following enrollment with the Provider is a valuable method to educate and protect customers participating in demand response programs.<sup>21</sup><sup>22</sup> Thus, we find it reasonable to automatically disenroll

<sup>20</sup> ORA Response to EnerNOC-ARem-DACC Petition at 4.

<sup>21</sup> SCE Comments at 13.

<sup>21</sup><sup>22</sup> D.12-11-025 at Finding of Fact 33.

Critical Peak Pricing customers enrolling in another Provider's service and ~~provide~~require notification to that customer through the notification letter.

We, therefore, approve an automatic disenrollment process for Critical Peak Pricing customers who choose to enroll in another Provider's demand response service. The automatic disenrollment from Critical Peak Pricing of a service account, upon that service account being enrolled in another Provider's service, will occur following the ~~resource~~confirmed registration in the CAISO's Demand Response System. If the customer is a residential or small commercial customer, ~~that~~the customer must be notified through the small customer notification letter that choosing to participate with a third-party Provider in the wholesale market will result in the disenrollment from Critical Peak Pricing and may result in the loss of bill protection.<sup>22</sup> , if applicable.<sup>23</sup> The notification letter shall be sent to the customer prior to the confirmed registration. If the customer has a remaining tariff obligation for Critical Peak Pricing, the utility providing the tariffed service should provide comments to the CAISO that the registration violates the Commission's dual participation rules.

#### 4.4. **Ordering Paragraph 12**

Two petitioners request the Commission to modify Ordering Paragraph 12, which addresses the management of customer data. The Joint Petitioners request the Commission to modify Ordering Paragraph 12 to clarify that it is the responsibility of the Meter Agent to provide Revenue Data and the Demand Response Provider's Scheduling Coordinator to provide Settlement Data. No party opposes this modification. In addition, EnerNOC-AReM-DACC request

<sup>22</sup><sup>23</sup> In D.12-11-025, we determined that the Commission would take a light regulatory touch for Providers serving medium and large commercial customers knowing that their contractual obligations provide existing legal protections for those customers through statutory mandates. See D.12-11-025 at Finding of Fact 12 and Conclusion of Law 4.

that the Commission further modify the ordering paragraph to add a liability clause stating that Meter Agents are responsible *and, therefore, liable* for providing the actual Revenue Data to the Provider's Scheduling Coordinator. PG&E and SCE oppose such a clause. As discussed below, we find [that](#) the modification requested by the Joint Petitioners ~~to be~~ reasonable and should be approved. While we acknowledge the potential for anti-competitive behavior, the Commission does not have the authority to award damages for such behavior and thus we deny the request by EnerNOC-AReM-DACC to include a damages clause in Ordering Paragraph 12. ~~However,~~ [Furthermore, while](#) we find it reasonable to grant the request by EnerNOC-AReM-DACC to include a liability clause in Ordering Paragraph 12, ~~but~~ we limit the liability to the penalties imposed by the CAISO.

We first discuss the unopposed changes to Ordering Paragraph 12. The Joint Petitioners explain that the requested changes are necessary to correctly identify the roles of Meter Agents versus Scheduling Coordinators and the relationships of these two versus the Utilities and the Providers. The original Ordering Paragraph 12 assigned responsibility to the Utilities, as the Meter Agents, to provide Settlement Data to the Providers' Scheduling Coordinator. In actuality, the Utilities, as the Meter Agents, are responsible for providing Revenue Data to the Providers' Scheduling Coordinator or agent. Furthermore, the Revenue Data is generated by a customers' meter and is collected by the Meter Agents, whereas, Settlement Data has gone through certain adjustments, such as those to aggregate multiple customer Revenue Data and account for transmission losses.

According to the Joint Petitioners, during the course of the workshops, it came to light that the Utilities may not have all the information necessary to

adjust Revenue Data to Settlement Data. Furthermore, when the role of Meter Agent is performed by one of the Utilities, the Utility has a direct contractual relationship with the Provider through the Demand Response Provider Agreement. No such relationship exists between the Utility and the Scheduling Coordinator. Thus the original ordering paragraph requires modifications to provide clarity to the management of customer data. We find the modifications requested by the Joint Petitioners are reasonable for clarity sake and should be adopted.

In regards to the requested change by EnerNOC-AReM-DACC to add a liability clause, EnerNOC-AReM-DACC claim that the modification is critical for ensuring the liability for failure to timely provide accurate data is appropriately placed on the Meter Agent. Additionally, EnerNOC-AReM-DACC contend that the absence of timely and accurate data ~~creates~~could create risk and cost for Providers and jeopardize the bidding of demand response resources in the CAISO market. PG&E and SCE provide several reasons why the Commission should deny the request: 1) the proposed language would unfairly penalize a utility and its ratepayers based upon a misalignment between Commission Rules and CAISO tariffs;<sup>2324</sup> 2) the proposed language would require the Commission to award consequential damages when only a court has the authority to do so;<sup>2425</sup> 3) references to even consequential damages are inappropriate because most Commission-approved agreements contain reciprocal language foreclosing the ability of parties to seek consequential damages from each other;<sup>2526</sup> 4) Rule 24 should not focus on penalties for failure to perform but, rather, on setting

<sup>2324</sup> PG&E Response at 7.

<sup>2425</sup> SCE Response at 9.

<sup>2526</sup> *Id.* at 10-11 ~~and referencing~~(citing *Waters v. Pacific Telephone Company*, (1974) 12 Cal. 3d ~~1 at~~1, 6 ~~(1974)~~).

standards for reasonable efforts;<sup>2627</sup> 5) the proposed language does not allow for due process and does not address the need for aggrieved parties to establish causation and mitigation;<sup>2728</sup> and 6) a petition for modification is not the proper vehicle to make this change.

We grant the request by EnerNOC-AReM-DACC to add a liability clause to limit the anti-competitive behavior. ~~We recognize that a~~ goal of this proceeding is to identify and limit potential barriers to direct participation. ~~EnerNOC-AReM-DACC have shown~~ We agree that such potential barriers ~~exists~~ could exist without the liability clause. We are inclined to protect against those barriers before they arise.

