

Decision 07-12-048 December 20, 2007

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of PACIFIC GAS AND ELECTRIC  
COMPANY (U 39-E), for Approval of 2006-2008  
Demand Response Programs and Budgets.

Application 05-06-006  
(Filed June 1, 2005)

And Related Matters.

Application 05-06-008  
(Filed June 1, 2005)  
Application 05-06-017  
(Filed June 2, 2005)  
Application 07-07-022  
(Filed July 19, 2007)

**OPINION MODIFYING RESOLUTION E-4079 and D.06-11-049**

We modify Resolution E-4079 to define “hard-to-reach customers” for purposes of customer eligibility in the Business Energy Coalition demand response program as customers that (a) have never participated in a PG&E demand response program event and (b) have rejected participation in at least one PG&E demand response program other than the BEC. We also modify D.06-11-049 to clarify that we do not require PG&E to request extension of the BEC program by a stand-alone application, but merely require that PG&E seek any such extension as part of a formal application.

**Background**

The Business Energy Coalition (BEC) program is a demand response program aimed at organizing participants into a cooperative committed to a

certain amount of load reduction when called either day-ahead or to meet short term emergencies. As initially proposed by Pacific Gas and Electric Company (PG&E), the program pilot was limited to San Francisco customers in the office, hospitality, and high tech sectors, with a target load of 10 megawatts (MW) for 2005.<sup>1</sup> The Commission approved the BEC program on the basis that it targets customers who had not participated in demand response programs up to that point. (D.05-01-056, pp. 34-35.) PG&E submitted Advice Letter 2681-E, which established the BEC program's Schedule E-BEC and limited eligibility to San Francisco customers "in the office, hospitality, and high-tech sectors."<sup>2</sup>

The Commission subsequently approved an increase of the program's target load in San Francisco to 15 MW and its expansion to a new customer area with a 10 MW target load, for a total program target load of 25 MW for 2007 and 2008. (D.06-03-024.) Accordingly, PG&E submitted Advice Letter 2804-E. In addition to accomplishing the advice letter's stated purpose of extending the term of the BEC program and expanding its geographic scope, the revised tariff

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<sup>1</sup> We take official notice of PG&E's October 15, 2004, proposal, January 18, 2005 comments on the draft decision, and November 16, 2004, reply comments, which were filed in Rulemaking 02-06-001. PG&E's proposal describes the pilot's focus as "the office, hospitality and high-tech sectors that in the past have shown a reluctance to participate in other demand response programs" (p. 41). PG&E's comments describe the focus more narrowly as "office-building customers, a largely untapped opportunity because of traditionally low participation in demand response programs" (p. 6). PG&E's reply comments describe the pilot's focus as "office buildings and the hospitality industry, segments that historically have not participated much in PG&E's demand response programs" (p. 8). Decision (D.) 05-01-056 defines the pilot as "limited to San Francisco office-building customers" (p. 34).

<sup>2</sup> We take official notice of Advice Letters 2681-E, 2804-E, 2953-E, and 2980-E.

sheet modified the eligibility language to reach customers “in sectors *such as* office, hospitality, and high-tech.” (Emphasis added.)<sup>3</sup>

In July 2006, shortly after the issuance of D.06-03-024, the State of California experienced an unusually intense heat wave which at times strained the state’s electrical system. In a swift effort to maximize existing opportunities to protect the state’s electrical system from compromises to its reliability, the assigned Commissioner reopened the record of this proceeding to solicit proposals from the utilities to augment their demand response programs for 2007 and 2008. In response, PG&E requested authority to expand the BEC program’s target load from 25 MW<sup>4</sup> to 50 MW in 2007 and 2008, and to extend the program for seven years. (PG&E response regarding demand response enhancements, p. 21.) Describing the BEC program as “a project *in San Francisco* designed to subscribe hard-to-reach customers into demand response programs,” the Commission authorized PG&E’s proposal to increase the program’s target load, but declined to authorize the seven-year extension, directing PG&E to file an application to seek approval of the extension once a new agreement has been signed. (D.06-11-049, pp. 56-57, emphasis added.) Accordingly, PG&E submitted Advice Letter 2953-E, which expanded the target load to 50 MW.

Seven weeks later, PG&E submitted Advice Letter 2980-E to expand the availability of the BEC program to PG&E’s entire electric service territory and to

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<sup>3</sup> It appears that PG&E neglected to revise the tariff language limiting the maximum load to 10 MW.

