

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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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)

**COMMENTS OF ENERNOC, INC., ENERGYCONNECT, INC., AND
CPOWER, INC., (1) IN REPLY TO COMMENTS FILED DECEMBER 4, 2009,
AND (2) ON THE WORKSHOP REPORT DATED JANUARY 8, 2010**

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EnerNOC, Inc., Energy Connect, Inc., and CPower, Inc. (“Joint Parties”) respectfully submit these Comments (1) in reply to comments filed on December 4, 2009 (“December 4 Comments”) in response to the Assigned Commissioner and Administrative Law Judges’ (“ALJs”) Ruling issued on November 9, 2009, amending the Scoping Memo and establishing a Direct Participation Phase for this proceeding (“Amended Scoping Memo”), and (2) on the Report on Direct Participation Phase Workshops filed by Southern California Edison Company (“SCE”) on January 8, 2010 (“Workshop Report”). These Comments are filed and served pursuant to the Amended Scoping Memo and the ALJs’ Ruling issued on December 29, 2009, memorializing schedule modifications in this Direct Participation Phase (“December 29 ALJs’ Ruling”).¹

¹ Amended Scoping Memo, at p. 12 (Ruling No. 6); December 29 ALJs’ Ruling, at p. 2. On January 5, 2010, the Joint Parties’ attorney, Sara Myers, sent an e-mail to assigned ALJ Hecht asking if the comments due on January 22 in reply to the December 4 comments and on the workshop report should be contained in one or two separate filings. ALJ Hecht responded that she had assumed one filing, but would direct the Docket Office to accept either configuration. For expediency, especially given further input provided on the subject topics at the December 2009 Workshops, the Joint Parties offer their comments in a single filing.

INTRODUCTION

On December 4, 2009, the Joint Parties responded to the questions posed by the Amended Scoping Memo offering the following positions, in summary, on the questions posed in Appendix A “related to direct participation of retail customers and aggregators of retail load in the California Independent System Operator (“CAISO”) markets as Demand Response resources.”² Representatives of the Joint Parties also participated in the three-day workshop in this Direct Participation Phase that followed on December 16 through 18, 2009.

Based on a review of comments filed on December 4, 2009, and the Workshop Report filed on January 8, 2010, the Joint Parties offer their comments on both herein. The Joint Parties have organized these comments according to the “four categories of topics” identified by Energy Division staff for discussion at the December 2009 Workshops as follows: (1) Jurisdictional and Tariff Restrictions, (2) Dual Participation, (3) Investor-Owned Utility (“IOU”) and Demand Response Provider (“DRP”) Communications and Settlement Issues, and (4) Implementation Plan.³

In summary, the Joint Parties’ recommendations on key issues in each of these topic areas are as follows:

- The current “one SC per meter” limitation must be eliminated to facilitate direct bidding in wholesale markets by demand response providers other than the load serving entity;
- Although administratively complex, it is possible to allow third party DRPs to bid the demand response of an account enrolled on a retail capacity tariff during times when that account is not nominated under the retail tariff;
- Demand response should not be prohibited from participating in more than one energy program, provided that appropriate rules are in place to avoid double payments for concurrent events;

² Amended Scoping Memo, Appendix A, at p. 1.

³ Workshop Report, at p. A-1.

- A settlement with the load serving entity is not necessary because load serving entities are made whole through balancing accounts
- If the Commission determines that a settlement with the load serving entities is appropriate, the Commission must adopt a methodology for such compensation that includes both costs and benefits;
- There is merit in discussing an interim solution to allow some subset of customers to participate in Proxy Demand Resource for 2010, as long as that subset includes bundled customers, direct access customers and third-party DRP customers;
- It is important that all DRPs and all customers have the same opportunity to gain the experience afforded by direct participation while gaining insight into and/or resolving many of the settlement and communication issues associated with PDR;
- If an interim solution is unattainable due to the timeframe and complexities, it may be appropriate to delay implementation of PDR for all parties until 2011 under the condition that there are strong commitments from parties, the Commission and CAISO to have full participation by summer 2011

I. JURISDICTIONAL AND TARIFF RESTRICTIONS

A. Scope of Topic Area

With one exception, the Joint Parties offer the following comments in response to the December 4 Comments and the Workshop Report on jurisdictional and tariff restrictions. The one exception is the issue of Commission jurisdiction related to DRPs. That is addressed, as both the parties agreed and the December 29 ALJ's Ruling memorializes, in an Opening Brief filed today by the Joint Parties.

