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 REPLY OF ENERNOC, INC., JOHNSON CONTROLS, INC., AND COMVERGE, INC. ("JOINT DR PARTIES") TO DEMAND RESPONSE PROGRAM PROPOSALS

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EnerNOC, Inc., Johnson Controls, Inc., and Comverge, Inc. ("Joint DR Parties") respectfully submit this Reply to the Demand Response (DR) Program Proposals filed on March 3, 2014. This Reply is filed and served pursuant to the Commission's Rules of Practice and Procedure and the Assigned Commissioner and Administrative Law Judge's Ruling Providing Guidance for Submitting Demand Response Program Proposals, which was issued in this rulemaking on January 31, 2014 (January 31 AC/ALJ's Ruling).

I. INTRODUCTION

On March 3, 2014, the Joint DR Parties filed their DR Program Proposals in response to the January 31 AC/ALJ's Ruling. The Joint DR Parties recommendations focused, in particular, on improvements to the Aggregator Managed Portfolio (AMP) programs and contracts of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) that would also provide greater funding certainty.

The Joint DR Parties have reviewed the DR Program Proposals and comments submitted by other parties. By this Reply, the Joint DR Parties respond to recommendations made by Southern California Edison (SCE), the Office of Ratepayer Advocates (ORA), the Southern

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California Regional Energy Network/ Bay Area Regional Energy Network (SoCalREN/ BayREN), and the California Energy Storage Association (CESA).

II.
SCE's PROPOSALTO MAINTAIN THE STATUS QUO FOR AMP PROGRAMS FOR 2015/2016 WITHOUT ANY ADDITIONAL MODIFICATIONS TO ADVANCE THOSE AGREEMENTS SHOULD BE REJECTED.

In its DR Program Proposals, SCE has not proposed any changes to its AMP contracts, but proposes that the contracts be extended through 2015 and 2016.[1] Joint DR Parties agree with SCE that the AMP contracts already reflect improvements in response to the directives in D.12-04-045.[2] However, it is also the case that certain additional "improvements" should be made to the program design features that will result in better alignment of the program for 2015 and 2016.

The Joint DR Parties hope that SCE's failure to make such a proposal is not dispositive of SCE's willingness to engage in negotiations with its contractors to pursue such program improvements. The AMP contracts are negotiated agreements, and any changes to those agreements must be the result of mutual agreement between the negotiating parties. As such, the Joint DR Parties have included a request in their DR Program Proposals for some additional time, but not an unlimited amount of time, to pursue negotiated modification to SCE's AMP contracts.

The Joint DR Parties and PG&E have successfully negotiated modifications to the PG&E AMP Contracts, which contract amendments were submitted for Commission approval through a Joint Petition for Modification (Joint PFM)[3] of D.13-01-024 in A.12-09-004, et. al., and granted by the Commission in D.14-02-033. In Finding of Fact 3 of D.14-02-033, the Commission

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[1] SCE DR Program Proposals, at p. 7.
[2] SCE DR Program Proposals, at pp. 4-5
[3] The PFM was jointly filed by PG&E, EnerNOC, and Energy Curtailment Specialists.

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specifically states that the changes "advance the agreements and the associated demand response programs toward increased demand response and improved alignment with the CAISO markets, which complement the goals of R.13-01-011[sic]."[4] While certain of the PG&E AMP contract amendments adopted in D.14-02-033 would not be needed for SCE's AMP contracts because SCE's contracts are structured differently than PG&E's, certain other changes would "advance the agreements." The Joint DR Parties would like to explore changes, akin to those approved in D.14-02-033, with SCE, and, in particular, explore the alignment of payment and performance.

While PG&E and aggregators jointly sought Commission approval for those contract amendments through the Joint PFM, it may not be necessary for SCE to follow the same course. One of the items that the parties requested to be changed in the Joint PFM , and the Commission adopted, was the program testing date, from May 31st to June,[5] which required a change to D.13-01-024. If the contract amendments that result from a negotiation between SCE and the aggregators do not require a change to D.13-01-024 or result in a change to the cost effectiveness of the contracts, such modest changes could be incorporated by agreement of the parties without Commission approval.

For these reasons, the Joint DR Parties continue to request that the Commission incorporate a timeline by which SCE and the aggregators will engage in such negotiations. As proposed in the Joint DR Parties' DR Program Proposals, these negotiations would have an end date of July 1, 2014, by which time the parties will either have reached agreement or inform the Commission that they require more time to continue negotiations.[6]

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[4] D.14-02-033, at p. 12.
[5] D.14-02-033, Ordering Paragraph 2.d., at p. 17.
[6] Joint DR Parties DR Program Proposals, at p. 5.

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III.
ORA'S PROPOSALS SHOULD BE REJECTED, ESPECIALLY ABSENT THE EXPRESS, MUTUAL AGREEMENT OF THE PARTIES TO THE AMP CONTRACTS.

In its DR Program Proposals, ORA recommends the following modifications to the AMP Contracts:

1. The contracts should be revised so that only SCE can call test events.
2. The contract payments should be based upon performance across all hours.
3. The contracts with day-of notification should be from one hour to 30 minutes.[7]

The AMP Contracts are contracts approved by the Commission, in D.13-01-024, that were the result of a Request-for-Offer (RFO) process and subsequent bilateral negotiations. The contracts represent a whole, consideration between the two parties with significant give-and-take as a result of the negotiation process. The contract itself dictates the terms of its modification as to the parties to the contract, and clearly no one who is not a party to the agreement can dictate changes to its individual terms, especially where that change could affect other parts of the agreement. ORA's proposals would significantly change certain terms that affect the operation of the contracts, making it more complex for DR Aggregators to perform, a circumstance not accounted for in the negotiation and for which no consideration has been given in the agreement for that increased complexity.

As SCE indicates in its DR Program Proposals, there were modifications made to these contracts, including locational, or geographic, dispatch, as a result of D.12-04-045.[8] Locational dispatch is more complex to administer than system dispatches and increases the risk associated with reliable delivery of the resource, especially in a relatively small geographic area, like a sub-LAP (load aggregation point). In addition, anytime a significant change to a program structure occurs, there is a learning curve to implement those changes on behalf of both parties. The

[7] ORA DR Program Proposals, at pp. 2-5.
[8] SCE Program Proposals, at p. 4.

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identified areas that ORA would like to change are articles of the contract that give some operational latitude to the DR aggregators, in recognition of the increased complexity and operational risk associated with locational deliveries.

ORA also asks that the terms of the AMP agreements be changed to permit only SCE to call tests and to eliminate the option for seller-directed tests. ORA states that seller-directed tests will allow aggregators to communicate with their customers so that customers will respond better. Also, ORA alleges that advance seller notification may result in customers manipulating their baselines.

First, having customers respond better should be the goal of the AMP program. Customers are the providers of the resource. Providing the best possible service to customers, so that they will remain valuable DR resources, includes good communication. Joint DR Parties maintain a consistent level of communication with customers to provide them with as much information as possible as to when they are likely to be dispatched, including system conditions, temperature and price forecast, etc. So, if tests are meant to replicate conditions of an actual dispatch, communication with customers is what happens in advance of actual dispatches. Therefore, to have no communication with a customer in advance of a test, which is supposed to replicate actual dispatch conditions, would be consistent. In addition, such communication is good customer service and enhances customer satisfaction to ensure a good response, which is in the best interest of everyone, including the ratepayers.

ORA's reasoning seems to be that good communication with the consumer provides the customer with an unfair advantage, when, in fact, not communicating with the customer about the expectation of a DR dispatch would be the anomaly. All stakeholders should be working together to create an environment that encourages customer participation and response and treats

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customers like informed consumers providing a valuable resource to the system. It is also important to maintain customer satisfaction with their participation as DR resources. Communication with the customer keeps the customers more satisfied with their participation as DR resources.

