

Decision 10-12-033 December 16, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Approval of Demand Response Programs, Goals and Budgets for 2009 - 2011.

Application 08-06-001
(Filed June 2, 2008)

And Related Matters.

Application 08-06-002
Application 08-06-003

DECISION GRANTING IN PART THE PETITION OF PACIFIC GAS AND ELECTRIC COMPANY TO MODIFY DECISION 09-08-027

1. Summary

This decision grants in part and denies in part the petition of Pacific Gas and Electric Company to modify Decision 09-08-027. This decision: (1) grants the request to modify the demand response agreements with EnerNOC, Inc. and EnergyConnect, Inc.; (2) denies the request to hold a competitive solicitation to obtain additional demand response agreements; and (3) moves the Capacity Bidding Program into Category 3 in Table 24-2 of Decision 09-08-027.

2. Procedural Background

In Decision (D.) 06-03-024, the Commission approved demand response (DR) activities and budgets for Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E) and Pacific Gas and Electric Company (PG&E) for 2006 through 2008, and required these utilities to file utility-specific

DR program and budget applications for the 2009 to 2011 time period by June 1, 2008.

In D.09-08-027 (the decision), the Commission approved DR activities and budgets for SCE, SDG&E, and PG&E for 2009 through 2011.

On April 28, 2010, PG&E filed a petition for modification of the decision.

On May 28, 2010, responses to the petition were filed by the Division of Ratepayer Advocates (DRA), and jointly by EnerNOC, Inc. (EnerNOC), Energy Curtailment Specialists, Inc., EnergyConnect, Inc. (EnergyConnect) and Converge, Inc. (collectively Joint Parties). On June 7, 2010, PG&E filed a response to DRA's comments on its petition.

3. PG&E's Request

PG&E's petition makes several requests. First, it asks the Commission to approve proposed amendments to two of PG&E's agreements with Aggregator Managed Portfolio (AMP) providers EnerNOC and EnergyConnect. The amendments would: (a) increase the amount of DR EnerNOC will provide in 2010 and 2011; (b) replace the baseline methodology in both agreements with the methodology adopted in the decision for other DR programs; and (c) allow dual program participation in DR programs by customers participating in these aggregators' portfolios, to the extent directed by the Commission in the decision.

Second, PG&E asks the Commission to modify Ordering Paragraph (OP) 19 of the decision, which disapproved PG&E's request to hold a competitive solicitation to obtain additional agreements to replace the current AMP agreements after they expire in 2011. PG&E requests that this ordering paragraph be modified to authorize PG&E to issue a Request for Proposals (RFP) to enter into five-year agreements with third-party DR aggregators for 2012-2016.

Finally, PG&E seeks modification of Budget Table 24-2 in D.09-08-027 to move the Capacity Bidding Program (CBP), an aggregator-only program, into the AMP category. This would allow PG&E to shift budgets between CBP and other aggregator programs. PG&E states that fund-shifting among CBP and other aggregator programs would facilitate information technology upgrades that PG&E believes are necessary to enable CBP resources to serve as Proxy Demand Resource (PDR) in the California Independent System Operator's (CAISO) markets and to fully fund PG&E's administrative expenses.

PG&E's requests are addressed in Sections 4, 5, and 6 below.

4. Amendments to AMP Agreements

OP 33 of the decision allows the utilities to request modifications to existing aggregator contracts through either an application or a petition for modification of the decision.

Under PG&E's proposed amendments to the EnerNOC and EnergyConnect agreements, PG&E would continue to pay the energy and capacity prices approved by the Commission in D.07-05-029. PG&E represents that the proposed amendments are cost-effective.

Under one of the existing agreements, EnerNOC has committed to provide 40 Megawatts (MW) of DR as needed in May through October 2010 and May through October 2011. The proposed amendment would increase the commitment level to 65 MW for June through October 2010 and to 70 MW for June through October 2011, while retaining the energy and capacity payments and other terms as originally approved by this Commission.

PG&E represents that EnerNOC has demonstrated its ability to provide reliable load reductions during DR events, and the proposed increased

commitment levels will increase the cost-effectiveness of the agreement. No change to commitment levels is proposed for EnergyConnect.

