

Decision 10-06-034 June 24, 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)
(Phase 3)

**DECISION ADOPTING SETTLEMENT AGREEMENT ON
PHASE 3 ISSUES PERTAINING TO EMERGENCY TRIGGERED
DEMAND RESPONSE PROGRAMS**

1. Summary

This decision adopts a Settlement Agreement (Settlement) among California Independent System Operator Corporation, California Large Energy Consumers Association, Division of Ratepayer Advocates, Enernoc, Inc., Pacific Gas and Electric Company (U 39-E), San Diego Gas & Electric Company (U 902-E), Southern California Edison Company (U 338-E) and The Utility Reform Network.¹ In broad terms, the Settlement transitions many of the current reliability-based and emergency-triggered demand response programs into price-responsive demand response products. In addition, it reduces the amount

¹ The Settlement was attached to the *Joint Motion of California Independent System Operator Corporation, California Large Energy Consumers Association, Division of Ratepayer Advocates, Enernoc, Inc., Pacific Gas and Electric Company (U 39-E), San Diego Gas and Electric Company (U 902-E) and Southern California Edison Company (U 338-E) and The*

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of reliability-based and emergency-triggered demand response programs that count for Resource Adequacy from the current 3.5% of system peak to 2% of system peak in 2014. Even as the Settlement adopts caps on the amount of Megawatts (MW) that count for Resource Adequacy, the Settlement removes the current enrollment caps on reliability-based and emergency-triggered demand response program.

The transition to the price-responsive demand response program will begin in the Investor Owned Utilities' 2012-2014 demand response program cycle applications that are due in January of 2011, and the new demand response products are subject to Commission review at that time.

Under the Settlement, the reliability-based and emergency-triggered demand response programs will be changed to become more useful.² Most importantly, the reliability-triggered demand response program will be triggered prior to the California Independent System Operator's canvassing of neighboring balancing authorities for energy or capacity. This new practice would eliminate the anomalous treatment whereby emergency-triggered demand response counts for Resource Adequacy yet, unlike all other power that counts for Resource Adequacy, the California Independent System Operator currently procures costly "exceptional dispatch energy or capacity" before using this energy

Utility Reform Network for Adoption of Settlement; Settlement Attached (Joint Motion), filed on February 22, 2010.

² Consideration of the transition to the new reliability-triggered/price-triggered demand response program will begin in the Investor Owned Utilities' 2012-2014 demand response program cycle applications that are due in January 2011, and these new demand response products are subject to Commission review at that time.

resource, a practice that has led to charges that ratepayers “pay twice” for this power.

The Settlement also permits the development of new reliability-based demand response products, but any product eligible for a Resource Adequacy payment would be subject to the Resource Adequacy cap mentioned previously and review by the Commission.

The details of the settlement are discussed in greater detail below.

No comments were filed on the Settlement.

We find that the Settlement is reasonable in light of the whole record, consistent with law, and in the public interest. The settlement resolves all outstanding issues in Phase 3 of this proceeding.

2. Background

The Commission opened this rulemaking on January 25, 2007 as part of a “continuing effort to develop effective demand response (DR) programs” and identified consideration of “modifications to DR programs needed to support the California Independent System Operator’s efforts to incorporate DR into market design protocols” as an objective of the rulemaking.³

Phases 1 and 2 were initiated to address DR program cost-effectiveness, load impacts, and goals. One specific issue that arose in Phase 2 was whether existing emergency-triggered DR programs should be modified to facilitate their integration into the California Independent System Operator’s (CAISO or ISO) Market Redesign and Technology Upgrade (MRTU). A ruling issued in this

³ Order Instituting Rulemaking (R.) 07-01-041 (January 25, 2007) at 1.

proceeding requested comments on this issue, with the CAISO's comments due on June 25, 2008 and other parties' comments due on July 9, 2008.⁴

In response to this ruling, the CAISO provided its rationale for reducing the amount of emergency-triggered DR in the service areas of the three largest investor-owned utilities (IOU).⁵ The IOUs and other parties⁶ provided comments on the CAISO analysis of emergency-triggered DR.

