

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking To Enhance
the Role of Demand Response in Meeting
the State's Resource Planning Needs and
Operational Requirements.

Rulemaking 13-09-011
(Filed September 19, 2013)

**JOINT PREHEARING CONFERENCE STATEMENT OF
ENERNOC, INC., JOHNSON CONTROLS, INC., AND COMVERGE, INC.**

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EnerNOC, Inc., Johnson Controls, Inc., and Comverge, Inc. ("Joint DR Parties") respectfully submit this Prehearing Conference (PHC) Statement in Rulemaking (R.) 13-09-011 (Demand Response (DR)). This PHC Statement has been prepared and served pursuant to the Commission's Rules of Practice and Procedure and the Administrative Law Judge's (ALJ's) Ruling of October 2, 2013 (October 2 ALJ's Ruling), as revised by the ALJ's Ruling sent by electronic mail on October 3, 2013, requiring service of these PHC statements only.

**I.
INTRODUCTION**

As background, the Joint DR Parties are companies that currently aggregate residential, commercial and industrial customers to participate in a significant number of DR programs managed by grid operators across the country. In California, the Joint DR Parties participate in DR programs offered by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E) (collectively, the Investor-Owned Utilities ("IOUs")) and include the following companies:

- **EnerNOC, Inc.** (NASDAQ: ENOC) 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 provides nearly 8,500 MW of dispatchable capacity reductions and energy management services across the United States, as well as in Canada, Australia, New Zealand, and the United Kingdom. EnerNOC currently supplies in excess of 300 MW of demand response services in California.

- **Johnson Controls (EnergyConnect Inc.)** (NYSE: JCI) Johnson Controls is a global diversified technology and industrial leader serving customers in more than 150 countries. The JCI Building Efficiency business unit is a leading provider of equipment, controls and services for heating, ventilating, air-conditioning, refrigeration, security systems and demand response.
- **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.

Each of the Joint DR Parties has actively participated individually and jointly in Commission proceedings focused on IOU DR programs, including R. 07-01-041, the prior DR rulemaking, and A.11-03-001, et al., the IOUs' last applications for approval of their individual DR programs and budgets for the three-year period 2012-2014. Given both the involvement and expertise of the Joint DR Parties in the DR market in California, the Joint DR Parties intend to bring their unique perspective and experience to ongoing, active participation in R.13-09-011.

II. JOINT DR PARTIES' RESPONSES TO QUESTIONS POSED IN OCTOBER 2 ALJ'S RULING

The October 2 ALJ's Ruling posed three questions to be answered by parties in their PHC Statements.¹ The Joint DR Parties offer the following responses:

(a) *Any additional issues the Rulemaking should consider and why?*

In R.13-09-011, the Commission identifies the overall scope of this rulemaking to include the following four basic topic areas: (1) Bifurcating Demand Response Programs,² (2) Program Approval and Funding Cycle,³ (3) Roadmap for Future of Demand Response (including interagency coordination),⁴ and (4) Potential Bridge Year Funding and Staff Proposal on

¹ October 2 ALJ's Ruling, at p. 2.

² R.13-09-011, at pp. 17-19. This topic includes review and analysis of current demand response programs to determine whether and how to bifurcate them as demand-side (customer-focused programs and rates) and supply side resources (reliable and flexible demand response that meets local and system resource planning and operational requirements).

³ R.13-09-011, at p. 20. This topic includes providing "timely guidance to eliminate uncertainty and ensure stability in the demand response funding and procurement process," including consideration of the "most suitable program approval funding cycle." (*Id.*)

⁴ R.13-09-011, at pp. 20-21.

Demand Response Pilots.⁵ As to Topic (1), R.13-09-011 identifies 14 issues to be examined and on which stakeholder input will be sought. As to Topic (4) (Bridge Funding and the Staff 2015 DR Pilot Proposal), the rulemaking asks 6 questions on which Comments are to be filed on October 21, 2013.

The Joint DR Parties will be responding to the questions on Bridge Funding and the Staff 2015 DR Pilot Proposal on October 21. However, for purposes of this PHC Statement, the Joint DR Parties believe that it is important to *prioritize and add to the issues* that the Commission will consider in this proceeding, including the appropriate procedural treatment of each.

