

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding
Policies and Protocols for Demand Response,
Load Impact Estimates, Cost-Effectiveness
Methodologies, Megawatt Goals and
Alignment with California Independent System
Operator Market Design Protocols

Rulemaking 07-01-041
(January 25, 2007)

**OPENING COMMENTS OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ON
THE PROPOSED DECISION ON PHASE FOUR DIRECT PARTICIPATION
ISSUES**

The California Independent System Operator Corporation (the ISO) submits these opening comments on the Proposed Decision (PD) of ALJ Farrar, “Decision on Phase Four Direct Participation Issues.”¹ The Commission opened Phase Four in November 2009 to address state issues pertaining to FERC’s Order No. 719 (issued October 2008) that requires ISOs/RTOs such as the California ISO to allow aggregators of retail electric customers to bid demand response resources directly in the ISO’s wholesale electricity market, where local laws and rules do not prohibit such bidding.² The immediate focus of Phase Four and the PD is upon provider authorization for, and retail customer participation in, the ISO’s Proxy Demand Resource (PDR) product, which the ISO

¹ The PD was issued on March 23, 2010 and can be accessed on the Commission’s website at <http://docs.cpuc.ca.gov/efile/PD/115328.pdf>.

² Wholesale Competition in Regions with Organized Electric Markets, FERC Stats. & Regs. ¶ 31,281 (2008) (“Order No. 719”), order on reh’g, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292, order on reh’g and clarification, Order No. 719-B, 129 FERC ¶ 61,252 (2009). Order Nos. 719, et seq. also added to the Commission’s regulations 18 C.F.R. § 35.28(g), which includes demand response requirements applicable to ISOs and RTOs. Order No. 719 can be accessed on FERC’s website at <http://www.ferc.gov/whats-new/comm-meet/2008/101608/E-1.pdf>.

intends to launch on May 1, 2010, assuming FERC acceptance of the ISO's PDR tariff amendment.

At the outset, the ISO would like to acknowledge the significant efforts by the Commission to intake the issues, evaluate them, and set out thoughtful proposals for treatment of the subject matter of Phase Four, all the while cognizant of the time frames in which the ISO has been operating to implement FERC's Order No. 719 through launch of the PDR product. The Commission and the ISO have been working together to move demand response forward to fulfill California state policy and federal policy in this area. Commission staff has actively participated in ISO stakeholder workshops for the PDR product development, and ISO staff has actively participated in the events in this proceeding, including Phase Four. These efforts have benefited from the participation of able stakeholders, both private sector and utility, in both venues.

I. Background: The ISO PDR Product

The ISO has developed the PDR product to implement FERC's Order No 719 requirements for demand response as well as other FERC directives on demand response issued directly to ISO in what is commonly referred to as the "MRTU docket (Market Redesign and Technology Upgrade)."³ Through the MRTU docket, FERC has considered and ruled upon ISO implementation of its new market design.⁴

The ISO submitted its PDR tariff amendment to FERC in February 2010 and has requested an effective date of May 1, 2010 for the PDR product and an earlier effective date of April 19, 2010 for approval of the *pro forma* proxy demand resource provider agreement that demand resource providers and the ISO must enter into as a prerequisite

³ FERC Docket No. ER06-615.

⁴ The ISO submitted the proposed amendment to FERC on February 16, 2010. It has been designated as FERC Docket No. ER10-765. The amendment filing can be accessed on the ISO website at <http://www.caiso.com/273f/273fcac5d70.pdf>.

to the provider offering resources to the ISO market. FERC has calendared the matter for its April 15 meeting.⁵

II. Implementation Timing; Determinations in the PD Relating to Participation in PDR Product at Launch (May 1)

The PD is interim in nature, authorizing IOU activity under existing 2009 participating load pilots (PLP), and authorizing energy service provider (ESP) activities with respect to the ESP's own customers; the decision defers jurisdictional, ratepayer protection, and other identified issues to a later stage. The decision is structured around four key substantive issues: 1) jurisdiction; 2) dual program participation; 3) communication protocols; and 4) settlement. It then screens the four issues, and concludes with directives on implementation timing that are set out in PD Section 3.4.⁶