On July 18, 2008, the Commission initiated Phase 3 of this rulemaking to address the "operation of the investor-owned utilities' emergency-triggered DR programs in the future electricity wholesale market."⁷ Parties were asked to file prehearing statements on nine questions regarding the emergency-triggered DR programs.

Pre-hearing statements were filed on July 27, 2008, and a prehearing conference (PHC) was held on August 20, 2008, during which the CAISO, the IOUs and other parties largely reiterated their positions as stated in their filings on July 9 and July 27, 2008.

⁴ *Administrative Law Judge's Ruling Requesting California Independent System Operator Information on Emergency-Triggered Demand Response*, June 9, 2008.

⁵ Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) are the three largest IOUs in California. Throughout this decision, when we refer to the "IOUs," unless otherwise noted, we mean these three utilities.

⁶ Commenters included the Division of Ratepayer Advocates (DRA); the California Large Energy Consumers Association (CLECA); Enernoc Inc., EnergyConnect, Inc., Converge, Inc., and Consumer Powerline (filing together as Joint Parties); and the California Manufacturers and Technology Association (CMTA).

⁷ *Assigned Commissioner's and Administrative Law Judge's Amended Scoping Memo and Ruling*, July 18, 2008, at 1.

Thereafter, Phase 3 was delayed pending the implementation of the MRTU by the CAISO. Subsequently, the IOUs, working in collaboration with the CAISO and other stakeholders, proposed to modify their Base Interruptible Programs (BIP) by adding a new trigger condition to the program: a warning notice issued by the CAISO along with a determination by the CAISO that a Stage 1 emergency is imminent, consistent with CAISO operating procedure E-508B. The IOUs, the CAISO and other stakeholders agreed to continue to pursue efforts to voluntarily transition emergency-based DR program participants to price-responsive DR. The proposed modifications were approved in Resolution E-4220 on January 29, 2009.

Subsequently, in Application (A.) 08-06-001 et al. (regarding the IOUs' 2009-2011 DR program portfolios), the Commission adopted Decision (D.) 09-08-027 on August 20, 2009, imposing interim caps on the IOUs' emergency-triggered DR programs. D.09-08-027 reasoned:

In recognition of the ongoing examination of the appropriate size and role of emergency programs in R.07-01-041 Phase 3, we decline to expand existing emergency-triggered programs or adopt new emergency programs with similarly limited triggers. Instead, we cap these programs at their current enrollment (in megawatts) and funding levels pending the resolution of R.07-01-041 Phase 3, with a limited exception for the PG&E SmartAC™ program.⁸

With the implementation of the MRTU, Phase 3 was re-activated on July 8, 2009 to hold workshops on the emergency-triggered DR programs.⁹

⁸ D.09-08-027 at 33.

⁹ See Assigned Commissioner's Ruling Amending the Scoping Memo and the Schedule of Phase 3 of this Proceeding (Amended Scoping Memo), July 8, 2009.

Three workshops were scheduled to examine the optimal size of the emergency-triggered DR programs, consider alternatives to the emergency-triggered DR programs, and address implementation and transition issues for any alternatives identified in Workshop 2.

Workshop 1 was held on August 10, 2009, and addressed the optimal size for emergency-triggered DR programs in each IOU's service area to maintain grid reliability. Stakeholders participated in panels to discuss positions and address questions. As documented in the Workshop Report and the post-Workshop comments, filed August 20, 2009 and August 27, 2009, respectively, parties engaged in vigorous debate on whether the emergency-triggered DR programs should be reduced from their current size, and little party consensus was achieved.