The December 4 Comments and the Workshop Report raise related concerns about existing and proposed IOU and CAISO tariff restrictions that severely limit the ability of third-party DRPs to directly bid customers into CAISO wholesale markets. Joint Parties address this issue in general terms in this section. However, Joint Parties note that issues related to tariff restrictions that prohibit multiple scheduling coordinators ("SCs") per service account and the

CAISO's proposal to limit a DRP to one per customer service account are addressed in Section II ("Dual Participation") of these comments. To the extent that these comments are considered to impact the jurisdictional or "tariff restriction" topic area, the Joint Parties' comments and recommendations in Section II on these issues are also incorporated by reference in this section.

B. Tariff Issues

As noted by many parties, both the CAISO tariff and several of the retail demand response ("DR") program tariffs currently prohibit multiple SCs per customer service account.⁴ SCE's Rule 22, Section B.3(c) contains this restriction for electric service providers ("ESPs"), but that language is not intended to restrict an ESP or DRP from bidding demand response into CAISO markets.⁵ Pacific Gas and Electric Company ("PG&E") notes that the retail tariff provisions "exist because of the logistical problems of creating settlement data for multiple SCs at a single service point and should not be removed from either the CPUC- or FERC-approved tariffs."⁶ However, PG&E does concede that the only exception would be to allow two separate SCs – one for the load serving entity ("LSE") and one for the DRP.⁷ SCE agrees that "Rule 22 should be modified to reference and/or include any tariff provisions adopted by the CPUC that authorize and govern the direct bidding by DRPs of retail customer DR into CAISO's markets."⁸ At the workshops, the IOUs committed to identifying any additional retail tariff sections that require modifications to accommodate two separate SCs.

In addition to the "one SC per meter" restriction in existing retail tariffs, Section 4.5.1.1.3 of the CAISO tariff currently also contains language that prohibits more than one SC from

⁴ Between PG&E and SCE, Rules 18, 21 and 22 were identified as possibly requiring modification as to limitations on aggregation, service by multiple parties and "sale-for-resale" concerns. Although, the FERC Order issued on 1/19/10 in Docket ER09-1307-000,001 found DR was not a sale for resale.

⁵ SCE December 4 Comments, at p. 4-5

⁶ PG&E December 4 Comments, at p. 7

⁷ Id

⁸ SCE December 4 Comments, at p. 5

registering with CAISO for a single meter or Meter Point.⁹ CAISO elaborated in its December 4 Comments and at the workshops that it has proposed revisions to this section of the CAISO tariff to accommodate Proxy Demand Resource (“PDR”). The revised tariff language clarifies that the one SC per meter prohibition is only for CAISO Metered Entities. PDR is an SC Metered Entity. Therefore, nothing in Section 4.5.1.1.3 will prohibit more than one SC per customer meter.¹⁰

Joint Parties agree that the current “one SC per meter” limitation effectively restricts direct bidding to the LSE associated with the meter/customer service account and makes direct bidding by a third-party impossible. This restriction needs to be eliminated to facilitate direct bidding in wholesale markets by DRPs other than the LSE. While PG&E has asserted that the SC for load can be different than the DR SC only after proper agreements are in place between the LSE and the DRP,¹¹ such agreements are not required by the CAISO.

II. DUAL PARTICIPATION

In D.09-08-027, the Commission authorized dual participation by utility customers in one energy-based program and one capacity-based program with certain precautions in place to avoid multiple payments for the same response while also allowing the maximum amount of DR possible. In its December 4 Comments, SCE states:

“These rules work reasonably well in the current IOU non-participating load environment because the IOU has access to a customer’s bid and performance in each product and can ensure that the resource is only paid once for the same load drop.”¹²

The question now before the Commission is: Can a customer who is participating in a retail DR program also participate directly in the CAISO markets?