In this regard, the *highest* priority for the Commission in this rulemaking is to address the issue of how best to ensure uninterrupted program funding for the *current* DR Programs through at least 2015. In the evaluation relative to bridge funding, the Commission should also immediately address whether the existing contracts/programs provisions should be revised to address changes that would increase program effectiveness and participation, while deferring all other issues to the rulemaking. This approach is consistent with the question posed in R.13-09-011 seeking input as to whether the contract funding should be extended for the contracts “as is.”

Further, the Joint DR Parties believe that the issue of funding and any interim contract/program changes can be categorized as “ratesetting,” and addressed on a separate, expedited track relative to the policy issues raised by R.13-09-011, which can be separately considered and categorized as “quasi-legislative.” Such categorization on policy issues will allow the free flow of ideas and discussions among stakeholders and decision-makers.

Among those policy issues is the consideration of a new “vision” of how DR programs are developed or approved. While this task may be worthwhile, it is clear from the multiple questions posed on that topic by R.13-09-011 that such changes will be complex and potentially time-consuming. At a time when the Commission continues to expect to rely on DR resources to meet pressing resource and reliability needs, this State cannot afford to destabilize or diminish the valuable DR resources that are currently being provided under IOU programs. It is worth exploring whether the one and only way for DR resources to be considered supply-side resources and to be considered for planning purposes is if the resources are bid into the wholesale market.

⁵ R.13-09-011, at pp. 21-23; Attachment A. This final topic includes consideration of approval of 2015 funding for the current DR programs and utilization of 2015 pilot funds “to prepare for a new demand response program structure,” including consideration of a “Staff Proposal for Demand Response Pilots in 2015,” included in R.13-09-011 as Attachment A.

Because there are many changes being contemplated that could affect future DR resource definitions, it is important to have a trial period to determine if certain program parameters are workable before engaging in any significant changes for existing resources. Pilots are an opportunity way to test and learn from certain constructs before formally adopting criteria for DR resources on a broad basis. However, pilots pose other challenges. If they are too small, they may not warrant appropriate consideration by participants to dedicate time and resources toward participation, especially if such participation could negatively affect existing obligations and commitments. Nevertheless, pilots can be a good way of matching DR capabilities with current resource needs that have high and immediate value.

For these reasons, among others, the Joint DR Parties recommend that the Commission find that the highest priority issue in R.13-09-011 is to consider how best to preserve the effectiveness of existing programs and achieve continuity and certainty in those programs with limited adjustments. While the schedule in R.13-09-011 identifies the timing of a “Bridge Funding Decision” as “2nd Quarter 2014,” the Joint DR Parties are concerned that this vague timing, which could be as late as June 2014, is not sufficient to provide needed continuity in current programs or to provide new, appropriate pilot program opportunities that would be realized in 2014. Further, the Joint DR Parties continue to believe that the goals of R.13-09-011 can best be achieved by addressing “Bridge Funding” and pilot programs on a separate, expedited track categorized as ratesetting, with the larger policy issues, like bifurcation and procurement, considered subsequently and categorized as quasi-legislative.

The utilities have been given a 6-month extension on filing their 2015-2017 DR Program Plans until July 2014. However, it is unlikely that this process will be resolved much before July 2014 (if then) so as to provide adequate guidance to the IOUs to submit their applications. Once those applications are filed, it will take anywhere from a year to 18 months to resolve. After that, there will be a procurement process that also can take upwards of a year to conduct and obtain Commission approval.

Thus, it will be important to understand the interaction between this Rulemaking and the DR Applications for purposes of obtaining DR program/contract authorization and funding. This would appear to be the next item of importance from a time critical perspective, unless this Rulemaking would, potentially, obviate the need for those applications. As such, it may be prudent to examine a 2-year bridge funding period so as not to require parties to repeat the

process of extending customer contracts for two consecutive years. Again, however, the Joint DR Parties recommend that, only after all funding issues have been resolved and DR funding has been established through 2015 or 2016, should the Commission take up the issue of bifurcation and then the long-term DR Roadmap.