<sup>4</sup> PG&E’s proposal appears to incorrectly characterize the previously approved total 2007 goal as 15 MW rather than 25 MW.

expand its eligibility “to sectors beyond the current office, hospitality and high-tech.” (Advice Letter 2980-E, p. 2.) Resolution E-4079 approved the proposed modifications, finding it reasonable to expand the program to include hard-to-reach customers across all sectors.

On July 19, 2007, EnerNOC, Inc., EnergyConnect, Inc., and Comverge, Inc. (Joint Petitioners) concurrently filed Application (A.) 07-07-022 to modify Resolution E-4079 and a petition to modify D.06-11-049. The Joint Petitioners contend that the tariff changes approved by Resolution E-4079 exceed the changes authorized by the Commission for the BEC program in any of its prior orders, including D.06-11-049. The Joint Petitioners maintain that D.06-11-049 and Resolution E-4079 should be modified to define the term “hard-to-reach customers” and to limit the program to those customers. Specifically, the Joint Petitioners petition to modify D.06-11-049 and Resolution E-4079 in two ways: First, to reinstate the program limitation to customers in the office building, hospitality and high-tech sectors, and, second, to limit eligibility to “hard-to-reach customers for demand response services” defined as “customers that (a) have never participated in a PG&E demand response program and (b) have rejected participation in at least one PG&E demand response program other than the BEC.” The Joint Petitioners also request that D.06-11-049 be modified to eliminate its direction that PG&E request, by separate application, approval of a seven-year extension of the BEC program.

PG&E filed in protest of the petition and application, and The Utility Reform Network (TURN) and the Energy Curtailment Specialists, Inc. each filed in support. The Joint Petitioners filed a reply.

## Discussion

### A. Definition of “hard-to-reach customers”

We approved the BEC program for the purpose of reaching customers “who have not participated in demand response programs to this point.” D.05-01-056 identified these customers as office building customers, while PG&E’s approved Advice Letter 2681-E expands the definition of eligible customers to include hospitality and high-tech customers as well. Although we approved increases to the program’s target load and geographic scope in D.06-03-024 and D.06-11-049, we did not revisit the issue of customer eligibility until Resolution E-4079. In that resolution, we recognized that hard-to-reach customers may exist across all sectors, and we therefore approved PG&E’s request to make the program available to those customers regardless of sector. However, in so doing, we neglected to provide a clear definition of what constitutes “hard-to-reach” customers.

TURN supports reinstating the limitation on BEC program eligibility to office, hospitality and high-tech customers, arguing that the BEC program was intended to target commercial office buildings because of their large potential for reducing commercial air conditioning load.<sup>5</sup> We do not interpret our approval of the BEC program so narrowly. We have consistently identified the BEC program’s purpose as being to target hard-to-reach customers. Although we previously identified office buildings as being hard-to-reach customers, they are not necessarily the only customers that can be characterized as “hard-to-reach.”

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<sup>5</sup> TURN remarks that it would question including “high-tech” as an eligible sector.

Indeed, as TURN suggests in its response, peak period load-shifting by large commercial buildings in response to time-of-use rates may indicate that even office-building customers may not necessarily be hard to reach. Defining “hard-to-reach customers” by reference to their behavior rather than to customer sector appropriately excludes “easy-to-reach” office-building customers who do not require the BEC program’s special attributes in order to participate in a demand response program.

PG&E contends that the application to modify the resolution should be denied because the Joint Petitioners do not identify factual or legal error. PG&E is correct that, pursuant to § 7.7.2 of General Order (GO) 96-B, an application for rehearing of a resolution must identify error. However, the Joint Petitioners’ application to modify the resolution is governed by § 7.8, which subjects it to Rule 16.4 of the Commission’s Rules of Practice and Procedure regarding applications for modification.<sup>6</sup> Petitions for modification are not required to allege error.

PG&E contends that the petition to modify D.06-11-049 (and presumably, with the explanation above, Resolution E-4079 as well) should be denied as there is no change in circumstances since the decision and resolution were issued that would support the requested modifications. Although changed circumstances may support a petition for modification, neither Rule 16.4 of the Commission’s

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<sup>6</sup> Some confusion may be attributed to the fact that a “petition” for modification of a resolution must be filed as an “application” in order for the Commission’s Docket Office to assign it a docket number. Nevertheless, the pleading is substantively treated as a petition for modification under Rule 16.4.

Rules of Practice and Procedure nor D.07-01-007, which PG&E cites in support of its contention, requires them.

