

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)

**COMMENTS OF THE
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON
PROPOSED DECISION ON BIFURCATION OF DEMAND RESPONSE PROGRAMS**

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Comments on the Proposed Decision Addressing Foundational Issue of the Bifurcation of Demand Response Programs (Proposed Decision). The Proposed Decision was issued in Rulemaking (R.) 13-09-011 on February 21, 2014. These Comments are timely filed and served pursuant to Article 14 of the Commission's Rules of Practice and Procedure and the instructions accompanying the Proposed Decision.

**I.
INTRODUCTION**

On November 14, 2013, Assigned Commissioner Peevey and Administrative Law Judge (ALJ) Hymes issued a Joint Ruling and Scoping Memo (Scoping Memo). The Scoping Memo requested responses to several Foundational Questions on demand response (DR) bifurcation, cost allocation, and back-up generators in this proceeding. CEERT timely filed a Response to Foundational Questions dealing with DR program bifurcation and a Reply to other parties' Responses on December 13 and December 31, 2013, respectively.

As stated in its December 13 Response, CEERT's primary interest in this proceeding is to ensure that "any resulting decisions will be based on policies and programs that recognize the value of, and the need for increased reliance on, demand response to meet California's energy

needs.”¹ With that policy framework in mind, CEERT was particularly concerned that a better understanding of DR attributes was needed prior to bifurcation and that the DR program bifurcation proposed in the Order Instituting Rulemaking (OIR) and Scoping Memo provided no policy rationale to support bifurcation and would result in dividing up DR resources in a manner that would lead to piecemeal or siloed treatment of DR resources. For these reasons, CEERT urged the Commission not to undertake bifurcation of DR resources that would negatively impact, reduce, or undermine current, beneficial utility or retail DR programs and instead first develop criteria to determine whether retail DR programs should be integrated into the wholesale market and whether these criteria include demonstrating ratepayer benefits. From CEERT’s perspective, undertaking these steps first is necessary to avoid unnecessary confusion and uncertainty for DR resources, especially given the OIR’s goal to “enhance the role of demand response in meeting the State’s resource planning needs and operational requirements.”²

With respect to the Proposed Decision, CEERT appreciates the steps it takes to clarify and address issues raised by CEERT and many other parties to the original bifurcation proposed in the OIR and Scoping Memo. As discussed further below, CEERT particularly appreciates the Proposed Decision’s clarification that current DR programs will not be devalued, that the Commission will explore ways to decrease California Independent System Operator (CAISO) market integration costs, that issues related to resource adequacy (RA) will be resolved prior to implementation of bifurcation, and that the CAISO does not have exclusive control of DR.³

However, as discussed in Section III, the Proposed Decision, like the OIR and Scoping Memo, still fails to outline a clear policy basis for proceeding with bifurcation of DR programs

¹ CEERT Response to Foundational Questions, at p. 1.

² Scoping Memo, at p. 2. See: CEERT Response to Foundational Questions, at pp. 3-5; CEERT Reply to Responses to Foundational Questions, at pp. 2-5.

³ Proposed Decision, at pp. 6, 8 and 10.

and to clearly identify the problem bifurcation will or is expected to solve. CEERT continues to be concerned that bifurcation is happening far too rapidly and the decision to bifurcate has been made without adequately evaluating the full impact of bifurcation. Siloing remains a concern with bifurcation that the Proposed Decision simply does not adequately address. Lastly, CEERT believes that the revised bifurcation definitions require further clarification, without which confusion and uncertainty regarding their impacts on DR programs will remain.

For these reasons, CEERT continues to recommend that the Commission postpone any decision on bifurcation until all the details have been fully evaluated. Alternatively, if the Commission proceeds with bifurcation of DR resources now, CEERT proposes that the Proposed Decision contain a specific process for addressing parties' concerns with a particular focus on coordination between the Commission and the CAISO. The Proposed Decision must also be modified to eliminate Ordering Paragraph 4, which prematurely places existing programs into the two identified bifurcation categories.

