

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

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

R.13-09-011  
(Filed September 19, 2013)

**PREHEARING CONFERENCE STATEMENT OF THE  
DIRECT ACCESS CUSTOMER COALITION AND  
ALLIANCE FOR RETAIL ENERGY MARKETS**

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## TABLE OF CONTENTS

I. INTRODUCTION .....	2
II. ADDITIONAL ISSUES TO BE ADDED TO SCOPE .....	3
A. Principles For Properly Allocating The Costs Of Utility DR Procurement And Programs Must Be Added To Scope In Accordance With Decision 12-04-045. ....	3
B. Bridge Funding For Utility DR Programs Should Include Consideration of Appropriate Phase Outs. ....	5
III. NEED FOR HEARINGS AND COMMENTS ON SCHEDULE .....	6
A. Need for Hearings. ....	6
B. Schedule. ....	6
IV. CONCLUSION .....	7

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The Direct Access Customer Coalition<sup>1</sup> (“DACC”) and Alliance for Retail Energy Markets<sup>2</sup> (“AREM”) submit this Prehearing Conference Statement in accordance with the Ruling of Administrative Law Judge Kelly A. Hymes, *Administrative Law Judge’s Ruling Calling for Prehearing Conference Statements* (“Ruling”), issued October 2, 2013. The Ruling states that the Prehearing Conference Statements are to address: (a) additional issues the Rulemaking should consider and an explanation of why they should be added to the scope; (b) the need for hearings; and (c) a proposed schedule.<sup>3</sup> As discussed below, DACC and AREM identify additional issues that should be added to the scope of this proceeding and provide comments on the schedule and need for hearings.

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<sup>1</sup> DACC is a regulatory alliance of educational, commercial, industrial and governmental customers who have opted for direct access to meet some or all of their electricity needs. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage.

<sup>2</sup> The Alliance for Retail Energy Markets is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California’s direct access market. This filing represents the position of AREM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

<sup>3</sup> Ruling, p. 2.

## I. INTRODUCTION

DACC and AReM welcome and support the Commission’s call for a “new vision” for demand response (“DR”) resources in the Rulemaking.<sup>4</sup> The time is indeed “ripe” to tackle changes to the current utility-centric model for demand response (“DR”) and explore ways to enhance competitive DR markets.<sup>5</sup> In fact, these issues were major policy thrusts for DACC and AReM during the proceeding to consider the utilities’ applications for their 2012-14 DR Program Applications (Application 11-03-001 *et al*). In that proceeding, DACC and AReM noted that California’s DR programs had fallen far short of the state’s goals and that other markets have evolved into significantly more robust DR markets with many more competitive third-party providers.<sup>6</sup> The California Energy Commission recently made this same point in its Draft 2013 Integrated Energy Policy Report (“IEPR”).<sup>7</sup>

Nonetheless, DACC and AReM are disappointed that the immediate tasks under the rulemaking involve approving, funding and implementing *utility-run pilots*. While DACC and AReM do not oppose such pilots, we urge the Commission to move forward expeditiously and on a parallel track with the DR policy issues that will support the move away from utility-run programs. We recommend a proposed schedule in Section III for this parallel effort. DACC and AReM are also disappointed that the Rulemaking targets 2016 for completing a transition to the “new vision.”<sup>8</sup> That timetable would mean two more summer periods without opportunities for

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<sup>4</sup> R.13-09-011, pp. 15-16.

<sup>5</sup> R.13-09-011, pp. 5-6.

<sup>6</sup> See, for example, *Comments of the Direct Access Customer Coalition and the Alliance for Retail Energy Markets on Proposed Decision Adopting Demand Response Activities and Budgets for 2012 Through 2014*, A.11-03-001 *et al*, November 17, 2011, pp. 2-3.

<sup>7</sup> *2013 Integrated Energy Policy Report – Draft Lead Commissioner Report*, California Energy Commission, October 2013, Figure 3, p. 43.

<sup>8</sup> R.13-09-011, p. 17.

third-party providers to enter the market and bring needed innovations. We request that the Commission make every effort to expedite that timing.