On September 23, 2009, Administrative Law Judge (ALJ) Sullivan issued a ruling summarizing parties' positions on the Workshop 1 issues, and providing additional guidance on Workshop 2. The ruling, in particular, noted that:

The Amended Scoping Memo ... explicitly states regarding the CAISO-proposed optimal size of emergency-triggered programs: "[i]f there are no alternatives submitted, then the Commission may assume that the recommendations made by CAISO are valid and proceed towards an emergency-triggered DR that resolves the issues raised by CAISO."¹⁰

While making no final determination regarding a cap on the emergency-triggered DR programs, the September 23, 2009 ruling directed parties to assume for purposes of Workshop 2 a cap on the emergency-triggered

¹⁰ ALJ's Ruling Regarding Workshop 2, September 23, 2009, at 9 (footnotes omitted).

DR programs of 1,000 MW statewide, allocated based on the CAISO's Emergency Operating Procedure E-508A Load Shedding Guide.¹¹

Pre-workshop comments were filed on October 12, 2009, and Workshop 2 was held on October 20, 2009 to examine alternatives to emergency-triggered DR programs. Parties discussed, among other issues, the merits of a 1,000 MW statewide cap and allocation as proposed by the CAISO; however little consensus was reached, as documented in the Workshop 2 Report, filed October 30, 2009.

At the conclusion of Workshop 2, parties requested additional time prior to Workshop 3 to work together to explore possible resolutions for proposal to the Commission. In a November 4, 2009 e-mail ruling, ALJ Sullivan granted the parties' request, removing Workshop 3 from the Commission's calendar to allow time for settlement discussions.¹²

On January 20, 2010, the Settling Parties provided "notice" of a settlement conference pursuant to Rule 12.1 of the Commission's Rules of Practice and Procedure (Rules). A settlement conference was subsequently convened on January 29, 2010. Participating parties were the Settling Parties and the Alliance for Retail Energy Markets (AReM).

On February 22, 2010, a joint motion asking for the adoption of a settlement was filed in the proceeding.¹³ The Joint Motion reports that

¹¹ *Id.* at 10.

¹² This was accomplished by ALJ Sullivan's e-mail to all parties in the service list in this proceeding on November 4, 2009.

¹³ *Joint Motion of California Independent System Operator Corporation, California Large Energy Consumers Association, Division of Ratepayer Advocates, Enernoc, Inc., Pacific Gas and Electric Company (U 39-E). San Diego Gas and Electric Company (U 902-E) and Southern California Edison Company (U 338-E) and The Utility Reform Network (Settling Parties) for Adoption of Settlement (Joint Motion); Settlement Attached (Settlement).*

subsequent to Workshop 2, the Settling Parties met on numerous occasions to explore a possible settlement and that these efforts eventually resulted in a settlement in principle among the Settling Parties.

The Joint Motion reports that after the settlement conference, the Settling Parties worked to finalize their settlement efforts and that this resulted in the Settlement, which is Attachment A to this decision. The Joint Motion reports that although AReM is not a party to the settlement, AReM does not oppose the settlement.

On March 3, 2010, an ALJ Ruling denied the Settling Parties' request for a shortening of time to comment on the Settlement and ordered the Settling Parties to serve by March 5, 2010, the Joint Motion on the service list in R.09-10-032, a proceeding addressing issues concerning Resource Adequacy (RA).

There were no comments filed on the Joint Motion and the Settlement.

3. Proposed Settlement

The Settlement is included at Appendix A to this decision.

In the Settlement, the Settling Parties propose changes to the emergency-triggered and reliability-triggered DR programs that will make the programs more useful and cost-effective. We will discuss the key provisions of the Settlement in this section.

3.1. Standard of Review for Settlements

The Commission reviews the Settlement under the requirements set forth in Article 12, Rules 12.1 – 12.7 of the Commission's Rules.

Rule 12.1(a) requires parties to submit a settlement by written motion within 30 days after the last day of hearing. There were no evidentiary hearings on Phase 3 issues in this proceeding. Therefore, the time limits in Rule 12.1(a) are inapplicable to the situation at hand.

Consistent with Rule 12.1(b), on January 20, 2010, the Settling Parties provided public notice of a settlement conference. A settlement conference was convened on January 29, 2010. Participating parties were the Settling Parties and AReM. The Settling Parties report that after the settlement conference, the Settling Parties worked to finalize their settlement efforts, resulting in the Settlement attached hereto as Exhibit A. The Settling Parties also report that although AReM did not join the Settlement, it has indicated it does not oppose the Settlement. Thus, the Settlement meets the requirements of Rule 12.1(a) and 12.(b).