In addition, PG&E proposes to change the baseline methodology currently in place in the EnerNOC and EnergyConnect contracts with the methodology approved in the decision for other DR programs, consistent with the Commission's determination in Conclusion of Law (COL) 3 in D.10-03-007. PG&E argues that while the methodology adopted in the decision was not adopted for existing agreements, it is appropriate to modify existing agreements if requested by the DR aggregators.¹ Similarly, PG&E proposes to change the multiple participation rules in both agreements to allow simultaneous participation in multiple DR programs consistent with the policy adopted in the decision and the rules ultimately adopted by the Commission.²

4.1. Positions of Parties

The Joint Parties support PG&E's request.

DRA opposes expanding the commitment level of the EnerNOC contract because PG&E has not shown that the additional short-term capacity is needed or that the prices that would be paid would be cheaper than what is available in the short-term market. DRA asserts that capacity available from expansion of this contract could not be cost effective because that capacity is not needed. DRA explains that, in considering avoided energy costs as a benefit of DR activities, the cost effectiveness calculations implicitly assume that the load reduction due

¹ See footnote 188 in the decision.

² Pursuant to OP 30 of the decision, PG&E filed Advice Letter 3560-E-B dated June 24, 2010 proposing multiple program participation rules compliant with the decision. The rules proposed in this Advice Letter are currently in effect.

to a DR activity displaces electricity from other sources, such as generators. DRA argues that because PG&E does not show that it would pay more for resource adequacy capacity in the absence of the contract expansion, the additional capacity should not be considered as a benefit.

DRA supports the proposed contract modifications regarding the baseline methodology and multiple participation rules.

4.2. Discussion

DR programs are at the top of the loading order for electricity procurement.³ This means that cost-effective energy efficiency and DR is preferable to other electric resources and shall be taken first when available. Thus, the issue is whether the additional commitment is cost-effective.

The cost-effectiveness analysis performed by PG&E demonstrates that the additional commitment is cost-effective using the cost effectiveness methodology applied in the original decision. We do have concerns that the late adoption of this contract, after the year-ahead resource adequacy numbers for 2011 have been set by this Commission, may make it unlikely that the additional capacity will actually lead to a reduction in procurement of electricity from other sources. It is not reasonable to require PG&E to go beyond the methodology in place at the time of this decision by requiring a showing that the additional capacity through this contract will cost less than displaced energy from other sources. However, the Commission may address this concern in a separate decision adopting new cost effectiveness protocols for future DR applications.

³ The Commission's policy, as stated in its 2008 update to its 2005 Energy Action Plan, is that the loading order would include energy efficiency and demand-side resources, in preference to renewable resources and clean conventional resources.

The request to expand the EnerNOC contract for 2010 is moot due to the timing of this decision; the increased commitment for 2011 is adopted.

While the baseline methodology adopted in the decision was not adopted for existing agreements, the Commission stated in D.09-08-027 that it is appropriate to modify existing agreements if requested by the DR aggregators. Since that is the case here, PG&E's proposal to substitute the current baseline methodology with the methodology approved in the decision for other DR programs is reasonable and adopted.

Similarly, the decision adopted rules to allow simultaneous participation in multiple DR programs. PG&E proposes to change the multiple participation rules in both agreements to allow simultaneous participation in multiple DR programs consistent with the policy adopted in the decision. PG&E's proposal to update the multiple program participation rules within these contracts is reasonable, and is adopted.

5. Competitive Solicitation of Replacement AMP Agreements

PG&E currently has five AMP agreements approved in D.07-05-029 that expire at the end of 2011. In D.09-08-027, the Commission denied PG&E's request to hold a competitive solicitation to replace these agreements after they expire for two primary reasons: (a) lack of certainty regarding Market Redesign and Technology Upgrade (MRTU) rules for DR; and (b) lack of certainty regarding whether it would be appropriate for DR aggregators to continue to contract with the utilities after development the CAISO rules to allow direct participation by aggregators in the CAISO markets. Along with denying PG&E's request to hold competitive solicitations to replace the five contracts, the decision allowed PG&E to make a similar request in the future if appropriate based on market conditions.

PG&E states that, at the time it was developing its proposals and budgets for the 2009-2011 DR program and budget application, CAISO had not finalized its wholesale market structure for DR resources.