Parties intending to be Demand Response Providers under PDR are looking to the PD to determine whether they can participate in PDR in May 2010 and what end use customers they may solicit as curtailment resources:⁷

- From the perspective of the IOUs, they are looking to see what activities and funding the decision has authorized.
- From the perspective of ESPs and third party aggregators who are not ESPs (the PD calls them DRPs) they are looking to see whether their solicitation of the full spectrum of retail customers (both bundled and Direct Access (DA)) is in any way restricted for now.
- From the perspective of bundled and direct access customers, they are looking to see whether they can participate as PDR resources, should they so desire, either directly or through a program offered by i) an IOU; ii) an ESP; or iii) a DRP.

⁵ See FERC Commission calendar posted on FERC website at <http://www.ferc.gov/EventCalendar/Files/20100408161745-CA04-15-010.pdf>. The matter is April 15, 2010 agenda item E-15.

⁶ PD at pp.15-18.

⁷ The ISO is using the term Demand Resource Providers here as defined in the ISO PDR tariff amendment. This definition encompasses any entity that wants to act as the provider (the aggregator of retail customers) for PDR, whether it is an IOU, an ESP, an end-use customer, or an aggregator that is not registered as an ESP in California. In contrast, the PD uses the abbreviation "DRP" to mean providers that are not IOUs. (This is the convention that parties have used in workshops.) The ISO will use the term DRP as it is used in the PD. When it is necessary to discuss the broader set of providers, whether they be an IOU, ESP, end-use customer or third-party aggregator, the brief will use the unabbreviated term Demand Response Provider or provider.

The ISO is looking at the PD from the following perspective:

Does it cover all of the potential parties that may contact the ISO to be a PDR Demand Response Provider (an IOU, an ESP, an end-use customer, a DRP)? Additionally, which customers can be registered as PDR resources in the ISO demand response system (the PDR software database)?

To aid in its own evaluation of the decision, the ISO has developed the table below (Table 1) as a screening tool. The ISO believes that the PD may not speak to all the potential circumstances for May 2010, and potential providers and customers for PDR would benefit from further discussion or directives in the decision. Further Commission guidance in the PD would assist the ISO in complying with FERC's instructions in Order Nos. 719 and 719-A that local regulatory authority jurisdiction over their retail customers is to be recognized and respected. In this regard, FERC's Order 719-A states that:

The RTO or ISO should not be in the position of having to interpret when the laws or regulations of a relevant electric retail regulatory authority are unclear. While we leave it to the relevant retail authority to decide the eligibility of retail customers, their decision or policy should be clear and explicit so that the RTO or ISO is not tasked with interpreting ambiguities.⁸

⁸ *Wholesale Competition in Regions with Organized Electric Markets*, 128 FERC ¶ 61,059 (2009) ("Order No. 719-A") at P 50. This order can be accessed on FERC's website at <http://www.ferc.gov/whats-new/comm-meet/2008/101608/E-1.pdf>.