What experience has also demonstrated is that customers have signed up to be a resource to the system when needed, but object to being tested just for the sake of being tested, especially if they have been participating in the program over a number of years. Unnecessary testing decreases customer satisfaction because the customer feels as if they are being dispatched unnecessarily. Some wonder how many times they need to be tested before there is confidence in the resource. In some ways, testing and retesting devalues the resource to customers because it sends a message that there is a lack of confidence in, and value for, the resource. If others do not have confidence in the resource, why should the customers?

ORA has offered *no evidence* that baseline manipulation is occurring as a result of seller-directed tests, that seller-directed tests would increase the occurrence of baseline manipulation, that the existing baseline methodology is flawed and vulnerable to such manipulation, or that seller-directed tests are less representative than an SCE-directed test. Therefore, ORA's argument that seller-directed tests will result in baseline manipulation for customers relative to SCE-directed tests or actual dispatches, wherein DR providers are in communication with their customers, is baseless and should be completely disregarded.

As stated above, the use of the "best hour" as a way of measuring performance was a concession to, and made in recognition of, the increased complexity associated with providing local deliveries on a sub-LAP basis. Removing that provision would increase the operational risk of the contract and would remove some of the "value" that aggregators received in the

context of a negotiated contract. Locational deliveries were only recently required as a result of D.12-04-045, and parties have had a steep learning curve in implementing those changes. The "best hour" provision cannot be removed without affecting other aspects of the contract.

The Joint DR Parties also oppose ORA's recommendation to change the notification time for day-of programs from one hour to 30 minutes. ORA contends that, if the response time is 30 minutes, the resources could be used by CAISO for system emergencies and as contingency resources.[9] While Joint DR Parties would agree that programs with shorter notifications should be more valuable to the system, CAISO has not, based on its testimony, briefs, and comments in the 2012 Long-Term Procurement Plan (LTPP) Rulemaking (R.) 12-03-014, in either Track 1 or Track 4, shown itself willing to consider demand response resources that are capable of being dispatched with 30 minutes as adequate for contingency purposes. In fact, a recent ruling in the 2014 LTPP Rulemaking (R.13-12-010) states that DR resources must be available to be dispatched in "sufficiently less time than 30 minutes"[10] to be considered a fast response resource and to help CAISO recover from contingency events.

While Joint DR Parties do not agree with that definition, changing the notification time of these contracts will not, at least according to CAISO, increase the value of these resources for meeting a contingency event. But, again, in the context of a negotiated agreement, reducing the notification time increases the performance requirements of the resource, which should make the resource more valuable. Modifying the contract in such a manner, without any recognition or consideration of the enhanced value or operational rigor, would be to the disadvantage of the sellers of the resource.

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[9] ORA DR Program Proposals, at pp. 5-6.

[10] R.13-12-010 (LTPP) Assigned Commissioner's Ruling on Assumptions, Scenarios and Renewable Portfolio Standard (RPS) Portfolios for 2014 Long Term Procurement Plan (LTPP) and 2014/2015 California Independent System Operator (CAISO) Transmission Planning Process (TPP) (February 27, 2014), at pp. 24-25.

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Joint DR Parties are unwilling to consider these changes, except in the context of a negotiated agreement with SCE, and unless appropriate accommodations are made to reflect the increased value those changes provide and the increased operational risk that the aggregators incur. Such changes would then modify the cost effectiveness of the contracts, which the Administrative Law Judge had cautioned parties to avoid.[11]

Finally, it is true that ORA supported the Joint PFM seeking approval of amendments to PG&E's AMP Program, which was granted in D.14-02-033. However, the Joint PFM was not contested by any party. The negotiating parties *agreed* to make an accommodation for ORA's concerns in that context in exchange for support. However, the process for making any modification to the contracts required that agreement being reached first between the negotiating parties. That is also the starting point that the Joint DR Parties have recommended in undertaking negotiations with SCE relative to its AMP contract.

IV.
MORE INFORMATION IS NEEDED TO DETERMINE WHETHER DR FUNDING THROUGH SOCALREN AND BAYREN IS APPROPRIATE.

SoCalREN/BayREN have jointly proposed that funds be made available to conduct their own demand response programs on a basis comparable to the way in which funds are made available to conduct their own energy efficiency programs. These agencies provide technical services and program management support for public agencies that do not have the in-house expertise to execute their own energy efficiency programs.[12]

Specifically, SoCalREN proposes that $500,000 be allotted from SCE's budget to provide the following services:

- Inclusion of Demand Response potential as a component of the investment grade audits

[11] January 31 AC/ALJ Ruling, at p. 3.
[12] SoCalREN/BayREN DR Program Proposals, at p. 1.

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- Technical reports that objectively and thoroughly evaluate Demand Response costs and benefits
- Transparent information and explanation about the obligations and actions required of Demand Response program participants
- Aggregation of multiple building Demand Response projects
- Solicitation of aggregated Demand Response projects to third party administrators under SCE's Demand Response Program
- Coordination and execution of agreements to provide aggregated Demand Response output to selected third party administrators
- Bundling of Demand Response and Energy Efficiency project approaches to maximize the opportunities from both within public agency buildings and facilities.[13]

Some individual members of the Joint DR Parties are already contractors to SoCalREN for energy efficiency services and do not object to the modest amount identified for purposes of facilitating demand response services. However, as a general matter, if funds for providing DR services are disaggregated among several parties, each with a share of the DR load within SCE's service territory, it may increase the administrative costs associated with bidding smaller portfolios associated with multiple load-serving entities within specific sub-LAPs. Joint DR Parties would also have a strong preference that the delivery of DR services be directed, as much as possible, to third-party providers.

As a general matter, the Joint DR Parties do not contest the modest amount requested by SoCalREN for purposes of DR Service facilitation. However, as this is a new concept for DR, and there could be complications described above, if more funds are directed in this manner for DR purposes, the Joint DR Parties would like to have the opportunity to further explore this idea.

[13] SoCalREN/BayREN DR Program Proposals, at p. 2.

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V.
CESA'S PROPOSAL TO REDUCE PROGRAM FUNDING BY FIFTY PERCENT SHOULD BE REJECTED.

In its DR Program Proposals, CESA makes two proposals that are of great concern to the Joint DR Parties. Those proposals, as discussed below, should both be rejected by the Commission.

A. CESA's Proposal that Funding Must Correlate with the Actual Dispatch of the Resource Is Misplaced and Should Not be Adopted.

CESA points to language in the Proposed Decision in Track 4 (Local Capacity Requirements (LCRs) without SONGS) of R.12-03-014 (LTPP) in which 189 MW of DR resources were identified as "First Contingency" resources and 997 MW were identified as "Second Contingency" resources, with the expressed hope that, in the future, more DR resources would be available for a first-contingency event.[14] CESA then goes on to say that any increase in funding must correlate with the actual dispatch of the resource.[15] CESA's comments are misplaced and should be rejected.

First, whether a resource is defined as a first-contingency or second-contingency resource has nothing to do with the frequency of actual dispatch. The contingency event in the 2012 LTPP, for local resource purposes, was an N-1-1 event. An N-1-1 event is the loss of one major transmission line between San Diego Gas & Electric Company's (SDG&E's) service territory and SCE's service territory, followed by a period of time in which CAISO tries to restore the system, and then followed by the loss of a second major transmission line. The likelihood of the occurrence of this event is 1:21 to 1:928 years.[16] The occurrence of this low-probability contingency event has nothing to do with the frequency with which DR resources are dispatched.

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[14] CESA DR Program Proposals, at pp. 2-3.
[15] Id.
[16] Proposed Decision in Track 4 LTPP, at p. 42.

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Further, EnerNOC, a member of the Joint DR Parties, has fully participated in the 2012 LTPP and has contested the classification of 997 MW as a "Second Contingency" resource, as overly conservative.[17]

CESA fails to understand what purpose DR serves. DR, historically, has been used to either help with emergency conditions or to defer emergency conditions from happening. In addition, DR is used for peak shaving. Those uses have not resulted in a high frequency of DR resources. In all, CESA's comments are conflating frequency of dispatches, and funding, with a resource's ability to respond to a contingency event, which has a low likelihood of occurring. The concepts are unrelated.

The Joint DR Parties are aware of an expressed desire to utilize DR resources for more purposes and with more frequency. Such changes, however, should be achieved through the development of program participation rules, program design, or resource adequacy requirements. Such changes should not be developed by withholding funding for failing to be utilized in a manner that differs from the program design. Therefore, CESA's proposal on this point is misplaced and should be rejected.

B. CESA's Support for TURN's Proposal to Cut 2015/2016 Funding by 50% Is a Bad Policy and Should Not be Adopted.

CESA supports TURN's proposal to cut 2015/2016 funding by 50% based upon the fact that 2012/2013 spending was about 50% of budget.[18] There is no reason to expect that DR programs will behave exactly the same in 2015/2016 as they did in 2012/2013. Many DR programs, including AMP contracts, are ramping up in capacity over the 3-year term. The

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[17] EnerNOC, a member of the Joint DR Parties, has fully participated in the 2012 LTPP. Its comments, testimony and briefs can be accessed in that docket (R.12-03-014).
[18] CESA DR Program Proposals, at p. 4.

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availability of funds does not mean that it will be spent, as in the 2012/2013 period. Unspent dollars are not lost to ratepayers. Unspent dollars will be returned.

However, defunding DR programs by such a substantial amount could result in programs being seriously under-funded. The boomerang effect of having funding and then not having funding would be seriously detrimental to DR programs. CESA members would not support such a policy for its own programs and neither do the Joint DR Parties. Therefore, CESA's support of TURN's proposal, to cut DR funding for 2015/2016 by 50% is bad from a policy perspective, could negatively impact the DR programs (if 2012/2013 is not representative of 2015/2016), and should be rejected.

VI.
CONCLUSION

The Joint DR Parties respectfully request that, by further ruling or decision, the Commission encourage bilateral negotiations between SCE and the aggregators on the AMP Contracts to adopt changes comparable to those authorized for PG&E's AMP Contracts in D.14-02-033, with a progress report by July, 1 2014. It may not be necessary to obtain Commission approval for negotiated amendments to the contract that are consistent with D.13-01-024 and D.14-02-033 and make no change in the cost effectiveness of the AMP contracts.

ORA's proposals cannot be entertained except in the context of a negotiation whereupon the parties to the contract are in agreement and have weighed the implication of those changes relative to other provisions. ORA's proposals reduce value for the DR aggregators, are not supported by facts, and will not make the contracts more useful to CAISO for the purpose of responding to contingency events, according to the record in R.12-03-014 and as reflected in the ACR Ruling in R.13-12-010. For those reasons, ORA's proposals should not be adopted.

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The modest request by the SoCalREN is reasonable for purposes of facilitating DR services to public agencies without the requisite expertise. However, Joint DR Parties have a strong preference that DR services should be delivered by third-party providers. Further, allocating limited DR funds among smaller agencies may make it more difficult to administer DR among multiple load-serving entities on a sub-LAP basis. It may also be reasonable to further explore this option.

Finally, CESA's proposals for defunding DR programs by 50% and making DR funding subject to actual dispatches are misplaced. Both should be rejected.

Respectfully submitted,

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