Finally, Rule 12.1(d) provides that, prior to approval, the Commission must find a settlement “reasonable in light of the whole record, consistent with law, and in the public interest.” We will discuss the terms of the Settlement and make a determination as to whether it meets this standard.

3.2. Summary of the Settlement

The material terms of the settlement include a statement regarding to whom the Settlement applies; a program for transitioning customers to a price-responsive DR production; caps on the amount of reliability-triggered DR which counts towards RA requirements; the details of a “Wholesale Reliability Demand Response Product” that the CAISO agrees to develop; and provisions relating to contingencies that arise from regulatory reviews. We discuss each briefly.

3.2.1. Applicability of Settlement

The Joint Motion states in great detail the applicability of the settlement to companies and programs:

The Settlement applies to all IOU emergency-triggered DR programs, which are referred to in the Settlement as “emergency-based” or “reliability-based DR programs,”

and are described as “programs in which customer load reductions are triggered only in response to abnormal and adverse operating conditions, such as imminent operating reserve violations or transmission constraint violations (i.e., emergencies).” The reliability-based DR programs subject to the Settlement are:

- Base Interruptible Program (BIP);
- Air Conditioning Cycling programs of PG&E and SCE (A/C Cycling);
- Agricultural and Pumping Interruptible Programs of SCE (AP-I); and
- Any future reliability-based DR program offered by an IOU.

DR programs that are not triggered strictly for emergencies are not considered by the Settlement to be “emergency-based” or “reliability-based,” even if they include emergency-based (or reliability-based) triggers.¹⁴

These are all the programs that were the subject of this phase of this proceeding.

3.2.2. Transition to a Price-Responsive DR Product

One goal of this Settlement is to reduce the amount of emergency-triggered or reliability-triggered DR that counts for RA from the current 3.5% of system peak to 2% of system peak, consistent with the CAISO’s estimate of the amount of reliability-triggered DR that is useful to its management of the California grid while still retaining the customers as part of the DR program in ways that can decrease the cost of system peaks.

¹⁴ Joint Motion at 8, footnotes omitted.

To achieve this reduction, the Settlement plans to transition many customers onto price-based DR products that can bid into the MRTU. The Joint Motion describes the current and planned efforts to move customers to price-based Demand Response programs as follows (quoting directly from a bulleted list in the Joint Motion):

- San Diego Gas & Electric (SDG&E's) A/C Cycling program (called Summer Saver) is already price responsive, and is not considered a reliability-based DR program;
- Pacific Gas and Electric (PG&E) has proposed to transition customers on its existing reliability-based A/C Cycling program (called SmartAC™) to a program that includes a price trigger in A.09-08-018. PG&E will begin the transition SmartAC™ to the price-responsive option upon the Commission's approval of A.09-08-018; and
- SCE will propose a voluntary, price-responsive option for its A/C Cycling program (called Summer Discount Plan (SDP)) by the end of the second quarter 2010, including an option to allow SDP to be bid into the ISO market. Implementation of transition is expected to occur over the 2011-2014 timeframe. SCE agrees to actively promote customer transition to the price-responsive option through customer communications and by decreasing incentives from current levels for reliability-based MW.¹⁵

The Settlement envisions that many customers will transition from the current emergency-triggered DR program to these fully price-responsive programs that will participate in the MRTU.

¹⁵ Joint Motion at 9-10.