## **II. ADDITIONAL ISSUES TO BE ADDED TO SCOPE**

### **A. Principles For Properly Allocating The Costs Of Utility DR Procurement And Programs Must Be Added To Scope In Accordance With Decision 12-04-045.**

The preliminary scope set forth in the Rulemaking addresses a number of critical policy issues regarding the state of DR resources in California.<sup>9</sup> However, a key policy issue is missing – one that is fundamental to the success of a competitive DR market -- principles to properly allocate the costs of utility DR procurement and programs. Even though the Commission, in this newest OIR, renews its commitment to ending the utility-centric model for DR programs, it is clear that there will continue to be some level of utility-based programs for several years, and maybe even longer when one considers the demand-side programs that are envisioned to come from this proceeding. The Commission pledged in Decision (“D”) 12-04-045 to include consideration of cost allocation issues in its next DR policy proceeding and DACC and AReM respectfully request that this topic be added to the scope of this rulemaking.<sup>10</sup>

Some background and further discussion is appropriate. In the consolidated proceeding addressing the DR program applications of the Investor-Owned Utilities (“IOUs”) for 2012 through 2014,<sup>11</sup> DACC and AReM presented testimony and recommendations intended to modify the utility-centric model of DR procurement and ensure proper cost allocation for the IOUs’ DR programs so as to encourage expansion of DR resources through competitive third-

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<sup>9</sup> R.13-09-011, pp. 17-19.

<sup>10</sup> D.12-04-045, p. 204.

<sup>11</sup> These proceedings were as follows: PG&E Application: A.11-03-001; SDG&E Application: A.11-03-002, and SCE Application: A.11-03-003.

party suppliers.<sup>12</sup> In particular, DACC and AReM argued that DR resources bid into the markets operated by the California Independent System Operator (“CAISO”) are treated like generation resources and, like generation resources, their associated costs must be recovered through the IOUs’ generation rates. Continuing to allow recovery of utility DR costs through non-bypassable rates or charges is a barrier to entry for third-party providers because the customers they would serve through DR programs still have to pay for the utility programs, making the third-party program less competitive than the utilities’ subsidized DR programs.<sup>13</sup> The Commission declined to adopt recommendations of DACC and AReM in D.12-04-045, but agreed that the utility-centric model and related cost allocation issues should be addressed in a policy rulemaking.<sup>14</sup> Further, the Commission expressly determined that cost allocation issues should be addressed consistently for all three IOUs in that policy rulemaking:

... we agree that these issues should be considered in a consistent manner across all three utilities and thus are best handled in one proceeding. We think that the most appropriate forum would be the R.07-01-041 or its successor to establish overall rules and then those rules can be applied in the Utilities’ respective rate design applications.<sup>15</sup>

The presence of ratepayer-funded utility DR programs has at least a two-fold negative effect -- it creates higher costs for consumers and serves as a direct barrier to competitive DR markets that could work to lower those costs and bring innovation. In fact, the majority of the IOUs’ DR program costs are misallocated to non-bypassable distribution rates, in which (a) DR costs are applied to distribution rather than generation costs where they largely belong and (b)

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<sup>12</sup> See, for example, *Testimony of Mark E. Fulmer on Behalf of the Direct Access Customer Coalition and the Alliance for Retail Energy Markets Concerning Competitive Issues in the 2012 -14 Demand Response Program Proposals*, A.11-03-001 *et al*, June 15, 2011.

<sup>13</sup> See: D.12-04-045, pp. 201 -202; and *Testimony of Mark E. Fulmer on Behalf of the Direct Access Customer Coalition and the Alliance for Retail Energy Markets Concerning Competitive Issues in the 2012-14 Demand Response Program Proposals*, A.11-03-001 *et al*, June 15, 2011.p. 12-20.

<sup>14</sup> D.12-04-045, pp. 16 and 204.