On February 16, 2010, CAISO filed its tariff with the Federal Energy Regulatory Commission (FERC) to allow DR resources to bid into its market utilizing PDR. In the petition, PG&E represented that once the tariffs are approved, it will have a factual basis for the development of a new RFP for third party DR resources, and PG&E expected that the tariff would be approved in summer 2010. The CAISO tariffs received conditional approval from FERC on July 15, 2010,⁴ and PDR was implemented on August 10, 2010.

In the petition, PG&E proposes to hold a solicitation for agreements that are designed to be bid into the CAISO markets as PDR, for up to five years beginning in 2012. The solicitation would seek approximately 150-250 MW of new DR. The new AMP contracts would contain provisions to revise them if necessary due to regulatory changes.

Phase Four of Rulemaking (R.) 07-01-041, which will address direct participation of DR aggregators, has not been finally resolved. However, PG&E believes resolution of Phase Four is not necessary before a new AMP solicitation can be issued and new contracts are in place. PG&E represents that the main focus of Phase Four is issues related to the case where the Load Serving Entity (LSE) and the Demand Response Provider (DRP) are different entities. PG&E argues this does not apply to AMP agreements because PG&E would be an LSE

⁴ Order Conditionally Accepting Tariff Changes and Directing Compliance Filing (FERC PDR Order), issued on July 15, 2010, in Docket No. ER10-765, available at: http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20100715-4001.

as well as the DRP for the contracts. Any issues between PG&E as the DRP and other LSEs, such as energy service providers, should not directly involve the agreements and will be handled by the mechanism the Commission ultimately adopts for resolving DRP/LSE issues in R.07-01-041.

PG&E argues it will take at least a year to make the solicitation, evaluate bids, negotiate contracts, and obtain Commission approval of the contracts. Thus, in order to have the DRPs prepared to perform under the contracts in the summer of 2012, Commission approval must be obtained by the end of 2011. If PG&E is required to submit a new request to hold a solicitation in its DR program and budget application for the 2012 through 2014 portfolio, due to be filed by January 30, 2011, PG&E represents it will create a gap in program participation in 2012 and impact its Long Term Resource Plan.

5.1. Positions of Parties

DRA states that if PG&E is allowed to sign contracts with DRPs, the DRPs will not be participating in the CAISO market until 2016 at the earliest. DRA argues that if other utilities follow the same path, it will limit DRP competition statewide. DRA recommends that direct participation options be preserved, rather than constrained by contracts, until a comprehensive decision is issued in R.07-01-041 on direct participation in 2011. Simply put, DRA recommends the Commission not allow such contracts until the Commission has the opportunity to see how the CAISO's market works.

Several parties that filed comments on the proposed decision, including SCE and North American Power Partners, LLC, support the PG&E request for authority to issue a new competitive solicitation. These parties argue that approving the solicitation will not foreclose opportunities for direct participation

in PDR, and will provide greater flexibility for participation in demand response in the long term.

5.2. Discussion

It is reasonable to assume that it will take a year or more to make the solicitation, evaluate bids, negotiate contracts, and obtain Commission approval of the contracts as proposed by PG&E. This could make it unlikely that such contracts would be in place in the first half of 2012 if PG&E is required to make its proposal in its January 2011 DR program and budget application. At the same time, the January 2011 DR program and budget application and other related matters such as R.07-01-041, will address such things as whether there should be such contracts, the duration of the contracts and other related requirements. As a result contracts ultimately approved, if any, will have to meet the requirements to be set forth in future Commission decisions as discussed above.

The CAISO's is now in operation, however utilities have little experience with PDR pending authorization by the Commission to participate on a non-pilot basis. It makes sense to observe how it works before approving contracts. Additionally, the Commission has not determined whether there should even be such contracts, much less their duration and other terms. Since an alternative to such contracts is to buy from the market, the cost-effectiveness of the proposed contracts can best be estimated when the market is in operation and understood. In these ways, circumstances have not materially changed since D.09-08-027 was adopted, and there is no reason to change the determination made in that decision. For these reasons, PG&E's request is denied. If circumstances warrant and new aggregator contracts are not available in 2012, PG&E may request that its existing contracts be extended to continue for that year.