⁹ CAISO December 4 Comments, at p. 2

¹⁰ Id

¹¹ PG&E December 4 Comments, at p. 9

¹² SCE December 4 Comments, at p. 13

Most parties at the workshop agreed that dual participation, which allows a customer that is part of a demand resource to provide different products or services through different DRPs, is a complicated issue, for which there are solutions. Therefore, parties proposed deferring dual participation until a later phase. In its December 4 Comments, SCE suggested that in spite of the administrative complexity, it is possible to allow third party DRPs to bid the demand response of an account enrolled on a retail capacity tariff during times when that account is not nominated under the retail tariff.¹³ Joint Parties agree with SCE's view and appreciate its support on this issue.

The IOUs have stated that they are the DRP for any retail DR programs. That is the case, by default. Utilities have been the only entities authorized to offer or administer DR programs. This includes the aggregator contracts, under which DR is procured by third parties from retail customers on behalf of the IOUs. However, it is because the IOUs have been the only entities to offer DR programs that they have a substantial market advantage relative to any other DRP at this point.

In addition, as mentioned in the tariff restriction section above, CAISO stated its intent to amend the CAISO tariff language to allow for one SC for scheduling and servicing load and one DRP for providing DR services.¹⁴ Therefore, any rule that allows only one DRP per meter would mean that all existing demand response customers would have the IOU assigned as the DRP. The IOU, acting as DRP, would be able to bid the demand response of its retail programs into the wholesale market. Consequently, no other DRP would be able to sell services offered by those customers into the CAISO market.

¹³ SCE December 4 Comments, at p. 7

¹⁴ Workshop Report Day One, at p. A-3

The IOUs also are the DRPs for any bilateral contracts, such as Aggregator-Managed Portfolio (“AMP”) contracts. DRPs, other than the IOU, would need to select customers that are not on Critical Peak Pricing (“CPP”) or Peak Day Pricing (“PDP”) tariffs and are not participating in the Capacity Bidding Program, the Demand Bidding Program, Peak Choice, AMP or any other IOU-sponsored demand response program.

The universe of customers not already enrolled in IOU-managed or AMP programs or on CPP tariffs will be small and, as mandatory CPP/PDP-type pricing proposals continue to roll-out, will continue to get smaller. Obviously, in this context, the IOUs have a tremendous head-start and may be able to foreclose any independent participation of DRPs or customers in the wholesale market.

In its presentation on Day One of the December 2009 Workshop, EnerNOC illustrated how retail DR customers participate directly in wholesale markets in Eastern ISOs.¹⁵ For the most part, the Eastern ISOs allow for reliability-based direct participation of retail customers as well as economic participation. Reliability-based ISO programs require a DR resource to be available either for a specific number of hours or under specific conditions. The DR resource can submit bids into the economic market and if the bid is accepted and the resource is running, even if an emergency condition arises, the DR resource will meet its run requirement. If the DR resource is not cleared on an economic basis and the emergency condition arises, the resource is required to run or face penalties.

However, certain states or IOUs within a state have been concerned about an inability to build adequate generation or transmission to meet growing demand within a reasonable time. One way the state or the utility could deal with that situation is to encourage the DR resources to

¹⁵ Workshop Report, at Exhibit A-5

be available for emergency purposes beyond the hours required by the ISO. In turn, the IOUs would pay the DR resources a capacity payment, in addition to the capacity payment received from the ISO, in return for being available to run incremental hours above the ISO maximum hours. However, the CAISO events would have priority over IOU events until the ISO hours were exhausted. In this way, the IOU programs would be subordinate to the ISO reliability programs. This is an example of developing a hierarchy between ISO and IOU programs that increases the value of DR to both entities by increasing the number of hours the resource could be called upon to run.