3.2.3. Caps on the Amount of Reliability-Triggered Demand Response that Counts for Resource Adequacy

The transition to price-responsive DR is part of the Settlement's strategy to meet the caps on the size of emergency-triggered or reliability-triggered DR programs that count for RA. Specifically, as part of the Settlement, the Settling Parties have agreed to the following caps on reliability-triggered DR that counts for RA:

- A limit on reliability-triggered DR that counts for RA, calculated as a percentage of system peak as follows:
 - In 2012, 3% of system peak;
 - In 2013, 2.5% of system peak; and
 - In 2014, 2% of system peak.
- A compliance process whereby a utility measures and reports on its success in meeting the targets.
- A penalty mechanism for failure to meet targets.
- An allotment of the total reliability-triggered DR between the three utilities, thereby creating individual targets and caps.
- Other conditions relating to enforcement and modification of agreement terms.¹⁶

Although the Settlement adopts firm caps on the size of the emergency-triggered or reliability-triggered DR that counts for RA, a condition of the settlement is the elimination of the May 2010 enrollment caps on reliability-triggered or emergency-triggered DR.¹⁷ Thus, the reliability-triggered

¹⁶ See Joint Motion at 10-12 for a fuller discussion of these terms.

¹⁷ See Joint Motion at 10-12.

DR programs will become and remain open even as the utilities must manage a reduction in the size of these programs to meet the Settlement's caps on reliability-triggered DR programs that count for RA.

In addition, the Settlement includes terms by which parties can bring the issues in this proceeding back to the Commission if the CAISO is unable to establish a Reliability-Triggered Demand Response Product (RDRP product) by the end of 2011 or if there are "major changes in load, resource, regulatory or economic conditions from those anticipated at the time of the Settlement."¹⁸ Furthermore, the Settlement does not preclude IOUs from proposing other reliability-triggered DR products, but any product that counts for RA would count against the cap. Any new product would require Commission approval.

3.2.4. The CAISO Wholesale RDRP Product

Another key element of this settlement is the design of a new reliability-triggered DR product that will serve as the mechanism through which the IOU emergency-triggered and reliability-triggered programs will be integrated into the CAISO market. A goal of this new product is to improve the cost-effectiveness of reliability-triggered DR by enabling it to work better in the CAISO's dispatch sequence. Specifically, a reliability-triggered DR product should enable the CAISO to use this resource before buying "exceptional dispatch" energy or capacity.

As part of the Settlement, CAISO commits to the development of just such a product. The Joint Motion describes this RDRP product as follows (quoting directly):

Section A of the Settlement describes the ISO's development of a wholesale reliability DR product (RDRP) that will be compatible with the IOUs' reliability-based DR programs and enable those programs to be bid into the RDRP product. The key features of the RDRP product are:

- Its design will accommodate the primary features of the existing IOU reliability-based DR programs;
- RDRP capacity will count for RA, subject to a MW limit specified in Section C of the Settlement;
- The amount of RDRP capacity will not be limited; however, the amount of RDRP capacity that can count for RA will be limited, as specified in Section C of the Settlement...;
- RDRP can be triggered at the point immediately prior to the ISO's need to canvas neighboring balancing authorities and other entities for available exceptional dispatch energy or capacity. Once triggered, RDRP will be economically dispatched by location and quantity through the ISO's Automated Dispatch System (ADS);
- RDRP will not preclude the IOUs' use of the RDRP capacity for transmission and local distribution purposes;
- RDRP will allow for an annual test event; however an actual event in a given year is expected to eliminate the need for a test event for that year; and
- RDRP will be open to all qualified DR providers.

The Settlement requires the ISO to develop a stakeholder process in 2010 to develop RDRP, with the objective of obtaining the ISO board approval in the fourth quarter of

¹⁸ Joint Motion at 12.

2010, so that RDRP can be incorporated into the IOUs' 2012 – 2014 DR program cycle applications in January 2011.¹⁹

Thus, following the adoption of this Settlement, those customers who desire to receive resource adequacy treatment for their re-configured emergency- and reliability-triggered DR programs must integrate those programs into the wholesale market using this new product, and the programs, as reconfigured, will be reviewed by the Commission in the new 2012-2014 program cycle.

