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)

MARIN CLEAN ENERGY'S REPLY TO PHASE TWO FOUNDATIONAL QUESTION RESPONSES

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December 31, 2013

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RESPONSE OF THE MARIN ENERGY AUTHORITY ON PHASE TWO FOUNDATIONAL QUESTIONS

I. INTRODUCTION

In accordance with the Joint Assigned Commissioner and Administrative Law Judge Ruling and Scoping Memo, Marin Clean Energy ("MCE") submits the following reply to the responses of other parties to Phase Two Foundational Questions.[1] MCE looks forward to working with other stakeholders and Commission staff to implement the "New Vision for Demand Response" as envisioned in the *Order Instituting Rulemaking to Enhance the Role of Demand Response in Meeting the State's Resource Planning Needs and Operational Requirements* ("OIR").

As discussed below, MCE requests that the Commission prioritize addressing cost allocation for Demand Response ("DR") programs in this proceeding. As parties point out in opening responses, the Commission's current approach to cost allocation for DR is outdated, discriminates against customers of non-utility Load-Serving Entities ("LSEs"), and effectively precludes the development and implementation of much-needed new and innovative DR programs. Now is the right time, and this proceeding is the right place to update cost allocation

[1] MCE is the entity charged with administering the community choice aggregation ("CCA") program established under the authority of the Marin Energy Authority, a California not-for-profit joint powers authority.

policy in order to ensure competitive neutrality and accurately reflect the purpose and impact of DR resources on utility and LSE procurement obligations.

II. THE COMMISSION SHOULD PRIORITIZE THE UPDATING OF DEMAND RESPONSE PROGRAM COST ALLOCATION POLICIES TO ELIMINATE EXISTING BARRIERS TO PARTICIPATION AND BIAS AGAINST NON-IOU LOAD SERVING ENTITIES.

The opening responses to the Foundational Questions underscore the importance of addressing cost allocation in Phase Two of this proceeding. Although there is divergence of opinion regarding how and where to address DR cost allocation, no party disputes that the regulatory landscape has changed in significant ways. Provision of DR services has expanded beyond a limited, utility-centric framework. The array of potential DR services that can either be applied to alter the load shape or to address capacity needs has expanded. And now LSEs like MCE as well as the major IOUs are responsible for meeting procurement requirements that encompass energy and capacity products to meet the net needs of their end-use customers plus an appropriate share of reserve requirements.

1. MCE Agrees With Parties Advocating Recovery Of All RA-Eligible DR Costs Through Generation Rates.

MCE supports the Direct Access Customer Coalition and Alliance for Retail Energy Markets ("DACC/AReM") proposal that all utility DR programs should be recovered through generation rates that are paid by the utilities' bundled customers.[2] This approach would be simple and reflects the fact that DR resources enable the IOU or LSE, as the case may be, to avoid procurement obligations. As DACC/AReM points out in its response, DR products that are bid into CAISO markets and/or otherwise eligible for resource adequacy ("RA") are

[2] DACC/AREM Response at 5.

inherently generation-related resources and should not be recovered through distribution rates. The Sierra Club appears to take this perspective also, noting that:

> Demand response can be as reliable and more economical than generation resources and has significant environmental benefits, including zero emissions and zero or negligible impacts on water and land use. *Absent clear reasons to do otherwise, the Commission should treat the costs of demand response measures the same way it treats the cost of generation supply.*[3]

More importantly, the Commission's historical practice of allocating DR costs through distribution rates is fundamentally inequitable to non-utility LSEs like MCE. Correcting this inequity constitutes a strong rationale for allocating DR costs to generation that is separate and independent of consideration of the attributes of particular supply and demand-side DR resources. In fact, the Commission relied on this rationale in addressing cost allocation for San Diego Gas & Electric Company's ("SDG&E's") dynamic pricing tariffs.[4] The Commission determined that the cost of implementing SDG&E's dynamic pricing tariffs should be recovered through generation rather than distribution rates because charging CCA and electric service provider ("ESP") customers for tariffs they are not eligible for would not be reasonable.[5]

Making CCA and ESP customers pay for programs they are not eligible for is not only unfair but also, as noted by DACC/AReM, hampers CCA and ESP participation in DR and stymies innovation.[6] The California Independent System Operator similarly recognizes that routine allocation of DR costs to distribution creates a "major policy concern" and "is a current barrier to the development of a vibrant and competitive demand response market."[7]

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[3] Sierra Club Response at 7, emphasis added.
[4] See D.12-12-004 at 52-53.
[5] Id.
[6] DACC/AREM Response at 7.
[7] CAISO Response at 12.

The Commission should acknowledge and address that barrier in this proceeding. Allocating all DR program costs to the generation side is not the only way of structuring cost allocation so that it adheres to the principle of competitive neutrality and reflects the nature of DR as a capacity resource, but it seems to be the most straightforward approach.