Several parties commented on one additional point related to dual participation that may require further consideration by the Commission. The Commission's August 2009 decision establishing dual participation rules, D.09-08-027, prohibits participation in two energy-based DR programs at the same time.¹⁶ Joint Parties share the concern expressed by the California Large Energy Consumers Association that since CPP was deemed to be an energy-based program and customers cannot participate in two energy-based programs at the same time, "a default CPP customer's load could not be bid into the CAISO's energy markets even during non-CPP event periods."¹⁷ Joint Parties also join SCE in recommending that "DR as a preferred resource should not be prohibited from participating in more than one energy program, provided that appropriate rules are in place to avoid double payments for concurrent events."¹⁸ Joint Parties are concerned that if the Commission prohibits customers from participating in more than one energy program, customers participating in retail energy programs would be precluded from participating in CAISO energy markets. This position would further limit customer opportunities to offer services in PDR. For example, customers that are on CPP or PDP

¹⁶ D.09-08-027, at p. 154

¹⁷ CLECA December 4 Comments, at p. 5

¹⁸ SCE December 4 Comments, at p. 8

programs, determined by the Commission in D.09-08-027 to be energy programs, should be able to submit energy bids in PDR for the days that are not PDP/ CPP days. In this instance, the PDP tariff would have priority over economic bids in CAISO.

III. IOU AND DRP COMMUNICATIONS AND SETTLEMENT ISSUES

Day Two of the December 2009 Workshop was dedicated almost exclusively to discussion around settlement issues that may arise by virtue of having retail customers participate directly in the CAISO's markets, most likely as a PDR. One of these issues is whether LSEs should be reimbursed for energy they procured on behalf of customers that the customers did not consume as a result of responding to a demand response event. Parties refer to this as the "settlement issue."¹⁹

Joint parties do not believe that the Commission should automatically determine that a settlement between DRPs or customers and the LSEs is necessary. It is Joint Parties' position that LSEs should continue to be reimbursed through their balancing accounts for any direct participation of DR resources just as they are currently reimbursed through the balancing account mechanism for all DR participation in utility- and aggregator-managed programs. If, however, the Commission determines it needs to examine a settlement methodology for direct DR participation in CAISO markets, then Joint Parties recommend that the Commission examine benefits as well as costs associated with this participation.

It is the Joint Parties' understanding that the CAISO's proposed settlement process for PDR will be between the CAISO and the DRP at the full locational-marginal price ("LMP") represented by an aggregated pricing node or APNode. CAISO will also reduce the LSE's day-ahead ("DA") or real-time ("RT") schedules for any cleared DR bids, so there will not be a

¹⁹ EnerNOC offered a presentation on this issue on Day 2. Workshop Report, Exhibit B-2

payment from CAISO to the LSE for an uninstructed deviation. Since the CAISO is not dealing with an allocation of the cost of the DR to all beneficiaries, as do the New York ISO and ISO-New England, and is not allocating the LMP payments between the LSE and the DRP, as does PJM, there is no missing money or double payment issue, by virtue of a DR bid clearing, that is within the CAISO settlement process. However, the LSEs believe that a settlement between the LSE and the DRP needs to occur outside of the CAISO settlement process.

As stated above, Joint Parties do not believe that a settlement with the LSE is necessary because LSEs are made whole through their balancing accounts. Moreover, there are benefits from DR participation in wholesale markets that accrue to all customers. If the Commission determines a settlement with the LSE is appropriate, Joint Parties believe that the Commission must adopt an appropriate calculation methodology for such compensation that includes both costs and benefits. It is important to ensure that there is a uniform approach to resolve the question of compensation and to ensure that direct DR transactions are not thwarted by virtue of unknown, and possibly uneconomic, settlements that may be demanded of DRPs or the customers that participate in their programs. To that end, the Joint Parties recommend the following approach be taken to resolve this issue.