3.2.5. Request for Regulatory Approval of Settlement in Entirety

As is common for a settlement, the Settling Parties have committed themselves to the settlement as written. The Joint Motion states as follows:

The Settling Parties agree that the Settlement should be approved in its entirety and without modification. Any Settling Party may withdraw from the Settlement if the Commission modifies it, subject to good faith negotiations to try to restore the balance of benefits and burdens of any modified settlement adopted by the Commission.²⁰

4. Discussion

The settlement, as described above, makes reliability-triggered DR programs more useful to the CAISO and more economic to ratepayers. Furthermore, the Settlement transitions programs from reliability-triggered to price-responsive (which is consistent with overall Commission policy objectives).

¹⁹ Joint Motion at 8-9.

²⁰ *Id.*

Finally, the Settlement reduces the overall size of the reliability-triggered power counting for RA.

As a result, the Settlement either answers or renders moot the questions and concerns that gave rise to Phase 3 of this proceeding.

4.1. The Settlement is Reasonable in Light of the Entire Record of this Proceeding

The Settling Parties contend (quoting directly from the Joint Motion) that:

[The] Settlement reasonably enables the integration and operation of the IOUs' reliability-based DR programs in the wholesale electricity market because:

- The Settlement establishes a process for the development of a wholesale product that will allow for the participation of reliability-based DR in the wholesale market and maintain an appropriate level of reliability-based DR for grid reliability and RA purposes. The RDRP product design reasonably recognizes the value of service of the participating reliability-based DR MW and the need to trigger such resources after conventional supply-side resources. RDRP enables all DR providers to bid in capacity, with no limits on the amount of RDRP capacity (limits are on the amount of RDRP capacity that can count for RA), and allows the IOUs to continue to use the RDRP capacity for local transmission and distribution needs.
- The Settlement limits the amount of reliability-based DR that will count for RA, and reasonably commits the IOUs to implement and promote price-responsive options for reliability-based DR program participants, while appropriately mitigating concerns over removal of customers from reliability-based DR programs in the absence of reasonable alternatives and sufficient transition time. The Settlement provides adequate time and incentive for the IOUs to implement

price-responsive transition efforts to effectively reduce reliability-based DR participation to the 2% limit by 2014, and for creation of remedial measures for failure to do so. The final 2% limit on the reliability-based DR sufficiently addresses the ISO's concerns over the level of statewide emergency DR MW, while accommodating the current IOU BIP enrollment of large interruptible customers for whom price-responsive options may not be feasible.

- The Settlement provides a reasonable measure of stability to BIP participants and mitigates the uncertainty that they have faced in the last several years about the continued nature of the BIP program. The Settlement reasonably resolves a variety of transitional issues for the reliability-based DR programs during a period of considerable change in the DR landscape, including the installation of advanced metering and implementation of dynamic pricing for residential and small commercial customers; the integration and operation of DR into the new wholesale market design; and the development of scarcity pricing. The Settlement provides a reasonable means of addressing the reliability-based DR programs while DR developments are in flux and until advanced metering, dynamic pricing, and scarcity pricing are in place.
- The Settlement advances the Commission's objectives for expanding use of price-responsive DR by committing SCE to introduce a price-responsive option in its A/C Cycling program, the largest such program in the State; and by using the Commission's rules on dual participation to help maximize participation on price-responsive DR options. Specifically to the latter point, the Settlement does not limit reliability-based MW that dual-participate in a price-responsive program/option as long as the dual MWs can be identified and measured in accordance with the DR load impact protocols established by the Commission in D.08-04-050. The current caps on the reliability-based

DR programs preclude any MWs above the caps irrespective of whether such MWs dual-participate in a price-responsive program/option.

- The Settlement provides a reasonable process for modifying the reliability-based DR programs while seeking to preserve existing participation levels in the IOU DR programs.
- The Settlement recognizes the contribution of the reliability-based DR programs to local reliability value.
- The Settlement provides the opportunity to reexamine the limit on reliability-based DR programs as well as the IOU allocation (beginning in compliance year 2014) as circumstances may change in the future.²¹

We agree.