We have reviewed PG&E and SCE's arguments against the liability clause and find them unavailing. We agree with PG&E, SCE and ORA that the Commission cannot award damages.<sup>2829</sup> However, for the purposes of limiting barriers, we find it reasonable to ~~impose~~ require a liability ~~on~~ clause in Rule 24, which provides that if the Utilities, when acting as the Meter Agent, ~~for failing to provide~~ are found to have failed to comply fully with the applicable requirements for submission of timely and accurate data, they should be held liable. At this time, the Commission limits the liability to those penalties imposed by the CAISO.

In comments to the proposed decision, PG&E argued that the proposed Ordering Paragraph 12 is in error because the standard fails to recognize the possibility that the demand response providers, their scheduling coordinators,

<sup>2627</sup> *Id.* at 11.

<sup>2728</sup> *Id.* at 12.

<sup>2829</sup> See, for example, *P.P.&T. Co. 72, CPUC 505, 509, Diener v. PG&E, D.11-09-027 at 3,* and *Ronald I. May & Associates v. Pacific Bell, D.91-10-008.*

and even other third parties may be responsible for causing or contributing to the problem. We resolve this concern by revising the Ordering Paragraph as follows:

*If the Meter Data Management Agent is found through the remedy and dispute process to have failed to comply fully with the applicable requirements...so as to be at sole fault...*

As pointed out by EnerNOC, AReM and DACC, the remedy and dispute process provided for in the draft Rule 24 provides reasonable due process for the utilities if they are accused of failing to perform.

PG&E and SCE contend that the Commission has no authority to impose liability for the demand response providers' CAISO penalties. PG&E and SCE argue two different points here. First, the Commission does not have the authority to award damages<sup>30</sup> and second, according to PG&E, the Commission's authority to impose liability is limited to unreasonable rates or charges or liability for civil penalties.<sup>31</sup>

We agree that the Commission cannot award damages and we have not done so here. Parties seeking damages related to this Ordering Paragraph are required to do so in court. However, PG&E's argument that the Commission is limited in its authority to impose liability is not correct. PG&E provides no support for this argument and none of the citations that PG&E provides related to the issue of liability discuss limitations to imposing liability; they merely discuss limitations to awarding damages and, in one case, shielding a party from liability.<sup>32</sup> The Commission has the authority to impose liability in its rules and tariffs.

<sup>30</sup> PG&E Comments at 5-6 and SCE Comments at 3-6.

<sup>31</sup> PG&E Comments at 6.

<sup>32</sup> PG&E Comments at Footnote 4.

#### 4.5. Ordering Paragraph 19

EnerNOC requests the Commission to modify Ordering Paragraph 19 to recognize demand response provider services, for the purposes of bidding into the CAISO market, as a primary purpose if it supports system, grid, or operational needs. EnerNOC contends that the issuance of several new Commission decisions make the argument that any demand response participation in the wholesale market should be considered a primary purpose, as discussed in Public Utilities Code Section 8380, whether there is a contract with the utility or not.<sup>2933</sup> As described below, the Commission denies EnerNOC's request that Providers be reclassified as a primary purpose ~~based on what we consider a misguided interpretation of the contents of Section 8380.~~[because of the lack of evidence in its petition.](#) The Commission also denies ORA's request to dismiss the Petition.

First we address the request to dismiss the Petition. ORA requests the Commission to dismiss the Petition on procedural grounds because a) it is beyond the scope of the joint party discussions, b) no new or changed facts justify the modification, and c) EnerNOC is merely re-litigating primary purpose arguments and therefore the Petition is a collateral attack on D.12-11-025. We deny ORA's request to dismiss the Petition. As further discussed below, EnerNOC provides new facts in the form of the several new Commission decisions they allege should reverse the classification of demand response from a secondary purpose to a primary purpose.

We now turn to EnerNOC's request to reclassify demand response as a primary purpose. In its Petition, EnerNOC claims that since the issuance of D.12-11-025, several other Commission decisions have been issued that identify

<sup>2933</sup> EnerNOC Petition at 3.

demand response participation in the CAISO market as providing reliability and operational benefits that support the grid. EnerNOC references the Long Term Procurement Plan proceeding's D.13-02-015, and the Resource Adequacy proceeding's D.13-06-024 and Phase 3 Scoping Memo, all of which allegedly demonstrate an expectation that "demand response be integrated into the wholesale market not only to participate as an economic resource, where and when that makes sense, but also to provide operational support to the grid and to contribute toward meeting local, system and flexible reliability as well as operational needs."<sup>3034</sup> EnerNOC also challenges whether demand response participation in the wholesale market should be solely viewed through the lens of whether or not the Provider is providing services to the utility pursuant to a contract.<sup>3135</sup>

PG&E, SCE and ORA allege that EnerNOC misinterprets the purpose and language of Section 8380 as well as the rationale for primary and secondary purposes. ~~As~~ ORA points out in its comments, that Section 8380 generally applies to only electric or gas corporations and their agents and even EnerNOC made this same interpretation in its application for rehearing of D.12-11-025.<sup>3236</sup> PG&E contends that the term secondary purpose described in Section 8380 does not refer to the value of the services listed but rather to the fact that the services require the customer to authorize the third-party access to the customer-specific energy usage data. PG&E considers third-party Provider services to be similar to other third-party non-utility services that also provide system, grid or operational benefits, e.g. programmable thermostat makers or solar photo voltaic sellers, none of which are entitled to access confidential or personal customer

<sup>3034</sup> EnerNOC Petition at 4.

<sup>3135</sup> *Id.* at 5.