Therefore, the Joint DR Parties recommend that the “scope” of this rulemaking should include the following additional issues, including prioritization and appropriate procedural treatment of each as indicated:

1. “Bridge-Year” Funding and DR Pilot Programs should be addressed separately, and on an expedited basis, relative to other issues in R.13-09-011 and classified as “ratesetting”. Because of the potential duration of the case, the resulting DR program applications and any subsequent solicitations, it may be prudent to examine a 2-year bridge funding cycle at this juncture. The Joint DR Parties do not think that hearings will be necessary. A decision on these issues must be issued well in advance of the 2014 summer season, so as to give parties time to address customer contracting issues and to implement any program changes in advance of May 1. Therefore, it is strongly suggested that a final decision on this matter be issued by late February 2014.
2. Program Approval and Funding Cycle should be the next area of importance. The relationship between proceeding R.13-09-011 and the IOUs’ delay in filing the 2015-2017 DR Program Plan Applications must be reconciled so that parties have an idea of when future solicitations will occur and whether a further extension of Bridge Funding is required. It is unclear as to whether this proceeding will inform the next program cycle applications or replace them. If R.13-09-011 is to replace the next program cycle applications, then this aspect should be classified as ratesetting. Alternatively, if R.13-09-011 is meant to inform the next program cycle applications, but not provide explicit procurement authorization or funding, then this aspect of this proceeding should be categorized as quasi-legislative. The Joint DR Parties also think it is appropriate to explore longer planning cycles or to obviate the need for these planning cycles through integrating DR procurement.
3. The issue of bifurcation of DR resources and the DR Roadmap can be taken up simultaneously. Joint DR Parties assume that the resolution of this issue will also provide guidance to the IOUs as to the content of the next program cycle, if so ordered. This process must also keep in mind the limited extension granted to the IOUs by the Executive Director. As part of the discussion around bifurcation, there should be a discussion as to what specific resource characteristics would be considered supply-side versus load modifiers; whether those characteristics must solely be called by the CAISO. This proceeding should also explore what benefits would accrue through bifurcation and what, short of bidding into the wholesale market, will give CAISO comfort as to the existence and performance of the resource. It is also important to explore what factors, other than the lack of integration of DR resources into the

wholesale market, are inhibiting growth of DR resources in the State. The Joint DR Parties believe consideration of these policy issues should also be categorized as quasi-legislative.

4. In addition, R.13-09-011 must carefully consider the timing necessary to resolve these issues and the affect those determinations will have on the next DR Applications.

(b) The need for hearing (i.e., state whether hearings are necessary and, if so, list potential material issues of disputed fact which require an evidentiary hearing).

Without the benefit of position statements of all parties on the issues to be addressed, it is premature to determine whether any “material issues of disputed fact” exist and, in turn, to what extent evidentiary hearings will be required. Having said that, however, the Joint DR Parties prefer to approach issue resolution with an emphasis on consensus-building, to the extent possible. To that end, the Joint DR Parties believe that resolution of the issues in this proceeding should start with a Workshop-Comment process, with evidentiary hearings required and limited only to material factual issues that cannot be resolved or on which consensus cannot be achieved through such a process.

(c) A proposed schedule for the proceeding in order for the Commission to resolve this proceeding within 24 months of its initiation.

Consistent with the identified priorities above, the Joint DR Parties recommend the following schedule for the *first twelve months* of this proceeding:

| EVENT | DATE |
|--|-------------------|
| Responses to Questions on Bridge Funding Staff DR Pilot Proposal | October 21, 2013 |
| Prehearing Conference | October 24, 2013 |
| Comments on Remaining Questions in Rulemaking | November 7, 2013 |
| Workshop on Bridge Funding and Staff 2014 DR Pilot Proposals | November 7, 2013 |
| Workshop on Program Approval and Planning Cycles | November 14, 2013 |
| Workshop on Bifurcation and Roadmap | November 21, 2013 |
| Workshop Comments | December 16, 2013 |
| Proposed Decision Approving 2015 DR Program Funding and Pilots | February 2014 |
| Final Decision Approving 2015 DR Program Funding and Pilots | March 2014 |
| Proposed Decision on Program Approval and Planning Cycles | March 2014 |
| Final Decision on Program Approval and Planning Cycles | April 2014 |
| Proposed Decision on Bifurcation and Roadmap | April 2014 |
| Final Decision on Bifurcation and Roadmap | May 2014 |

III. CONCLUSION

The Joint DR Parties look forward to active participation in this proceeding and the PHC scheduled for October 24. The Joint DR Parties ask for full consideration at that time of their recommendations herein.

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Respectfully submitted,

/s/ SARA STECK MYERS

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On Behalf of the Joint DR Parties

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