PG&E suggests that the Commission approved the expansion of the BEC program beyond the office, hospitality, and high-tech sectors well before Resolution E-4079. Specifically, although Schedule E-BEC originally limited eligibility to customers “*in the office, hospitality, and high-tech sectors,*” PG&E points out that Advice Letter 2804-E, submitted in compliance with D.06-03-024 approving demand response programs for 2006-2008, revised the tariff language to expand the program to customers in “*sectors such as office, hospitality, and high-tech*” (emphasis added). We note that PG&E did not propose this expanded program scope in its testimony on demand response programs for 2006-2008 or identify it in the text of Advice Letter 2804-E; PG&E continued to characterize the BEC program as limited to hard-to-reach customers in its August 30, 2006 proposal to enhance the BEC program and in its September 15, 2006 comments in response to the Administrative Law Judge’s request; PG&E did not undertake to correct our description of the program, in D.06-11-049, as “*designed to subscribe hard-to-reach customers;*” and PG&E characterized its request in Advice Letter 2980-E as seeking to expand the program eligibility “*to sectors beyond the current office, hospitality, and high-tech*” (emphasis added). Our -- and PG&E’s -- apparent oversight in allowing this changed tariff language in Advice Letter 2804-E without deliberation does not preclude us from reviewing it now.

PG&E argues that limiting the BEC program to hard-to-reach customers is inconsistent with the Commission’s goals to increase demand response. We disagree. We approved the BEC program for the purpose of procuring demand

response load reductions from customers whose needs had not been met by our other demand response programs, which is consistent with our overall goal to increase demand response. We have not expanded the BEC program purpose by any prior order or resolution. To do so now would require the consideration of facts and issues that cannot be resolved on the current record, e.g., the design of the BEC program, the relative cost and effectiveness of the BEC program, and the impact of a broader BEC program scope on the aggregator demand response contracts.<sup>7</sup>

We believe that one of the attractions of demand response as a resource is the dispatchability that it can provide the system. To have customers enroll in programs but never act – never actually reduce load – negates a very important benefit of these programs. Enrolled customers who have not participated in a demand response event may be induced to actively participate in a demand response program through the additional level of customer service and instruction that the BEC program provides. In actuality, these customers could be persuaded to participate in demand response events if *any* demand response provider provided additional services to them. These “passive” demand response customers represent valuable MW reductions that could be achieved if demand response providers put forth an extra effort to reach these customers.

However, if we adopt the definition of hard-to-reach put forth by the Joint Petitioners, the BEC, *and only the BEC*, would be prohibited from reaching certain customers that represent potential MW savings. PG&E and the joint Petitioners

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<sup>7</sup> As directed by D.06-11-049, these broader issues are to be addressed when PG&E applies for authorization to extend the BEC program.

would still be able to market to these customers. The state of California has extremely aggressive demand response goals that will only be achieved if *all* providers are innovative and aggressive in achieving targets.

Therefore, we find merit in the proposed definition of what constitutes “hard-to-reach” customers proffered by both the Joint Petitioners and PG&E. As such, we modify Resolution E-4079 to define “hard-to-reach customers” as customers that (a) have never participated in a PG&E demand response program event and (b) have rejected participation in at least one PG&E demand response program other than the BEC program. This definition includes customers who may have *enrolled* in another of PG&E’s demand response program, but have not actively participated.<sup>8</sup> This definition reasonably identifies the customers that the BEC program is intended to target. This definition also furthers the Commission’s goals of achieving actual load reductions through available demand response programs and not simply enrolling customers in programs.<sup>9</sup>

Further, we deny the Joint Petitioners’ request to also reinstate the program’s previous limitation to customers in the office, hospitality and high-tech sectors. The purpose of the BEC program is to reach hard-to-reach

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<sup>8</sup> For the purposes adding additional clarification to the definition above we define ‘never participated’ to mean that a customer has not dropped load from the system in response to a demand response event (irrespective of whether a bid was made or not).

<sup>9</sup> See, Energy Action Plan II, September 21, 2005. Key Actions #5 - Create standardized measurement and evaluation mechanisms to ensure that demand response savings are verifiable. Page 5. Available at: [http://www.energy.ca.gov/energy\\_action\\_plan/2005-09-21\\_EAP2\\_FINAL.PDF](http://www.energy.ca.gov/energy_action_plan/2005-09-21_EAP2_FINAL.PDF)

customers. While the phrase “office, hospitality and high-tech customers” has served as a reasonable proxy for “hard-to-reach customers,” it inevitably excludes hard-to-reach customers in other sectors. Modifying Resolution E-4079 to define “hard-to-reach customers” as discussed above adequately limits the BEC program to its approved purpose while enabling it to increase demand response consistent with the Commission’s goals.