<sup>3236</sup> DRA Response to EnerNOC Petition at 7, referencing EnerNOC Application for Rehearing at 10.

data. Furthermore, SCE argues that a regulated utility may not provide customer usage data to companies without a contract serving utility operational objectives, and more importantly, without customer consent.<sup>3337</sup>

~~We find that EnerNOC's current argument--that even without a utility contract, third-party services should be considered primary purpose services if it supports system, grid, or operational needs--is misguided given that Section 8380 does not apply to third-party entities. Additionally, we confirm that our interpretation of primary versus secondary services is about the relationship between the customer and the utilities we regulate, not the value of the service. As described by SCE, if the utilities and their contracted agents are providing a service directly to the customer, then this is a first line of contact with customers or a primary purpose service. Other non-contracted services, where the utilities do not have a direct line of contact with the customer, are considered to be secondary. In its re-interpretation of Section 8380, EnerNOC disregards the real purpose of Section 8380 which is to protect confidential and personal utility customer data and thus it is not reasonable to approve a change to classifying demand response direct participation as a primary purpose resource.~~

In D.13-05-012, the Commission determined that demand response providers are not required to comply with Public Utilities Code Section 8380, but are considered to be "Covered Entities" under the existing privacy rules.<sup>38</sup> Covered Entities, in the context of demand response providers, are "any third party, when authorized by the customer, that accesses, collects, stores, uses or discloses covered information relating to 11 or more customers who obtains this information from an electrical corporation."<sup>39</sup> Because Section 8380 is not

<sup>3337</sup> SCE Response at 15.

<sup>38</sup> D.13-05-012 at 11-12.

<sup>39</sup> D.11-07-056 at 49.

applicable to demand response providers, we disregard arguments related to this code section.

EnerNOC's main contention is that direct participation should be considered a primary purpose because it provides for system, grid or operational needs.<sup>40</sup> In comments, EnerNOC claims that participation in the wholesale market is contemplated as a means of satisfying local, system or flexible capacity resource needs.<sup>41</sup>

EnerNOC provided four examples to defend its position: a scoping memo from the long term procurement plan,<sup>42</sup> two straw proposals from CAISO that identify demand response as potentially providing operational support to the grid,<sup>43</sup> D.13-02-015,<sup>44</sup> and D.13-06-024.<sup>45</sup> The straw proposals and scoping memo do not make any final determinations regarding demand response; thus, we do not rely upon them. We discuss the contents of D.13-02-015 and D.13-06-024 below.

EnerNOC contends that, in D.13-02-015, the Commission reiterated its view of the future role of demand response as one that "will be able to provide a range of services that can support grid integration."<sup>46</sup> D.13-02-015 provided an overview of positions regarding demand response from organizations such as the CAISO, EnerNOC, and ORA. In D.13-02-015, the Commission agreed that demand response programs are important resources in the California electricity system but stated that the CAISO contends that the effects of demand response

<sup>40</sup> Id. at 50.

<sup>41</sup> EnerNOC reply comments at 5.

<sup>42</sup> Rulemaking 11-10-023.

<sup>43</sup> The two straw proposals are 1) the Demand Response and Energy Efficiency Roadmap and 2) the Flexible Resource Adequacy Capacity Must-Offer Obligation.

<sup>44</sup> R.12-03-014, local reliability requirements in the long term procurement plan.

<sup>45</sup> R.11-10-023, the resource adequacy rulemaking.

<sup>46</sup> D.13-02-015 at 55.

programs may not materialize at the time and in the locations needed.  
Furthermore, the Commission noted that SCE recommends “additional work regarding the economics and viability of demand response programs for reliability purposes and for meeting the needs of the grid.”<sup>47</sup> In D.13-02-015, the Commission concluded that it should take a conservative approach for forecasting the demand response resources available.<sup>48</sup>

EnerNOC claims that D.13-06-024 discussed the value of demand response as a flexible capacity resource to manage grid stability. In reviewing D.13-06-024, we found that while several parties alluded to demand response as a potential solution for flexibility needs, the Commission concluded that “there should be further discussion about modifying the counting and bidding rules, as necessary and in alignment with operational needs, for use-limited resources such as storage and demand response.”<sup>49</sup>

We find that neither D.13-06-024 nor D.13-02-015 are valid examples where the Commission has considered demand response or direct participation a provider of system, grid or operational needs. Thus, we find EnerNOC has provided no evidence to justify the Commission revising its prior determination that direct participation should be categorized as a secondary purpose. However, we do not preclude future discussion of this issue. Once the Commission has gained experience with demand response direct participation, we may entertain the discussion of whether it should be categorized as a primary or secondary purpose.

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<sup>47</sup> Ibid.

<sup>48</sup> D.13-02-015 at 52-57.

<sup>49</sup> D.13.06-024 at 51.

#### 4.6. Ordering Paragraph 20

EnerNOC-AReM-DACC request the Commission to modify Ordering Paragraph 20 to ensure that the Customer Form is based on the staff proposal and consistent with D.11-07-056, and to allow for a migration to electronic authorization. EnerNOC-AReM-DACC allege that the Utilities' proposal went "beyond what the Commission approved in D.12-11-025"<sup>3450</sup> and should be modified to make clear the language to be included in the Customer Form. SCE, SDG&E, and PG&E oppose the recommended language, but PG&E agrees that modifications to Ordering Paragraph 20 are necessary. We find that Ordering Paragraph 20 must be revised; however, we deny the requested language revisions by both EnerNOC-AReM-DACC and PG&E, because both conflict with D.12-11-025.

EnerNOC-AReM-DACC state that the Commission intended that Ordering Paragraph 20 would ensure that the same Privacy Rules as those adopted in D.11-07-056 would be incorporated into the Customer Form.

EnerNOC-AReM-DACC contend that the Utilities' proposed form went beyond what was approved in D.12-11-025 by adding additional changes than those associated with privacy issues. EnerNOC-AReM-DACC rely on language in D.12-11-025 that directs the Utilities to incorporate changes made to the Customer Form through R.08-12-009 as it relates to privacy issues into the direct participation process.<sup>3551</sup> Additionally, EnerNOC-AReM-DACC recommend that the Commission modify Ordering Paragraph 20 so that it relies on a Commission Staff-proposed Customer Form attached to an August 19, 2011 Ruling but also allows for a transition to an electronic form and electronic customer authorization

<sup>3450</sup> EnerNOC-AReM-DACC Petition at 13.

