

**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)

**RESPONSE OF THE DIRECT ACCESS CUSTOMER COALITION
AND ALLIANCE FOR RETAIL ENERGY MARKETS
TO QUESTIONS ON FOUNDATIONAL ISSUES**

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A. RESPONSE TO QUESTIONS ON FOUNDATIONAL ISSUES

1. BIFURCATION

- a. *In the Order Instituting Rulemaking (OIR), the Commission proposes to bifurcate the current demand response programs into demand-side and supply-side resources. The OIR defines the demand-side programs as customer focused programs and rates, and supply side resources as reliable and flexible demand response that meets local and system resource planning and operational requirements. Please comment on the terms, demand-side and supply-side resources, and the definitions provided. If you disagree with the terms and/or definitions, please provide your recommended changes and explain why your recommendation is more appropriate.*

DACC/AReM Response: At this time, DACC and AReM do not oppose the proposed bifurcation of demand resources (“DR”) into “demand-side” (or load-modifying) and “supply-side” DR resources, subject to the following caveat: The Commission must establish a clear demarcation line between “demand-side” and “supply-side” programs. In particular, the reference to demand-side programs as “customer focused” is a somewhat confusing misnomer and should be removed. ALL DR programs are, by their very nature, “customer focused.” DACC and AReM recommend that the appropriate distinguishing characteristic is whether the DR program is bid as a resource into the markets operated by the California Independent System Operator (“CAISO”), and are eligible to provide Resource Adequacy (“RA”). All such DR programs would be categorized as “supply side” and all other programs, such as those that are embedded in utility tariff rates, as “demand side.”

- b. *Are there any potential problems or concerns with the proposed bifurcation or realignment of demand response programs into demand-side and supply-side resources? For example, are there any legal issues or other concerns such as missed opportunities for integration?*

DACC/AReM Response: DACC and AReM are unaware of any legal issues associated with the proposed bifurcation, but reserve the right to respond further in reply. Regarding the potential for “missed opportunities,” DR programs that are categorized as

“demand side” may have reduced value in meeting the operational requirements of the grid, so to the maximum extent possible, DR programs should be structured as supply-side programs and be bid into the CAISO markets.

- c. *The OIR describes an ongoing tension between the supply-side and demand-side requirements for demand response. The OIR states that demand response as resource adequacy resources are held to the same requirements as generation resources for system reliability and economic efficiency. Simultaneously, the needs and technical capabilities of customers and providers should also be considered in program design. How could the proposed bifurcation or realignment of supply-side and demand-side resources be designed to serve both sets of requirements? 請□□*

DACC/AReM Response: Providing clear lines of demarcation between demand-side and supply-side DR programs, as discussed in the response to Question 1.a above, should resolve these tensions to a large degree. The preferred approach for designing DR programs is to define the characteristics and/or requirements for supply-side and demand-side DR programs and then allow the market to innovate and develop the programs that meet those requirements. The utilities would obviously design and implement pricing tariffs as a demand-side DR program for bundled customers. However, third-party providers should be free to develop and implement supply-side DR programs that meet the applicable requirements without prescriptive “program design” features dictated by the Commission.

- d. *What role, if any, will the load impact protocol serve in this realignment? Are revisions required? Should the Commission develop separate sets of evaluation criteria and/or processes for the demand and supply sides?*

DACC/AReM Response: DACC and AReM are not experts with respect to the load impact protocols. It is, however, DACC and AReM’s understanding that the protocols serve two purposes at present. They are used: (1) to determine whether a particular utility DR program is a cost-effective expenditure of ratepayer funds; and (2) to establish the RA capacity attributable to a particular DR program.

2. COST ALLOCATION

- a. *Current policy requires the utilities to identify, in their demand response applications, the rates used for cost recovery of each program and the justification for that rate. What, if any, additional information should the Commission require to ensure equitable cost allocation and why?*

DACC/AReM Response: The Commission requires that utility applications requesting use of ratepayer funds be supported by testimony, detailed workpapers, and other evidence on the record. In previous proceedings in which the utilities have applied for approval of their DR programs or price responsive tariffs, the utilities have typically requested that the vast majority of the program costs be recovered through distribution rates that are paid for by all customers, including those taking supply service from competitive suppliers, such as the electric service providers (“ESPs”) that AReM represents. In support of this request, however, the utilities have not actually proved or provided evidence to support this cost allocation, but merely asserted that (1) costs have always been recovered this way in the past so the practice should continue and/or (2) the programs are anticipated to provide “system” benefits.⁶ Put simply, assertions are not showings. Nevertheless, to date, the Commission has accepted these assertions, while acknowledging that further evaluation of appropriate cost allocation is warranted, and that this is the proceeding where modifications to the existing cost allocation regulations will be addressed.⁷

As discussed our response to Question 2.b below, the bifurcation of utility DR programs into demand-side and supply-side programs should simplify the process of determining recovery of the costs associated with utility DR programs: utility DR programs, both supply side and demand side, should be recovered through generation rates that are paid by the utilities’

⁶ See, for example, testimonies filed in A.11-03-001 *et al*, on March 1, 2011, for Pacific Gas and Electric Company, p. 11-10 and 11-11 and San Diego Gas & Electric Company, pp. AMB-12-AMB-13.

⁷ D.12-04-045, p. 204.

bundled customers. The time has come for the Commission to recognize and rectify the inappropriate DR program cost allocation that has persisted for too long.

b. *If the Commission bifurcates the demand response programs into demand-side and supply-side, does it need to revise its requirements for cost allocation in order to ensure equitable cost allocation? How and why?*

DACC/AReM Response: Yes. This new DR Rulemaking sets forth a “new vision” for DR in California.⁸ As part of this new vision, the Commission has expressed the desire to move away from the current utility-centric approach for DR programs and “consider other models,” in which third-party DR Providers play a larger role.⁹ Integral to the success of this new vision is proper cost allocation for utility DR programs.

i. Current Cost Allocation Creates Barriers to Entry and Discourages

Competition. As noted above, the Commission has typically approved the utilities’ requests to allocate the vast majority of their DR program costs to distribution rates. Utility DR programs funded through distribution rates create barriers to entry for third-party DR Providers, restricting competition, and thereby raising costs for consumers. Specifically, utilities are significantly advantaged when their DR program costs are guaranteed cost recovery from all customers through distribution rates with no risk of shortfall or non-recovery. The CAISO has echoed the concerns that DACC and AReM have been raising in this regard, noting that the Commission’s current cost allocation approach creates an un-level and anti-competitive playing field, which prevents a viable competitive DR market from taking root.¹⁰ The CAISO argues that improperly

⁸ R.13-09-011, pp. 15-16.

⁹ R.13-09-011, pp. 9 and 16.

¹⁰ *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* ,

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.”¹¹

Put simply, third-party DR Providers have neither guaranteed cost recovery nor ratepayer subsidized programs to offer to customers they are seeking to enroll in programs of their own design. When customers who may otherwise elect service through third-party DR programs nevertheless still have to pay for the utility programs, the third-party programs are automatically less competitive than the utilities’ subsidized DR programs.¹² Third parties are thus hampered in their ability to enter the DR market when utilities’ DR services are underwritten by non-bypassable charges (in this case through distribution rates) that must be paid by all customers. The resulting limited engagement by third parties also stymies innovation in DR programs. Utility offerings tend to be prescriptive, one-size -fits-all programs that often do not work well for all customers. As a consequence, the utilities’ programs supported by layers of sales teams, marketing specialists, software and systems, not to mention direct subsidies, paid for through distribution rates remain the only game in town.

Thus, in spite of long-standing California policy to “promote” DR, direct third-party offerings in California are few and direct participation in CAISO markets negligible. By contrast, eastern ISO markets have robust DR competition, mainly provided by third parties. This rulemaking provides the opportunity to correct these barriers to third-party participation created by improper cost allocation of utility DR programs.

CAISO, R.07-01-041, August 17, 2012, p. 7; see also, discussion on pp. 8-10.

¹¹ *Ibid*, p. 8.

¹² 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.

though utility generation rates:

We are persuaded by the arguments of the Direct Access Parties that requiring the customers of CCAs and ESPs, who cannot enroll in SDG&E's dynamic pricing tariffs, to pay the costs of implementing those tariffs, is not consistent with cost causation principles, and would not be reasonable. ... we require that the costs of SDG&E's dynamic pricing decision be recovered from all bundled customers **through generation rather than distribution rates.**¹⁹ (emphasis added)

Collection of the costs authorized in this proceeding **through generation rates** will ensure that customers that are not eligible for dynamic rates are not charged for activities associated with those rates.²⁰ (emphasis added)

The Commission has thus already determined that proper cost allocation for demand-side DR programs requires the associated costs to be recovered through utility generation rates.

- c. *In resource adequacy procurement, costs are allocated across the LSE's. If the Commission bifurcates demand response programs into demand side and supply side, should costs for supply-side procurement be allocated in the same fashion as resource adequacy procurement? If not, recommend other frameworks?*

DACC/AReM Response: Only supply-side DR programs would qualify for RA credit under the proposed bifurcation. If the recommendation to allocate and recover the costs of supply-side DR programs through the generation rates is adopted, DACC and AReM would agree that the associated RA capacity contribution would accrue solely to the utilities' bundled customers, and therefore the current practice of allocating the RA to the ESPs who serve DA customers would end. However, if the Commission rejects DACC and AReM's proposal for cost allocation to generation rates, and direct access customers are required to continue paying

¹⁹ D.12-12-004, pp. 52-53.

²⁰ D.12-12-004, Finding of Fact No. 31, p. 68.

Commission should explore the use of back-up generators to provide supply-side DR in more detail and determine the types of units, fuels, or operation that could be used and still allow the resource to qualify as a RA resource.

DACC and AReM propose the following options for further discussion in this proceeding for determining whether supply-side DR resources supported by back-up generation may qualify as an RA resource:

- Considering the extent to which the resource is subject to and meets all federal, California Air Resources Board (“CARB”), and local air quality management districts’ emission standards. For example, if back-up generation meets the low emission standards of the local air quality management districts for stationary sources, then the unit could be approved for use as an RA resource.
- Allowing back-up generation to be bid into CAISO markets as a DR resource (and to receive RA credit) when the unit conducts its required testing.
- Working with CARB to define the acceptable uses of back-up generation for providing supply-side DR resources under the plan for reducing greenhouse gas (“GHG”) pursuant to Assembly Bill 32.
- Working with local air quality management districts to consider acceptable conditions for waivers of emission requirements to use back-up generation for providing supply-side DR resources in CAISO markets. For example, back-up generators can be operated in case of emergencies under most air quality district rules. Therefore, if a request for DR resources is considered an “emergency,” the restriction on operations should be removed.

- c. *What are the current laws and regulations regarding back-up generation, including those by the Air Resources Board, local air quality management districts and/or any other related regulatory body?*

DACC/AReM Response: DACC and AReM have no additional comments to offer in response to this question, except to note that the ability for an entity to use back-up generation for any purpose is heavily regulated in California, and these restrictive policies should be reviewed in this proceeding as part of the evaluation of the use of back-up generation by DR resources. DACC and AReM may have further comment on this issue in the future.

B. CONCLUSION

DACC and AReM strongly urge the Commission to move forward with the implementation of its new vision for DR in California by removing barriers to competitive DR markets, facilitating active engagement by third-party DR Providers, and reforming existing cost allocation for utility DR programs so that existing subsidies from retail choice customers are eliminated. We look forward to transitioning rapidly to this new vision so that DR can more effectively fulfill its promise as an “essential element of California’s resource strategy.”²²

Respectfully submitted,



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²² R.07-01-041, p. 2.