The Settlement successfully integrates the operation of the IOUs' emergency-triggered DR programs into the wholesale electricity market. The Settling Parties are reflective of the affected interests in Phase 3 of this proceeding. The CAISO represents wholesale market interests; DRA and TURN represent bundled ratepayer interests, including residential and small business customers; CLECA represents the interests of large customers participating in the IOUs' emergency-triggered DR programs; EnerNOC represents the interests of third-party DR providers; and PG&E, SCE and SDG&E represent their interests as IOUs offering DR programs to their customers.

As noted in the procedural history, the record in this proceeding is quite extensive and provides support for the Settlement. Thus, the Settlement is reasonable in light of the entire record.

²¹ *Id.* at 14-15.

4.2. The Settlement is Consistent with the Law and Prior Commission Decisions

The Settlement is consistent with the law and prior Commission decisions. First, the Settling Parties reached agreement in accordance with Rule 12.1. The Settling Parties noticed the convention of a settlement conference on January 20, 2010, and convened a settlement conference on January 29, 2010 in San Francisco to describe and discuss the terms of the Settlement. The settlement conference was attended by representatives of Settling Parties as well as by AReM. The Settlement was executed after the settlement conference held on January 29, 2010.

Second, the Settlement is consistent with the Commission's and the State's objectives to encourage participation in preferred price-responsive DR programs, and integrate DR into the wholesale electricity markets to promote cost-effective DR as a priority resource, as articulated in numerous prior Commission decisions issued in various DR-related proceedings.

4.3. The Settlement is in the Public Interest

The Settlement is in the public interest because it enables the integration and operation of the IOUs' reliability-based DR programs in the wholesale electricity market in a manner that ensures the continued availability of reliability-based DR for grid reliability and RA purposes while encouraging the transition of IOU customers to preferred price-responsive DR options and a more-efficient reliability-based DR product.

In addition, the Settlement is a reasonable compromise of the Settling Parties' respective positions. Furthermore, the adoption of this Settlement will reduce the Commission resources needed to resolve Phase 3 of this proceeding.

4.4. The Settlement is Not Opposed by Any Active Party in this Proceeding

The Settlement is not opposed by any active party in this proceeding. Although AReM did not sign the Settlement, it has indicated that it does not oppose the Settlement.

4.5. Adopting the Settlement is Reasonable

Based on our review and the discussion above, the Commission finds the Settlement to be reasonable in light of the whole record, consistent with the law, and in the public interest. Therefore, we adopt the Settlement.

4.6. Further Directions Concerning the 2011 Demand Response Filing of the Utilities

As recognized by the Settlement, the Commission retains full authority to “determine the appropriate action to take with regards to the ‘oversupply’ of reliability-based DR ...”²²

A goal of the Commission has been to ensure that ratepayer funds do not subsidize the reliability-based DR in amounts that exceed what the CAISO can use. This provision of the settlement (as well as the cap on the amount of MW for reliability-triggered DR that counts for RA) is consistent with the Commission’s overall policy goals.

To facilitate the Commission in determining the “appropriate action concerning ‘oversupply’”²³ in order to ensure that ratepayer funds do not subsidize reliability-triggered DR in amounts that exceed the settlement caps, the Commission needs further information. For this reason, we will require that in the filing of the 2011 DR applications, each utility will propose in its application a

²² Settlement at 9.

²³ *Id.*

plan as to how it will limit enrollment in reliability-triggered DR programs in accordance with the settlement caps as well as a regulatory mechanism that ensures that ratepayer funds will not subsidize the tariff provision of reliability-triggered DR if an oversupply is determined.

5. 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 June 14, 2010 by the Settling Parties. There were no reply comments. The Settling Parties expressed support for the proposed decision and requested certain clarifications, which we have incorporated into this decision.

6. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Timothy J. Sullivan is the assigned ALJ in this proceeding.

