

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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Agenda ID #9319
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 07-01-041

This is the proposed decision of Administrative Law Judge (ALJ) Darwin E. Farrar. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Farrar at edf@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:gd2

Attachment

Decision **PROPOSED DECISION OF ALJ FARRAR** (Mailed 3/23/2010)

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 ON PHASE FOUR DIRECT PARTICIPATION ISSUES**1. Summary**

Order 719 and Order 719A of the Federal Energy Regulatory Commission required Independent System Operators to modify their tariffs to allow retail customers to bid demand response (DR) directly into their wholesale electric and ancillary services markets, either on their own behalf or through aggregators, if the relevant state or regional authorities do not prohibit such direct bidding. In today's decision, the California Public Utilities Commission (Commission or CPUC) directs the Investor Owned Utilities (IOUs) to bid DR from existing Participating Load Pilot programs into the California Independent System Operator's (CAISO) wholesale market, but prohibits further participation until ratepayer protections are developed. This decision also identifies the authority through which the Commission will regulate participation, including a requirement to oversee the relationships between service providers, retail customers, and IOUs; account for direct bidding within the Commission's long

term procurement¹ and Resource Adequacy² duties, and address environment-related or other necessary and appropriate subjects. Finally, this decision outlines the issues which must be resolved before the Commission will allow more extensive DR participation in the CAISO markets.

2. Background

On October 17, 2008 and July 16, 2009 the Federal Energy Regulatory Commission (FERC) issued Order 719 and Order 719A, respectively.³ These orders require Regional Transmission Operators (RTOs) and Independent System Operators (ISOs) to amend their market rules as necessary to permit demand response⁴ of retail customers to be bid directly into the RTO's or ISO's organized markets. Specifically, those orders require that end use customers, or Demand Response Providers (DRPs)⁵ acting on behalf of end use customers, be allowed to bid directly into these markets to the extent that the laws or

¹ See e.g., Cal. Pub. Utils. Code, § 454.5, subd. (b)(1) (electrical procurement plans must account for utility owned generation, power purchase agreements, demand response contracts, electricity-related products and open positions to be served by spot market transactions).

² See Cal. Pub. Utils. Code, § 380 (requiring the Commission to design and implement a Resource Adequacy program).

³ See FERC Order 719: http://elibrary.ferc.gov/idmws/file_list.asp?document_id=13656106, and see FERC Order 719A: <http://www.ferc.gov/whats-new/comm-meet/2009/071609/E-1.pdf>.

⁴ "Demand response can be defined as changes to electric usage by end-use customers from their normal consumption patterns in response to changes in the price of electricity over time, to incentive payments, or to reliability conditions." Assigned Commissioner and Administrative Law Judges' Ruling Amending Scoping Memo, R.07-01-041, November 9, 2009.

⁵ FERC Order 719 and 719A use the term Aggregator of Retail Customers, or ARC. For the purposes of this decision, DRP is synonymous with ARC.

regulations of the relevant electric retail regulatory authority do not prohibit a retail customer's participation. In the absence of intervening regulations from the Commission, the FERC orders allow for direct participation of DR in California wholesale markets without any additional requirements or rules.

The CAISO's primary efforts to implement direct participation of DR currently come in the form of Proxy Demand Resource (PDR). PDRs are conglomerations of the demand response capabilities of several retail end-use customers. As set forth in the CAISO tariff filing, the load of these end-use customers will continue to be served by Load Serving Entities (LSEs). LSEs include the IOUs as well as energy service providers (ESPs) that provide direct access (DA) or community choice aggregation (CCA) services to retail end-use customers. The CAISO's PDR product will allow a DRP to submit demand reductions directly to the CAISO as a generator. This means that PDR resources will be bid into the supply stack with traditional generating resources in the CAISO wholesale market.⁶ Because of the similar treatment afforded a PDR resource and a generator, the CAISO refers to PDR as a pseudo-generating resource. Since PDR will rely on an aggregation of Commission jurisdictional retail customers, it creates many questions that the Commission must address.

On November 9, 2009 the scoping memo in R.07-01-041 was amended to initiate the Direct Participation Phase of this proceeding.⁷ The Amended Scoping

⁶ The DRPs would not need to schedule the load associated with the reduction, only the reduction.

⁷ *Assigned Commissioner And Administrative Law Judges' Ruling Amending Scoping Memo, Establishing A Direct Participation Phase Of This Proceeding, And Requesting Comment On Direct Participation Of Retail Demand Response In CAISO Electricity Markets (Amended Scoping Memo)*. See <http://docs.cpuc.ca.gov/efile/RULINGS/109611.pdf>.

Memo directed that a workshop be held to address certain issues and established a schedule to complete this phase of the proceeding by March 2010. The CAISO subsequently pushed back its PDR start-date until May 1, 2010, prompting a new schedule that allowed for additional filings to develop a more complete record. In particular, the new schedule allowed for the filing of legal briefs and two sets of reply comments.

Participants in the workshop included the Alliance for Retail Energy Markets (AReM), CAISO, California Energy Storage Alliance (CESA), California Large Energy Consumers Association (CLECA), the Direct Access Customer Coalition (DACC), the Division of Ratepayer Advocates (DRA), Energy Curtailment Specialist (ECS), the Environmental Defense Fund (EDF), Joint Parties (EnerNoc Inc., CPower Inc., and Energy Connect Inc.), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E). Parties' participation focused on four key issues:

1. What is the Commission's jurisdictional authority with respect to DR's direct participation in CAISO markets?
2. What rules should be established to properly address dual participation in Commission-authorized DR programs and the CAISO's PDR?
3. What communications protocols need to be in place to ensure that resources that directly participate in the CAISO markets are properly paid and billed?
4. Is there a need for an additional financial settlement between the LSE and DRP to ensure that the LSE is not paying for excess power that is not needed?

The following discussion addresses these four issues.

3. Discussion

3.1. Jurisdiction

The November 9, 2009 Amended Scoping Memo states that part of the purpose of Phase Four of this demand response rulemaking is to “begin the [Commission’s] effort to determine whether existing state procurement laws, decisions, rules or practices may directly or indirectly conflict with potential direct bidding by retail Demand Response into CAISO wholesale markets.”⁸ This question prompted an in-depth discussion at the workshops of whether DRP providers fall within the jurisdiction of the Commission.

On January 22, 2010 the following parties submitted opening briefs on the issue of Commission jurisdiction over DRPs that engage in the direct bidding of retail customer DR resources into the wholesale energy markets run by the CAISO: SCE, PG&E, Joint Parties, and AReM. On January 29, 2010 PG&E, Joint Parties, AReM, SDG&E, and DRA submitted reply briefs on this same issue.

In its opening brief, AReM argues that because bidding retail customers’ DR resources into the CAISO’s markets does not entail the use of “electric plant” as defined in Public Utilities Code Section 217, engaging in such activity will not cause a DRP to fall within the definition of an “electric corporation” as defined in Section 218, or to be a “public utility” as defined in Section 216.⁹ AReM further argues that because the direct bidding of retail customers’ DR resources into the CAISO’s markets does not entail the provision of “electrical service” as that term is used in Section 218.3, engaging in such activity will not cause a DRP to fall

⁸ Amended Scoping Memo at 5.

⁹ Unless otherwise stated, all statutory references herein are to the California Public Utilities Code.

within the statutory definition of an Electric Service Provider (ESP). In its reply brief, AReM clarifies its view that DRPs are not “electric plants,” as defined in Section 217 because they will not engage in the “production, generation, transmission, delivery or furnishing of electricity for light, heat or power,” and will not use “conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat, or power.” AReM goes on to state that DRPs may not be classified as ESPs because the definition of “electrical service” in the context of ESPs is limited to supplying electrical energy to retail customers. Finally, AReM argues that third-party DR aggregators are not “aggregators” as defined in Section 331, and are therefore not ESPs under Section 365.1 because bidding retail customers’ DR resources into the CAISO markets does not involve the aggregation of customer loads, and such activities do not entail “direct transactions” as that term is used in Section 365.1.

In its post-workshop comments and reply comments, AReM states that the Commission has no jurisdiction over contracts signed between an ESP and its direct access customer (or a DRP) and no authority over the rates, terms or conditions of service offered by ESPs. AReM reasons that Direct Access customers procure no energy from IOUs and are therefore free to participate directly in CAISO markets through any avenue they desire without Commission oversight. AReM further argues that because ESPs are free to develop their own DR programs, these programs would not be subject to Commission jurisdiction. Finally, AReM sees no legal or policy basis to restrict the participation of direct access customers in CAISO markets, provided such customers are not enrolled in any IOU DR programs.

In their opening brief Joint Parties state that the Commission does not have jurisdiction over DRPs because DRPs are not “public utilities” or ESPs. The Joint Parties note that the Legislature has never prescribed that DRPs are an “additional class” of public utilities subject to Commission regulation, and argue that direct participation by DRPs in the CAISO wholesale markets does not give rise to Commission jurisdiction. Finally, Joint Parties argue that there is no rational basis to impose consumer protection rules for the CAISO’s markets beyond the consumer protection laws applicable to businesses operating in California, including DRPs.

In their reply brief Joint Parties argue that according to the plain meaning of the statutes defining “public utility” and “electric service provider,” and using established principles of statutory construction, a DRP is neither a “public utility” nor an “electric service provider,” and the Legislature has never included DRPs within either definition. Joint Parties conclude that any consumer protection deemed by the Commission or the CAISO to be required for DRPs beyond the current law applicable to California businesses should be addressed through rules governing participation in jurisdictional utility programs.

In its opening brief, SCE asserts that the Commission has jurisdiction over DR service providers for consumer protection purposes. According to SCE, although ESPs and third-party DR aggregators do not meet the statutory definition of public utilities, the Commission has specific jurisdiction over ESPs for consumer protection, and third-party DR aggregators are ESPs for consumer protection purposes. SCE argues that, even if the Commission were to determine that third-party DR aggregators are not ESPs, it can and should require consumer protection related to the terms and conditions under which IOUs can

approve an IOU procurement customer's participation in a direct bidding program.

In its reply brief, SDG&E asserts that DR service providers are within the definition of an "electric service provider" and as such are subject to the Commission's jurisdiction over ESPs for consumer protection purposes as indicated in Sections 394.2 and 394.25(e). SDG&E also argues that the Commission has consumer protection jurisdiction over third-party DR aggregators and that third-party DR aggregators are ESPs.

In its reply brief, DRA argues that DRP aggregators are public utilities subject to Commission jurisdiction. DRA reasons that, although DRP aggregators engage in the business of load reduction, a DRP "electric plant" exists in the facilitation of the DRP process to aggregate load, which allows the DRP to produce the energy and capacity products it will offer to the CAISO markets as a supply-side resource. Since DRP aggregators sell energy and capacity products in the competitive public marketplace, DRA claims they meet the public dedication requirements necessary to be considered a "public utility" under Section 216.¹⁰ Finally, DRA asserts that DRPs are subject to Commission jurisdiction as ESPs.

The parties take markedly different positions regarding whether DRPs should be treated as ESPs, and whether such a determination conclusively establishes Commission jurisdiction. However, we need not reach this particular

¹⁰ According to DRA, the Federal Power Act's (FPA) definition of "public utility" is not applicable because the FPA defines "public utility" more narrowly than does the California Public Utilities Code.

issue at this junction.¹¹ We agree with SCE, PG&E, and SDG&E that this Commission can impose reasonable terms and conditions on the IOUs' approval of an end-use customer's participation in a third party DR aggregator's direct bidding program. As SCE points out, such participation can impact the reliability, cost, safety and maintenance of utility service. We conclude that the Commission should impose rules on the IOUs ability to approve a customer's participation in a direct bidding program. Approval should be granted only if the third-party aggregators meet established standards and conditions that ensure consumer protection and overall system reliability.

No party disputes that the Commission has authority over the potential impacts of direct bidding on consumer protection for utility customers, long-term procurement, resource adequacy requirements, or Loading Order¹² related issues. Thus, the Commission will develop rules as appropriate to establish the terms and conditions by which the IOUs may authorize their retail customers' participation in a DR aggregator's direct bidding program; account for direct bidding within the Commission's long-term procurement¹³ and

¹¹ Commission jurisdiction in this area may be further examined in subsequent phases of this proceeding.

¹² See *Energy Action Plan II[:] Implementation Roadmap For Energy Policies*, issued October 2005 by the Commission and the California Energy Commission (CEC), available at http://docs.cpuc.ca.gov/word_pdf/REPORT/51604.doc.

¹³ See e.g., Cal. Pub. Utils. Code, § 454.5, subd. (b)(1) (electrical procurement plans must account for utility owned generation, power purchase agreements, demand response contracts, electricity-related products and open positions to be served by spot market transactions.)

Resource Adequacy¹⁴ duties; and address environment-related or other necessary and appropriate subjects. This determination is immediately relevant where a potential DRP customer is already in an IOU's DR program. So as to avoid potential abuses and at the same time allow customers to seek the best deal available without unnecessarily narrowing the pool of desirable customers, the Commission will order that a customer that is in an IOU's DR program must be informed that they cannot directly participate without leaving the IOU's DR program.

3.2. Dual Participation

Dual participation can be said to occur where a customer that is already enrolled in an IOU DR program also participates directly in CAISO markets, either individually or through a DRP. While the CAISO makes clear that it's "Demand Response System will only allow one service account per demand response provider [DRP]"¹⁵ the CAISO also acknowledges that multiple arrangements can be made against the performance of a particular resource. Dual participation arrangements can be quite complex. In reality, allowing dual participation at the start of a new direct participation program may be more burdensome than beneficial. This reality was not lost on the parties.

SCE argues that there are substantial complexities around dual participation in the context of direct participation in the CAISO markets, and asserts that dual participation should be considered only after the DRPs have

¹⁴ See Cal. Pub. Utils. Code, § 380 (requiring the Commission to design and implement a Resource Adequacy program).

¹⁵ CAISO Comments at 4.

experience with bidding resources into PDR.¹⁶ PG&E identifies several forms that dual participation could take and identifies potential costs and inequities that could arise in each instance. PG&E then concludes that “until the CAISO’s program is well established, the Commission should not allow [customer Service Accounts] that participate in a program run by an IOU to also be a part of a PDR for a non-IOU DRP.”¹⁷

In spite of these “complexities,” most parties support, albeit conditionally, dual or multiple participation. In reply comments PG&E argues that, rather than burden all parties with attempting to resolve the issues of dual or multiple participation at this time, the Commission should consider the issue after sufficient experience is gained with PDR.¹⁸ EDF supports third party participation on claims that allowing third party DRPs access to accounts that are also managed by LSEs will maximize the amount of DR available to the grid. EDF cautions that dual participation should be allowed in a way that maximizes grid reliability by, among other things, avoiding double counting and allowing LSEs to rely on their contracted resources. DRA strongly agrees with the principles set forth by EDF that go to: 1) ensuring that only DR that actually performs is paid, and 2) ensuring that DR that does perform does not receive duplicative payments for the same load reductions from one or more source. DRA goes on to propose various rules for the Commission to adopt that would

¹⁶ SCE Comments at 7.

¹⁷ PG&E Comments at 15.

¹⁸ PG&E Reply Comments at 4.

establish DRP registration requirements and general guidelines for DRP service.¹⁹ Energy Connect Inc. supports dual participation provided that the rules are “simple enough to be easily administered, reasonably immune to gaming, and easily understood by customers.”²⁰

Taking the record of the proceeding as a whole, we conclude that at this time the Commission should not allow DRPs to participate directly in CAISO markets without adequate ratepayer protections. Since the complexities identified by the parties in this proceeding cannot be resolved at this time, we will defer the development of the necessary ratepayer protections until a subsequent phase of this proceeding. Until these complexities can be resolved, only the identified pilot programs will be allowed to participate.

3.3. Communications and Settlement Issues

Communications issues go to what information flow is necessary between the IOU, the demand response service providers (if any), and the customer providing the load drop to ensure transparency of the process where an IOU or other DR provider is allowed to bid DR load that is also part of a retail DR program into the CAISO markets on non-event days, outside the context of the existing retail program. The communications issues addressed at this point in the proceeding focused on the roles, interactions and responsibilities of all parties, and the need for consumer protections. Settlement issues generally go to ensuring just compensation, the mechanism for transfers, minimum credit

¹⁹ DRA is concerned that utility ratepayers could be saddled with making duplicative payments due to the lack of oversight during daily market operations.

²⁰ Energy Connect Inc., Supplemental Comments on the Workshop Report at 6. Energy Connect Inc. is one of the Joint Parties.

assurances, and whether pro forma contracts that address many of these concerns are necessary and/or appropriate. The interaction of these various issues and interests creates substantial complexity and warrants a cautious approach to implementing DR.

With regard to settlements, as noted by the CAISO, “[m]ost parties, if not all, agreed in workshop discussions that a standard contract, versus multiple bilateral negotiations, should be developed to govern pertinent terms of the relationship between the Commission jurisdictional load-serving entities and the third-party demand response providers.”²¹ This agreement was reflected in the parties’ comments on the workshop; most parties agreed that facilitating direct participation of DR in the CAISO markets requires addressing the operational and communication needs of the various stakeholders. SCE identifies various process and system issues that need to be resolved prior to direct participation of DR.²² PG&E urges the Commission to adopt a pro-forma contract that sets the default amount, terms and conditions for the transfer of this amount, settlement mechanism for transfers, minimum credit and performance assurances, and other terms.²³ DRA argues that general communication and settlement concerns should be allowed sufficient oversight by the Commission since the CAISO would only track PDR performance results at the aggregated level and would not include information on the performance of underlying customers that make up a PDR.²⁴

²¹ CAISO Comments at 5.

²² SCE Comments at 2-3.

²³ PG&E opposes the direct billing approach which it attributes to SCE.

²⁴ DRA Comments at 3.

While Joint Parties argued that there would be no need for any additional settlement because the cost savings would outweigh the cost, most parties that addressed this issue agreed that there are various ways to address the problem, that the problem can be addressed via contracts or settlement agreements, and that the problem must be addressed before DR is fully implemented. DRA identifies under-collection, which it refers to as the “missing money” problem, as one of several issues that warrant additional discussion and some actual experience.²⁵ DRA therefore recommends identifying different types of participation frameworks and that the Commission allow only those frameworks that have been properly tested and refined in a PDR pilot.²⁶

The communications issues discussed by most parties was the “missing money” or LSE under-collection problem. EDF explains that “the way the CAISO has structured its PDR settlement process has led to the LSEs asking that they be compensated by third-party DRPs for the energy they purchased for their customers that was not consumed because of demand response.”²⁷ As explained by PG&E, this problem would arise under the following circumstances:

... a DRP may bid DR into the CAISO’s markets using PDRs comprised of portions of the LSE’s load. If a DRP’s bid for a PDR is accepted, then the DRP is compensated for its accepted load

²⁵ DRA at 4-5.

²⁶ DRA also points out that while the Commission has determined that the use of back-up generators to provide DR is contrary to the Commission’s environmental goals, FERC Order 719 expressly provides the use of back-up generators to provide DR services. (DRA Comments at 7.) DRA suggests that this issue should be included in a subsequent phase of this proceeding.

²⁷ EDF Comments at 4.

reduction bid just as though the PDR had a scheduled delivery of that amount of energy into the CAISO system.

As a consequence, the LSE pays for load it does not place on the CAISO grid, and the DRP receives payment for energy it does not deliver into the CAISO grid. (PG&E Comments at 6.)

As we stress above, the Commission will not allow DRPs to participate directly in CAISO markets without adequate ratepayer protections. Since the complexities identified by parties in this proceeding cannot be resolved at this time, we will defer the development of the necessary ratepayer protections until a subsequent phase of this proceeding. Until these complexities can be resolved, only the identified pilot programs will be allowed to participate. This action has the added benefit of allowing parties and the Commission to learn from the participation of the pilot programs before coming to conclusions which will impact the PDR community at-large.

3.4. Implementation Timing

The Commission has regulatory oversight of IOU DR programs and contracts, and authority over long-term resource planning and retail sales of electricity. In existing DR programs, the IOUs act as the intermediary between the CAISO's markets and the customer or aggregator that is providing the DR resource. While these DR programs have not provided for a customer or aggregator to directly bid DR resources into the CAISO wholesale markets,²⁸ the Commission has directed the IOUs to better integrate their existing DR resources

²⁸ The Commission has authorized three Participating Load Pilot (PLP) programs in which the IOUs bid DR load reductions into the CAISO ancillary service markets.

into the CAISO's energy and ancillary services markets.²⁹ Acting expeditiously to allow end use customers or aggregators to bid DR resources directly in these markets (to the extent that the laws or regulations of the relevant electric retail regulatory authority do not prohibit a retail customer's participation) is consistent with our identification of DR as one of the state's preferred means of meeting growing energy needs.³⁰

The CAISO has urged the Commission to determine what must be done to get some level of direct participation in summer 2010, and what must be resolved over the long term. The CAISO states that priorities should include modifying rules and tariffs to enable direct participation.³¹ In its Comments, PG&E identifies various issues that it asserts must be addressed prior to the implementation of PDR and argues that PDR should not be fully implemented until several months after the decision in this phase of the proceeding.³² While DRA agrees with PG&E that a schedule for full implementation of PDR, including dual participation, by summer 2010 is too compressed, AReM is skeptical of the claim that full-scale PDR cannot be implemented by the summer of 2010 (and asserts that direct access customers who are not enrolled in IOU DR programs can participate in PDR during the summer of 2010).³³ AReM is

²⁹ See Decision (D.) 09-08-027.

³⁰ See *Energy Action Plan II[:] Implementation Roadmap For Energy Policies*, issued October 2005 by the Commission and the California Energy Commission (CEC), available at http://docs.cpuc.ca.gov/word_pdf/REPORT/51604.doc.

³¹ CAISO Comments at 1-2.

³² PG&E Comments at 16.

³³ AReM Comments at 7.

opposed to PG&E's proposal that the Commission establish conditions for participation by retail customers.

Rather than enact the full PDR program, various parties suggest enacting a pilot or partial program as an initial step. For example, SCE states that it could modify its existing PLP program to allow some PDR participants in 2010.³⁴ After having completed the initial work on the PLP, SCE believes the PDR product is better suited to small and medium aggregated DR resources. SCE goes on to assert that modifying its PLP would allow it to work with the CAISO on operation of the new PDR wholesale market product, while allowing additional work toward rules and requirements for full implementation in 2011. Toward this end, SCE recommends that it be directed to file an advice letter seeking authorization to modify its PLP for a PDR pilot in the summer of 2010, and that additional processes be ordered to resolve the outstanding issues in time for full implementation of PDR by the summer of 2011.

Various parties appear to embrace this approach. In Reply Comments PG&E states that it is prepared to implement the CAISO's PDR program on a limited basis. DRA also voices its agreement with SCE's idea that PDR should be implemented in 2010 only as a pilot.³⁵ SDG&E also supports the use of pilot programs and proposes to leverage the PLP to implement PDR for the summer of 2010. SDG&E suggests that IOUs should solicit and incorporate third-party DRPs into their 2010 PDR pilots as a way to gain experience through real-time

³⁴ SCE's PLP has a three-year pilot program cycle (2009-2011), funded in D.08-12-038 and D.09-08-027.

³⁵ DRA Reply Comments at 3.

DRP/LSE interaction.³⁶ Similarly, while EDF asserts that allowing DR providers to have access to the CAISO market in the same timeframe as LSEs will ensure that customers choosing a DRP have access to both LSE programs and third party DRP programs, and will not give the LSEs a competitive advantage, EDF believes this principle should be applied should the Commission order pilot programs.³⁷

As an initial step toward direct participation, we require PG&E, SCE, and SDG&E to file advice letters amending their PLP pilots and preparing them for direct participation as soon as possible. These party's PLP programs are in different states of development and have varying levels of fund remaining. Where there are demonstrably insufficient funds to support the new pilot program it may be necessary to engage in fund shifting as provided for in D.09-08-027. Only the pilot programs identified by these parties will be allowed to participate until the issues discussed above can be resolved. However, giving the value of effectively regulated direct participation of PDR in CAISO markets and our desire to secure these benefits for ratepayers, we intend to resolve the outstanding issues in this decision by March 1, 2011.

4. Comments on Proposed Decision

The proposed decision 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.

³⁶ SDG&E Reply Comments at 2.

³⁷ EDF Reply Comments at 3.

Comments were filed on _____[DATE] by _____[PARTIES].
_____[PARTIES] filed reply comments on _____[DATE]. All
comments and replies were filed timely.

5. Assignment of Proceeding

Diane M. Grueneich is the assigned Commissioner in this proceeding and Darwin E. Farrar is the assigned Administrative Law Judge in Phase Four of this proceeding.

Findings of Fact

1. There are substantial complexities associated with dual participation in the context of direct participation in the CAISO markets.
2. The Commission should consider issues related to dual (or multiple) participation after sufficient experience is gained with PDR.
3. IOUs should solicit and incorporate third-party DRPs into their 2010 PDR pilots as a way to gain experience with real-time DRP/LSE interaction.
4. The CAISO only tracks PDR performance at an aggregate level and does not see the end use customer.
5. A registration and certification process for DRPs should be developed in a subsequent phase of this proceeding.
6. The reasons that an IOU may reject a PDR registration should be enumerated by the Commission in a subsequent phase of this proceeding.
7. The Commission should revisit the question of whether there should be more than one DRP per customer account in a subsequent proceeding.
8. The Commission should revisit the question of whether dual participation should be restricted at the retail level in a subsequent proceeding.

9. The details related to settlement, information sharing, logistical system questions, and other dual participation issues should be resolved in a subsequent proceeding.

10. The PLP programs should be leveraged to incorporate PDR pilot programs for the summer of 2010.

Conclusions of Law

1. Consistent with FERC Order 719 and Order 719A, DR in wholesale markets cannot go forward in California except as allowed by the Commission and consistent with the terms and conditions established by the Commission.

2. The Commission has the jurisdictional authority to restrict IOU customers from directly participating in the CAISO markets.

3. Energy Service Providers may engage in direct participation on behalf of their customers.

4. The Commission has a role in consumer protection.

5. The Commission may, among other things, resolve customer complaints related to DRPs, establish financial responsibility standards for DRPs, and require DRPs to inform customers that enrolling with the DRP will mean that they will be unenrolled from DR programs offered by another carrier.

6. To the extent that existing funds for the PLP programs are insufficient for PDR pilot programs, PG&E, SCE, and SDG&E may seek to shift funds pursuant to D.09-08-027.

O R D E R

IT IS ORDERED that:

1. There shall be only one Demand Response Provider per customer account.
2. There shall be no dual or multi-party participation at the retail level.

3. Except as set forth below, the demand response of retail customers will not be bid directly into the California Independent System Operator's wholesale electric and ancillary services markets.

4. A Demand Response Provider shall inform customers that are in Investor Owned Utility demand response programs that they cannot directly participate without leaving the Investor Owned Utility's demand response program.

5. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company will each file a tier 2 advice letter within 10 days of the effective date of this decision to modify its Participating Load Pilot program to Proxy Demand Response pilot programs for summer 2010.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated March 23, 2010, at San Francisco, California.

/s/ LILLIAN LI
Lillian Li

N O T I C E

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