### **B. Application for Seven-Year Extension**

We deny, without prejudice, the Joint Petitioners’ request that we modify D.06-11-049 to require PG&E to request a seven-year extension of the BEC program as part of an application for authorization of its 2009-2011 demand response programs, rather than by separate application. It may be appropriate to review PG&E’s proposal in the context of our review of the 2009-2011 demand response programs. However, it is premature to make that determination today without seeing PG&E’s proposal. The Joint Petitioners may protest PG&E’s separate application to extend the BEC program on the grounds that they state here, if and when PG&E files one. We modify D.06-11-049 to clarify that we do not require PG&E to request extension of the BEC program by a stand-alone application, but merely require that PG&E seek any such extension as part of a formal application.

### **Motion to Become a Party**

The Energy Coalition, a non-profit corporation that developed and manages the BEC program from PG&E, filed a motion to become a party, without objection. The motion is granted.

### **Motion to Withdraw Previous Motion**

PG&E moved to withdraw its previously-filed motion to file a confidential version of its protest under seal in order to maintain the confidentiality of the

number of customers that EnerNOC, Inc. has enrolled with respect to the bilateral demand response agreement between PG&E and EnerNOC, Inc. No party objects to PG&E's motion to withdraw its previously-filed motion. The motion is granted.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3197, the Commission preliminarily categorized A.07-07-022 as ratesetting and preliminarily determined that hearings are not necessary. No party requested hearings, and no circumstances give us cause to change the preliminary determinations.

### **Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on September 27, 2007, and reply comments were filed on October 1, 2007 by PG&E and the Joint Petitioners.

PG&E and the Joint Petitioners both assert that defining "hard-to-reach customers" on the basis of never having "participated" or having rejected "participation" in a PG&E demand response event is unduly vague. PG&E proposes that we modify the definition of "hard-to-reach customers" to include customers who, regardless of whether they have previously enrolled or are currently enrolled in a demand response program, have not reduced load in a demand response event, while the Joint Petitioners propose that we substitute the word "enrolled" for "participated." We adopt PG&E's proposal, and provide additional clarification in the text above.

The Joint Petitioners request that we require PG&E and the BEC to periodically file a report that identifies customers that enrolled in the BEC

program in the preceding period and demonstrates how they meet the definition of “hard-to-reach customers.” PG&E objects that such requirement is unduly burdensome, particularly as the Joint Petitioners would not be entitled to view the reports because the customer-specific information is confidential. We do not require PG&E to file reports, as proposed by the Joint Petitioners. However, we direct PG&E to maintain auditable records to demonstrate compliance with the rules for implementation and administration of the BEC program. PG&E shall maintain auditable records for the life of the program.

In addition, in response to PG&E’s query, we clarify that receiving promotional materials without enrolling does not meet the prerequisite established in part (b) of the above definition. We require that the customer receive a personal contact (telephone or field visit) describing at least one non-BEC demand response program, and reject it, before PG&E or the BEC proffers the BEC program to the customer.

PG&E and the Joint Petitioners both seek clarification of the effect of this decision on customers currently enrolled in the BEC program. PG&E proposes that current enrollees be allowed to continue their participation in the program, while the Joint Petitioners propose that current enrollees who are not “hard-to-reach customers” as defined in this decision have the option to terminate their contract with the BEC and enroll in any other PG&E demand response program. We adopt the Joint Petitioners’ proposal as it is consistent with the purpose of the BEC program.

The Joint Petitioners ask that we “re-confirm” that the BEC program is currently limited to 50 MW. The Joint Petitioners do not identify any ambiguity

in any Commission decision or resolution, or in PG&E's tariffs, that require this clarification.

### **Comments on the Alternate Decision**

The alternate decision of Commissioner Michael R. Peevey in this matter was served on the parties in accordance with Public Utilities Code Section 311 and Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on December 10, 2007, and reply comments were filed on December 17, 2007 by PG&E and the Joint Petitioners. We have reviewed the comments and reply comments and conclude that no substantive change to the Alternate Decision is necessary.

### **Assignment of Proceeding**

Rachelle B. Chong is the assigned Commissioner and Hallie Yacknin is the assigned Administrative Law Judge in this consolidated proceeding.

