

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 OPENING COMMENTS OF
ENERNOC, INC., JOHNSON CONTROLS, INC., AND COMVERGE, INC.
("JOINT DR PARTIES")
ON PROPOSED DECISION ON DR PROGRAM BIFURCATION**

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EnerNOC, Inc., Johnson Controls, Inc., and Comverge, Inc. ("Joint DR Parties") respectfully submit these Joint Opening Comments on the Proposed Decision Addressing Foundational Issue of the Bifurcation of Demand Response Programs ("Proposed Decision"). The Proposed Decision was mailed in Rulemaking (R.) 13-09-011 on February 21, 2014. These Joint Opening Comments are timely filed and served pursuant to Article 14 of the Commission's Rules of Practice and Procedure and the instructions accompanying the Proposed Decision.

**I.
INTRODUCTION**

On November 14, 2013, Assigned Commissioner Peevey and Administrative Law Judge (ALJ) Hymes issued a Joint Ruling and Scoping Memo (Scoping Memo). Among other things, the Scoping Memo requested responses to several Foundational Questions on demand response (DR) bifurcation, to which the Joint DR Parties offered timely opening and reply responses filed on December 13 and December 31, 2013, respectively.

In their responses to the question of bifurcation of DR Programs, the Joint DR Parties concluded as follows:

- Bifurcation should be the result of a policy directive that will result in increased DR opportunities and incremental benefits beyond those provided by the current retail programs.

- The Commission should acknowledge that energy market revenues, alone, will not be enough to encourage wholesale market participation under the current market structure, much less result in an expansion of DR beyond the current retail programs.
- If the Commission proceeds with bifurcation, bifurcation between wholesale and retail programs probably makes the most sense.
- Not all retail programs will be bid into the wholesale market; however, maintenance of the value of retail DR for resource adequacy purposes is critical.
- Differences in operating characteristics of different resources must be reflected in the resource adequacy requirements, relative to generation, or risk collapse of other resource types.¹

While the Joint DR Parties welcome the progress has been made in the Proposed Decision to clarify and address issues of concern with the original bifurcation proposal set forth in R.13-09-011 and the Scoping Memo, the Joint DR Parties still see need for improvement in the direction taken by the Proposed Decision. In fact, the changes required in the Proposed Decision support the Joint DR Parties' primary recommendation that the Commission withdraw the Proposed Decision and not issue a decision regarding bifurcation and the categorization of the DR Programs, as either load modifiers or supply-side resources, until needed, underlying analysis of the issues associated with integrating DR resources into the wholesale market has concluded in Phase Three of this proceeding. Alternatively, if the Commission elects to proceed with a Proposed Decision now on bifurcation, the Joint DR Parties urge that the Proposed Decision be revised to indicate that the decision to bifurcate, and the categorization of the programs as either load modifiers or supply-side resources, is preliminary until an examination of the issues identified by the parties is conducted in Phase Three.

This recommendation, along with discussion of other shortcomings in the Proposed Decision, are addressed further below. If the Proposed Decision goes forward, the Joint DR

¹ Joint DR Parties Response (12-13-13), at pp. 16-17.

Parties ask that, at a minimum, the final decision include the Joint DR Parties' Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs set forth in Appendix A hereto.

**II.
THE PROPOSED DECISION ERRS IN FINDING THAT MOST PARTIES
SUPPORT BIFURCATION, WHILE ALSO FAILING TO FIRST
ADDRESS UNDERLYING CONCERNS, AND SHOULD BE
WITHDRAWN PENDING NEEDED ANALYSIS IN PHASE THREE.**

Joint DR Parties recommend that the Proposed Decision should be withdrawn in favor of a final decision on bifurcation and the categorization of DR programs, as either load modifiers or supply-side resources, being made only after needed underlying analysis of the issues associated with integrating DR resources into the wholesale market, which is required to support such a direction, is undertaken. If the Commission nevertheless elects to proceed with the direction set by the Proposed Decision, then, at a minimum, the Proposed Decision must be revised to indicate that these determination are preliminary and subject to change pending the conclusion of an analysis of the issues in Phase Three of this proceeding.