6. Modification of Budget Table 24-2

PG&E says its CBP is a good candidate for participation in CAISO's market as PDR. In Advice Letter 3635-E, dated March 18, 2010, PG&E proposed to modify the CBP program to allow it to participate in the wholesale market through CAISO's product in 2011, pending timely approval of CAISO's PDR tariff and final rules for DRP participation in CAISO wholesale markets in R.07-01-041.

PG&E states, once the PDR tariff and participation rules are finalized, it can file any necessary modifications to its tariff and begin the business process and system development and implementation work.

PG&E states the CBP program has proven reliable and is an attractive program for adaptation to the CAISO's PDR market. PG&E says the CBP is fully subscribed by third-party aggregators. Although the aggregators may find it difficult to participate if they must separate their portfolios to satisfy the CAISO's geographical requirement, PG&E does not anticipate a significant reduction in participation.

PG&E states it will have to make tariff modifications to allow geographical-specific dispatch and other necessary changes. PG&E also represents it will have to make business system and process changes, including notifications, settlements and dispatch, to enable CBP participation as PBR. It estimates it will take nine months to obtain approval of the tariff changes and implement the business system and process changes.

PG&E estimates it will need \$700,000 of additional CBP funding to make the changes. PG&E proposes to fund these changes by shifting funding from AMP (Category 3-DR Aggregator Managed Programs) to CBP (Category 2-Price Responsive Programs). However, OP 35(d) of the decision prohibits shifting

funds between categories. In order to shift the funds, PG&E asks to move the CBP from Category 2 to Category 3. PG&E argues this is appropriate because the decision allowed it to eliminate the direct participation option in CBP. Thus, CBP is now an aggregator-only program appropriate for inclusion in Category 3.

6.1. Positions of Parties

DRA supports the request and no party opposes it.

6.2. Discussion

The decision, in Table 24-2, placed CBP in Category 2. The decision also allowed PG&E to discontinue the direct participation option in CBP and continue as an aggregator managed program. Since CBP is an aggregator managed program, it is appropriate to move it to Category 3.

7. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (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. Opening comments were filed by the CAISO, DRA, North American Power Partners, LLC PG&E, and SCE, and jointly by Converge, Inc., EnerNOC, Inc., EnergyConnect, Inc., and Energy Curtailment Specialists, Inc. (together, the Demand Response Aggregators). Reply comments were filed on December 13, 2010, by DRA, PG&E, and the Demand Response Aggregators. In comments, parties suggested minor corrections to the proposed decision to more accurately reflect the current status of the CAISO's PDR product; relevant corrections have been made to the decision in response to these comments.

In opening comments, DRA renewed its earlier arguments that the EnerNOC, Inc. contract should not be expanded because the additional capacity

will not be needed in 2011; this issue is addressed in Section 4 of this decision. DRA was otherwise supportive of the proposed decision.

Opening and reply comments of several parties, including PG&E, SCE, the Demand Response Aggregators, and North American Power Partners, LLC renewed arguments in favor of adopting a competitive solicitation for new aggregator agreements; this issue is addressed in Section 5 of this decision. These parties were otherwise generally supportive of the proposed decision.

8. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Jessica T. Hecht is the assigned ALJ in this proceeding.

Findings of Fact

1. Under PG&E's proposed amendments to the EnerNOC and EnergyConnect agreements, PG&E will continue to pay the energy and capacity prices approved by the Commission in D.07-05-029.

2. PG&E's proposed amendments to the EnerNOC and EnergyConnect agreements are cost-effective.

3. The existing agreement with EnerNOC has a commitment level of 40 MW for May through October 2010 and May through October 2011.

4. The proposed amendment would increase the commitment level to 65 MW for June through October 2010 and to 70 MW for June through October 2011.

5. PG&E's proposal to substitute the current baseline methodology with the methodology approved in D.09-08-027 for other DR programs is consistent with COL 3 in D.10-03-007.

6. While the baseline methodology adopted in D.09-08-027 was not adopted for existing agreements, the Commission said it is appropriate to modify existing agreements if requested by the DR aggregators, as is the case here.

7. PG&E's proposal to change the multiple participation rules in both agreements to allow simultaneous participation in multiple DR programs consistent with the policy adopted in the decision and the rules ultimately adopted by the Commission is consistent with COL 4 in D.10-03-007.

8. PG&E's proposal to change the multiple participation rules in both agreements to allow simultaneous participation in multiple DR programs consistent with the policy adopted in the decision and the rules ultimately adopted by the Commission is reasonable.

9. PG&E's proposed contract modifications regarding the baseline methodology and multiple participation rules are unopposed.

10. Because DR programs are at the top of the loading order for electric procurement, cost-effective energy efficiency and DR is preferable to other electric resources and is taken first.

11. The increased commitment proposed for the EnerNOC agreement is cost-effective.

12. PG&E currently has five AMP agreements approved by D.07-05-029 that expire at the end of 2011.

13. On February 16, 2010, CAISO filed its tariff with FERC to allow DR resources to bid into its market utilizing PDR.

14. FERC conditionally approved the CAISO's PDR tariff on July 15, 2010.

15. PG&E and other electric utilities have little experience with PDR pending authorization by the Commission to participate on a non-pilot basis.

16. The January 2011 DR program and budget applications and other related matters such as R.07-01-041, will address such things as whether there should be DR aggregator contracts, the duration of the contracts and other related

requirements. Any DR contracts ultimately approved will have to meet the requirements to be set forth in future Commission decisions.

17. It makes sense to observe how the PDR product functions in CAISO markets before approving contracts.

18. The Commission has not determined whether there should be DR contracts, much less their duration and other terms.

19. In D.09-08-027, the Commission denied PG&E's request to hold a solicitation to replace these agreements after they expire for two primary reasons: (a) lack of certainty regarding MRTU rules for DR; and (b) lack of certainty regarding whether it would be appropriate for DR aggregators to continue to contract with the utilities after development the CAISO's rules to allow direct participation by aggregators in the CAISO markets.

20. The Commission's rules for Direct Participation of DRPs in CAISO markets have not yet been finalized.

21. D.09-08-027, in Table 24-2, placed CBP in Category 2.

22. Since CBP is an aggregator managed program, it is appropriate to move CBP to Category 3.

Conclusions of Law

1. OP 33 of D.09-08-027 allows the utilities to request modifications to existing aggregator contracts through either an application or a petition for modification of the decision.

2. It is reasonable to adopt the increased commitment for 2011 requested by PG&E for the EnerNOC agreement.

3. The increased commitment for the EnerNOC agreement for 2010 is moot.

4. D.09-08-027 provides that, while the baseline methodology adopted in the decision was not adopted for existing agreements, it is appropriate to modify existing agreements if requested by the DR aggregators.

5. D.09-08-027 adopted rules to allow simultaneous participation in multiple DR programs.

6. PG&E's proposal to substitute the current baseline methodology with the methodology approved in the decision for other DR programs is reasonable and should be adopted.

7. PG&E's request to hold solicitations to replace the five existing DR contracts should be denied.

8. D.09-08-027 allowed PG&E to discontinue the direct participation option in CBP and continue it as an aggregator managed program.

9. PG&E's request to move the CBP to Category 3-DR Aggregator Managed Programs should be granted.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's proposal to increase the commitment in the demand response agreement with EnerNOC, Inc. for 2010 is denied.

2. Pacific Gas and Electric Company's proposal to increase the commitment in the demand response agreement with EnerNOC, Inc. for 2011 is approved.

3. Pacific Gas and Electric Company's proposal to revise the demand response agreements with EnerNOC, Inc. and EnergyConnect, Inc. to include the baseline methodology approved in Decision 09-08-027 for other demand response programs is authorized.

4. Pacific Gas and Electric Company's proposal to revise the demand response agreements with EnerNOC, Inc. and EnergyConnect, Inc. to allow simultaneous participation in multiple demand response programs consistent with Decision 09-08-027 is authorized.

5. Pacific Gas and Electric Company's request to hold solicitations to replace the five existing demand response contracts is denied.

6. Pacific Gas and Electric Company's request to move the Capacity Bidding Program to "Category 3-DR Aggregator Managed Programs" is approved.

7. Applications (A.) 08-06-001, A.08-06-002, and A.08-06-003 remain open pending the resolution of an unrelated petition for modification filed by Southern California Edison Company.

This order is effective today.

Dated December 16, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners