

**DRAFT**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**  
**ENERGY DIVISION**  
**I.D. # 6477**  
**RESOLUTION E-4078**  
**April 12, 2007**

**R E S O L U T I O N**

Resolution E-4078. San Diego Gas & Electric for approval of Second Amendment to the San Diego Gas & Electric/ AER Contract in Compliance with D.06-11-049

By Advice Letter 1871-E Filed on February 1, 2007.

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**SUMMARY**

This Resolution approves in part SDG&E's amendments to the SDG&E/ AER contract, as authorized by Commission Decision (D.) 06-11-049.

The contract is amended to reflect the new program components adopted by D.06-11-049, specifically adding a 100% cycling option for residential customers, a 30% cycling option for non-residential customers, and the addition of weekend events. The contract is also amended to assign the contract from Comverge, Inc. (Comverge) to Alternative Energy Resources, Inc. (AER), a wholly-owned subsidiary of Comverge, and to address several additional contract implementation and administration issues between SDG&E and AER. SDG&E is ordered to modify its contract with AER in the manner described in Finding 10 but may make this feature a pilot program that could be terminated following the 2007 summer season.

**BACKGROUND**

**D.04-06-011 approved five SDG&E proposals to meet its short-term and long-term grid reliability needs. A demand response program from Comverge was one of the approved proposals.**

On June 9, 2004, the Commission issued D.04-06-011, which approved a number of utility proposals to address short-term and long-term grid reliability needs. The original Comverge proposal was in response to SDG&E's May 16, 2003 Request for Proposals (RFP), and used Direct Load Control (DLC) during the

summer months to manage customer end-use equipment to help SDG&E manage demand. The original proposal targeted commercial customers with maximum demands no greater than 100kW and irrigation customers with demands less than 200kW. The Decision approved the contract and ordered SDG&E to amend the contract to include a residential customer component. The Commission also ordered that the cost sharing between SDG&E and Comverge be modified. SDG&E filed Advice Letter 1639-E on November 18, 2004 requesting approval of the First Amendment to its contract with Comverge to implement these changes ordered by the Commission. The Commission approved this First Amendment in Resolution E-3913 on February 10, 2005. The SDG&E-Comverge contract is the basis for SDG&E's Summer A/C Saver program.

In D.06-11-049, the Commission adopted a number of augmentations and improvements to existing utility demand response programs and budgets originally adopted in D.06-03-024 in order to promote system reliability during the summer peak demand periods of 2007 and 2008. Specific improvements adopted by D.06-11-049 are for SDG&E to expand its Summer A/C Saver program to include pool pumps and electrical water heating, renaming the program the Summer Saver Program. Additionally the decision authorized SDG&E to provide residential customers a new 100% cycling option in addition to the current 50% cycling option, to offer non-residential customers a new 30% cycling option in addition to the current 50% option, and to allow weekend demand reduction cycling events for new program enrollees. SDG&E's Advice Letter 1871-E filed February 1, 2007 requests Commission approval of the Second Amendment to its contract with Comverge, which implements all of these changes.

Additionally the advice letter requests approval of the other changes contained in the Second Amendment to SDG&E's contract with AER that address several contract implementation, administration, and contractor compensation issues that SDG&E and AER have negotiated. These changes include the following items:

1. Assigning the contract from Comverge to AER,
2. Specifying that the compensation that SDG&E will pay to AER for participating commercial customers who elect the new 30% cycling level shall be based on and paid the same rate as AER is to be paid for 50% cycling level customers,
3. Extending the term of the contract for one additional year, through 2015,

4. Raising the program's load reduction target from 30.2 MW to 42.2 MW,
5. Raising the program's maximum load reduction potential that SDG&E is obligated to buy under this contract from 40 MW to 100 MW, at the sole discretion of AER,
6. Eliminating reference in this contract to the \$/kW incentive that is paid to customers under the program (note: customer incentives are described in separate agreements between SDG&E and customers), and
7. Modifying certain contract terms that address specific Measurement and Evaluation (M&E) activities associated with pool pumps and electric water heaters.

### **NOTICE**

Notice of AL 1871-E was made by publication in the Commission's Daily Calendar on February 9. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

### **PROTESTS**

Advice Letter 1871-E was protested.

SDG&E's Advice Letter AL 1871-E was timely protested by DRA on February 16, 2007.

SDG&E responded to the protest of DRA on February 26, 2007.

### **DISCUSSION**

**DRA recommends that the Commission require SDG&E and AER to change its cost sharing formula from 50/50% to 0/100% in favor of SDG&E. Energy Division finds no compelling reason to change the cost sharing mechanism.** DRA's protest asserts that several of the changes to the subject contract with AER significantly reduce AER's risk of not meeting the target level of demand reduction from this Summer Saver program. DRA believes the original contract, as well as the proposed amendments, are lopsided in favor of AER.

SDG&E's response to DRA's protest points out that the cost-sharing mechanism in this contract was previously addressed by the Commission in D.04-06-011,

reflected in the First Amendment to the contract, and approved by the Commission in Resolution E-3913. Hence, SDG&E asserts, DRA's protest goes beyond the scope of the issues presented in AL 1871-E, and should be given no weight.