In this regard, the Proposed Decision states that “parties were generally supportive of the idea of bifurcation,” yet, at the same time, acknowledges that “parties expressed concerns” or “caution” about bifurcation.² Despite these concerns, the Proposed Decision nevertheless concludes that such concerns “should not prevent [the Commission] from moving forward with bifurcation.”³ According to the Proposed Decision, while recognizing the validity of those concerns, it concludes that “there are no known reasons not to move forward with bifurcating demand response programs” and it is “reasonable to approve the bifurcation of demand response programs.”⁴

² Proposed Decision, at pp. 7, 11.

³ Proposed Decision, at p. 11; see also, p. 9.

⁴ Proposed Decision, at p. 12.

These conclusory statements do not fairly reflect the “record” on which the Proposed Decision is presumably based. In fact, the Joint DR Parties only conditionally supported moving in the direction of bifurcation *if* the underlying barriers identified for DR integration were addressed. The Joint DR Parties are concerned that the pre-determination to proceed forward with bifurcation, without first examining whether such a path will meet the Commission’s intent of increasing DR participation, may result in serious unintended consequences, including the loss of DR resources. The Joint DR Parties fail to see the value of putting the cart (this critical policy decision) before the horse (the needed examination and resolution of underlying, *foundational* issues). There is no need for such a policy decision at this point that endorses bifurcation unless and until those underlying issues are addressed.

Further, the declaration of the programs that will be either load modifiers or supply-side resources is clearly premature.⁵ There has been no examination of the characteristics of those programs to discern if the programs are appropriately categorized as either a load modifier or a supply-side resource.

The Joint DR Parties specifically articulated the error in proceeding down the path of a premature categorization of programs without adequate support in their Comments on bifurcation as follows:

“The Joint DR Parties support enabling the ability to participate in the wholesale market and removing obstacles to that participation, but, at the same time, remain wary of mandating participation in a market that is still not fully developed, is untested for DR resources, and has yet to exhibit a market dynamic that would support DR resources. Before defining terms related to “bifurcation,” the Joint DR Parties believe it is important to establish the premise to support proceeding down this path, explore the obstacles to a robust wholesale market result and explore the current barriers to DR participation in the retail context. It is important to explore whether this movement toward bifurcation will achieve the results that we seek and,

⁵ Proposed Decision, Table 2, at p. 19.

if not, identify the potential barriers to that success. If the parties are not willing to address the obstacles, then there will only be a partial chance at success.”⁶

The Joint DR Parties also demonstrated that such premature action could reduce DR participation, *not* increase it:

“Without a real policy reason, an objective, or a vision for making changes, the Joint DR Parties share the concerns expressed by other parties that more harm than good will be done to the existing DR resource base if changes are made without reference to or support from a strong policy direction. The Joint DR Parties are skeptical that integration will expand DR opportunities beyond those that exist at the retail level or that the wholesale market provides an economic opportunity to grow resource participation beyond present levels, unless coupled with continued utility funding for capacity payments. The Joint DR Parties, therefore, remain concerned that integration may result in the reduction or collapse of the DR resource base that exists today.”⁷

As noted in the Joint DR Parties’ Reply to the Responses on bifurcation, this concern regarding the lack of foundational support for a policy direction of bifurcation is shared by the Center for Energy Efficiency and Renewable Technologies (CEERT).⁸ Further, other parties, like the Joint DR Parties, also established that there is a “lack of a fully developed DR opportunity in the wholesale market due to either (1) remaining barriers to entry, such as telemetry; (2) the lack of certainty around product definitions, like flexible or local capacity resources; (3) the lack of economic incentives in an energy-only market with low energy prices prevailing; or (4) the possible degradation of value for DR resources that cannot participate in the wholesale market.”⁹

The Joint DR Parties do not see these issues as incidental to the success or failure of a decision to bifurcate DR programs; the Joint DR Parties see these issues as integral to the decision of whether or not to bifurcate *in the first place*. At this point, neither the Commission

⁶ Joint DR Parties Response (December 13, 2013), at pp. 5-6.

⁷ Joint DR Parties Reply to Responses (December 31, 2013), at pp. 5-6.

⁸ *Id.*, Footnote 5, at p. 2.

⁹ *Id.*, Footnote 14, at p. 5.

nor the parties are in a position to determine whether bifurcation is a sound policy decision because the facts that would support or refute that decision have not been examined. Without examination of those facts, the Commission is not in a position today to know whether this policy direction is in the best interest of advancing DR or ratepayer interests.

Therefore, the Joint DR Parties strongly request that the Proposed Decision be withdrawn in favor of a decision on bifurcation and the categorization of the DR Programs, as either load modifiers or supply-side resources, being made only after the underlying analysis of the issues associated with integrating DR resources into the wholesale market has concluded in Phase Three. If the Commission is unwilling to withdraw the Proposed Decision in this manner, then, at a minimum, the Joint DR Parties urge the Proposed Decision be revised to indicate that the decision to bifurcate, and the categorization of the programs as either load modifiers or supply-side resources, is preliminary until an examination of the issues identified by the parties is conducted in Phase Three of this proceeding.

III.
THE PROPOSED DECISION ERRS BY FAILING TO ADHERE
TO THE DIRECTION CONTAINED IN THE OIR FOR THIS PROCEEDING.

In the Order Instituting Rulemaking (OIR) for this proceeding (R.13-09-011), the Commission states:

“This Rulemaking will review and analyze 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).¹⁶ Towards that end, this rulemaking will identify the criteria that should be used to distinguish demand-side and supply-side demand response resources and determine whether there is an optimal mix that should be maintained.”¹⁰

The process to date in this Rulemaking, however, has *not* included a review and analysis of current DR programs or a discussion as to whether or how to bifurcate them. There also has

¹⁰ Order Instituting Rulemaking (OIR) (R.13-09-011 (DR)), at p. 17.

not been any criteria developed as to how to distinguish between demand-side and supply-side DR resources, and no examination has been conducted as to whether there is an optimal mix of DR resources maintained. This is exactly the type of examination that should have occurred, but has not.

Instead, this proceeding to date has only asked whether DR resources should be bifurcated, but without any examination of the reasons or basis for supporting such a decision. The Proposed Decision defines supply-side resources as “DR resources that can be scheduled and dispatched into the CAISO energy markets, where and when needed” and defines load modifying DR resources as a resource that “shapes or reduces the net load curve.”¹¹ However, the Proposed Decision does not create a nexus as to those definitions and the categorization of the DR programs. The Proposed Decision fails to establish discernible criterion, among the programs, that make them either a load modifier or a supply-side resource. In these circumstances, there is simply no support for the Proposed Decision’s findings, conclusions, and orders regarding bifurcation and categorization of DR programs, and, until such time as that support exists, the Proposed Decision should be withdrawn.

**IV.
THE PROPOSED DECISION ADOPTS A RESTRICTED
PURPOSE FOR DEMAND RESPONSE THAT IS INAPPROPRIATELY LIMITED
AND NOT BASED ON THE RECORD OR ANY EXAMINATION OF FACTS.**

The Proposed Decision adopts a definition of DR that is new, has not been adequately examined by the other parties in this case, and is not supported by any record or examination of facts. There is simply no basis for the Commission to adopt this new definition.

In this regard, the Proposed Decision states that there are two purposes for demand response: (1) “The first purpose is to meet the state’s long-term energy goals including those for

¹¹ Proposed Decision, at p. 18.

renewable and low greenhouse gas emitting resources,”¹² and (2) “[t]he second purpose of demand response is to maintain both system and local reliability by relying on load-following resources bid into the energy market and dispatched on a minute by minute basis with preferable resources.”¹³ Both of the footnotes provided in the Proposed Decision refer to the OIR as supporting these two new definitions, yet there is *no* language in the referenced section of the OIR that resembles this language in the Proposed Decision. Instead, while the OIR states that the “grid’s needs are no longer limited to shaving peak electricity load,”¹⁴ it certainly does not state that peak load reduction is no longer needed or a valid use of DR resources. Yet, if the definition in the Proposed Decision were to stand, the existing uses of DR would become invalid.

To define the local or system reliability benefits of DR resources as only occurring if the resources are providing load following services and responding to minute-by-minute dispatches may be aspirational, but is not supported by any evidence in this proceeding. Further, this definition assumes that any other reliability benefits provided by DR, such as the benefits provided by current programs which do not meet this definition, are of little or no value.

The definition of DR resources for reliability purposes should not be based solely on a set of aspirational characteristics but should include all reliability benefits provided by DR based on an exhaustive examination of the facts. This is a definition that will affect assumptions for the long-term procurement proceeding and for resource adequacy. This “purpose” would limit DR *only* to providing the type of services, which are the most difficult to provide, which require full automation, and for which there is little to no practical experience providing in California, much less whether there is any market signal to indicate that these types of resources are needed.

¹² Proposed Decision, at p. 16.

¹³ Proposed Decision, at p. 17.

¹⁴ OIR (R.13-09-011 (DR)), at p. 16.

This kind of definition is *exactly* the type that will devalue all existing DR and create a going-forward definition that will almost guarantee limited, prospective development of DR. The Commission must not reduce DR to these limited “purposes,” but must allow DR to provide a broader range of services. The Proposed Decision’s “definition” should not be adopted.

**V.
BECAUSE THERE ARE EXISTING REMEDIES TO
ADDRESS DOUBLE COUNTING OF DR RESOURCES,
BIFURCATION IS UNNECESSARY FOR THAT PURPOSE.**

The Proposed Decision seeks to bolster the need for DR program bifurcation by pointing to a concern raised by the CAISO that, absent a bifurcation of resources between load modifiers or supply-side, double counting of the resource for resource adequacy purposes would occur.¹⁵ Joint DR Parties do not agree that bifurcation is necessary to prevent double counting of DR resources for RA purposes.

In this regard, the recently adopted Resolution E-4630 (Electric Rule 24), to which the utilities have submitted compliance advice letters, contains several protections against dual participation of resources, which would lead to a double counting concern. The Commission also prohibits customers from dual participating in a utility, event-based program while participating in the wholesale market.¹⁶ The utilities will be the gatekeepers to ensure that customers are indeed eligible to participate in the wholesale market, by checking that a customer is not already registered in a utility, event-based program. In addition, the CAISO has safeguards in its registration process that prohibit a customer from participating in an active registration with more than one demand response provider.¹⁷

¹⁵ Proposed Decision, at p. 19.

¹⁶ D.13-12-029, Ordering Paragraph 7, at p. 40.

¹⁷ D.13-12-029, Ordering Paragraph 8, at pp. 40-41.

Therefore, bifurcation, for purposes of preventing double counting of DR resources for RA purposes, is nonsensical since those protections are already in place as the result of the rules adopted by the Commission relative to direct participation. Again, there has been no evidence or examination of whether the statement made by CAISO and relied upon by the Proposed Decision has any merit. These circumstances further undermine the Proposed Decision's determination to proceed with bifurcation now.

**VI.
THE COMMISSION MUST DEVELOP A PROCESS THAT ALLOWS FOR
GREATER INTERACTION OF THE PARTIES AND EXPLORATION
OF THE ISSUES THAN PANELS AND COMMENTS CAN PROVIDE.**

The issues related to DR resource integration into the wholesale market are many and complex. The Joint DR Parties recommend that the Commission hold a workshop at which parties can identify the issues and discuss the best way to resolve them, including developing a timeline whereby identified obstacles will be resolved. Making a policy declaration, now, that bifurcation will occur and effectuating a bifurcation of DR resources, and participation in the wholesale market, are two very different things.

There are strongly held opinions about the obstacles and the way to address them that would benefit from an open discussion among the parties, akin to the process that was recently undertaken for Electric Rule 24. First of all, in Rule 24, Pacific Gas and Electric Company (PG&E) initiated an informal working group wherein the issues were discussed among the parties. The parties made as much progress as they could, on a good-faith basis, and then, Energy Division Staff became involved to assist parties in resolving as many issues as possible. The issues that could not be resolved on a collaborative basis were decided by the Commission.

The Joint DR Parties believe that a collaborative process in this Rulemaking could be helpful in reducing contested issues. It may also be helpful to have a mediator assigned to this

process, which could be used to identify obstacles *and* solutions. The Joint DR Parties do not believe that comments, alone, will be a sufficient process.

VII. CONCLUSION

The Joint DR Parties respectfully request that the Commission withdraw the Proposed Decision in favor of actual record development needed to support even a policy decision on bifurcation. Alternatively, if the Commission elects to proceed with the Proposed Decision now, the Joint DR Parties strongly urge that it be modified as recommended above and in the Proposed Findings of Fact, Conclusions of Laws, and Ordering Paragraphs in Appendix A hereto.

Respectfully submitted,

March 13, 2014

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APPENDIX A

JOINT DR PARTIES PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

EnerNOC, Inc., Johnson Controls, Inc., and Converge, Inc. (“Joint DR Parties”) propose the following modifications to the identified Findings of Fact, Conclusions of Law, and Ordering Paragraphs in the Proposed Decision of ALJ Hymes Addressing Foundational Issue of the Bifurcation of Demand Response Programs in R.13-09-011 (Demand Response).

Please note the following:

- A page citation to the Proposed Decision is provided in brackets for each Finding of Fact, Conclusion of Law, or Ordering Paragraph for which a modification is proposed.
- Added language is indicated by **bold type**; removed language is indicated by **bold strike-through**.

PROPOSED FINDINGS OF FACT:

1. [23] ~~Several Pparties provided~~ **were generally qualified** supportive of the idea of bifurcation, **if the Commission examined the necessary elements that would result in a successful opportunity for DR resource participation in the wholesale market.**

2. [23] The concern of potential siloing or devaluation of demand response programs can be addressed and should **be done in advance of** ~~not prevent~~ the Commission **deciding to proceed with** adopting bifurcation.

3. [23] **DR resources already contribute to resource adequacy. It is premature to determine if b** ~~Bifurcation will expand the opportunity for DR to contribute further for ean~~ **assist the Commission in terms of improving** resource adequacy and Planning, as well as administrative efficiencies.

4. [23] **It is premature to determine if b** ~~Bifurcation~~ can assist the Commission to focus on the strengths of each demand response category to improve the effectiveness of demand response and increase the amount of overall load shed.

7. [24] ~~There are two purposes for demand response programs: 1) to meet the state's long-term energy goals including those for renewable and low greenhouse gas emitting resources and 2) to maintain both system and local reliability by relying on load-following resources bid into the energy markets and dispatched on a minute by minute basis with preferable resources.~~ DR resources should be defined in the broadest possible way to allow DR resources to meet peak, system, local, flexible and other identified needs on the system.

8. [24] D.13-12-029 prevents dual participation of DR resources in the wholesale market while enrolled in an utility, event-based DR program. There is no evidence to support the assertion that DR resources will be double counted unless they are ~~A resource adequacy double counting problem occurs if demand response is not~~ clearly classified as either a supply side or demand side resource.

12. [24] ~~If m~~More demand response ~~is~~ must be bid into the CAISO markets, **that will be an indication that the Commission and the CAISO have created a market structure that encourages DR participation.**~~to make it successful.~~

13. [24] There are plausible solutions to the CAISO integration costs concerns **that need to be explored prior to making a decision to bifurcate existing DR resources.**

14. [24] ~~The cost concerns should not deter us from moving forward with adopting bifurcation.~~

15. [24] The **Commission should resolve the jurisdictional issue** ~~should not prevent the Commission from~~ before moving forward with bifurcating the demand response programs.

17. [25] There are several policy issues regarding demand response resource adequacy and bifurcation that must be addressed **before the Commission**~~but do not create a barrier to~~ adopting bifurcation.

19. [25] ~~No party flatly opposes CAISO market integration.~~

22. [25] The Commission has ~~recently moved forward with~~ directed ~~ing~~ the utilities to revise their tariffs to allow retail customers to bid demand response into the CAISO market and authorized the utilities to bid demand response into the market.

PROPOSED CONCLUSIONS OF LAW:

1. [25] It is ~~premature~~**reasonable** to approve the bifurcation of demand response programs.

~~2. [25] It is reasonable to revise the proposed terminology for bifurcation and improve the definitions in order to eliminate confusion.~~

6. [26] It is ~~premature~~**reasonable** to categorize the current demand response programs. ~~to avoid the double counting problem.~~

7. [26] It is reasonable to continue to analyze, in Phase III of this proceeding, the issue of how ~~much~~ demand response ~~w~~ should be **effectively and economically** bid into the CAISOs market to **encourage demand response participation** ~~ensure viability of the market.~~

PROPOSED ORDERING PARAGRAPHS:

1. [26] The bifurcation of current demand response programs into load modifier and supply resource ~~is adopted~~ will be based upon a full examination of the characteristics of those programs in Phase III.

~~4. [26-27] Current demand response programs are bifurcated as such:~~

Bifurcation of Demand Response Programs	
Programs that are Load Modifiers	Programs that are Supply Resources
Critical Peak Pricing (CPP) Time of Use (TOU) Rates Permanent Load Shifting (PLS) Real Time Pricing (RTP) and Peak Time Rebate (PTR)	Aggregator Managed Programs (AMP) Demand Bidding Program (DBP) Capacity Bidding Program (CBP) Air Conditioning (AC) Cycling Agricultural Pumping Interruptible (API) and Base Interruptible Program (BIP)