<sup>3551</sup> D.12-11-025 at 44.

following the implementation of Open Automated Data Exchange and Energy Service Provider Interface Protocols.<sup>3652</sup>

PG&E cautions that the language requested by EnerNOC-AReM-DACC “is in error and may be interpreted so as not to provide the Utilities with the flexibility they need to implement Rule 24 effectively, initially, or in the future.”<sup>3753</sup> PG&E explains that the proposed language errs in that a staff-proposed Customer Form does not exist in the record. PG&E states that the EnerNOC-AReM-DACC language could be interpreted as requiring a single Customer Form regardless of future developments.<sup>3854</sup> PG&E contends that “it may be best to employ multiple” Customer Forms.<sup>3955</sup>

We clarify that the language of Ordering Paragraph 20 was solely to address changes regarding privacy requirements, not any other changes to the Customer Form. Because R.08-12-009 planned to revise the Customer Form to be consistent with the adopted privacy requirements, we found it reasonable to address any changes to the Customer Form, related to the privacy requirements, in R.08-12-009. In order to clarify our intention, we modify Ordering Paragraph 20 to state:

In order to be consistent with the Commission’s privacy requirements, the Electric Rule 24 Customer Information Service Request Form must incorporate the same changes made to the Form that were adopted in Rulemaking 08-12-009.

We note however, that these are not the only changes to the Customer Form permitted. In Ordering Paragraph 10, we directed the Utilities to work with the stakeholders to refine and define the fields needed for the Customer

<sup>3652</sup> EnerNOC-AReM-DACC Petition at 13 referencing August 19, 2011 Ruling.

<sup>3753</sup> PG&E Response at 9.

<sup>3854</sup> *Id.* at 10.

<sup>3955</sup> *Ibid.*

Form, as it relates to ensuring efficiency and effectiveness in the Customer Process.

In D.12-11-025, the Commission found “the expansion of the Customer Process to be a simpler, stream-lined approach as opposed to the simultaneous use of both the current Customer Process and a new, yet to be created, [demand response] process.”<sup>4056</sup> We find that PG&E’s suggestion to create multiple Customer Forms conflicts with [the stream-lined approach adopted in D.12-11-025](#). Thus, PG&E’s recommended language could also conflict with D.12-11-025 and should not be adopted.

We agree that “Ordering Paragraph 20 could be out of step with planned technologies and processes by the time it is implemented for Rule 24.”<sup>4157</sup> Both PG&E and EnerNOC-ARem-DACC requests language modifications that take into account future data processes. We find this request unnecessary because any changes based on future data processes would have to be addressed through a specific Petition for Modification.

[In comments to the proposed decision, PG&E contends that there may be confusion regarding the Customer Process Form and whether a single form for the Customer Process is required. PG&E explains that they already use multiple customer forms.<sup>58</sup> We confirm that D.12-11-025 requires one demand response direct participation Customer Form. In our discussion, we stated that in our adoption of the \*expanded\* \(emphasis added\) Customer Process, parties must work together to define the \*additional\* \(emphasis added\) fields necessary on the Customer Process form. Our intention was one Customer Process, and one](#)

<sup>4056</sup> D.12-11-025 at 31, Finding of Fact 22, and Conclusion of Law 7.

<sup>4157</sup> PG&E Response at 10.

<sup>58</sup> [PG&E Comments at 9-10.](#)

[Customer Form for use solely in demand response direct participation, but based on the existing Customer Form.](#)

#### **4.7. Ordering Paragraph 21**

The Joint Petitioners request the Commission to modify Ordering Paragraph 21 to confirm that it is the customer who controls access to their information. The Joint Petitioners state that, as currently written, the ordering paragraph requires that any transmission of the customer's data ends when demand response provider service ends. The Joint Petitioners argue that a customer may wish to continue transmitting that data to [the Provider] even after direct participation service has ended.<sup>4259</sup> No party opposes this request.

We find no reason to require a discontinuation of the data transmittal so long as the customer authorizes such transmittal. We find the proposed change to Ordering Paragraph 21 maintains the original intention to ensure the confidentiality of a customer's data while providing them a choice in effectuating revocation of an authorization to release that data.<sup>4360</sup> The proposed change to Ordering Paragraph 21 is reasonable and should be adopted.

#### **4.8. Ordering Paragraphs 28 and 29**

EnerNOC-AReM-DACC requests the Commission to delete Ordering Paragraph 28 and revise Ordering Paragraph 29 to correctly reflect updated financial security requirements adopted in R.07-05-025. Ordering Paragraphs 28 and 29 address the subjects of credit requirements and security deposits for Providers and require that any changes made to Energy Service Providers (ESP) financial requirements in R.07-05-025 be incorporated. As a result of decisions in R.07-05-025, EnerNOC-AReM-DACC claim that no change was made to ESP's financial security requirements and, therefore, Ordering Paragraph 28 should be

<sup>4259</sup> Consensus Petition at 6-77.

<sup>4360</sup> D.12-11-025 at 45.

deleted and Ordering Paragraph 29 should be revised to reflect that fact. No party protests this change, but PG&E recommends revising Ordering Paragraph 28 instead of deleting. As discussed below, we find the request to revise Ordering Paragraph 29 to be reasonable but we also recognize the need to revise and not delete Ordering Paragraph 28.

Both Ordering Paragraph 28 and 29 address credit requirements for Electric Rule 24. Currently, Ordering Paragraph 28 requires that final credit requirements adopted through Rulemaking 07-05-025 be incorporated into Rule 24 and Ordering Paragraph 29 sets a specific level for a Provider's security deposit until final credit requirements in Rulemaking 07-05-025 are adopted. In their petition, EnerNOC-AReM-DACC correctly state that none of the four decisions in R.07-05-025 make any changes to the ESPs' financial security requirements.<sup>4461</sup> Thus we find that citations to R.07-05-025 should be modified or deleted. However, as PG&E alludes to in its response, deleting Ordering Paragraph 28 completely without any further reference to the Commission's policy on credit requirements would be an inadvertent omission.