Findings of Fact

1. On February 20, 2010, CAISO, CLECA, DRA, Enernoc, PG&E, SDG&E, SCE and TURN submitted a Joint Motion with an attached Settlement.
2. No party submitted comments on the Settlement.
3. The proposed Settlement resolves all outstanding issues in Phase 3 of this proceeding.
4. A settlement conference was noticed by the Settling Parties and convened on January 29, 2010.
5. The Settlement includes all active parties to the proceeding with the exception of AReM.
6. AReM does not oppose the settlement.

7. The Settlement Agreement was served on the service list in R.09-10-032, a proceeding concerning Resource Adequacy.

8. The Settlement Agreement:

- a. calls for the development by the CAISO of a wholesale reliability-triggered demand response product that efficiently and effectively integrates with the CAISO procedures for managing the California grid;
- b. will enable the CAISO to use reliability-triggered demand response resources before buying costly “exceptional dispatch” energy or capacity;
- c. reduces the amount of power associated with emergency-triggered and reliability triggered-programs which counts for Resource Adequacy from the current level of 3.5% of system peak to 2.0% of system peak;
- d. proposes a transition plan that moves demand response resources from reliability-triggered products to price-responsive products that are easily integrated into the MRTU market, a policy of encouraged by the Commission; and
- e. takes into account the business needs of current participants in the emergency-triggered demand response program and develops new programs and transition products.

Conclusions of Law

1. The Settling Parties have complied with Rule 12.1(a) and 12.1(b).
2. The Settlement at Appendix A is reasonable in light of the whole record, consistent with the law, and in the public interest.
3. The Settlement should be adopted and should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Settlement attached to this decision as Appendix A is adopted. As provided in the adopted Settlement:

- a. The California Independent System Operator Corporation (CAISO) shall initiate a stakeholder process in 2010, with the objective of developing a wholesale reliability demand response product (RDRP) that is compatible with the reliability-based demand response programs of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) and consistent with the Settlement.
- b. In their Demand Response applications to be filed in January 2011, PG&E, SCE, and SDG&E each shall:
 - a. address integration of its reliability-based demand response programs into the RDRP developed by the CAISO;
 - b. address and seek approval of its program marketing efforts; and
 - c. Propose a plan as to how it will limit enrollment in reliability-triggered Demand Response (DR) programs in accordance with the settlement caps as well as a regulatory mechanism for consideration by the Commission that ensures that no Resource Adequacy payments or other ratepayer funds will subsidize the tariff provision of reliability-triggered DR if an oversupply is determined.
- c. In the event of a Commission decision approving PG&E's pending Application 09-08-018 filing, PG&E shall begin to transition its existing reliability-based Smart ACTM customers to a program that adds a price trigger as directed in that decision and, consistent with the provisions of the Settlement Section B-1, shall proceed with deliberate speed.
- d. SCE shall file an application to create a price-responsive option for its AC Cycling program by the end of the second

- quarter of 2010 that will modify the program to include a proposal to allow the program to be bid into CAISO markets.
- e. The freeze on demand response reliability-based program participation that was adopted in Decision 09-08-027 is removed and replaced with the following annual limits, as a percent of the CAISO's all-time coincident peak demand, which currently is 50,270 megawatts (MW):
 - a. For 2012 the limit is 3%.
 - b. For 2013 the limit is 2.5%.
 - c. For 2014 and later, the limit is 2%, unless revised in a future proceeding.
 - f. In their annual April 1st Load Impact Compliance Protocol reports, PG&E, SCE, and SDG&E each shall include a summary of its reliability-based demand response program (generally referred to as BIP, A/C Cycling, and AP-I) capacity and will compare the reliability-based capacity to its share of the overall limit (plus tolerance), consistent with Section C.2 of the Settlement.
 - g. PG&E, SCE, and SDG&E shall undertake reasonable efforts to promote customer participation in price-responsive demand response programs, consistent with Decision 09-08-027 (pages 30 – 31) and the Settlement.

- h. Any A/C Cycling program for which a price trigger proposal is currently pending before the Commission is not restricted from recruiting customers at this time, subject to future Commission action that may limit the size of such a program.

This order is effective today.

Dated June 24, 2010, at San Francisco, California.

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

D1006034 APPENDIX A Sullivan