2. The Commission Should Not Delay Or Defer Addressing Generic DR Cost Allocation Issues.

The California Large Energy Consumers Association ("CLECA") acknowledges that there are outstanding questions regarding the impact of the current DR cost allocation approach on non-IOU LSEs. However, noting that the IOUs' cost allocation for DR programs has historically been affected by settlements in general rate cases, CLECA "believes that the allocation of such costs should continue to be addressed in Phase 2 of each General Rate Case…."[8] MCE strongly disagrees for very pragmatic reasons.

The cost allocation issues raised in the OIR are common to all of the IOUs and should be addressed in this proceeding so that the Commission can develop a consistent, coherent policy for all affected parties. Once the Commission has addressed DR cost allocation at the policy level in this proceeding, the IOUs will then apply the established policies through their respective GRC applications, and parties will be free to raise issues specific to each IOU in terms of that implementation. CLECA's suggestion that important policy issues be dealt with piecemeal in utility-specific GRCs is contrary to established Commission practice, which favors dealing with issues of broad applicability in rulemaking proceedings.[9] A piecemeal approach to

[8] CLECA Response at 16.
[9] "The Commission may at any time institute rulemaking proceedings on its own motion (a) to adopt, repeal, or amend rules, regulations, and guidelines for a class of public utilities or of other regulated entities; …." Rule 6.1, Commission Rules of Practice and Procedure (June 8, 2011).

the central policy question is also at odds with the Commission's intent to develop and implement a "new vision for demand response" through this rulemaking proceeding.

3. The Status Quo Is Not A Solution.

The three IOUs offer various theories in support of retaining the current practice of allocating most DR program costs to recovery through distribution rates.[10] However, they do not offer constructive proposals for how to update and correct the historical practice of allocating generation-replacing DR costs to distribution rates, and address equitable issues that have emerged as a result of ESP and CCA participation in DR markets. Doing nothing is not a reasonable option because it will not advance the Commission's goals for the OIR. Rather, the OIR should look towards expanding participation in DR programs and permitting all LSEs to apply DR as a resource to meet their overall energy and capacity requirements.

III. THE CRITERIA FOR BIFURCATION ARE LESS IMPORTANT THAN MAXIMIZING PARTICIPATION, COMPETITIVE NEUTRALITY AND PROGRAM INNOVATION AND EFFECTIVENESS.

A number of parties address the ambiguities with the "demand-side" versus "supply-side" bifurcation approach and suggest that one distinction would be whether the programs are designed to provide a DR resource to the CAISO with dispatch as a function of market selection, or whether the particular program is designed to be utilized by the LSE to impact its load levels at particular times of the day at the LSE's determination. While this is may be a way of distinguishing programs, MCE believes the primary focus of the OIR should be to establish

[10] PG&E at 14 ("Recovery of the DR revenue requirement follows cost causation principles and ensures costs are recovered via distribution rates from all customers who either participate in or benefit from these programs."); SCE at A-7 ("The current DR cost allocation policy is sufficient to achieve equitable cost allocation of the DR revenue requirements"); SDG&E at 8-9 ("SDG&E believes that the costs associated with supply-side and load modifying DR should be allocated based on the benefits that are created. When supply-side DR is used to provide a capacity resource, the beneficiaries of that capacity, including ESPs, should pay the associated costs.")

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policies that optimize customer participation, reflect competitive neutrality (from both a technology and performance perspective), and support efficacy and innovation.

Given the dramatic changes in technology that continue to occur at a rapid pace, the DR OIR should maximize potential participation by adopting policies that are technology neutral, and seek to minimize barriers for deployment while spurring innovation and efficacy. Mandating direct participation in the CAISO markets may not be compatible with such goals for various reasons, not the least of which could be seasonality limits to participation and potentially higher costs for CAISO technical requirements (either in terms of direct costs like telemetry and SC services or in the technical criteria for certification to provide particular products, i.e., ancillary services certification or eligibility to qualify as "flexible capacity" under the developing RA program changes). Put frankly, MCE is concerned that mandating that DR directly participate in the CAISO market could discourage participation and innovation. Instead, LSEs like MCE could incorporate such programs into their resource portfolios for purposes of flattening their load profile or helping ease demand during large ramping swings during the off-peak months, without facing potential availability or "no-pay" penalties from CAISO.

In any event, from MCE's perspective, cost allocation issues should not be driven by the label applied to a particular program (e.g., "supply side" vs "demand side"). In every case, the DR application will be impacting the system net load on some dispatchable basis—either as dispatched by CAISO for those programs directly participating in the CAISO's markets to provide particular products, or directly dispatched by the LSE to reduce its load's net contribution to system demand. In each case those programs impact loads, and hence should be functionally characterized as resource costs that are recovered via the "generation" rate component. While there could be benefits to the transmission and distribution systems from the

DR programs, those benefits are indirect at best, and do not justify functional categorization to a non-generation rate component.

IV. CONCLUSION

MCE appreciates the opportunity to provide these reply comments and looks forward to working with the Commission and parties to develop DR policies that reflect new products, programs and opportunities, and a comprehensive DR program cost allocation policy.

Respectfully submitted,

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