II.
THE PROPOSED DECISION CORRECTLY IDENTIFIES BIFURCATION
ISSUES PERTAINING TO CURRENT DR PROGRAMS AND MARKETS,
BUT STILL REQUIRES MORE PRECISION ON THESE POINTS.

As CEERT stated in its Response to Foundational Questions, it is essential “to continue to maintain utility or retail DR programs that have, to date, been the means of expanding this valuable resource, building customer confidence, and understanding of its capabilities in meeting energy needs.”⁴ CEERT further emphasized that any bifurcation should not negatively impact current, valuable DR programs.⁵ From CEERT’s perspective, any action to diminish current DR programs would stifle the growth of DR in California.

⁴ CEERT Response to Foundational Questions, at p. 5.

⁵ Id.

The Proposed Decision clarifies that “the Commission will insure that we do not devalue current demand response programs.”⁶ While CEERT appreciates this assurance from the Commission that it will not devalue current DR programs, CEERT believes that further clarification is required to ensure that there will not be a strict deadline for the end of current programs. CEERT believes that a longer transition period into bifurcation will allow DR programs to properly expand and adjust to bifurcation and to provide for customer certainty in DR.

The Proposed Decision also correctly acknowledges that implementation of bifurcation requires resolution of still pending issues related to CAISO market integration costs and RA. Specifically, the Proposed Decision states that “the Commission must continue to explore ways to decrease CAISO market integration costs” and “that the issues related to resource adequacy must be resolved” before bifurcation or “any new vision for demand response” is implemented.”⁷ CEERT supports the Proposed Decision’s recognition that these barriers facing DR, including solving CAISO integration cost concerns, must be addressed in order to promote DR programs. However, it remains CEERT’s primary position that these issues be resolved *prior to* any decision authorizing bifurcation of DR programs.

Finally, one of CEERT’s concerns regarding bifurcation was the prospect of this Commission ceding control of DR to the CAISO. In this regard, CEERT agrees with the California Large Energy Consumers Association (CLECA) that the CAISO’s “insistence and resulting imposition of greater costs make it less likely that customers currently enrolled in DR programs will be willing to continue their enrollment.”⁸

⁶ Proposed Decision, at p. 6.

⁷ Proposed Decision, at pp. 8, 10.

⁸ CLECA Reply to Responses to Foundational Questions, at p. 3.

For this reason, CEERT supports the Proposed Decision’s conclusion that “the CAISO cannot have exclusive control of demand response” and that “[d]emand response must be available to address local issues as well as system wide issues.”⁹ CEERT also supports the Proposed Decision’s finding that DR “must be available by the Utilities to address local issues, as well as system wide issues.”¹⁰ Nevertheless, the Proposed Decision must be modified to at least outline how the Commission proposes to limit CAISO control or make DR available to address local issues. Without that clarification, the Commission’s ongoing commitment to utility DR programs is left unnecessarily vague.

**III.
THE PROPOSED DECISION ERRS BY DECIDING TO PROCEED WITH
BIFURCATION PRIOR TO FULLY EVALUATING THE IMPACT OF BIFURCATION.**

While CEERT does find merit in some of the findings and conclusions reached by the Proposed Decision, as identified above, a decision approving bifurcation at this time is simply premature and critical details and needed clarifications are simply not included in the Proposed Decision. As CEERT made clear in its Response to Foundational Questions, “neither the Scoping Memo nor R.13-09-011 provides any detailed basis for engaging in this ‘bifurcation’ inquiry in the first place.”¹¹ Unfortunately, the Proposed Decision also fails to adequately identify how bifurcation will meet the Commission’s goal “to enhance demand response programs in meeting the state’s long-term clean energy goals.”¹²

In this regard, the Proposed Decision states that “the Commission goals are to improve the efficiency of demand response and increase the use of all demand response programs – both

⁹ Proposed Decision, at p. 20.

¹⁰ Proposed Decision, Finding of Fact 9.

¹¹ CEERT Response to Foundational Questions, at p. 2.

¹² Scoping Memo, at p. 8.

those that are bid into the CAISO energy markets and those that are not.”¹³ However, the Proposed Decision does not explain how bifurcation would help the Commission meet these goals.