Energy Division agrees with DRA that several of the changes to this contract reduce AER's likelihood of not meeting the target level of demand reduction. Only if AER fails to meet the target level of demand reduction specified in the contract may AER invoke the cost-sharing provision to recover a portion of its specified costs from SDG&E. Thus the changes to the contract make it less likely that the cost-sharing provision at issue will be invoked. Furthermore, Energy Division believes the cost-sharing formula, which was previously approved by the Commission in Resolution E-3913, and has not been further amended, is beyond the scope of this advice letter. Hence, Energy Division does not believe that the cost-sharing mechanism of the contract should be amended.

**DRA recommends that the Commission require SDG&E to amend the contract to allow early termination or renegotiation of the contract if found not cost-effective. Energy Division recommends against adjudicating the issue of cost-effectiveness of demand response programs in the context of this advice letter.** DRA states that the contract as amended will extend through 2015, almost 9 years after the Commission develops the cost-effectiveness tests for demand response programs in its new rulemaking (R.07-01-041). DRA states its concern that, since the contract does not provide for termination based on a determination by the Commission on the cost-effectiveness of the contract, the ratepayers could be stuck for another 9 years with a contract that may be found not cost-effective.

SDG&E's response to DRA's protest points out that the term of the contract, originally 10 years, was already approved by the Commission in Resolution E-3913 with no early termination or renegotiation provisions. SDG&E asserts that any attempt at this point to alter the contract with early termination provisions would most likely have a detrimental impact on the Summer Saver Program, as such provisions would likely be viewed by AER as adding significant risks to the longevity of the contract.

Energy Division believes that whether the Commission should require utilities to terminate or renegotiate previously approved contracts if they are later found to be not cost-effective is an issue relevant to a large number of currently approved

demand response programs, and should be addressed in a unified manner rather than piecemeal in response to advice letter filings dealing with individual demand response programs. Energy Division believes this issue is beyond the scope of this advice letter, and one that the Commission may wish to consider in its rulemaking proceeding on cost-effectiveness tests for demand response programs. Thus Energy Division recommends denying DRA's request to require this contract be amended to allow early termination or renegotiation if found not cost-effective.

**SDG&E and AER have specified in the Second Amendment that the compensation that SDG&E will pay to AER for participating commercial customers who elect the new 30% cycling level will be based on and paid the same rate as AER is paid for 50% cycling level customers. Energy Division recommends rejecting this provision of the Second Amendment.**

SDG&E states that AER has expressed strong concerns about the marketing and promotion of the new 30% commercial customer cycling option if it is not able to recover its initial costs based on new customers who elect to participate at the 30% cycling level. SDG&E states that AER indicates that its marketing and promotional costs are essentially the same under either cycling option. Although not addressed in the advice letter, SDG&E stated, when asked, that it believes AER's incremental equipment costs are also essentially the same under either cycling option. AER has expressed reluctance to aggressively market this new cycling option, given the potential business costs and revenue recovery risks they face. SDG&E believes that the likelihood of attracting more customers to participate and the added benefits to the program from such an increase in participation, even at a lower cycling option, is an appropriate basis on which to make the capacity payments to AER for the 30% cycling option the same as the payment for the 50% cycling option, so as not to create a disincentive to AER to market the program to potential new participants at the 30% cycling option.

Energy Division agrees with SDG&E that AER's incentive to market the 30% cycling option to non-residential customers would be significantly lower if the contract made the capacity payment to AER proportional to the cycling level for non-residential customers, as it already is for residential customers. Specifying a capacity payment for 30% cycling level customers at the same rate as for 50% cycling level non-residential customers provides a 67% higher capacity payment to AER for 30% cycling customers than they would receive if the capacity payment were proportional to the cycling level. Energy Division believes that a

capacity payment that is 67% higher than what AER would otherwise receive for a lower amount of benefits (30% cycling demand response) is not equitable for SDG&E's ratepayers. Setting AER's capacity payments in proportion to the cycling level still provides AER an incentive (albeit a reduced incentive) to market the 30% cycling option. Energy Division does not believe that AER would be so inhibited by the proportional capacity payment structure as to not market the 30% cycling option knowing that there are non-residential customers who will not be interested in the level of potential disruption to their operations or loss of comfort that the 50% cycling might entail, but will be amenable to the 30% option.

### **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

Comments on the draft resolution were received from SDG&E and from AER on March 30, 2007. No party filed reply comments.

**SDG&E and AER recommend that the Commission either approve the Second Amendment to this contract as filed, or alternatively, make the 30% cycling option for commercial customers a pilot program, which SDG&E and AER could terminate or continue at AER's discretion, following the 2007 summer season. Energy Division recommends approving the 30% cycling option as a pilot program.**

SDG&E and AER both state in their comments that setting the capacity payment to AER proportional to the cycling level for non-residential customers would leave AER with little or no economic incentive to market the new commercial 30% cycling option. Both parties ask the Commission to reject this portion of the

draft resolution, and to approve the Second Amendment to the SDG&E/ AER Contract as submitted. Both parties also ask that, in the event the Commission does not approve this aspect of the Second Amendment, SDG&E and AER be allowed to make the 30% cycling option a pilot program, by establishing a contingency in the contract that the new 30% cycling option be re-evaluated shortly following the 2007 summer season. Under this contingency, SDG&E and AER would reserve the right to either continue or terminate the 30% cycling option if they agree that it is not in AER's best fiscal interest to pursue the option based on an economic evaluation of the option by AER.

AER also recommends two other options if the Commission declines either to adopt the Second Amendment as filed, or to approve the 30% cycling option as a pilot program: (1) eliminate altogether the 30% cycling option for non-residential customers, or (2) have SDG&E pay AER proportional to the cycling level chosen by each customer, but increase the capacity payment for all cycling levels.

Energy Division remains convinced that paying AER at a 50% cycling rate for customers who sign up for the 30% cycling option is not a worthwhile deal for ratepayers as this arrangement increases the incentive on a dollar per kW basis which Energy Division believes was not the intent of the Commission in approving a 30% cycling option. Furthermore Energy Division continues to believe that the commercial 30% cycling option has the potential to attract certain customers for whom higher cycling rates might be too disruptive to their businesses. Energy Division believes that AER will still find it preferable to sign up and serve a participant at the 30% cycling level rather than to forgo doing business altogether with a customer who indicates unwillingness to participate at a higher cycling level. For these reasons, Energy Division recommends retaining the 30% cycling option for commercial customers, as a pilot program for 2007. Regarding AER's second recommended option, making the capacity payments to AER proportional in all cases to the cycling level while increasing the capacity payment for all cycling levels, Energy Division has insufficient information about the costs to AER of this program to determine what reasonable capacity payments to AER would be. Energy Division declines to intervene in that area of this contract.

## **FINDINGS**

## DRAFT

1. Commission Decision 06-11-049 authorized SDG&E to file an Advice Letter to modify its Summer Saver demand response program in specified ways.
2. SDG&E filed AL 1871-E on February 1, 2007, seeking Commission approval of amendments to its contract with AER.
3. Requested amendments include adding pool pumps and electrical water heating to the devices eligible for cycling by SDG&E, adding more cycling options, allowing weekend cycling events for new program enrollees, assigning the contract from Comverge to AER, extending the term of the contract for one for one additional year, through 2015, raising the program's load reduction target from 30.2 MW to 42.2 MW, raising the program's maximum load reduction potential from 40 MW to 100 MW at the sole discretion of AER, eliminating reference in the contract to the \$/kW incentive that is paid to customers under the program, and modifying certain contract terms that address specific Measurement and Evaluation (M&E) activities associated with pool pumps and electric water heaters.
4. Requested amendments also include specifying that the compensation that SDG&E will pay to AER for participating commercial customers who elect the 30% cycling level shall be based on and paid the same rate as AER is to be paid for 50% cycling level customers.
5. The cost-sharing mechanism in this contract between SDG&E and AER was previously addressed by the Commission in D.04-06-011, reflected in the First Amendment to the contract, and approved by the Commission in Resolution E-3913.
6. There is no compelling reason at this time to change the cost sharing mechanism included in this contract.
7. The term of the contract between SDG&E and AER, originally 10 years, was already approved by the Commission in Resolution E.3913 with no early termination or renegotiation provisions.
8. Whether the Commission should require utilities to terminate or renegotiate previously approved contracts if they are later found to be not cost-effective is an issue relevant to a large number of currently approved demand response programs, and should be addressed in a unified manner in our rulemaking proceeding on cost-effectiveness tests for demand response programs rather than in this resolution.
9. A lower incentive for AER to market the 30% cycling level for non-residential customers is appropriate, and will still give AER sufficient incentive to offer the 30% cycling option to those non-residential customers who are not interested in participating in SDG&E's Summer Saver program at the 50% cycling level.

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10. Article 3, Section 3.2 of the contract between SDG&E and AER should be modified to make the Demand Reduction amounts and the resulting capacity payments from SDG&E to AER proportional to the cycling level elected by the participating commercial facilities, as they are for participating residential facilities.
11. SDG&E is authorized to further amend its contract with AER to establish a contingency making the 30% commercial cycling option a pilot program for 2007, to be continued or terminated at AER's discretion following the 2007 summer season. If the 30% cycling option is terminated, SDG&E shall notify the Director of the Energy Division in writing.
12. All contract amendments proposed by SDG&E in this advice letter are reasonable, unless otherwise noted.

**THEREFORE IT IS ORDERED THAT:**

1. SDG&E shall modify Article 3, Section 3.2 of its contract with AER in the manner described in Finding 10 above.
2. SDG&E may add a contingency to its contract with AER making the commercial 30% cycling option a pilot program for 2007, to be continued or terminated at AER's discretion following the 2007 summer season.
3. All other provisions SDG&E requested in AL 1871-E are approved.
4. SDG&E shall file a supplemental advice letter in compliance with this resolution within 14 days of the effective date.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 12, 2007; the following Commissioners voting favorably thereon:

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STEVE LARSON  
Executive Director