In our discussion on credit worthiness in D.12-11-025, we explain that we consider Rule 22 to be an appropriate comparison to determine credit requirements for the proposed Rule 24 but recognize that the final credit requirements for Rule 22 have not been finalized.<sup>4562</sup> Ordering Paragraph 28 created a placeholder for a final credit requirement. Deleting Ordering Paragraph 28 would create a hole in the final credit requirement. Instead, we revise Ordering Paragraph 28 to confirm our discussion that Electric Rule 24 financial credit requirements for Providers will be the same as those for ESPs.

<sup>4461</sup> EnerNOC-AReM-DACC Petition at 14.

<sup>4562</sup> D.12-11-025 at 53 and Finding of Fact 47.

#### 4.9. Ordering Paragraph 31

EnerNOC-AReM-DACC request the Commission to modify Ordering Paragraph 31 to eliminate the CSI Handbook as the basis for an enforcement mechanism. EnerNOC-AReM-DACC rely on three claims to justify that the processes used in the CSI program are not appropriate for enforcement of Rule 24: a) a complaint process already exists, b) the CSI handbook references high- and low-volume providers, irrelevant to Rule 24, and c) using a process similar to the CSI process restricts the Commission's ability to weigh the facts of a complaint and determine its outcome. No party opposes this modification.

We find that, in retrospect, the process referenced in the CSI handbook is not appropriate as a basis for an enforcement mechanism in Rule 24 given the differences in volume between the solar and the direct participation programs. We agree that the Commission's current complaint process should be able to handle the limited volume of complaints that may occur in this program. We find the proposed modification to Ordering Paragraph 31, eliminating the reference to the CSI handbook, is reasonable and should be approved.

#### 4.10. Ordering Paragraph 35

PG&E requests the Commission to modify Ordering Paragraph 35 to delay the timing for submittal of the Rule 24 ~~Advice Letter~~[advice letter](#). PG&E explains that the submission of the draft tariffs most likely will occur prior to a final decision on the Petitions for Modification of D.12-11-025.<sup>4663</sup> PG&E contends that "filing draft tariffs, which do not incorporate the directions to be provided by the Commission through a decision on the Petitions for Modification, will create additional work and confusion."<sup>4764</sup> SCE and SDG&E support this

<sup>4663</sup> On October 10, 2013, the Utilities filed a joint advice letter in compliance with D.12-11-025, Ordering Paragraph ~~35.35~~ [\(Advice Letter 4298-E et al.\)](#).

<sup>4764</sup> PG&E Petition at IV.

modification.<sup>4865</sup> PG&E provides no evidence of additional work or confusion that will result from the ~~Advice Letter~~[advice letter](#) and Petitions for Modification processes occurring simultaneously. While D.12-11-025 did not anticipate the Petitions for Modifications to be filed, the Commission sees the simultaneous processes to be efficient, resulting in a final Rule 24 as expeditiously as possible. The Commission finds the request to modify Ordering Paragraph 35 to be unnecessary and denies it.

#### 4.11. Proposal for a New Ordering Paragraph

EnerNOC-AReM-DACC request the Commission to create a new ordering paragraph to ensure competitive neutrality among all the Providers, including the Utilities. EnerNOC-AReM-DACC explain that the potential for anti-competitive behavior was discussed at length during the course of R.07-01-041. EnerNOC-AReM-DACC contend that Rule 24 should specify clearly the obligations of the Utilities, their employees, contractors and affiliates so as to limit the potential for anti-competitive activities. Specifically, EnerNOC-AReM-DACC point to the Utilities' staff simultaneously performing the roles of UDC, LSE and Provider.<sup>4966</sup> EnerNOC-AReM-DACC contend that competitive information protected in one role could be obtained through another role, thus making this proposed ordering paragraph imperative. The proposed language offered by EnerNOC-AReM-DACC requires that Rule 24 include the competitive neutrality clause provided in the Staff Proposal:

Rule 24 shall include the Staff's proposed Rule 24 provision to ensure competitive neutrality by the utilities, their employees, contractors, and affiliates, as well as an added requirement that the LSE, UDC and Demand Response Provider roles of the utility must

<sup>4865</sup> SCE Response at 18 and SDG&E Response at 3.

<sup>4966</sup> LSE is the acronym for Load Serving Entity and UDC is the acronym for Utility Distribution Company.

be performed by separate individuals who may not share information with each other.

SCE opposes the new paragraph requested by EnerNOC-ARem-DACC stating that it would be “improper for the Commission to grant the Petitioners’ request” to adopt language the parties have not refined.<sup>5067</sup> However, PG&E supports adding a similar ordering paragraph but offers different language supported by SDG&E. While PG&E agrees that confidential, competitively sensitive information shared by the Providers with Utilities’ staff in certain roles, PG&E contends that there are several problems with the Proposed Rule 24 clause ranging from the improper imposition of liability to unintentionally limiting competition. PG&E offers an ordering paragraph that attempts to resolve these problems:

Rule 24 shall include provisions to protect the confidential, competitive information received from an unaffiliated demand response Provider, or from the CAISO about the demand response Provider or its customers, to enable the utility to perform duties necessary to implement and administer the demand response Provider’s use of bundled utility load for direct participation under this Rule in the CAISO market. Such confidential, competitive information received from the Provider or the CAISO may not be used to promote the utility’s services to customers. The utility staff receiving such confidential, competitive information from the provider or CAISO in the discharge of the utility’s roles and responsibilities under Rule 24 shall not share such confidential, competitive information with other individuals in the utility except for individuals who also are responsible for discharging the utility’s roles and responsibilities under Rule 24.

We previously stated that a goal of this proceeding is to promote competitive neutrality and limit anti-competitive behavior. Throughout this proceeding, the issues of competitive neutrality and eliminating anti-competitive

<sup>5067</sup> SCE Response at 19.

behavior have been discussed by all parties. To that point, a section addressing Non-Discrimination and Competitive Neutrality was included in the Proposed Rule 24.<sup>5168</sup> While we find that a new ordering paragraph addressing competitive neutrality is necessary to ensure a level playing field for all demand response providers, we also agree that the language suggested by EnerNOC-AReM-DACC is vague.

We find that the language recommended by PG&E is thorough and clear, and is reasonable to adopt as a new Ordering Paragraph, with one addition. In comments to the proposed decision, EnerNOC-AReM-DACC requested that the words, “as a Demand Response Provider” be added to clarify that competitive information may not be shared with the utility staff involved in the operation of the utility’s demand response provider.<sup>69</sup> We find the additional language is reasonable as it complies with the Commission’s goal of competitive neutrality and adopt it.

## 5. Conclusion

As discussed above, we approve the following changes to D.12-11-025:

- Ordering Paragraph 6 is revised to clarify that a small commercial customer includes *any* non-residential customer that has a maximum peak demand of less than 20 kilowatts.
- Ordering Paragraph 7 is revised to clarify technical deficiencies so as to improve the coordination with the CAISO system.
- Ordering Paragraph 8 is revised to allow current Critical Peak Pricing customers to be automatically disenrolled from Critical Peak Pricing in order to enroll in another demand response program with a different Provider. The disenrollment would take place upon the ~~resource~~confirmed registration in the CAISO’s Demand Response System. The residential and small customer notification letter, delivered prior to resource

<sup>5168</sup> D.12-11-025, Appendix A at 5, Rule B.2.a.(1)-(3).

<sup>69</sup> EnerNOC-AReM-DACC Comments at 4-6.

[registration](#), must include language notifying the customer of the potential loss of any benefits resulting from the action.

- Ordering Paragraph 12 is modified to clarify that it is the responsibility of the Meter Agent to provide Revenue Data and the Provider's Scheduling Coordinator to provide Settlement Data and to impose limited liability on the Utilities, acting as the Meter Agent, for failing to provide timely and accurate data.
- Ordering Paragraph 20 is revised to clarify that that the intent of the language of Ordering Paragraph 20 was solely to address changes regarding privacy requirements, not any other changes to the Customer Form.
- Ordering Paragraph 28 is revised to confirm our discussion that Electric Rule 24 financial credit requirements for Providers will be the same as those for ESPs.
- Ordering Paragraph 29 is revised to delete any citations to R.07-05-025.
- Ordering Paragraph 31 is revised to eliminate the CSI Handbook as the basis for an enforcement mechanism.
- A new Ordering Paragraph is added to ensure competitive neutrality and to prohibit the sharing of confidential data to promote the utility's services to customers.

All other requested modifications to D.12-11-025 are denied. As no other issues remain unresolved in this proceeding, this decision closes R.07-01-041.

[In order to ensure that Rule 24 and its associated tariff are approved as expeditiously as possible, as previously discussed in Section 4.10, we direct the Commission's Energy Division staff to implement the changes ordered in this decision in the anticipated Commission Resolution addressing the Utilities' tier 3 advice letter on Rule 24 tariff and forms filed on October 10, 2013.<sup>70</sup>](#)

<sup>70</sup> [Advice Letter 4298-E et al.](#)

**6. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on ~~\_\_\_\_\_~~ November 14, 2013 by EnerNOC, EnerNOC-AReM-DACC, Marin Energy Authority, ORA, PG&E, and SCE, and reply comments were filed on ~~\_\_\_\_\_~~ by \_\_\_\_\_ November 20, 2013 by EnerNOC-AReM-DACC, ORA, PG&E, SDG&E, and SCE. Additions and revisions have been made throughout the decision as appropriate in response to the comments received.

**7. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Kelly A. Hymes is the assigned ALJ in this proceeding.

**Findings of Fact**

1. PG&E previously requested in this proceeding that the Commission allow each utility to adopt its own definition of small commercial customer that is most appropriate for that utility's system.
2. The Commission determined in D.12-11-025 that it is important that the Commission be consistent in defining the term, small commercial customer, and only adopt one definition.
3. PG&E provides no new circumstances that would cause the Commission to revise our conclusion that there should be one definition for a small commercial customer.
4. Small agricultural customers may not be afforded the same protection as small commercial customers without a revision in the definition.

5. The Commission did not previously address whether to include agricultural customers in the definition of small commercial customer.
6. The purpose of Rule 24 is to provide the administrative, technical, and financial mechanisms to allow demand response providers to bid resources directly into the CAISO market while protecting customers and ratepayers.
7. Clarity of the technical mechanisms of Rule 24 is important to the success of the direct participation process.
8. The proposed change to Ordering Paragraph 7 clarifies technical deficiencies to improve the demand response direct participation coordination with the CAISO system.
9. The issue of treating Critical Peak Pricing differently in our dual participation rules because of its default and opt-out provisions had not been discussed previously in this proceeding.
10. Critical Peak Pricing should be considered an outlier in regards to the dual participation rules for direct participation because of its default and opt-out provisions.
11. We consider it our duty to protect customers.
12. The Commission strives to improve access to demand response direct participation and limit barriers to enrollment.
13. A streamlined process will facilitate customer participation in demand response.
14. Ordering Paragraph 12 of D.12-11-025 assigned responsibility to the Utilities, as the Meter Agents, to provide Settlement Data to the Provider's Scheduling Coordinator.

15. We have since determined that the Utilities, as the Meter Agents, are responsible for providing Revenue Data to the Providers' Scheduling Coordinator or agent.

16. Utilities may not have the information necessary to adjust Revenue Data to Settlement Data.

17. There is no contractual relationship between the Utility and the Scheduling Coordinator.

18. Ordering Paragraph 12 of D.12-11-025 requires modification in order to provide clarity in identifying the roles, responsibilities and relationships of Meter Agents, Utilities, Providers, and Scheduling Coordinators.

19. A goal of this proceeding is to identify and limit barriers to demand response direct participation.

20. Potential barriers to demand response direct participation could exist without a liability clause to ensure that timely and accurate data is provided by the Utilities, acting as the Meter Agents.

21. The Commission should protect against barriers to direct participation before they arise.

22. ~~20.~~ The Commission has repeatedly determined that it does not have the authority to award damages ~~but we can impose liability.~~

23. Parties seeking damages related to Rule 24 must do so in court.

24. PG&E provides no facts to substantiate its claim that the Commission is limited in its authority to impose liability.

25. ~~21.~~ EnerNOC provides new facts in the form of several new Commission decisions they allege should revise the classification of demand response from a secondary purpose to a primary purpose.

~~22. EnerNOC's argument that the absence of a utility contract relegates the third party demand response service to being a secondary purpose disregards the main purpose of Public Utilities Code Section 8380.~~

~~23. EnerNOC's contract argument is misguided given that Section 8380 does not apply to third-party entities.~~

~~24. We confirm that our interpretation of primary versus secondary services is about the relationship between the customer and the utilities we regulate, not the value of the services.~~

26. D.13-05-012 determined that demand response providers are not required to comply with Public Utilities Code Section 8380 but are considered to be Covered Entities under the Commission's privacy rules.

27. EnerNOC provides four examples to defend its position that demand response direct participation service should be categorized as a primary resource.

28. The CAISO straw proposals and scoping memo that EnerNOC relies upon for defending its position are not final determinations.

29. D.13-02-015 and D.13-06-024 are not valid examples of where the Commission has determined demand response or direct participation to be a provider of system, grid or operational needs.

30. ~~25.~~ EnerNOC-AReM-DACC neglect the language in D.12-11-025 adopting the Customer Information Service Request process and directing the Utilities to work with the stakeholders to define the additional fields necessary on the form to ensure efficiency and effectiveness in the process.

31. ~~26.~~ In D.12-11-025, the Commission determined that the expansion of the Customer Process is a simpler, stream-lined approach as opposed to the simultaneous use of both the current Customer Process and a new, yet to be created demand response process.

[32.](#) ~~27.~~ PG&E's suggestion to create multiple Customer Forms conflicts with D.12-11-025.

[33.](#) ~~28.~~ Ordering Paragraph 20, as adopted in D.12-11-025 could be out of step with planned technologies and processes by the time it is implemented for Rule 24.

[34.](#) ~~29.~~ Any changes in future data processes that require changes in Rule 24 would have to be addressed through a specific Petition for Modification.

[35.](#) ~~30.~~ The intent of the language in Ordering Paragraph 20 of D.12-11-025 was solely to address privacy requirements and not any other changes to the Customer Form.

[36.](#) ~~31.~~ In addition to the changes related to the privacy requirements, we also directed the Utilities to work with the stakeholders to refine and define the fields needed for the Customer Form as it relates to ensuring efficiency and effectiveness in the Customer Process.

[37.](#) ~~32.~~ There is no reason to require a discontinuation of the data transmittal discussed in the Ordering Paragraph so long as the customer authorizes the continuation of such transmittal.

[38.](#) ~~33.~~ The change proposed by the Joint Petitioners to Ordering Paragraph 21 maintains the original intention of the Commission to ensure the confidentiality of a customer's data while providing them a choice in effectuating revocation of an authorization to release the data.

[39.](#) ~~34.~~ None of the four decisions approved in Rulemaking 07-05-025 make any changes to the ESPs' financial security requirements.

[40.](#) ~~35.~~ The intent of Ordering Paragraph 28 was to create a placeholder for a final credit requirement.

41. ~~36.~~ Deleting Ordering Paragraph 28 completely without any further reference to the Commission's policy on credit requirements would create a hold in the final credit requirement.

42. ~~37.~~ In retrospect, the enforcement process referenced in the California Solar Initiative Handbook is not appropriate as a basis for an enforcement mechanism in Rule 24 given the differences in volume between the solar and the direct participation programs.

43. ~~38.~~ The Commission's current complaint process should be able to handle the limited volume of complaints that may occur in the direct participation program.

44. ~~39.~~ PG&E provides no evidence of additional work or confusion that will result from the Rule 24 advice letter required by D.12-11-025 and the Petitions for Modification processes occurring simultaneously.

45. ~~40.~~ The two processes occurring simultaneously are sufficient and should result in a final Rule 24 in an expedient manner.

46. ~~41.~~ It is not necessary to delay the filing of the Rule 24 advice letter.

47. ~~42.~~ A goal of this proceeding is to promote competitive neutrality and limit anti-competitive behavior.

48. ~~43.~~ The issues of competitive neutrality and limiting anti-competitive behavior have been discussed by parties throughout the life of Rulemaking 07-01-041.

49. ~~44.~~ A section addressing Non Discrimination and Competitive Neutrality was included in the Proposed Rule 24.

50. ~~45.~~ A new ordering paragraph addressing competitive neutrality is necessary to ensure a level playing field.

51. ~~46. The~~With the addition of the words, “as a Demand Response Provider,  
the language recommended by PG&E for the new ordering paragraph on  
competitive neutrality is thorough and clear.

### **Conclusions of Law**

1. All four petitions for modification meet the requirements of Rule 16.4 (b), (c), and (d).
2. We should revise the definition of small commercial customer in Rule 24 to include agricultural customers.
3. The proposed changes to Ordering Paragraph 7 are reasonable and should be adopted.
4. It is reasonable to adopt language specifically addressing Critical Peak Pricing in the context of dual participation rules because of the program’s default and opt-out provisions.
5. It is reasonable to automatically disenroll Critical Peak Pricing customers enrolling in another Provider’s service and provide notification to the residential or small commercial customer through the notification letter approved in D.12-11-025.
6. It is reasonable to allow the automatic disenrollment from Critical Peak Pricing of a service account upon that service account being enrolled in another Provider’s service following the confirmed registration in the CAISO’s Demand Response System.
7. ~~6.~~The modifications to Ordering Paragraph 12 requested by the Joint Petitioners are reasonable and should be adopted.
8. ~~7.~~For the purposes of limiting barriers to demand response direct participation, it is reasonable to impose limited liability on the Utilities, when acting as Meter Agents.

~~8. Public Utilities Code Section 8380 was established to provide privacy protections to customers' energy usage data.~~

~~9. Public Utilities Code Section 8380 generally applies to only electric or gas corporations and their agents.~~

9. ~~10.~~ It is necessary to revise Ordering Paragraph 20 of D.12-11-025 to clarify our intentions.

10. ~~11.~~ The Joint Petitioners' proposed change to Ordering Paragraph 21 is reasonable and should be adopted.

11. ~~12.~~ Citations to Rulemaking 07-05-025 in Ordering Paragraphs 28 and 29 should be modified or deleted.

12. ~~13.~~ We should revise Ordering paragraph 28 to confirm that Electric Rule 24 financial credit requirements for demand response providers will be the same as those for ESPs.

13. ~~14.~~ The proposed modification to Ordering Paragraph 31 is reasonable and should be approved.

14. ~~15.~~ It is reasonable to adopt the competitive neutrality language recommended by PGE, with the additional language of "as a Demand Response Provider."

## O R D E R

### IT IS ORDERED that:

1. Ordering Paragraph 6 of Decision 12-11-025 is revised as follows:  
Electric Rule 24 will use the term, small commercial customer, and define it as any non-residential customer that has a maximum peak demand of less than 20 kilowatt.
2. Ordering Paragraph 7 of Decision 12-11-025 is revised as follows:

Demand response providers are prohibited from placing a customer account into a resource registration in the California Independent System Operator's (CAISO's) Demand Response System for any time period within the Start Date and End Date of another demand response provider's resource registration if that account has been given a "Confirmed" status by the CAISO under its rules and procedures.

3. Ordering Paragraph 8 of Decision 12-11-025 is revised as follows:

Demand response providers are prohibited from enrolling and registering customers in a demand response service where the load is bid into the California Independent System Operator's (CAISO's) market if that customer is already enrolled in a Utility event-based demand response program. The policy against dual participation applies to ~~the~~ Critical Peak Pricing ~~program~~; however customers of this program can withdraw from the program at any time if they withdraw to enroll in another Utility event based demand response program or with a demand response provider for direct participation services at the CAISO. Upon ~~the resource~~ confirmed registration in the CAISO's Demand Response System, the customer ~~will~~ may be automatically disenrolled from Critical Peak Pricing and enrolled in the new demand response service. If the customer is a residential or small commercial customer, the Provider of the new service shall notify the customer prior to the resource registration in the CAISO system, through the residential and small commercial customer notification, that the customer will be disenrolled from Critical Peak Pricing and may lose bill protection, if applicable.

4. Ordering Paragraph 12 of Decision 12-11-025 is revised as follows:

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, when serving as the Meter Data Management Agent, shall be liable for failing to ~~provide~~ timely provide timely and accurate Revenue Quality Meter Data to the demand response provider or its designated agent to facilitate final data submission in accordance with the California Independent System Operator's (CAISO) tariff. If the Meter Data Management Agent ~~fails~~ is found, through the remedy and dispute process, to have failed to comply fully with the applicable requirements for submission of timely and accurate Revenue Quality

Meter Data so as to ~~impede~~be the sole fault for the ability for the demand response provider or its agent to comply fully with the applicable CAISO requirements, the Meter Data Management Agent shall be held liable, limited to the penalties imposed by CAISO upon the demand response provider or its scheduling coordinator due to the non-compliance.

5. Ordering Paragraph 20 of Decision 12-11-025 is revised as follows:

To be consistent with the Commission's privacy requirements, the Electric Rule 24 Customer Information Service Request Form must incorporate the same changes made to the Form that were adopted in Rulemaking 08-12-009.

6. Ordering Paragraph 21 of Decision 12-11-025 is revised as follows:

Upon receipt of prior authorization from the customer pursuant to the Customer Information Service Request for non-utility demand response providers must notify the appropriate utility to terminate the transmittal of the customer's usage data to such provider when the customer withdraws from the demand response provider's service.

7. Ordering Paragraph 28 of Decision 12-11-025 is revised as follows:

The credit requirements for Rule 24 shall be the same as those established in Rule 22, the Rules for Energy Service Providers.

8. Ordering Paragraph 29 of Decision 12-11-025 is revised as follows:

Rule 24 must require that demand response providers establish a security deposit limited to twice the estimated maximum monthly bill for the utility charges.

9. Ordering Paragraph 31 of Decision 12-11-025 is revised as follows:

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company must create a proposal for an Electric Rule 24 enforcement mechanism.

10. A new ordering paragraph is added at the end of Decision 12-11-025 to ensure competitive neutrality and to prohibit the sharing of confidential data as follows:

Rule 24 shall include provisions to protect the confidential, competitive information received from a demand response provider (Provider) or from the California Independent System Operator (CAISO) about the Provider or its customers, to enable the utility to perform duties necessary to implement and administer the Provider's use of bundled utility load for direct participation under this Rule in the CAISO market. Such confidential, competitive information received from the Provider or the CAISO may not be used to promote the utility's services to customers. The utility staff receiving such confidential, competitive information from the Provider or CAISO in the discharge of the utility's roles and responsibilities under the Rule shall not share such confidential, competitive information with other individuals in the utility ~~except for those individuals~~ who are also responsible for discharging the utility's roles and responsibilities, as a Demand Response Provider, under Rule 24.

11. All other requested modifications to Decision 12-11-025 are denied.

12. Energy Division staff shall implement the changes ordered in this decision in the Resolution addressing Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company's tier 3 advice letter on Rule 24 tariff and forms filed on October 10, 2013 (Advice Letter 4298-E et al.).

13. ~~12.~~ Rulemaking 07-01-041 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

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