<sup>15</sup> D.12-04-045, p. 204.

the utilities are able to provide DR products and services that are available competitively from third-party providers at fully subsidized rates. As the CAISO has previously explained, this cost allocation approach creates an “un-level and anti-competitive playing field,” which prevents a “viable competitive” DR market from taking “root.”<sup>16</sup> The CAISO argues that improperly allocating IOU DR program costs to distribution rates is both a “major policy issue” and a “current barrier to the development of a competitive demand response market.”<sup>17</sup>

In summary, this rulemaking is the right time and the proper proceeding in which to address this urgent issue as a fundamental component of the Commission’s effort to stimulate participation by competitive third-party DR providers in California energy markets. Accordingly, DACC and AReM respectfully request that the scope of this proceeding be modified to include consideration of proper cost allocation for utility DR programs.

**B. Bridge Funding For Utility DR Programs Should Include Consideration of Appropriate Phase Outs.**

The Rulemaking explains that the first task at hand is to approve the proposed utility-run pilots and “bridge funding” of the utility DR programs through 2015.<sup>18</sup> DACC and AReM support bridge funding to ensure that cost-effective DR programs continue to be funded until the transition can be made to competitive DR markets. While DACC and AReM strongly support this transition away from the current utility-centric model, we also support market certainty and a measured transition. Therefore, as part of the scope of the Rulemaking, DACC and AReM propose that the Commission consider an appropriate timetable for phasing out funding for utility programs.

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<sup>16</sup> *Initial Response on the Assigned Commissioner and Administrative Law Judge’s Ruling Soliciting Responses from Questions Arising from Federal Energy Regulatory Commission Order 745 and 745A*, CAISO, R.07-01-041, August 17, 2012, p. 7; see also, discussion on pp. 8-10.

<sup>17</sup> CAISO August 17, 2012 Comments, *loc. cit.*, p. 8.

<sup>18</sup> R.13-09-011, p. 21.

### III. NEED FOR HEARINGS AND COMMENTS ON SCHEDULE

#### A. Need for Hearings.

At this time, DACC and AReM expect that hearings are not needed and that proposals, comments and workshops are the preferred approach for evaluating, discussing, and resolving or narrowing issues. Two workshops are already planned by Staff and more should be scheduled. In addition, the primary issues of concern to DACC and AReM -- proper cost allocation for utility DR programs and ensuring competitive DR markets -- are policy issues that are properly addressed outside of hearings.

#### B. Schedule.

Only a rudimentary schedule is specified in the Rulemaking.<sup>19</sup> Considering that many of the identified policy issues have remained unresolved since R.07-01-041, DACC and AReM believe that some urgency is warranted to tackle and resolve these issues. Addressing them in the Bridge Funding decision scheduled for the second quarter of 2014 may be most expeditious. We also recommend seeking policy proposals from parties to the proceeding and holding workshops to discuss and refine them. Our proposed schedule follows:

<b>ACTION</b>	<b>DATE</b>
Responses due to Staff Proposal on Pilots	October 21, 2013
Prehearing Conference	October 24, 2013
Workshops	October 16 and 22, 2013
Scoping Memo	November 14, 2013
Comments due on Questions Regarding OIR Policy Issues and Submission of Policy Proposals	December 4, 2013
Workshop on Proposals and Comments	Week of December 16, 2013
Refinements to Policy Proposals due	January 15, 2014
Reply to Comments on Questions Regarding OIR Policy Issues and Policy Proposals	February 5, 2014

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<sup>19</sup> R.13-09-011, p. 23.



Additional Workshops (As Needed)	February-March 2014
Post-Workshop Comments (If Needed)	March 31, 2014
Bridge Funding and Policy Decision	2 <sup>nd</sup> Quarter 2014

#### IV. CONCLUSION

DACC and AReM support moving forward quickly to address and resolve the critical DR policy issues set forth in the Rulemaking and discussed herein. DACC and AReM respectfully request that the scope of the rulemaking be modified to address proper cost allocation of utility DR programs in accordance with the Commission directive in D.12-04-045 and to consider phasing the reduction in funding for utility programs. Finally, DACC and AReM look forward to working with the Commission and its staff to successfully implement the new vision of DR resources in California.

Respectfully submitted,



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October 14, 2013

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