### **Findings of Fact**

1. The Commission approved the BEC program for the purpose of reaching customers who had not previously participated in demand response programs.
2. The Commission, in Resolution E-4079, found that hard-to-reach customers are not limited to the office, hospitality, and high-tech sectors, and therefore eliminated the requirement that the BEC program be limited to customers in those sectors.
3. In approving the elimination of the requirement that the BEC program be limited to customers in the office, hospitality, and high-tech sectors, Resolution E-4079 neglected to provide a clear definition of what constitutes "hard-to-reach" customers.
4. Expanding the BEC program purpose beyond enrolling hard-to-reach customers would require the consideration of issues that are beyond the scope of

this petition and application, e.g., the relative cost and effectiveness of the BEC program and the impact of a broader BEC program scope on the aggregator demand response contracts.

5. Modification of Resolution E-4079 as set forth herein will provide clarification as to what constitutes “hard-to-reach” customers for the purposes of customer eligibility in the Business Energy Coalition demand response program.

### **Conclusions of Law**

1. Modification of Resolution E-4079 as set forth herein will advance the state of California’s aggressive demand response goals.

2. Modification of Resolution E-4079 as set forth herein will provide clarification as to what constitutes “hard-to-reach” customers for the purposes of customer eligibility in the Business Energy Coalition demand response program.

3. Modification of D.06-11-049 as set forth herein will clarify that any request by PG&E for a seven-year extension of the BEC program must be filed by formal application, without precluding the possibility that it may be filed as part of PG&E’s application for approval of its 2009-2011 demand response programs.

4. This order should be effective immediately.

5. This proceeding should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. The first bulleted paragraph at page 1 of Resolution E-4079 is deleted and replaced by the following:

PG&E's proposed revision to allow expansion of the BEC program beyond the originally targeted hard-to-reach customers in the office, hospitality, and high-tech sectors is approved. Hard-to-reach customers across all business sectors may also enroll in the program, and shall be defined as customers that (a) have never participated in a PG&E demand response program event and (b) have rejected enrollment in at least one PG&E demand response program other than the BEC program.

2. The second paragraph under the heading "Energy Division finds that all proposed revisions to the BEC program are reasonable" at page 6 of Resolution E-4079 is deleted and replaced by the following:

In the interest of acquiring more demand response for this summer and for 2008, Energy Division concludes it is necessary and prudent to expand the scope of the BEC program to include hard-to-reach customers across all sectors. PG&E's proposed revision to eliminate the tariff language limiting eligibility to customers in the office, hospitality, and high-tech sectors is approved. In order to continue the BEC program's approved focus on hard-to-reach customers, the eligibility provision of Electric Schedule E-BEC shall be revised to add language limiting eligibility to hard-to-reach customers, defined as customers that (a) have never participated in a PG&E demand response program event and (b) have rejected enrollment in at least one PG&E demand response program other than the BEC program.

3. Finding 11 at page 8 of Resolution E-4079 is deleted and replaced by the following:

11. "Hard-to-reach customers," for purposes of eligibility for the BEC program, should be defined as customers that (a) have never participated in a PG&E demand response program event and (b) have rejected enrollment in at least one PG&E demand response program other than the BEC program.

4. Ordering paragraph 1 at page 8 of Resolution E-4079 is deleted and replaced by the following:

1. PG&E shall modify Electric Schedule E-BEC - Business Energy Coalition to eliminate the tariff language limiting eligibility to customers in the office, hospitality, and high-tech sectors, and to add language limiting eligibility to hard-to-reach customers, defined as customers that (a) have never participated in a PG&E demand response program event and (b) have rejected enrollment in at least one PG&E demand response program other than the BEC program.

5. The following Ordering Paragraph 3 is added to Resolution E-4079:

3. PG&E shall maintain auditable records of its solicitation of customers who enroll in the BEC program for purposes of demonstrating that they meet the definition of "hard-to-reach customer."

6. The following Ordering Paragraph 4 is added to Resolution E-4079:

4. BEC program customers who do not meet the definition of "hard-to-reach customer" have the option to terminate their contract with the BEC and enroll in any other PG&E demand response program.

7. The last sentence, at page 57, under the heading “3. Business Energy Coalition (BEC)” of Decision (D.) 06-11-049 is deleted and replaced by the following:

Therefore, we decline to authorize the extension at this time. PG&E may renew its request by formal application once a new agreement has been signed.

8. Conclusion of Law 29 at page 72 of D.06-11-049 is deleted.
9. Ordering Paragraph 9 at page 75 of D.06-11-049 is deleted.
10. The motion of the Energy Coalition to become a party is granted.
11. The motion of PG&E to withdraw its previously-filed motion to file under seal is granted.
12. Application (A.) 05-06-006, A.05-06-008, A.05-06-017 and A.07-07-022 are closed.

This order is effective today.

Dated December 20, 2007, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners