

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39-E) for Approval of Demand Response Programs, Pilots and Budgets for 2012-2014.	Application 11-03-001 (Filed March 1, 2011)
Application of San Diego Gas & Electric Company (U 902 M) for Approval of Demand Response Programs and Budgets for Years 2012-2014.	Application 11-03-002 (Filed March 1, 2011)
Application of Southern California Edison Company (U338-E) for Approval Demand Response Programs, Activities and Budgets for 2012-2014.	Application 11-03-003 (Filed March 1, 2011)

JOINT RESPONSE OF DR AGGREGATORS TO CONSOLIDATED APPLICATIONS

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Comverge, Inc., EnergyConnect, Inc., and EnerNOC, Inc. (“DR Aggregators”) respectfully file this Joint Response to the Consolidated Applications (A.) 11-03-001 (Pacific Gas and Electric Company (PG&E)), A.11-03-002 (San Diego Gas and Electric Company (SDG&E)), and A.11-03-003 (Southern California Edison Company (SCE)).¹ Each of these applications requests approval of the individual investor-owned utility’s (IOU’s) 2012-2014 Demand Response (DR) Programs and Budgets. This Joint Response is filed and served pursuant to Rule 2.6 of the Commission’s Rules of Practice and Procedure; the Administrative Law Judge’s (ALJ’s) Ruling of March 30, 2011, consolidating these applications and setting a prehearing conference (PHC); and the ALJ’s Ruling, sent to the service list by electronic mail on March 31, 2011, setting April 4, 2011, as the due date for protests and responses to the consolidated applications.

¹ These applications were consolidated by Administrative Law Judge’s (ALJ’s) Ruling of March 30, 2011.

I. SUMMARY

Rule 2.6 of the Commission's Rules of Practice and Procedure allow parties to either protest or respond to an application. A "protest" objects to the granting, in whole or in part, of the authority sought in an application; a "response" does not object to that authority, but does present information pertinent to resolving the application.²

While DR Aggregators do not question or object to the general authorization sought by PG&E, SDG&E, and SCE for their DR programs through 2014, DR Aggregators do believe that the applications seek authority that requires the Commission's immediate attention and approval or modification to be consistent with applicable Commission decisions. In compliance with Rule 2.6, by this response, the DR Aggregators also describe the effect of the applications on each company's business, an overview of the DR Aggregators' recommended Commission actions in response to the applications, and the DR Aggregators' position on the proposed category, the issues to be considered, a proposed schedule, and the need for an evidentiary hearings in these consolidated applications.

In summary, based on a preliminary review of the three applications, the DR Aggregators believe that the applications, together and individually, raise issues on which the following Commission action is required:

- The Commission needs to provide expedited authority to certain IOU proposals as time is of the essence:
 - The Commission should approve PG&E's request to extend existing aggregator managed portfolio (AMP) agreements that expire in 2011 by August 2011;
 - The Commission should direct SCE to execute its proposed amendments with aggregators to conform existing bilateral contracts to incorporate the baseline and dual participation rules adopted in D.09-08-027 and inform the Commission via Advice Letter prior to the 2011 DR season.

² Commission Rules of Practice and Procedure, Rule 2.6(b) and (c).

- The Commission needs to provide regulatory certainty as to its commitment to demand response, including third-party demand response programs:
 - The dynamic, changing landscape of demand response is creating market uncertainty for the future of demand response and energy efficiency;
 - Demand Response Providers (DRPs) are demand response specialists and provide valuable services to customers and the investor-owned utilities (IOUs) that continue even in an integrated CAISO environment;
 - Premature entry into CAISO markets before the structure is fully developed will be disruptive to third-party aggregators and their customers;
 - Direct Participation in wholesale CAISO markets will not replace the need for bilateral contracts with aggregators;
 - PG&E's request to issue a new solicitation for AMP agreements that PG&E can bid into Proxy Demand Resource (PDR) in 2013 is justified and should be approved; and
 - The Commission should authorize the IOUs to procure new demand response contracts that can be bid into the CAISO market as PDR.
- The Commission should approve SDG&E's Critical Peak Pricing (CPP) Incentive Mechanisms and guaranteed payment proposal and should consider the application of this type of incentive mechanism across all three IOUs.
- SCE's and SDG&E's proposed changes to modify the requirements of the TA/TI payments are extremely onerous and should not be approved.
- PG&E's Auto-DR funding should be available to customers that enroll in programs through DRPs.
- PG&E's PeakChoice program should be evaluated to determine if there is benefit to allowing participation by DRPs at this time.
- The IOUs' proposed DR programs for commercial and industrial customers must allow customers to simultaneously participate in other DR programs, including offerings from DRPs, consistent with the Commission's policy in D.09-08-027. However, the Commission's policy also requires one modification to correct an unintended consequence.
 - So long as there are guidelines for ensuring that customers are not paid twice for a single load drop when participating concurrently in two demand response activities, DR Aggregators propose expanding dual participation options consistent with this intent.

- SDG&E's proposal to restrict dual participation is not consistent with D.09-08-027 and should be denied.
- Customers on PG&E's net metering tariffs should be allowed to participate in the Capacity Bidding Program (CBP) and third-party DR programs consistent with the precedent established by SCE and SDG&E and the state's goal to facilitate increased renewable integration.
- DR Aggregators support SCE's efforts to remove barriers at the CAISO by developing cost-effective telemetry solutions and encourage the Commission's support.
- The baseline methodology must be modified to better reflect the effect of prescribed curtailment measures and to appropriately pay customers for verified load reductions.
- The Commission should adopt a procedural schedule that results in the issuance of a final decision on the Applications no later than December 1, 2011.

The DR Aggregators reserve the right to raise additional issues and make further recommendations pending further review of the applications, the responses and protests of other parties, and any replies by the IOUs. Such additional issues, if any, can be addressed at the Prehearing Conference (PHC) now scheduled for May 3, 2011.

II. EFFECT OF THE CONSOLIDATED APPLICATIONS ON THE DR AGGREGATORS.

The DR Aggregators currently aggregate commercial and industrial customers to participate in every major demand response program managed by grid operators across the country, including California:

- **Comverge, Inc.** (NASDAQ: COMV) Comverge is a leading provider of clean energy solutions that improve grid reliability and supply electric capacity on a more cost effective basis than conventional alternatives by reducing base load and peak load energy consumption.
- **EnergyConnect Inc.** (OTCBB: ECNG) EnergyConnect's integrated Demand Response services enable Independent System Operators, Regional Transmission Organizations and electric utilities to organize operational efficiencies and savings. By providing large

commercial and industrial users of electricity with easier access to power markets, the company's GridConnect™ software allows participants to manage energy consumption in response to market prices or regional shortages, effectively lowering energy costs while supporting grid reliability needs.

- **EnerNOC, Inc.** (NASDAQ: ENOC) EnerNOC is a publicly traded corporation that is a leading developer and provider of clean and intelligent power solutions to commercial, institutional, and industrial customers, as well as electric power grid operators and utilities. EnerNOC's technology-enabled demand response and energy management solutions help optimize the balance of electric supply and demand. EnerNOC serves customers throughout the Northeastern United States, as well as New Mexico, Florida, Texas, Idaho California and the Tennessee Valley.

Each of the DR Aggregators has actively participated individually and jointly in Commission proceedings focused on IOU demand response programs. With respect to A.11-03-001, A.11-03-002, and A.11-03-003, the businesses of each of the DR Aggregators are directly affected by the 2012-2014 DR programs and budgets proposed by the utilities in those applications.

III. CERTAIN IOU PROPOSALS REQUIRE EXPEDITED REVIEW AND APPROVAL.

Based on its review of the consolidated applications, the DR Aggregators strongly believe that certain, specific proposals require implementation prior to an expected final decision on these applications. Specifically, the DR Aggregators and the customers who participate in their programs may be harmed and the DR market will be disrupted unless the Commission permits extension of existing contracts through 2012. The DR Aggregators, therefore, recommend that the following proposals be promptly reviewed and approved by the Commission by expedited ruling or interim decision.

A. The Commission should approve PG&E's request to extend existing AMP agreements that expire in 2011 by August 2011.

PG&E's existing AMP agreements will expire by the end of 2011, but under any reasonable schedule for these consolidated applications, it is unlikely that a final decision in this proceeding will be issued before December 2011. Without expedited approval by the Commission to extend these contracts for one year, the contracts will expire prior to that final decision or a resolution of PG&E's requested authorization to issue a new solicitation for AMP contracts.

Under these circumstances, the DR Aggregators believe that it is imperative for the Commission to approve PG&E's program and funding request to permit it to extend these contracts through 2012. Such a step is needed to minimize the uncertainty for third-party aggregators and their DR customers as to the continuation of the contracts and preserves the Commission's commitment to existing DR resources. DR Aggregators, therefore, request that, by August 18, 2011, the Commission issue an interim order, or ruling, in this proceeding approving PG&E's requested extension so that aggregators may work with customers to continue commitments through 2012.

Such an approach is completely consistent with existing precedent for DR programs. Specifically, in the last consolidated 3-year DR Program applications (A.08-06-001, et al.), the Commission in Decision (D.) 08-12-038, approved "bridge" funding to extend aggregator contracts during the pendency of that proceeding. In addition, in D.10-12-033, the Commission recently provided the following specific direction to PG&E regarding the extension of such contracts:

“If circumstances warrant and new aggregator contracts are not available in 2012, PG&E may request that its existing contracts be extended to continue for that year.”³

Based on this precedent and to avoid confusion or disruption in existing contracts, it is clear that the Commission intended that these contracts be extended through 2012. DR Aggregators, therefore, support PG&E’s request to extend its existing cost effective AMP agreements through 2012 to continue to have this valuable resource in PG&E’s electric portfolio. However, in order for aggregators to have sufficient lead time to meet contractual commitments for a 2012 AMP program, DR Aggregators request that this issue be decided by interim decision no later than August 18, 2011.

B. The Commission should promptly direct SCE to execute its proposed amendments with aggregators to incorporate the baseline and dual participation rules adopted in D.09-08-027 in existing bilateral contracts.

DR Aggregators support SCE’s plans to continue to align its current demand response contracts with the baseline and dual participation rules adopted in D.09-08-027, to execute these amendments with the aggregators, and to inform the Commission of the amendments by Advice Letter. Specifically, SCE states in its testimony in A.11-03-003 as follows:

“SCE plans to continue efforts to align the [current] contracts with the current CPUC guidelines related to dual participation and optional baselines. Efforts will also continue to update the MRTU market rules in the contract regarding energy prices and shortfall energy penalties that are obsolete or incomplete. These modifications will only be conducted if both SCE and the aggregator mutually agree to the changes. SCE requests the ability to execute these amendments with the aggregator and inform the CPUC via an Advice Letter.”⁴

Such a proposal is inconsistent with the following direction by the Commission in D.09-08-027:

“We recognize that some contracts that have already been approved by this Commission, or are being approved in this decision, have concurrent program participation requirements that are not consistent with the rules adopted here. We do not require the alteration of existing contracts to make them consistent with

³ D.10-12-033, at p. 9.

⁴ A.11-03-003 (SCE) Testimony, Volume 2, at p. 71.

these rules; however, we do encourage utilities and aggregators to consider these rules when negotiating new contracts or modifying contracts that have been previously approved.”⁵

In addition to granting SCE’s request, however, the DR Aggregators request clarification from the Commission as to whether SCE requires additional authorization to execute the proposed baseline and dual participation rules, as outlined above, to bring the current contracts into conformity with D.09-08-027. While SCE’s testimony suggests that these amendments can be executed with the aggregators, with SCE then informing the Commission of these changes by advice letter, an approach which the DR Aggregators support, SCE also states:

“SCE plans to continue efforts to align existing contracts with the current CPUC decisions offering guidance regarding dual participation and optional baselines. For example, in D.09-08-027, the Commission required that ‘in the case of simultaneous or overlapping events called in two programs, a single customer enrolled in two programs will receive payment only under the capacity program, not the simultaneous event for the energy program.’ Two of the existing five DRCs follow an opposite rule (where, during overlapping events, the customer receives payment for the energy program and load reductions are not counted in the capacity program).⁶ For these two DRCs, SCE requests Commission authorization for SCE and the aggregator to amend their contract to conform to the Commission’s general dual participation rules. SCE also seeks Commission approval for SCE to enter into amendments to update the baseline rules to be consistent with the Commission mandate in D.09-08-027, and the MRTU market rules in the contracts regarding energy prices and shortfall energy penalties that are obsolete or incomplete. Following a final decision on these issues in this proceeding, SCE plans to execute bilateral amendments with the aggregator(s) and will make a compliance filing via Advice Letter showing the approved contract amendments.”⁷

The amendments outlined above conform the existing contracts to *existing* Commission requirements in D.09-08-027 and impact DR Aggregators *in 2011*. In these circumstances, such amendments do not depend on or require a final decision in this current proceeding, but should be accomplished now to bring these contracts into conformance with existing law. DR Aggregators, therefore, request that the Commission, by ruling or interim order, direct SCE to

⁵ D.09-08-027, at p. 157.

⁶ A.11-03-003 (SCE) Testimony, Volume 2, at p. 71.

⁷ *Id.*, at p. 72.

execute the amendments with the aggregators now and notify the Commission of those changes by advice letter. It is important that aggregators have the certainty provided by these contract amendments prior to the 2011 DR season.

**IV.
REGULATORY CERTAINTY REQUIRES COMMISSION
CONFIRMATION OF ITS COMMITMENT TO DEMAND
RESPONSE, INCLUDING THIRD PARTY DR PROGRAMS.**

A. The dynamic, changing landscape of demand response is creating market uncertainty for the future of demand response and energy efficiency.

In its testimony in support of A.11-03-003, SCE states that one of its guiding principles for its program portfolio is to “[m]eet the challenges posed by the dynamic, changing landscape of DR.”⁸ SCE further indicates that “the evolving nature of demand response poses challenges to effective program delivery.”⁹

The DR Aggregators certainly agree with these characterizations. Many of the issues posed by the consolidated applications are a reflection of this “dynamic, changing landscape” and are also being addressed in other parts of the country. These issues include new technology and information issues associated with smart grid deployment; automated DR resources; wholesale market participation; and integration with other smart grid applications such as storage, energy efficiency, load balancing for renewable resources. Many of these areas are under development, but may certainly affect the current consideration of DR and the direction adopted for the future.

B. DRPs are demand response specialists and provide valuable services to customers and the IOUs that continue even in an integrated CAISO environment.

The Commission has encouraged reliance on the competitive market for demand response services in recent years. The market has responded through a significant increase in

⁸ A.11-03-003 (SCE) Testimony, Volume 1, at p. 6.

⁹ Id.

both the number of DRPs and the number of interested customers. The ability of DRPs to deliver demand response as firm, dispatchable ramping capacity has been reliably demonstrated in California and throughout the United States.

Moreover, beginning with D.06-11-049, the Commission has continuously recognized the intrinsic value of DRPs, which, by competing for customers, improve demand response programs, increase customer participation, and lower costs. In that key decision, the Commission concluded that “demand aggregators may encourage innovative and less costly demand response programs” and directed “utilities to cooperate with demand aggregators to improve their demand response programs.”¹⁰ From that decision forward, the Commission has consistently supported and approved competitively solicited utility contracts with third parties to “augment existing [IOU] demand response programs,”¹¹ “unleash innovative and cost-effective demand response technologies and activities,”¹² “provide valuable experience with alternative ways of procuring and managing demand response programs,”¹³ and, increase reliance on demand response, an “environmentally sound,” dispatchable, low cost energy resource.¹⁴ Furthermore, as the Commission has emphasized, 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.”¹⁵

Clearly, the active involvement of DRPs is now a critical element in meeting “aggressive” DR goals and offering innovative changes to continually improve customer interest and participation in demand response. DR Aggregators currently aggregate commercial and

¹⁰ D.06-11-049, at p. 16

¹¹ D.07-05-029, at p. 2.

¹² D.06-11-049, at p. 44; D.07-05-029, at p.12.

¹³ D.07-05-029, at p. 12; see also, D.08-03-017, at p. 15

¹⁴ D.07-05-029, at p. 2; D.07-012-048, at p. 9.

¹⁵ D.07-12-048, at p. 9; emphasis original.

industrial (C&I) customers to participate in every major demand response program managed by grid operators across the country. DRPs also have considerable experience with automated notification and remote, automated control of end-use devices and processes to assist customers as they move to dynamic pricing tariffs, and the integration of DR and energy efficiency (EE) integration. Expanding the depth and breadth of DR participation is an ambitious undertaking that requires a variety of talents, skills and resources.

C. Premature entry into CAISO markets before the structure is fully developed will be disruptive to third-party aggregators and their customers.

Demand response aggregators look forward to the opportunity to provide new services through wholesale energy and ancillary services (AS) markets and are working closely with the IOUs, the Commission, the California Independent System Operator (CAISO), and the Federal Energy Regulatory Commission (FERC) to determine how demand response should be structured to participate in the CAISO markets to provide the greatest benefits to California ratepayers. For example, DR Aggregators are actively participating in the Commission's proceedings to determine how demand response will count for resource adequacy and what rules will govern direct participation of DRPs in wholesale markets with retail customers. DR Aggregators are also involved in CAISO stakeholder efforts including the development of its Reliability Demand Response Product, the integration of renewable resources into the grid, and, in the future, will participate in CAISO's efforts to include demand response in a Standard Capacity Product. Finally, DR Aggregators are aware that FERC Order 745 rejects methods of cost allocation that assign costs to the load serving entity associated with the DRP and directs the ISOs, including CAISO, to allocate the costs associated with demand response compensation

proportionally to all entities that benefit from the lower prices produced by dispatching demand response.¹⁶

While all of these efforts are underway in various venues, there continues to be a lack of certainty regarding the future of demand response participation in California that confirms DR Aggregators' concern that the CAISO market structure is not fully developed:

- Third party aggregators cannot participate in PDR with IOU retail customers load.
- The 2010 IOU PDR pilots didn't receive authorization in time for any meaningful participation in 2010 or 2011.
- There is a lack of certainty regarding the rules and incentives for direct participation by third-party aggregators in CAISO wholesale markets.
- The rules regarding eligibility for resource adequacy of DR resources are being formulated, which is important in order to achieve parity with generation resources and retail DR options.
- CAISO's effort to develop a Standard Capacity Product for demand response has been delayed.
- There is a wide range of utility proposals, indicating a lack of certainty regarding whether the Commission will determine that it is appropriate for DR aggregators to contract with the utilities after development of the CAISO's rules to allow direct participation by aggregators in the CAISO markets.

Premature entry into the CAISO markets before these structural issues are resolved will be disruptive to third-party aggregators and their customers.

D. Direct Participation in wholesale CAISO markets will not replace the need for bilateral contracts with aggregators.

Regardless of when or whether participation in CAISO markets matures, the need remains for bilateral contracts to enable DR benefits to continue to be realized. The Commission has consistently recognized that "DR programs are at the top of the loading order for electricity

¹⁶ FERC Order 745 (RM10-17).

procurement,” which “means that cost-effective energy efficiency and DR [are] preferable to other electric resources and shall be taken first when available.”¹⁷

One of the primary policy determinations then for procuring demand response is whether or not it is cost effective. Third-party aggregators have made significant investments in California to be able to deliver reliable, proven, cost-effective demand response to assist the IOUs and the state in meeting its aggressive demand response goals.

DR Aggregators agree with SCE that “the fact that the rules are presently unsettled means that the Commission should keep participation options open for DR aggregators and their customers, rather than foreclose them prematurely.”¹⁸ SCE also recently argued that not allowing the IOUs to sign new contracts with the aggregators would affect the aggregators’ ability to participate directly in the CAISO market:

“Should the Commission adopt the PD’s conclusion that PG&E may not sign new contracts with the aggregators, this would potentially do harm to the aggregators’ long term potential as direct bidders in the CAISO market. This is because multi-year contracts between aggregators and the IOUs increase the opportunity for the aggregators to stay active in the market, solicit potential customers, and eventually bid those customers’ load reductions directly into the CAISO market when they (and the rules that would potentially govern them) are ready. Having a presence in the market will make it easier for the aggregators to build their customer base to the level at which direct participation in CAISO is possible. This is analogous to the context in which electric generator companies operate. These companies may have multi-year contracts with a utility for certain generating facilities, and they can then bid additional generating facilities directly into the CAISO market.”¹⁹

PG&E came to a similar conclusion:

“Having additional aggregator agreements will help retain cost-effective demand response in PG&E’s portfolio and, for some demand response aggregators, the

¹⁷ D.10-12-033, at p. 5.

¹⁸ A.08-06-001, et al. (3-Yr DR Programs) SCE Opening Comments on the PD Granting in Part the Petition of PG&E to Modify D.09-08-027, at p. 2.

¹⁹ *Id.*, at pp. 2-3.

certainty of a new agreement is the only way they will be able to afford to continue to participate in the demand response market in California.”²⁰

DR Aggregators agree with SCE and PG&E that new long term agreements will provide aggregators with the requisite certainty needed to commit resources to the California market. A utility solicitation for demand response products would provide additional choices and payment structures, including the potential to earn a capacity payment, and would increase the amount of available cost-effective demand response, consistent with the Energy Action Plan Loading Order. Since the agreements would not be for direct participation, the Commission’s direct participation rules would not be required to be finalized in advance of the preparation of the new agreements.

The DR aggregators believe that, while the CAISO’s Market Redesign and Technology Update (MRTU) allows aggregators to bid demand reductions directly into CAISO markets as PDR, the lack of resolution on the myriad of implementation issues make it unlikely that rules will be in place to facilitate aggregators bidding directly into CAISO markets in the near term. Those issues include, but are not limited to, those identified in the Direct Participation Phase 4 of the DR OIR, the potential changes implicit in FERC Order 745, the need to modify rules requiring telemetry for purposes of offering non-spinning reserves, the inability to offer spinning reserves, and the lack of a Standard Capacity Product.

DR Aggregators will continue to be actively involved in the Commission’s efforts to resolve the outstanding implementation issues and believe that aggregators are integral to the expansion of DR in California. Until these implementation issues are resolved, however, there will continue to be a high degree of uncertainty surrounding aggregators’ ability to directly

²⁰ A.08-06-001, et al. (3-Yr DR Programs) PG&E Opening Comments on Proposed Decision Granting in Part the Petition of PG&E to Modify D.09-08-027, at p. 3.

participate in CAISO through PDR. DR Aggregators believe that new long-term contracts will provide the certainty needed to continue to commit DR resources to California.

E. PG&E’s request to issue a new solicitation for AMP agreements that PG&E can bid into PDR in 2013 is justified and should be approved.

In D.09-08-027, the Commission denied PG&E’s request to hold a competitive solicitation to replace its AMP agreements that expire at the end of 2011. This request was denied for two primary reasons:

- (a) Lack of certainty regarding MRTU rules for DR; and
- (b) Lack of certainty regarding whether it would be appropriate for DR aggregators to continue to contract with the utilities after development the CAISO rules to allow direct participation by aggregators in the CAISO markets.²¹

While denying PG&E’s request to hold a competitive solicitation to replace the AMP agreements, D.09-08-027 did allow PG&E to “propose a similar RFP in the future, if appropriate based on market conditions.”²²

In D.10-12-033, the Commission again denied PG&E’s request to hold a competitive solicitation to replace its AMP agreements that expire at the end of 2011 and indicated that the 2011 DR program and budget application would “address such things as whether there should be such contracts, the duration of the contracts and other related requirements.”²³ In its application, PG&E renews its request to issue an RFP for new AMP agreements that can be called locationally to support bidding into CAISO markets as PDR in 2013. The new AMP contracts would contain provisions to revise them if necessary due to regulatory changes.

²¹ D.09-08-027, at p. 118.

²² *Id.*, at p. 119.

²³ D.10-12-033, at p. 9.

In supporting PG&E's request to issue a solicitation to replace its existing AMP contracts, SCE addressed the challenge facing IOUs without the long-term certainty that the contracts provide:

“If the Commission decides that the IOUs are not permitted to hold solicitations for new DR aggregator contracts, and, at the same time, it does not approve clear rules defining the role of DR aggregators in bidding PDRs directly into the CAISO market, the Commission would need to approve extensions of the current contracts for a length of time sufficient to cover any gap period. This is because the IOUs, including SCE, require the long-term certainty that these DR aggregator contracts provide, as they make up a portion of the IOUs' Long Term Procurement Plans.”²⁴

SCE concluded that it was premature for the Commission to deny the IOUs the ability to enter into such contracts:

“Unless and until a future Commission decision explicitly prohibits DR aggregator contracts of this nature, it is premature to block the IOUs' efforts to create contracts that are consistent with the emerging PDR rules, solicit bids for them, and seek Commission approval for them at the appropriate time.”²⁵

DR Aggregators share these views expressed by PG&E and SCE. The need for cost effective bilateral demand response contracts that will provide certainty to both the DR aggregators and the IOUs for planning purposes is particularly acute during this period in which the rules for DRP participation in CAISO's PDR remain uncertain and continue to be developed.

F. The Commission should authorize the IOUs to procure new demand response contracts that can be bid into the CAISO market as PDR.

The IOUs' applications are inconsistent in their approach to continuing and growing third party programs. PG&E emphasizes the value of aggregators and the cost-effectiveness of aggregator-managed portfolio contracts:

“PG&E will continue to work with third-party demand response providers, to benefit from their experience and capabilities, and support their continued growth in California's demand response market. PG&E and aggregators bring unique

²⁴ A.08-06-001, et al. (3-Yr DR Programs) SCE Opening Comments on the Proposed Decision Granting in Part the Petition of PG&E to Modify D.09-08-027, at p. 3.

²⁵ *Id.*, at pp. 3-4.

capabilities, that when combined, can provide a more valuable portfolio than separately. AMP and CBP currently provide a large, reliable source of cost-effective demand response for PG&E, and the continuation, improvement, and growth of these third-party programs are central to PG&E's 2012-2014 plans."²⁶

PG&E requests authorization to extend through 2012 its existing AMP agreements that expire in 2011. In addition, PG&E renews its request to issue an RFP in 2012 for new AMP contracts that can be bid into CAISO markets as PDR.

SCE does not propose new contracts although, as mentioned below, SCE did recently argue in support of being granted the authorization to enter into new contracts.²⁷ In its application, SCE indicates that it would also enter into agreements that could be bid into CAISO markets as PDR "should the Commission agree to a new contract solicitation sometime in the near future . . ."²⁸ SCE also proposes a new Ancillary Service Tariff that would be open to aggregators.

In its testimony in support of A.11-03-002, SDG&E has identified challenges unique to its service territory. In response, SDG&E has suggested that there may be value to entertaining alternative incentives for aggregators with guaranteed payment rates for three years.

DR Aggregators recognize that there are a number of factors contributing to this inconsistency in the positions taken by the IOUs, including the lack of certainty regarding how demand response should be structured to participate most efficiently under the CAISO's new markets to provide the greatest benefits to ratepayers in 2012 and beyond. DR Aggregators strongly believe that there will be a need for aggregators to enter into contracts with utilities in order to continue to provide demand response services to California customers. DR Aggregators

²⁶ A.11-03-001 (PG&E), at p. 4.

²⁷ A.08-06-001, et al. (3-Yr DR Programs) SCE Opening Comments on the Proposed Decision Granting in Part the Petition of PG&E to Modify D.09-08-027.

²⁸ A.11-03-003 (SCE), Prepared Testimony, Volume 2, at p. 72.

urge the Commission to authorize the IOUs to procure new demand response contracts that can be bid into the CAISO market as PDR.

**V.
SDG&E'S CPP INCENTIVE MECHANISM AND GUARANTEED
PAYMENT PROPOSAL SHOULD BE APPROVED AND
CONSIDERED FOR UNIFORM APPLICATION TO ALL IOUS.**

DR Aggregators continue to support bilateral demand response contracts because they provide the long-term certainty that IOUs need for long term procurement planning and provide an important mechanism for DR aggregators to recover their considerable investment in acquiring and integrating new demand response customers. SDG&E, however, has proposed some interesting alternatives to bilateral demand response contracts that DR Aggregators support.

SDG&E's Critical Peak Pricing (CPP) Premium Incentive Mechanism and CPP Day-of-Incentive Mechanism both provide incentive payments to aggregators to facilitate load drop from CPP-D customers and to help automated CPP-D customers reduce energy use with short day-of-notification. SDG&E's goal is to pay all aggregators the same amount for event driven load reduction to create healthy competition, encourage aggregators to target smaller C&I customers, and enable a successful market for all stakeholders. This is similar to the Commission's approved standard offer approach for the Capacity Bidding Program (CBP). In addition, SDG&E proposes that the Commission authorize guaranteed payment rates for a three year period for CBP and CPP Premium Incentive Mechanism to provide aggregators with the certainty required to invest time and money in integrating new customers.²⁹

DR Aggregators are supportive of SDG&E's efforts to provide appropriate incentives to encourage aggregators to facilitate load drop from CPP-D customers. DR Aggregators can

²⁹ A.11-03-002 (SDG&E) Chapter 1: Prepared Direct Testimony of Mark Gaines, at p. MFG-12.

provide value in educating customers and providing technology to help customers fully benefit from dynamic pricing. DR Aggregators also support and encourage application of this approach to PG&E and SCE.

**VI.
SCE'S AND SDG&E'S PROPOSED MODIFICATIONS TO TA/TI PAYMENT
REQUIREMENT ARE EXTREMELY ONEROUS AND SHOULD BE REJECTED.**

SCE and SDG&E are proposing significant changes to TA/TI (Technical Assistance / Technical Incentives) payments as part of their applications. DR Aggregators find these changes to be unjustified and extremely onerous. Specifically, these changes will actually decrease the ability of customers, equipment vendors, and aggregators to continue to participate in Auto-DR.

Among other things, the proposed changes will defer payment of 40 percent of the eligible Technical Incentives until a year after installation of enabling technology.³⁰ This is a significant change from the current practice and presents an unnecessary obstacle to increasing the amount of Auto-DR in the state. It is a substantial liability for customers, equipment vendors or aggregators to essentially carry 40 percent of their costs on their books for at least one year. This represents a risk that will potentially result in fewer customers being willing to install Auto-DR technology. These proposals are a significant departure from the current requirements, are extremely onerous and should not be approved.

Customers already make a commitment to remain enrolled in a DR program for three years and are obligated to repay the equipment costs if they do not remain enrolled in a DR program for the full three years. The customer's agreement to participate in a DR program for 3 years is the appropriate signal for the utility to pay the remaining 40 percent of the TI incentive.

³⁰ A.11-03-003 (SCE) Testimony, Volume 2, at p. 77-78; A.11-03-002 (SDG&E) Chapter III: Prepared Direct Testimony of George Katsufraakis, at p. GMK-46-47.

VII.
**PG&E’S AUTO-DR FUNDING SHOULD BE AVAILABLE TO
CUSTOMERS THAT ENROLL IN PROGRAMS THROUGH DRPS**

In light of the substantial commitments to Auto-DR in California, IOUs’ should leverage DRPs’ wealth and breadth of experience with automated control of end-use devices and processes. SCE and SDG&E have revised their Auto-DR programs to include bilateral contracts with DRPs. The Commission should require PG&E to follow their lead and revise its Auto-DR program to also include bilateral contracts with DRPs.

VIII.
**PG&E’S PEAK CHOICE PROGRAM SHOULD BE EVALUATED TO
DETERMINE IF THERE IS BENEFIT TO ALLOWING
PARTICIPATION BY DRPS AT THIS TIME.**

When the Commission approved PG&E’s PeakChoice program in D.09-08-027, it admitted that PG&E’s decision not to open this program to aggregators was inconsistent with Commission policy and needed to be addressed in the next evaluation of the PeakChoice program as follows:

“In its application, PG&E does not suggest opening the PeakChoice program to aggregators. This is not consistent with . . . the current Commission policy decision allowing aggregators to participate in SCE’s Capacity Bidding Program . . . PG&E objects to the possibility of opening this program to aggregators, estimating that doing so would cost approximately \$2 million and take up to 12 months to implement. These numbers are not supported in the record, and the cost estimate for redesigning information technology and other systems is equal to the amount initially requested to develop information technology systems for the PeakChoice program as a whole. Still, it is not clear whether the benefits of a potential increase in enrollment from opening this program to aggregators would outweigh the costs required to modify the program to support this change. We . . . will revisit this issue in our next evaluation of the PeakChoice program.”³¹

³¹ D.09-08-027, at p. 61.

As the Commission evaluates the PeakChoice program for 2012-2014, DR Aggregators request that it determine whether there is benefit to allowing participation by DRPs. PG&E's current practice of not opening this program to aggregators seems unnecessarily restrictive.

IX.

THE IOUS' PROPOSED DR PROGRAMS FOR C&I CUSTOMERS MUST ALLOW SIMULTANEOUS PARTICIPATION IN OTHER DR PROGRAMS, INCLUDING OFFERINGS FROM DR PROVIDERS, CONSISTENT WITH D.09-08-027, WITH ONE MODIFICATION TO CORRECT AN UNINTENDED CONSEQUENCE.

A. Background

The Commission established a framework in D.09-08-027 for multiple program participation that permits customers to enroll in programs with different trigger events and determined the circumstances under which customers may participate in more than one DR program. The rules apply statewide regardless of whether the customer is enrolled in a utility-administered program or one administered by a third-party aggregator.

In adopting this framework, the Commission determined that there was value to providing customers with additional flexibility to respond to a variety of conditions that can trigger demand response as follows:

“As the utilities implement dynamic pricing tariffs and further develop the CAISO's new market mechanisms, additional opportunities may emerge for dual demand response program participation. This is an appropriate time to establish guidelines to facilitate growth in demand response through dual program participation while safeguarding ratepayers from excessive or duplicative payments.”³²

The Commission developed the following rules for concurrent participation in two demand response activities or programs:

“We conclude that it is reasonable and consistent with the Commission's policy of encouraging cost effective demand response activities to allow customers to participate concurrently in two demand response activities and programs, as long as duplicative payments for a single instance of load drop can be avoided. . . We

³² D.09-08-027, at p. 150.

direct that the utilities develop rules and procedures allowing customers in two programs, one providing capacity payments and one providing energy payments . . . In addition we direct that these rules will prohibit participation in two day-ahead programs or two day-of programs.”³³

In doing so, the Commission specifically addressed dual participation with CPP:

“For the purpose of demand response dual participation rules in 2009-2011, we will consider CPP to be an energy payment program in which customers may participate concurrently with capacity payment programs such as CBP.”³⁴

DR Aggregators support the continuation of multiple participation options, with the noted expansion below, which is consistent with the intent of D.09-08-027. Further, DR Aggregators caution the Commission about restricting or eliminating multiple participation options, especially when full implementation of D.09-08-027, as it relates to multiple participation, has not even occurred yet on all utility systems.

B. So long as there are guidelines for ensuring that customers are not paid twice for a single load drop when participating concurrently in two demand response activities, DR Aggregators propose expanding dual participation options consistent with this intent.

In D.09-08-027, the Commission correctly recognized that multiple participation in DR programs has the effect of expanding DR options for customers by providing additional flexibility and more capability for reducing peak demand or demand during high price periods. DR Programs have a variety of program triggers, months of availability, hours of availability, and voluntary and mandatory participation that could create additional opportunities for customer participation. Further, with the utilities introducing default CPP and Peak Day Pricing (PDP) tariffs, if customers were prohibited from multiple participation, it is likely that DR Aggregators would have a limited opportunity to provide services to customers on those default tariffs.

³³ D.09-08-027, at p. 154.

³⁴ D.09-08-027, at p. 155.

In providing the opportunity for multiple participation, the Commission wanted to limit the ability for customers to receive a “double” payment for one load drop, demand or energy, in two programs. As such, the Commission ordered that customers can participate in one energy and one capacity program and one day-ahead and one day-of program. To the extent an energy and capacity program are called simultaneously, the customer would receive the capacity payment, but would forego the energy payment from the energy program.

DR Aggregators believe that minimizing the ability for double payments for one load reduction should be a cornerstone of multiple participation. The provision that requires a customer to forego the energy payment from the energy program if an energy and capacity program are called simultaneously accomplishes this goal of minimizing the ability for customers to receive double payments for one load reduction. Therefore, the Commission’s guidance that allows customers to participate in one energy and one capacity program is sufficient. It is not necessary to further restrict customers to one day-ahead and one day-of program to accomplish the goal of minimizing double payments for one load reduction. Most of the IOU energy programs are considered “day-ahead” program. SCE, for example, recently eliminated the “day-of options” for all energy programs. The result of this change is that customers participating in a “day-ahead” capacity program cannot participate in any other program or be on a critical peak pricing tariff.

There is no difference in the way any potential double payments will be resolved whether the capacity program is called day-ahead or day-of. The energy payment conflict can be resolved with the same logic regardless of the notification time of the capacity program. If a customer in a day-ahead capacity program is not dispatched, they can provide value on a voluntary basis in the same way as the customer on a day-of program participating on a voluntary basis.

DR Aggregators support limitation of multiple participation to one energy and one capacity program, however, customers should be able to participate in any combination of day-of or day-ahead programs subject to the limitation of foregoing the energy payment for coincident events.

Therefore, customer combinations could include:

Day-Ahead Energy	Day-Of Capacity
Day-Ahead Energy	Day-Ahead Capacity
Day-Of Energy	Day-Ahead Capacity
Day-Of Energy	Day-Of Capacity

C. SDG&E’s proposal to restrict dual participation is not consistent with D.09-08-027 and should be denied.

SDG&E proposes to eliminate multiple program participation so customers enrolled in the Base Interruptible Program (BIP), CBP and DemandSMART will not also be eligible to participate in CPP. This proposal is not consistent with D.09-08-027 and should be denied.

D. Customers on PG&E’s net energy metering tariffs should be allowed to participate in CBP and AMP consistent with the precedent established by SCE and SDG&E and the state’s goal to facilitate increased renewable integration.

DR Aggregators continue to support a policy allowing customers on either a standby or net metering tariff to participate in DR programs, including CBP and AMP.³⁵ SCE and SDG&E already allow this participation, and the Commission approved this participation for PG&E’s customers on a standby tariff.³⁶ DR Aggregators request that the Commission also allow customers on PG&E’s net metering tariffs to participate in CBP and AMP; they are currently

³⁵ A.08-06-001, Prepared Direct Testimony of Richard H. Counihan on behalf of the California Demand Response Coalition Concerning Multiple Program Participation, at pp. 14-16.

³⁶ D.09-08-027, at p. 158.

only allowed to participate in DBP and BIP.³⁷ In A.11-03-001, PG&E does not explain why its net metering tariffs are compatible with some demand response programs, but not others.

SCE and SDG&E have determined that allowing customers to participate in net metering tariff programs does not exclude them from simultaneous participation in a variety of DR programs. These IOUs recognize that the benefits of demand reduction during peak events is not at odds with encouraging customers to reduce electricity usage through the use of renewable cogeneration technologies. In fact this policy is consistent with encouraging all forms of sustainable energy to be considered complementary.

DR Aggregators believe that customers on net metering rates should not be automatically prohibited from participating in demand response. Net metering tariffs are often selected by customers that have installed solar photovoltaic systems. Customers with solar panels are likely to be among the most energy conscious customers and excellent candidates for demand response.

Furthermore, net metering on premises where the solar photovoltaic installation is rated below the average peak demand is similar to a partial standby scenario where PG&E supplies electricity to premises with co-generation facilities. Partial stand-by customers are allowed to participate and be enrolled in AMP. There is no reason to treat customers on net metering tariffs differently. As such, PG&E should be required to remove its prohibitions against participation in the CBP and AMP programs for customers that take electric service under a Net Metering tariff.

X.

DR AGGREGATORS SUPPORT SCE'S EFFORTS TO REMOVE BARRIERS AT THE CAISO BY DEVELOPING COST-EFFECTIVE TELEMETRY SOLUTIONS.

SCE is proposing an AS tariff that will be open to aggregators. DR Aggregators believe there is merit in offering a tariff that will provide appropriate incentives to justify the substantial effort and investment required to enable DR resources to provide AS in CAISO markets.

³⁷ PG&E E-CBP Tariff, http://www.pge.com/tariffs/tm2/pdf/ELEC_SCHS_E-CBP.pdf.

SCE appropriately identifies the cost of telemetry as a barrier for most customers to participate in AS. SCE estimates the cost of the telemetry to enable this participation at \$70,000 per meter,³⁸ which seems cost prohibitive and will result in minimal participation. SCE indicates that they are prepared to revise their proposal to accommodate greater participation if the telemetry costs can be decreased. DR Aggregators support SCE's efforts to develop cost-effective telemetry solutions and also encourage the Commission to support this effort.

XI.

THE BASELINE METHODOLOGY MUST BE MODIFIED TO BETTER REFLECT THE EFFECT OF PRESCRIBED CURTAILMENT MEASURES AND TO APPROPRIATELY PAY CUSTOMERS FOR VERIFIED LOAD REDUCTIONS.

A. Background.

Customer baselines are essential to the design of any demand response program. A properly designed baseline calculation methodology is perhaps the most important determinant for testing the success of any demand response program as it provides the benchmark by which performance is measured. Since the load reduction contribution of a demand response resource to the grid cannot be directly measured, its performance is calculated by taking the difference between a facility's *measured load* during a DR event and an estimate of what its load *would have been* but for the curtailment actions (baseline). For example, if a facility's baseline is estimated to be 350 kW and during a DR event its measured load was 275 kW, then the load reduction contribution from this customer would be 75 kW.

To encourage continued DR participation, customers must receive appropriate compensation for verified load reductions that they provide to the system during DR events. DR Aggregators have had experience with customer dissatisfaction as a result of being paid for substantially less performance than the customer provided as a result of the baseline

³⁸ A.11-03-003 (SCE) Testimony, Volume 2, at p. 21.

methodology. Under that circumstance, a customer is compensated for only a portion of the demand reduction, while the system receives a larger benefit than it has provided compensation.

A well-designed baseline aligns the interests of participants, non-participants, DRPs, IOUs, and grid operators. A transparent, simple, and accurate baseline methodology ensures that all stakeholders can have confidence in the value that a DR resource provides to the electric grid.

B. SDG&E proposes modifications to the baseline methodology adopted in D.09-08-027 to improve its accuracy.

SDG&E demonstrates that the Highly Volatile Load customer study conducted by Christensen and performance results in programs using the 10 in 10 baseline with a 20% cap come to the same conclusion: “[this baseline] is inaccurate and is underestimating the program performance and aggregator payments.”³⁹ SDG&E “recognizes the issues with the current baseline methodologies and will explore options to improve the accuracy of the baseline calculations for weather patterns typical of its service territory as well as customer segment differences.”⁴⁰ SDG&E proposes that increasing the capped day-of adjustment to 40% will significantly improve the accuracy of the existing baseline.

C. DR Aggregators look forward to offering their own proposal on this issue for the Commission to consider.

DR Aggregators have experienced very inaccurate performance results with this capped baseline and believe it is severely undermining both program performance and customer payments. DR Aggregators look forward to offering a proposal on this issue for the Commission to consider.

³⁹ A11-03-002 (SDG&E) Chapter V: Prepared Direct Testimony of Leslie Willoughby/Kathryn Smith, at LW\KS-25.

⁴⁰ A.11-03-002 (SDG&E) DR Advisory Feedback: “2012-2014 Demand Response CPUC Filing,” at p. 12.

XII.
**PROPOSED CATEGORY, NEED FOR HEARING, ISSUES TO BE CONSIDERED,
AND ALTERNATIVE SCHEDULE TO PERMIT NEEDED INTERIM ORDERS IN
MAY AND AUGUST 2011 AND A FINAL DECISION BY DECEMBER 2011.**

Rule 2.6(d) also gives parties responding to an application the opportunity to provide comments or objections “regarding the applicant’s statement on the proposed category, need for hearing, issues to be considered, and proposed schedule.” An “alternative schedule” can also be proposed.⁴¹

The DR Aggregators agree with the utilities that these applications should be categorized as “ratesetting.” (See, Rule 1.3(e), Commission Rules of Practice and Procedure; Public Utilities Code §1701.1 (c)(3)). As to the need for an evidentiary hearing, DR Aggregators are always open to discuss issues in a workshop setting, but note that evidentiary hearings were required in the last 3-year DR Program applications (A.08-06-001, et al.). Further, additional processes should not be used if they result in a delay in a final decision being issued by December 2011.

As noted above, the DR Aggregators believe that the following issues are raised by, and common to, all of the applications and must be addressed by the Commission before any proposed program or budget can be approved. Namely:

- (1) The need for expedited authority for certain IOU proposals.
- (2) The need for regulatory certainty in DR Programs, including third-party DR programs.
- (3) Approval of SDG&E’s Critical Peak Pricing (CPP) Incentive and application to other IOUs.
- (4) Needed changes to, evaluation, or rejection of specific IOU-proposed programs or funding, including SCE’s and SDG&E’s TA/TI payments, PG&E’s Auto-DR funding, and PG&E’s PeakChoice program, as described herein.

⁴¹ Commission’s Rules of Practice and Procedure, Rule 2.6(d).

- (5) The need for modification to the IOUs' proposed DR programs to permit simultaneous participation in other DR programs, consistent with D.09-08-027, with one modification to correct an unintended consequence.
- (6) Adoption of SCE's cost-effective telemetry solutions to remove barriers to participation at the CAISO.
- (7) Modification of the baseline methodology to better reflect the effect of prescribed curtailment measures and appropriate payment to customers for verified load reductions.

Finally, the DR Aggregators agree with the IOUs that the Commission should adopt a procedural schedule that results in the issuance of a final decision on the Applications no later than December 1, 2011, to ensure the continuity of the demand response programs currently in place. However, notwithstanding that request, as noted above, DR Aggregators also urge the Commission to issue interim orders or rulings, prior to that final decision, (1) to approve PG&E's request to extend existing AMP agreements that expire in 2011 by August 18, 2011, and (2) to approve SCE's request to conform existing bilateral contracts to incorporate the dual participation rules adopted in D.09-08-027 by May 26, 2011.

With respect to the schedule for this proceeding, inclusive of these interim orders, the DR Aggregators propose the following "alternative schedule" to that proposed by the IOUs, starting from the date of the Prehearing Conference (PHC), now scheduled for May 3, 2011. This "alternative schedule" works from that PHC date and the schedule proposed by SCE in A.11-03-003.⁴² The DR Aggregators agree with, and support a schedule, that ensures a final decision on these consolidated applications no later than December 1, 2011. Changes from SCE's proposed schedule are indicated in italics and will permit sufficient time for input from all stakeholders.

⁴² A.11-03-003 (SCE), at p.13.

DR AGGREGATORS' PROPOSED SCHEDULE

EVENT	DATE
Prehearing Conference	May 3, 2011
Scoping Memo	<i>May 23, 2011</i>
<i>Interim Order on Conforming SCE Bilateral Contracts to D.09-08-027</i>	<i>May 26, 2011</i>
Intervenor Testimony	<i>July 1, 2011</i>
Rebuttal Testimony	<i>July 22, 2011</i>
Hearings	August 8, 2011
<i>Interim Order Approving Extension Of PG&E Contracts through 2012.</i>	<i>August 18, 2011</i>
Concurrent Opening Briefs	September 9, 2011
Concurrent Reply Briefs	September 23, 2011
Proposed Decision	November 1, 2011
Comments on Proposed Decision	<i>November 21, 2011</i>
Reply Comments on Proposed Decision	<i>November 28, 2011</i>
CPUC Business Meeting Agenda Date	December 1, 2011

XIII. CONCLUSION

DR Aggregators strongly urge the Commission to consider and adopt the DR Aggregators' recommendations offered above in response to the IOUs' 2012-2014 DR Program applications. In addition, the DR Aggregators request that the issues identified in this Response as arising from these applications be included within the scope of this consolidated proceeding.

Finally, the DR Aggregators ask that the Commission immediately consider issuing an interim ruling or decision that (1) adopts an expedited schedule for reviewing and approving PG&E's request to extend existing AMP contracts through 2012 and (2) directs SCE to execute

its proposed amendments with aggregators to conform existing bilateral contracts with D.09-08-027 baseline and dual participation rules prior to the 2011 DR season.

Respectfully submitted:

//s/ MELANIE GILLETTE

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April 4, 2011

CERTIFICATE OF SERVICE

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

On April 4, 2011, I served the within document **JOINT RESPONSE OF DR AGGREGATORS TO CONSOLIDATED APPLICATIONS**, in the consolidated applications, A.11-03-001, A.11-03-002, and A.11-03-003, with service on the A.11-03-001, A.11-03-002, A.11-03-003, R.06-04-010, R.07-01-041, and A.08-06-001, et al., service lists in the manner prescribed by the Commission's Rules of Practice and Procedure and as required by the ALJ's Ruling of March 30, 2011, and with additional and separate delivery of paper copies by U.S. Mail to Assigned Commissioner Peevey and Assigned ALJ Hymes, at San Francisco, California.

Executed on April 4, 2011, at San Francisco, California.

/s/ SARA STECK MYERS

Sara Steck Myers