Instead, the Proposed Decision makes broad statements that are not supported by the record. The Proposed Decision states that bifurcation “can assist the Commission in terms of resource adequacy and planning, as well as administrative efficiencies” without providing any evidence to support this assertion.¹⁴ The Proposed Decision also contends that “bifurcation can help us focus on the strengths of the two demand response categories to improve the efficiency of demand response, and increase the amount of overall load[,]” but again does not explain how bifurcation will achieve this.¹⁵ No evidence or policy rationale has been presented in the Proposed Decision that reflects that bifurcation of DR programs is the best method to enhance DR in California.

CEERT is also disappointed that the Proposed Decision generally ignores or discounts parties’ concerns about bifurcation. The Proposed Decision only summarily concludes that “concerns regarding the impact of bifurcation should be addressed but should not cause us to abandon the bifurcation of demand responses programs.”¹⁶ In support of this conclusion, the Proposed Decision offers only the prospect that both CAISO energy market integration costs and RA concerns are going to be evaluated by the Commission prior to implementation of bifurcation and that the jurisdictional issue must be addressed.¹⁷ The Proposed Decision never explains why these concerns should not be dealt with and evaluated *prior* to the Commission deciding or taking action first to bifurcate DR programs, which would result from issuance of the Proposed

¹³ Proposed Decision, at pp. 6-7.

¹⁴ Proposed Decision, at p. 11; Finding of Fact 3, at p. 23.

¹⁵ Proposed Decision, at p. 11; Finding of Fact 4, at p. 23.

¹⁶ Proposed Decision, at p. 6.

¹⁷ Proposed Decision, at pp. 8-10.

Decision. CEERT is also unclear as to why bifurcation must happen so quickly. The Proposed Decision states that there is no reason to delay bifurcation of DR programs, but does not explain why the decision to bifurcate must be made now.

From CEERT’s perspective, “the act of ‘dividing’ up DR resources almost assuredly will lead to piecemeal or ‘siloed’ treatment of a Loading Order preferred resource, the availability and reliance on which should be fully embedded in all procurement decisions made by this Commission.”¹⁸ The Proposed Decision states that “we consider both the siloing and devaluing concerns to be valid but addressable.”¹⁹ The Proposed Decision goes on to find that “there are no known reasons not to move forward with bifurcating demand response programs.”²⁰ Again, however, the Proposed Decision does not explain how these issues are “addressable” or why the Commission should proceed with bifurcation *before* addressing and resolving these issues and *before* a decision to bifurcate DR programs has been made.

The Proposed Decision asserts that “[m]ore demand response must be bid into the CAISO markets to make it successful,” but then states that “we do not have enough information to determine how much demand response must be bid into the market in order to make it successful.”²¹ Once again, the Proposed Decision claims that this issue will be analyzed in the future, instead of fully obtaining and evaluating this information prior to a determination that bifurcation of DR programs is appropriate.

Quite simply, the number of critical issues left unresolved or vague by the Proposed Decision is proof enough that a decision by the Commission authorizing bifurcation of DR Program is simply premature. In these circumstances, the Commission should postpone adopting

¹⁸ CEERT Response to Foundational Questions, at p. 4.

¹⁹ Proposed Decision, at p. 12.

²⁰ Proposed Decision, at p. 12.

²¹ Proposed Decision, at p. 20.

such a decision and undertake significant revisions after it has fully evaluated and resolved these issues, including how to prevent CAISO from having exclusive control of DR programs or how DR programs can be made available to address local issues.

The Proposed Decision must also be modified to eliminate Ordering Paragraph 4, which prematurely divides up existing DR programs between load modifiers and supply resources.²² A full evaluation of which programs would be classified as load modifiers and those that would be classified as supply resources has not been performed, and these classifications are not supported by the record. It is essential that this paragraph be removed from the Final Decision and this determination should be made as part of the intensive workshops described above. Alternatively, the Commission must make clear that Ordering Paragraph 4 represents a *preliminary* or *proposed* approach to bifurcation that will be subject to further evaluation and stakeholder input.

Another aspect of the Proposed Decision that creates more confusion and uncertainty than it solves is by adopting proposed definitions of terms like “load modifiers” and “supply resources” about which CEERT has already expressed concerns. Namely, in its Response to Foundational Questions, CEERT stated:

“[I]t is an over-simplification, if not a confusing distinction, to bifurcate demand response resources between ‘customer-side’ and ‘supply-side’ DR resources, when, given the bases offered for those distinctions, the division actually appears to more appropriately one between DR resources supplied on a ‘retail’ (utility customer programs) versus ‘wholesale’ (bid into CAISO markets) basis.”²³

This same confusion and oversimplification applies to the Proposed Decision’s revised bifurcation definitions of “load modifiers” and “supply resources.” The Proposed Decision does not even address the key issue of what happens when a resource can be categorized as a load

²² Proposed Decision, at p. 19; Ordering Paragraph 4, at p. 27.

²³ CEERT Response to Foundational Questions, at p. 4.

modifier *and* a supply resource.²⁴ Confusion as to bifurcation definitions may lead to the inadvertent exclusion of valuable DR resources and reduce customer confidence in DR, making it imperative for the Commission and stakeholders to work further on clearly and appropriately defining these terms.

Given these critical shortcomings of the Proposed Decision, it is CEERT's primary position that the Commission should not issue a final decision authorizing bifurcation at this time. Instead, the Commission should embark on a process of further evaluating the impacts of bifurcation and providing more clarity on the criteria and definitions that will apply to bifurcation.

**IV.
IF THE COMMISSION PROCEEDS TO AUTHORIZE BIFURCATION,
THE PROPOSED DECISION MUST BE MODIFIED TO BETTER ADDRESS
PARTIES' CONCERNS AND TO ELIMINATE ORDERING PARAGRAPH 4.**

As discussed above, CEERT believes it is premature to decide whether to adopt a bifurcation of DR resources. However, if the Commission decides to proceed with a decision to bifurcate, the Proposed Decision must be modified to state how it intends to address parties' concerns regarding bifurcation.

To that end, any authorization of bifurcation by the Commission should be conditioned on a commitment to hold public workshops, in cooperation with the CAISO, focused on addressing all outstanding bifurcation issues and the process for resolving those issues. These include, but are not limited to, the following: CAISO energy market integration costs, jurisdictional and RA issues, the prevention of siloing and devaluing DR resources, the manner in which DR should be bid into the CAISO market to make it successful, a full evaluation of *all* DR resources and attributes, and an *appropriate* basis for identifying which current DR programs

²⁴ CEERT Reply to Responses, at p. 3.

should be categorized as load modifiers or which as supply resources. Until that last step is taken, there is no basis to include Ordering Paragraph 4 and the Proposed Decision should be modified to eliminate that Ordering Paragraph.

**V.
CONCLUSION**

CEERT welcomes this opportunity to provide constructive comments on the Proposed Decision. CEERT urges the Commission to withdraw the Proposed Decision in favor of first addressing, and creating a record to resolve, all outstanding bifurcation issues. However, if the Commission decides to adopt the Proposed Decision, then CEERT urges its modification to provide greater clarity on its bifurcation definitions, provide for a specific forum and process for addressing all bifurcation concerns, and to remove Ordering Paragraph 4, in particular CEERT's Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs are contained in Appendix A hereto.

Respectfully submitted,

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APPENDIX A

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

As supported by the preceding Comments, CEERT recommends that the following modifications be made to the Proposed Decision's Findings of Fact, Conclusions of Law, and Ordering Paragraphs.

Please note the following:

- A page citation to the Proposed Decision is provided in brackets for each Finding of Fact, Conclusion of Law, and Ordering Paragraph for which a modification is proposed.
- Any proposed additional or new Finding of Fact, Conclusion of Law, or Ordering Paragraph is not numbered, but is identified as a "NEW."
- Added language is indicated by **bold type**; removed language is indicated by **bold strike-through**.

PROPOSED FINDINGS OF FACT:

2. [23] The concern of potential siloing or devaluation of demand response programs ~~can be addressed and should not prevent the Commission from adopting bifurcation~~ should be addressed before the Commission decides whether to bifurcate demand response programs or if the Commission decides to bifurcate demand response programs this issue must be evaluated in an intensive workshop which has mandatory CAISO participation.

3. [23] **Evaluation of whether B**bifurcation can assist the Commission in terms of improving resource adequacy and planning, as well as administrative efficiencies, **is still required**.

4. [23] **Evaluation of whether B**bifurcation can assist the Commission to focus on the strengths of each demand response category to improve the effectiveness of demand response and increase the amount of overall load shed **is still required**.

14. [24] The cost concerns ~~should not deter us from moving forward with adopting bifurcation~~ should be addressed before the Commission decides whether to bifurcate demand response programs or if the Commission decides to bifurcate demand response programs this issue must be evaluated in an intensive workshop which has mandatory CAISO participation.

15. [24] The jurisdictional issue ~~should not prevent the Commission from moving forward with bifurcating the demand response programs~~ should be addressed before the Commission decides whether to bifurcate demand response programs or if the Commission decides to bifurcate demand response programs this issue must be evaluated in an intensive workshop which has mandatory CAISO participation.

17. [25] There are several policy issues regarding demand response resource adequacy and bifurcation that must be addressed ~~but do not create a barrier to adopting bifurcation~~ before the Commission decides whether to bifurcate demand response programs or if the Commission decides to bifurcate demand response programs this issue must be evaluated in an intensive workshop which has mandatory CAISO participation.

24. [25] ~~The recommendation of a demand response auction mechanism is a good starting point for exploration and discussion.~~

PROPOSED CONCLUSIONS OF LAW:

1. [25] It is **not** reasonable to approve the bifurcation of demand response programs **prior to a full evaluation of bifurcation issues.**

3. [25] It is **only** appropriate to use the terms, Load Modifier and Supply Resource, for categorizing demand response programs **once all bifurcation issues have been evaluated and these terms can be defined in such a way that avoid confusion.**

5. [26] It is **only** reasonable to adopt the following definitions for bifurcating the demand response programs: Load Modifier demand response reshapes or reduces the net load curve and Supply Resource demand response can be scheduled and dispatched into the CAISO market, when and where needed **once all bifurcation issues have been evaluated and these terms can be defined in such a way that avoid confusion.**

PROPOSED ORDERING PARAGRAPHS:

1. [26] The bifurcation of current demand response programs into load modifier and supply resource is **not adopted and will not be adopted until all bifurcation issues have been evaluated.**

2. [26] Load Modifiers **will be** ~~are~~ defined ~~as resources that reshape or reduce the net load curve~~ once all bifurcation issues have been evaluated and these terms can be defined in such a way that avoid confusion.

3. [26] Supply resource **will be** ~~are~~ defined ~~as resources that can be scheduled and dispatched into the California Independent System Operators energy markets, when and where needed~~ once all bifurcation issues have been evaluated and these terms can be defined in such a way that avoid confusion.

4. [26-27] ~~Current demand response programs are bifurcated as such:~~

Bifurcation of Demand Response Programs	
Programs that are Load Modifiers	Programs that are Supply Resources
Critical Peak Pricing (CPP) Time of Use (TOU) Rates Permanent Load Shifting (PLS) Real Time Pricing (RTP) and Peak Time Rebate (PTR)	Aggregator Managed Programs (AMP) Demand Bidding Program (DBP) Capacity Bidding Program (CBP) Air Conditioning (AC) Cycling Agricultural Pumping Interruptible (API) and Base Interruptible Program (BIP)

NEW ORDERING PARAGRAPH: The Commission shall hold public workshops, in cooperation with the CAISO, to address and develop solutions for all bifurcation issues, including, but not limited to, CAISO energy market integration costs, jurisdictional and RA issues, prevention of siloing and devaluing DR resources, identification of the amount of DR required to be bid into the CAISO market to make it successful, a full evaluation of all DR resources and attributes, and identification of current DR programs that should be categorized as load modifiers or supply resources.