

**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)

**RESPONSE OF THE MARIN ENERGY AUTHORITY
ON PHASE TWO FOUNDATIONAL QUESTIONS**

Jeremy Waen
Regulatory Analyst
MARIN ENERGY AUTHORITY
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Telephone: (415) 464-6027
Facsimile: (415) 459-8095
E-Mail: jwaen@marinenergy.com

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I. INTRODUCTION

In accordance with the November 14, 2013 Joint Assigned Commissioner and Administrative Law Judge Ruling and Scoping Memo, Marin Energy Authority (“MEA”) submits the following comments responding to the Phase Two Foundational Questions identified by the Commission.

II. BACKGROUND

MEA is a Community Choice Aggregator (“CCA”) established pursuant to California law and regulations developed by the Commission. MEA is the joint powers not-for-profit public agency authorized to administer the MCE Clean Energy (“MCE”) CCA program. MEA currently serves approximately 125,000 customer accounts throughout Marin County and the City of Richmond. While MEA customers receive generation service from the MCE CCA program, they continue to receive transmission, distribution, billing and other services from Pacific Gas and Electric Company (“PG&E”).

Demand Response (“DR”) is an important consideration in MEA’s long-range mission to provide means for its communities and customers to reduce their greenhouse gas emissions -- not only through the consumption of clean energy, but also through programs that help conserve

energy usage and aid reliable operation of the grid. MEA would like to have the opportunity and means to design and administer DR programs for its customers and to optimize its customers' opportunity to participate in existing and future DR programs. However, under limitations created by the current DR cost allocation methodology, MEA customers can only participate in DR through programs offered to them by PG&E, the local Investor Owned Utility ("IOU").¹ By participating in PG&E's Intermittent Resource Management Phase 2 ("IRM2") pilot, MEA is taking the first step toward demonstrating that the existing California Independent System Operator ("CAISO") DR market can easily accommodate direct, efficient and effective participation by CCAs and other non-IOU Load Serving Entities ("LSEs").

MEA appreciates the Commission's efforts to reexamine the "utility-centric" model for demand response programs, and agrees with the Commission that third party aggregators can "provide additional innovation and services to the market, yielding additional uncaptured potential benefits to [demand response] in California."² MEA likewise applauds the Commission for identifying cost allocation as a foundational issue. We provide some contextual discussion and initial responses to the Foundational Questions below, and look forward to actively participating in this much-needed initiative to make DR programs more diverse, inclusive and effective.

¹ While MEA isn't prohibited from funding and operating its own DR programs through funds collected through its generation rates, such DR programs would be unfair to its customers because they would cause MEA's customers to double-pay for DR programs. In such an instance MEA customers would pay for IOU sponsored DR programs through their delivery charges and pay for MEA sponsored DR programs through their generation charges. Such double payment would be both unfair to customers and anti-competitive for non-IOU Load Serving Entities.

² *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 ("OIR") at 5, quoting Decision ("D.") 12-04-045 at 16.

III. THE COMMISSION’S DEVELOPMENT OF A NEW DR FRAMEWORK SHOULD INCLUDE POLICIES ENSURING THAT DR OPPORTUNITIES ARE FULLY AND FAIRLY AVAILABLE TO CCAS AND CCA CUSTOMERS

The Commission’s decision in this proceeding will effectively determine whether CCAs and their customers will have an opportunity to participate fully in demand response programs and market opportunities. Under current policies, CCAs and their customers are essentially “second class citizens” when it comes to options for DR program sponsorship and participation. We are encouraged by the opportunity offered in the Ruling and Scoping Memo to discuss this problem and suggest how it may be addressed as the Commission proceeds with DR program redesign activities.

As the OIR acknowledges, we are in a period of transition. DR resource procurement was traditionally utility-centered, not competitive or market-driven, and narrow in its scope and purpose. It was focused on a limited portfolio of load reduction strategies providing largely distribution-related benefits, and it was administered and controlled entirely by the incumbent IOUs. In recent years, both the scope and focus of DR activities has changed significantly. While traditional DR programs still have an important place, there are expanded opportunities for supply-oriented DR products that will reduce or help meet LSEs’ RA requirements and that will integrate DR into CAISO markets. The Commission has taken important first steps in adopting policies for direct participation in DR and initiating this rulemaking proceeding.³ However there is much work to be done in order to implement the Commission’s policies and create a truly open and competitive framework for DR in California.

The factors underlying cost allocation have likewise evolved over time. Traditionally the Commission has used a simplified approach to cost allocation, assigning all LSE DR costs to

³ See D.12-11-025 (2012) and D.13-12-029.

distribution based on the assumption that it is fair and appropriate to recover them pro rata from the distribution utility's customers.⁴ The time is ripe to address cost allocation methodologies for DR programs in a comprehensive manner as D.12-04-045 directs. Furthermore, DR programs continue to evolve, further supporting this need for a paradigm shift. The obligation to meet Resource Adequacy ("RA") and other generation-related requirements apply equally to non-IOU LSEs. CCAs procure both energy and capacity resources to serve their customer loads. CCAs as well as IOUs may be involved as sponsors of DR programs or aggregators of DR resources. If all DR costs (including costs for DR that qualifies as an RA resource) are recovered by the utility through distribution rates, CCA customers may be overcharged, and CCAs may effectively be prevented from participating in procurement or development of DR resources. The Commission has previously acknowledged that cost allocation needs to be revisited, and the Commission has appropriately identified it as an issue to be addressed in this proceeding.

As the Commission takes up the task of redesigning its DR structure to address recent evolution in DR products, attributes and wholesale market opportunities, it must also examine and reflect the evolution of choice and competition among retail service providers. On this basis, the Commission will be well positioned to develop policies that are appropriate, forward-looking, competitively neutral, and fair to all (bundled and unbundled) ratepayers. MEA looks forward to participating in such policy development and providing insight on the particular concerns of CCAs and their customers.

⁴ Though D.12-04-045 permitted the IOUs to recover DR-related costs through distribution charges as an interim cost allocation methodology, the Decision also determined that "additional data and fact finding" would be necessary to establish proper cost recovery methodology for DR programs and that such fact findings would take place in "R.07-01-041 or its successor." (D.12-04-045 at 204.)

IV. RESPONSES TO FOUNDATIONAL QUESTIONS

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. (See Figure 1 below for the proposed realignment.) 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.

MEA has no objection to bifurcation as a means of acknowledging distinctions between “demand side” and “supply side” DR resources, improving program effectiveness, and facilitating participation of supply side resources in the CAISO market. As long as bifurcation does not artificially dictate or distort cost allocation (see discussion below), MEA is somewhat agnostic regarding the parameters for bifurcation.

Assuming the Commission does proceed with program bifurcation, it will be important to establish clear boundaries and ensure that categorization does not inhibit innovation and program coordination. The first step will be to establish workable definitions. Figure 1 appears to define supply side as including all resources that are eligible to participate in the CAISO market, and demand side as all other DR resources that are LSE controlled but not bid into the CAISO. MEA would support this approach with the above caveats.

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?

There is an inherent danger in trying to categorize a diverse spectrum of programs and technology applications into two categories. For policy development purposes, it is clear that supply side resources participating in CAISO markets will have some characteristics and

regulatory requirements in common that other resources will not share. Thus, bifurcation for purposes of facilitating the development of technology-appropriate requirements and metrics for evaluation may be useful. However, the Commission’s concern regarding the possibility of “missed opportunities” is justified, and the Commission should take care to avoid such negative impacts.

With respect to the question of legal issues, MEA does not see a legal concern in bifurcation, per se, as long as it does not result in discrimination between resources or suppliers, and as long as cost allocation is addressed separately and correctly. Leaving the question of bifurcation aside, however, it is important to point out that the current IOU-centered demand response framework is fraught with existing and potential legal concerns from the perspective of CCAs and CCA customers. The Commission needs to identify and address such issues as soon as possible, ideally in this “redesign” phase of the proceeding. Specifically, MEA recommends that the Commission:

- Commit to expanding opportunities for participation by third party suppliers of DR products and services;
- Ensure a level playing field for CCAs by eliminating obstacles that directly or indirectly are likely to limit or potentially prevent CCAs and CCA customers from fully and fairly participating in direct access programs. These obstacles include:
 - Outdated IOU privacy policies and procedures that are currently used to withhold smart meter/AMI data from CCAs on privacy grounds;
 - Cost allocation and revenue recovery mechanisms that favor IOUs and/or disadvantage CCAs;
 - Real or attitudinal barriers to reflecting third party (CCA, ESP, etc.) credits or charges in IOU billing statements.

Finally, MEA agrees that if the Commission bifurcates DR programs it should take care to avoid precluding opportunities for program integration. This could be accomplished by creating an “other” category for proposals involving both supply and demand side elements, by limiting the scope and application of bifurcation to purposes that are served by it, and/or by

espousing generally a policy of openness to programs that may not fit neatly within one category or the other. MEA supports the Commission's recent announcement of its intent to form an Integrated Demand Side Project ("IDSP") Coordination Group, and encourages the Commission to coordinate its IDSP activities with the development of DR program parameters in this Phase Two proceeding.

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?

The Commission should adopt policies that acknowledge and reflect the diverse attributes, benefits, and costs of different DR resources. While recent IOU studies clearly point to the need for improvement in defining metrics for performance, the tool of bifurcation should not necessarily dictate a simplistic approach to establishing requirements for DR resources.

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?

Currently the Commission uses the load impact protocol to establish a Qualifying Capacity ("QC") value for DR resources.⁵ Recognizing that DR programs are diverse in their design, purpose and benefits, MEA would support development of separate (or perhaps multiple) sets of evaluation criteria and/or processes for the demand and supply side programs.

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

⁵ See D.10-06-036, Appendix B.

justification for that rate. What, if any, additional information should the Commission require to ensure equitable cost allocation and why?

Assuming the Commission adopts MEA's proposal to reflect the costs of all generation-related DR programs in generation rates (see discussion below in response to question b) the IOUs should follow the Commission's direction in allocating costs and should be required to provide an explanation supporting the proposed rate treatment for each program.

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?

The Commission needs to revise its requirements for cost allocation in order to ensure equitable cost allocation, irrespective of whether and how the Commission moves forward on program bifurcation. There are two important considerations. First, costs associated with programs designed to procure DR resources that meet RA requirements (regardless of whether they are classified as supply or demand side) are generation-related and thus should be reflected in generation rates and not through delivery or public purpose program charges. Second, DR cost allocation should be competitively neutral. Funding for any IOU DR program or incentive that is available only to bundled customers and not to unbundled customers should be recovered through generation rates, regardless of whether it is classified as a demand or supply side program. These principles are critical to creating a level playing field for CCAs.

Currently all DR program costs are allocated by the IOUs to distribution rates. This means that CCA customers pay for all of the IOU DR programs without consideration of whether an individual program benefits CCA customers. This "all in" approach to including DR costs in distribution rates may have made some sense at an earlier stage in program development but it does not make sense now.

As the Commission observes in the OIR, “demand response programs allow a utility to avoid procurement of generation capacity.”⁶ DR resources are counted towards fulfilling an LSE’s RA requirements.⁷ Since RA procurement obligations are a generation-related expense, the cost allocation for programs providing resources that meet such obligations should be reflected in generation, not distribution rates.

Allowing the IOUs to recover generation-related program costs through distribution rates is objectionable purely as a violation of ratemaking principles. More importantly, however, it is fundamentally unfair to unbundled customers of the IOU, since they are allocated costs for a program that benefits only the IOU’s bundled customers and/or is only available as an option to IOU bundled customers.

For this reason the Commission should also adopt as policy the principle that costs related to all DR programs that are available only to bundled IOU customers will be allocated only to bundled customers. The justification for this policy is simple fairness. Customers that do not have access to an IOU DR program should not have to pay for that program. For example, MEA customers are not allowed to participate in PG&E’s Peak Day Pricing, E-RSMART (Residential Smartrate Pricing) and E-SLRP (Scheduled Load Reduction) Programs. Regardless of whether the benefits of these programs are deemed to be demand versus supply side, forcing unbundled customers to shoulder the costs of administering programs they cannot participate in, is anti-competitive and inequitable.

While the Commission’s cost allocation questions are linked to bifurcation, cost allocation for DR programs requires examination as a stand-alone issue because the issue has more complex implications, particularly for unbundled retail customers. MEA and other parties

⁶ OIR at 8.

⁷ Id.

raised concerns about the flaws in the current cost allocation methodology for DR programs in the last DR application cycle.⁸ In Decision 12-04-045 the Commission determined that “additional data and fact finding” would be necessary to establish proper cost recovery methodology for DR programs,” and recommended that the issue be addressed in future proceedings.⁹ This proceeding is the right forum for correcting the current flaws in cost allocation. It is focused on creating a “new vision” for DR that includes as a goal “to increase the penetration of demand response programs by doing a close examination of how we frame the programs, how they are offered, procured, and reduce barriers to entry for new customer participation.”¹⁰ That “new vision” should include cost allocation guidelines that are congruous with the Commission’s commitment to reducing barriers and creating an open and fair DR framework. To that end MEA looks forward to a discussion of specific cost allocation principles and development of a plan for implementing them in this proceeding.

c. In resource adequacy procurement, costs are allocated across the LSEs. 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?

See comments above.

3. Back-Up Generators

MEA has no comments on Back-Up Generator questions at this time; however MEA reserves the right to comment on these matters as required in the course of this proceeding.

⁸ See e.g. *Comments of Marin Energy Authority on Proposed Direct Participation Rules* (May, 9, 2011) in R.07-01-041; *Reply Comments of Marin Energy Authority on Proposed Decision Regarding Utility Demand Response* (November 19, 2012) in R.07-01-041.

⁹ D.12-04-045 at 204.

¹⁰ OIR at 15.

V. CONCLUSION

MEA appreciates the thought and insight reflected in the Foundational Questions, and looks forward to working with the Commission to develop DR policies that reflect new products, programs and opportunities. In particular MEA encourages the Commission to address DR program cost allocation policy in an integrated manner, taking into account not only the categorization of programs but also the implications of cost allocation on non-IOU LSEs and their customers. Development of a rational and equitable policy for allocating DR program costs is long overdue and should be a priority in this proceeding.

Respectfully submitted,

/s/ Jeremy Waen

Jeremy Waen
Regulatory Analyst
MARIN ENERGY AUTHORITY
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Telephone: (415) 464-6027
Facsimile: (415) 459-8095
E-Mail: jwaen@marinenergy.com

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