<p style="text-align: center;">Table 1 ISO Screening Tool</p> <p>A guideline to analyze providers and customers who ask to participate in PDR in May 2010-</p> <p>1) Does the PD authorize or prohibit ISO contracting with the provider at this time? 2) Does the PD authorize or prohibit the provider from adding this customer as a resource?</p>		
<p>DRP Configuration—who is the demand response provider –can this provider sign a Proxy Demand Response Agreement (PDRA) with the CAISO?</p>	<p>Bundled Customer as Resource --can the provider solicit this customer to participate?</p>	<p>Direct Access (DA) Customer as Resource –can the provider solicit this customer to participate?</p>
<p>Provider is an IOU Yes—the PD authorizes the IOU to act as a provider (authorization under 2010 PDR pilots). The IOUs will be filing advice letters at the CPUC to implement.</p>	<p><u>Yes</u></p> <ul style="list-style-type: none"> This customer class is permitted under the 2010 PDR pilots. ISO seeks clarification as to size and scope of customer base that can be registered for PDR: Are utilities limited to 2009 PLP customers and 2009 MW values enrolled in the PLP? Logically, it seems that new customers must be permitted. 	<p><u>Unclear whether new DA customers can participate</u></p> <ul style="list-style-type: none"> How does the PD apply to the IOU as a DRP that is engaged in demand response with DA customers?
<p>Provider is a third-party DRP that is not an ESP⁹ Yes—the PD does not prohibit party from acting as a provider—a DRP is not a jurisdictional entity of the CPUC, so it is logical that the PD would not speak in terms of <i>authorization</i>. CPUC impact would relate to whom the DRP can sign up as a customer, as the CPUC considers DRP interaction of CPUC jurisdictional end-use customers.</p>	<p><u>No</u></p> <ul style="list-style-type: none"> PD has deferred jurisdictional/consumer protection and financial settlement issues. 	<p><u>Apparent Answer is Yes</u></p> <ul style="list-style-type: none"> ISO seeks clarification from the CPUC: Can a DRP solicit any DA customer to be its resource? A reason for confusion-- Conclusion of Law No. 3—PD expressly allows an ESP to solicit its customers as PDR resource. PD does not discuss other DRPs (i.e. a DRP who is not an ESP) Does the fact that the PD does not include a similar statement about DRPs imply prohibition? Most likely, the PD does not address because PD contemplates that this transaction is not CPUC jurisdictional. A reason for confusion—the PD could be read to say that the CPUC considers its future consideration of jurisdictional/consumer protection and resource

⁹ An analogous scenario is an end-use customer that desires to act as its own DRP and bid its load curtailment capability as a resource in the ISO markets.

		<p>adequacy issues to also cover DRP solicitation of DA customers, and so it defers, until later, DRP solicitation of DA customers that are not its own. If CPUC intends this, it would be helpful if the PD were revised to state this expressly.</p>
<p>Provider is an ESP Yes—PD Conclusion of Law No. 3 says that the ESPs may engage in direct participation on behalf of their retail customers.</p>	<p><u>No</u></p> <ul style="list-style-type: none"> • PD has deferred jurisdictional/consumer protection and financial settlement issues 	<p><u>Can this provider solicit those DA customers who are its own ESP customers?--Yes</u></p> <ul style="list-style-type: none"> • Expressly permitted for own customers (Conclusion of Law No. 3) <p><u>Can this provider solicit other DA customers who are not its own customers for LSE purposes?--Unclear</u></p> <ul style="list-style-type: none"> • The PD does not address whether an ESP can solicit other DA customers for whom the ESP does not act as the load-serving entity. The PD may not address this situation because the PD contemplates that this transaction is not CPUC jurisdictional. If so, it would be helpful if the PD included a clarification on this point. On the other hand, the CPUC may be of the opinion that consumer protection and RA issues—deferred to later time—require holding these transactions in abeyance for now. If so, it would be helpful if the PD stated this expressly.

The PD expressly authorizes IOU participation in PDR in May 2010 and directs the IOUs to utilize the authorization/funding vehicle of the existing PLP Programs that were developed for the summer of 2009. As to end-use customer participation, the PD prohibits bundled customers from participating in non-IOU direct bidding programs until the Commission has the chance to consider jurisdictional, communications, and settlement issues at a later time.¹⁰

¹⁰ PD at p. 18, Finding of Fact No. 10, Conclusion of Law No. 6, Ordering Paragraph No. 5.

As to ESPs, the PD expressly holds that ESPs can engage in direct participation on behalf of their own customers.¹¹ Accordingly, ESPs can act as their own DRP or employ third party DRPs at PDR launch to bid their own DA customers into the ISO market.

A. IOU Activities --Areas of Uncertainty and Requested PD Revisions

1. Uncertainties Caused by the PD

As soon as the PD was issued, various parties began asking the ISO what the decision meant in terms of customer participation in PDR. Specifically, they asked whether the decision operates to freeze IOU program size at summer 2009 PLP MW level for each IOU. The ISO believes that the answer to this question is no. Parties have also asked whether the IOUs will be able to solicit new customers to participate for 2010. The ISO believes that the answer to this question is yes.

The ISO believes that the point of the PD's directive that IOUs utilize the existing pilot programs as the vehicle for 2010 PDR participation is to authorize : 1) the activity (participation in the ISO market through the PDR product) and 2) the funding for such activities. The ISO does not consider the PD's invocation of the 2009 pilots to mean that the Commission is either freezing the MW level at 2009 levels or limiting the portfolio of 2010 PDR customers to only those who participated in the 2002 PLP. The ISO believes that this is embodied in Finding of Fact No. 3, which provides that "IOUs should solicit and incorporate third-party DRPs into their 2010 PDR pilots as a way to gain experience with real-time DRP/LSE interaction." Were the IOUs to be restricted to only the 2009 PLP customers, then the IOUs could not solicit and incorporate any more third party DRPs because the customer make-up would already be frozen. Moreover, SCE would have *no customers* for its 2010 PDR pilot, because its 2009 PLP retail customer, Fort

¹¹ PD at p. 20, Finding of Fact No. 3.

Irwin military base, is no longer participating in the pilot (Fort Irwin employed A/C cycling of residential customers).

Furthermore, the ISO understands that PG&E terminated its original pilot configuration and design at the end of 2009. Since then, the ISO and PG&E have discussed the fact that PG&E wants to use its PeakChoice™ demand response program, after some possible reconfiguration, for PG&E's 2010 pilot activities. And to do so, PG&E will have to request and obtain the Commission's approval.¹² The ISO encourages the Commission to support this program change to use PeakChoice™ so to make that program "PDR capable," and because this would be a positive step in the process of learning how to re-configure retail demand response programs to integrate them into ISO markets.

The fact that SCE must obtain new customers and that PG&E must reconfigure a demand response program clearly shows that IOU pilot activity cannot be restricted to the very same activities conducted in 2009. The ISO believes that the PD contemplates such adjustments in the final ordering paragraph wherein IOUs are directed to file the necessary advice letters. IOU flexibility authorized under the PD must include the flexibility for the 2010 PDR activity to exceed the 2009 PLP level and include new customers.

2 The ISO's Requested PD Revisions to Address These Uncertainties.

While the ISO believes that the discussion set forth above is the only logical interpretation of the PD's directive to utilize the 2009 IOU pilots, the ISO requests that the Commission augment the PD to provide clarity for parties who are using the decision as a roadmap to show them what they are permitted to do beginning in May with the

¹² Additional information about PG&E's PeakChoice™ program can be found on PG&E's website at: <http://www.pge.com/includes/video/mybusiness/energysavingsrebates/demandresponse/peakchoice/index.html>

launch of the ISO's PDR product. Specifically, the last paragraph of PD Section 3.4 should be revised as follows:

Only the pilot programs identified by these parties will be allowed to participate until this issues discussed above. However, 2010 pilot activities are not limited to specific 2009 PLP MW levels, and the IOUs are not prohibited from soliciting new customers to participate in 2010 pilot activities. ~~However,~~ Moreover, given the value of effectively regulated direct participation of PDR in CAISO markets and our desire to secure these benefits for ratepayers, we intend to resolve the outstanding issues in this decision by March 1, 2011.

Moreover, the ISO requests a revision to the PD to include a provision that expressly authorizes the IOUs to reconfigure their existing pilot programs to enable PDR participation, beginning May 2010, by filing of advice letters (as PG&E desires to do with regard to its PeakChoice™ program).¹³

B. Activities by DRPs that are not ESPs -- Uncertainty as to Whether their Ability to Solicit DA Customers on May 1 has been Frozen

1. Why the PD Causes Uncertainty.

The PD holds that DRP solicitation of bundled customers is deferred until such time as various issues are considered. In this regard, the PD discussion of jurisdiction states that:

The parties take markedly different positions regarding whether DRPs should be treated as ESPs, and whether such a determination conclusively establishes Commission jurisdiction. However, we need not reach this particular issue at this junction.¹⁴

¹³ In this regard, the ISO would recommend an additional Conclusion of Law, following Conclusion of Law No. 6, stating, for example, that "To the extent that existing program structures for the PLP programs are insufficient for PDR pilot programs, PG&E, SCE and SDG&E may seek to modify those programs through advice letter filings."

¹⁴ PD at pp 8-9.

The decision does not speak to the situation in which the DRP seeks to solicit DA customers. Conclusion of Law No. 3 specifically addresses ESPs, stating that the ESPs may solicit their own customers for PDR. The quotation above shows that the decision uses the term “DRP” distinctly from ESP, so that a DRP for purposes of the decision does not refer generically to any non IOU provider who may also be an ESP.

The ISO interprets the PD as not prohibiting DRP solicitation of DA customers, and believes that the decision does not contain an affirmative conclusion of law on the subject because a conclusion of law paralleling Conclusion of Law No. 3 would carry the connotation that the Commission was authorizing DRP activity before it had made a determination as to whether DRPs are subject to Commission jurisdiction. The ISO reads the decision this way because the statement in the decision that defers the issue of whether DRPs should be treated like ESPs is immediately followed by a discussion of *cross-cutting situations* in which a bundled customer participates in the DRP direct bidding program, and not the situation where a direct access customer participates. This part of the PD goes on to address consumer protection, but, again, the discussion addresses the cross cutting situation where the bundled customer participates in the DRP program. The discussion of issues to be deferred such as consequences for long term procurement, resource adequacy, or Loading Order impacts also refers to a situation where the bundled customer contemplates participation in the DRP program.¹⁵ Because the PD focuses on cross cutting issues (such as bundled customer sign up in a DRP bidding program), the decision apparently does not prohibit any DRP from engaging with any DA customers to join its PDR offering/program.

¹⁵ See PD discussion at pp 9-10. Significantly, the paragraph long discussion begins with the statement that “[n]o party disputes that the Commission has authority over the potential impacts of direct bidding on consumer protection for *utility customers*.... (Emphasis added).

2. Request to Revise PD to Expressly State that the Decision does not Prohibit DRPs from Soliciting DA Customers.

Given the uncertainty discussed above, the ISO requests that the decision be revised to include an express conclusion of law stating that the decision does not prohibit DRPs from engaging DA customers during the interim period between the issuance of the PD and the final Commission determination on the issues raised in the PD.¹⁶

If the PD does in fact intend to prohibit DRP engagement of DA customers in May 2010, the ISO would request that the Commission reconsider this point. The ISO believes that DA customers should not be denied the opportunity to participate in direct bidding through a DRP program during the interim period between product launch (May 1) and further Commission consideration of outstanding issues for the spring of 2011.

C. Uncertainty Whether ESPs Can Solicit DA Customers Who Use a Different ESP Entity as their LSE

The decision does not address the question of whether an ESP can solicit for PDR other DA customers who use other ESP entities as their LSE. The reason for this may be that the PD considers these transactions to be outside the Commission's jurisdiction.

1. Requested Revision to Decision

The ISO requests that the Commission revise Conclusion of Law No. 3 to include the additional provision that the decision does not prohibit ESPs from engaging DA customers that are not their own customers during the interim period between the decision issuance and the final Commission determination on the issues raised in the PD.

If the PD does in fact intend to prohibit ESPs from engaging DA customers (who are not their customers) during this interim period, then the ISO would request that the Commission reconsider this point. The ISO believes that DA customers should not be

¹⁶ The ISO recommends a new Conclusion of Law following Conclusion of Law No. 3 for to add this provision.

denied the opportunity to participate in direct bidding though an ESP during the interim period between product launch (May 1) and further Commission consideration of outstanding issues for the spring of 2011.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2010 I served, on the Service List for Proceeding R.07-01-041, by electronic mail and United States mail, a copy of the foregoing

OPENING COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION ON THE PROPOSED DECISION ON PHASE FOUR DIRECT PARTICIPATION ISSUES

Executed on April 12, 2010 at
Folsom, California

Anna Pascuzzo

Anna Pascuzzo,
An employee of the California Independent
System Operator