A. Comparable Treatment of Retail Programs and Direct Participation

Today, customers participating in a retail IOU demand response program, including AMP, are not charged for lost revenues on the part of the IOUs as a result of the curtailment. Joint Parties believe that this balancing account treatment should be extended to customers who participate in CAISO markets directly as well. Both PG&E and SCE are proposing a charge-back mechanism, described more fully below, to recover revenue from either the DRPs directly or the customers that the DRPs serve. To institute a charge only for direct participation

customers would clearly tilt the playing field in favor of the IOUs and against direct participation with third-party DRPs because it would create:

- An economic incentive for customers to remain on utility programs instead of participating directly in CAISO markets; and
- A disparate application of balancing account treatment for IOU programs versus direct participation.

This disparity of treatment between utility and third-party DRP customers is made even clearer because if the utility is losing retail revenues when customers participate through a third party DRP, then it is also losing revenues from customers that participate through a utility. However, the “charge” or penalty would only be assessed to direct participation customers or third-party DRPs.

From a customer point of view, if customers will, in essence, earn less for their DR participation through direct wholesale transactions than through retail programs, by having to pay some unknown amount of their earnings back to the IOU, then it makes economic sense for those customers to stay with the IOU programs. A charge for direct participation would create an undue competitive advantage for the utilities’ retail programs.

Moreover, if direct (wholesale) transactions for DR do not receive balancing account treatment for lost revenues while retail DR transactions do, balancing account treatment is being applied on an unequal and discriminatory basis that favors retail DR programs, even if those retail programs are integrated into the wholesale market. In other words, similar programs would receive disparate treatment from both a regulatory and cost perspective. At the workshop, DRA also raised this issue of lost revenues being accounted for in balancing accounts.²⁰

²⁰ Workshop Report, at p. B-7

Another issue with respect to comparability between retail and wholesale DR programs will be the resolution of resource adequacy (“RA”) treatment. The eligibility of direct participation resources for RA credit is under investigation by both the Commission, in another proceeding, and the CAISO. Joint Parties do not wish to make any proposals here as to the resolution of the other proceeding except to raise another example of where comparability between retail and wholesale programs must be reconciled. Currently, retail programs qualify for RA so long as they are available “at least 48 hours each summer season” and “operate two hours per day”²¹. To the extent new rules are established to qualify direct participation DR resources for RA purposes, the rules should be applied comparably to retail DR programs.

As evidenced by this section, in order for the CPUC to foster direct participation in the wholesale market that includes third-party DRPs, comparability will be a cornerstone principle.

B. The Benefits of DR Must Also Be Considered Alongside Costs

If the Commission contemplates providing any compensation to the LSE for lost retail or wholesale revenue opportunities, which would be considered a cost associated with DR participation, the Commission should also consider the benefits that the LSE or its customers receive by virtue of that same DR participation.

Direct participation of DR resources in the wholesale market for energy and/or ancillary services may reduce the market clearing price at the nodes where the DR bids clear. In other words, but for DR, the overall market clearing price would have been higher. This reduced market clearing price benefits participants and non-participants alike. PJM found that the benefit in the wholesale market clearing price as a result of DR far out-weighed the cost:

²¹ D.05-10-042, at p. 51.

“Regardless, the potential benefits of increasing demand side responsiveness in improved efficiency of the market are large and certainly exceed the relatively small program costs by a wide margin.”²²

In addition, DR may diminish the need to build new peaking resources and lower the cost of, or eliminate the need for, incremental energy purchases during peak periods. By shaving off the needle peak, DR can result in a lower, overall portfolio cost of supplies to the utilities’ customers, thereby benefitting non-participants as well as participants.

FERC made the following statement relative to the benefits of demand response participation in wholesale markets:

“Demand response can provide competitive pressure to reduce wholesale power prices; increases awareness of energy usage; provides for more efficient operation of markets; mitigates market power; enhances reliability, and in combination with certain new technologies, can support the use of renewable energy resources, distributed generation, and advanced metering.”²³

The Commission should consider the extent to which any of these benefits are quantifiable and balance them against any costs borne by direct participants or DRPs serving those customers.

Joint Parties take issue with SCE’s characterization that “other markets either allow for redundant payment in the wholesale market for ‘displaced energy’ or they attempt to estimate the retail participant’s obligation to the LSE for displaced energy in settling simultaneously the LSE and the DRP in the wholesale market.”²⁴

The NYISO and ISO-NE markets pay DR LMP when the resource provides a benefit to the system. The benefit to the system occurs when the market clearing price surpasses a pre-determined price threshold. When DR is paid LMP, as a result of displacing more costly supply resources and providing a lower LMP, all those who benefit from the reduced LMP are allocated a portion of the costs on a load-ratio share basis. Under that scenario, the ISO pays the DR

²² “Assessment of PJM Load Response Programs, Report to FERC” (2005)

²³ FERC Order 719, Paragraph 16, at p. 9

²⁴ SCE December 4 Comments, at p. 16

resource and the uninstructed deviation of the LSE, but recovers the “redundant” payment in the form of an uplift charge to all beneficiaries. Those ISOs have determined there is a direct relationship between the cost of the DR resource payment and the benefit to the system from a lower LMP resulting from DR participation.

Further, SCE seems to take issue with PJM’s process of allocating the LMP payment for DR between the LSE and the DRP/CSP/ARC. When DR clears in PJM, PJM determines the amount of foregone retail revenue that is due the LSE and deducts that amount from the DRP’s LMP payment. As PJM’s proposal is not customer-specific, it approximates the amount of the LSE’s lost retail revenue. The benefit of this approach is the settlement is a known amount.

Both of these options have been deemed just and reasonable by FERC.

C. SCE’s and PG&E’s Settlement Proposals

As stated earlier, both SCE and PG&E have proposed to charge either the DRP or the customer in order for the customer to participate in the wholesale market with a third-party DRP. Joint Parties, again, raise concerns about the anti-competitive nature of these charges and the legitimacy of these charges in light of balancing account treatment. Irrespective of settlement issues, there is a question as to how to define the relationships among the IOUs, DRPs and the customers for purposes of communication, for example.

ESPs have indicated that they do not wish to settle with the DRP, but prefer to settle directly with their customers per the contract. Joint Parties do not wish to interfere with the contractual relationship between the ESP and the customer. However, the IOUs do not have a specific, contractual relationship with their customers. They have, instead, an implicit contract through the issuance of tariffs. Individual contracts are inconsistent with the concept of a public utility providing non-discriminatory service.

SCE and PG&E have proposed two vastly differing settlement proposals. Joint Parties are also offering a proposal, which is described in the next section of these comments.

SCE proposes to settle directly with its customer through a bill adjustment reflecting a charge for the lost retail revenues associated with the customer's curtailment. Under SCE's proposal, the LSE and the DRP do not have a relationship for settlement purposes.

PG&E proposes to settle directly with the DRP through a contract. The settlement will be the difference between the LMP²⁵ at the APNode, which the DRP receives from the CAISO, and the LMP at the DLAP, which is the pricing point at which the utility settles with the CAISO. In other words, the DRP would pay the LSE the DLAP price and receive the difference between the LMP at the APNode and the LMP at the DLAP.

D. Comparison of SCE's and PG&E's Proposals

Neither PG&E nor SCE recognize any of the potential benefits associated with DR direct participation and therefore both proposals are pure cost recovery proposals. Secondly, as stated above, it is unclear why utility program participants are held harmless for lost IOU revenues through the balancing account recovery mechanism, whereas direct participation customers are charged directly for lost revenues.

Joint Parties' principal concern with SCE's proposal is that it is difficult to explain the exact value proposition to a customer because the settlement will be customer-specific. Further, it will be difficult to convince a customer to participate in a third-party DRP program if the customer is going to be charged for energy they do not consume. Joint Parties question whether the Commission can approve charges for "nega-watts or nega-watt/hours." Further, Joint Parties question whether it is appropriate to directly assign charges to participating customers based

²⁵ The settlement could be either day-ahead or real-time depending upon in which market the PDR bid cleared.

upon their specific rate schedules for a number of reasons. First, the current retail customers are not directly charged for the loss of retail revenue associated with their DR curtailment. Instead, retail revenue loss associated with retail DR receives balancing account treatment which is allocated to customer classes for recovery. Therefore, participants and non-participants alike pick up the cost. Allowing a direct charge to the retail customers that participate in wholesale markets through third-party DRPs based upon their individual usage and rate schedule moves away from treating customers as a class for revenue recovery purposes and toward individual rate design and revenue recovery. Such activities do not comport with Joint Parties' understanding of the regulatory protections due customers of regulated, monopoly utilities to prevent undue discrimination.

PG&E, in contrast to SCE, proposes a contractual relationship with the DRP. While a contract would clearly specify the DRP/LSE relationship, the contract terms may be difficult to negotiate. Joint Parties have repeatedly raised their concerns relative to having to engage in individual LSE contract negotiations in order to offer wholesale services to customers. The negotiation process can, in and of itself, erect barriers to entry by virtue of unreasonable and disparate terms and conditions.

At this point in time, Joint Parties cannot speak to the merit of a wholesale market differential as the basis for a settlement relative to a retail settlement, as proposed by SCE, except that Joint Parties question whether the CPUC can grant PG&E a recovery based on wholesale market "losses" as opposed to retail revenue losses. This methodology is inconsistent with any other cost recovery mechanism that Joint Parties are aware of, including those that occur in other ISOs.

E. Joint Parties' Proposal

Because of the potential lack of customer acceptance for the SCE proposal, including charging a customer for “not” consuming energy, Joint Parties prefer a contractual relationship with the LSE. However, as stated earlier, Joint Parties believe that the methodology for calculating a settlement with the LSE should consider benefits and balancing account treatment. Until the Commission makes a decision as to the appropriate elements of a cost/benefit analysis and determines whether any remuneration is due the LSE, it is not clear whether any settlement between the DRP and the LSE is necessary.

IV. IMPLEMENTATION PLAN

One final issue addressed in the Workshop Report is the timeline for direct participation in PDR. CAISO has a timeline in place that allows for direct participation in PDR beginning May 1, 2010. All parties have been working toward this goal, but discussion at the workshop revealed that the IOUs believe they must undertake a significant, time-consuming implementation effort once the Commission adopts rules that govern direct participation in CAISO markets.

San Diego Gas & Electric Company (“SDG&E”) indicated that it would take a “number of months” to develop their systems once the requirements are defined. SCE provided a matrix and explained that it would take them one year to put direct participation into production once the requirements are defined. SCE anticipates that the development of the rules and requirements will take approximately 6-9 months. In addition, SCE stated that the external interfaces required for exchanges between DRPs and LSEs may take significantly longer than

one year. PG&E stated that an aggressive timeframe for third-party DRPs to bid PG&E bundled customers into CAISO markets would be summer 2011.²⁶

Based on these implementation timelines, it is apparent that a CPUC order and full implementation of direct participation in PDR is not possible for summer 2010. Therefore, in order for there to be any direct participation in PDR in 2010, parties will need to agree on an interim process until the significant jurisdictional, dual participation and settlement issues raised in the workshops are resolved. In this regard, two implementation options were proposed and discussed on Day 3 of the workshop – “Option A” and “Option B”.

A. Option A

Option A entails limited participation in 2010 with full participation by all entities in 2011. “Option B” entails no participation in 2010 with full participation by an entities in 2011.²⁷ Option A could include expanding the existing SCE and SDG&E Participating Load (“PL”) pilots to include PDR for 2010. However, Option A could also be limited to direct participation in PDR for IOU bundled customers only.

SDG&E and SCE indicated that their PL pilots could be expanded or converted to include PDR for 2010 if the CPUC issues a prompt decision authorizing them to modify the pilots or providing the direction for them to modify the pilots via advice letter. In addition, SDG&E anticipates its pilot could include aggregators. PG&E stated that its AMP contracts would not be candidates for the pilots but Peak Choice may be available for 2010 PDR. In addition, PG&E stated that direct access customers may be able to participate in a pilot in 2010 with third-party DRPs.²⁸

²⁶ Workshop Report, at p. B-14

²⁷ Workshop Report, at p. C-2

²⁸ Workshop Report, at pp. C-2 - C-3

Joint Parties believe it is worth discussing an interim solution to allow some subset of customers to participate in PDR for 2010, as long as the subset includes bundled customers, direct access customers and third-party DRP customers. It is not an acceptable outcome for the Commission to determine that IOUs can “go first” with their bundled customers and require everyone else to wait until 2011. There was some discussion at the workshop about whether direct access customers would be able to participate in PDR pilots for 2010²⁹. Joint Parties think it is important that all DRPs and all customers have the same opportunity to gain the experience afforded by direct participation while gaining insight into and/or resolving many of the settlement and communication issues associated with PDR.

Joint Parties would also like to emphasize that a short lead time makes direct participation in 2010 difficult and at some point in the very near future, untenable. It is essential for parties to receive additional details about potential PDR pilots as far in advance as possible. Some of the questions that need to be answered before determining whether PDR pilots are a viable alternative for summer 2010 include:

- Will the pilots be conducted in the summer only or extend into winter months?
- Will there be extensive engineering development required?
- Will direct access customers be able to participate?
- What is the value proposition of the pilot?
- What level of programming costs would be incurred?

Joint Parties support the recommendation that PDR working groups meet over the next weeks/months to develop a work-plan detailing how the PDR pilots would be operated for 2010 and what processes need to be resolved for full scale implementation for summer 2011.

²⁹ Workshop Report, at p. C-2

However, Joint Parties believe that there should be some relatively short period of time for the working groups to determine whether progress is being made so as to not derail the schedule any more than is necessary.

B. Option B

Option B delays implementation of PDR to 2011. Obviously this option does not allow any PDR to bid into CAISO markets in 2010, which CAISO considers a “failure to launch.”³⁰

Joint Parties have actively participated in CAISO’s PDR process and understand that there is a very strong possibility that any “failure to launch” PDR in 2010 may result in a loss of momentum at CAISO that sets this process back even beyond full implementation in 2011. That would be an extremely unfortunate outcome. We believe it is important to have all parties participate in PDR as soon as possible so that we can gain experience while resolving the very real implementation issues we have identified throughout this process. However, given the timeframe and complexities, Joint Parties are willing to consider delaying implementation of PDR for all parties until 2011 under the condition that there are strong commitments from parties, the Commission and CAISO to have full implementation by May 2011.

³⁰ Workshop Report, at p. A-10

V.
CONCLUSION

The Joint Parties appreciate this opportunity to offer comments on the December 4 Comments and the Workshop Report related to important issues associated with direct participation of retail DR resources in CAISO wholesale markets. We appreciate the challenges that the Commission faces as it continues to consider how to achieve the most demand response possible by allowing demand response resources to participate in both retail programs and wholesale markets. The Joint Parties are committed to being an important part of the solution for California and appreciate the Commission's consideration of our recommendations on the key issues identified throughout this process.

Respectfully submitted,

January 22, 2010

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CERTIFICATE OF SERVICE

I, Sara Steck Myers, am over the age of 18 years and employed in the City and County of San Francisco. My business address is 122 - 28th Avenue, San Francisco, California 94121.

On January 22, 2010, I served the within document **COMMENTS OF ENERNOC, INC., ENERGYCONNECT, INC., AND CPOWER, INC., (1) IN REPLY TO COMMENTS FILED DECEMBER 4, 2009, AND (2) ON THE WORKSHOP REPORT DATED JANUARY 8, 2010**, in R.07-01-041, as prescribed by the Commission's Rules of Practice and Procedure and with additional and separate delivery of hard copies by U.S. Mail to Assigned Commissioner Grueneich and Assigned ALJs Hecht, Sullivan, and Farrar at San Francisco, California.

Executed on January 22, 2010, at San Francisco, California.

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