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)

REPLY BRIEF OF THE DIRECT ACCESS CUSTOMER COALITION AND ALLIANCE FOR RETAIL ENERGY MARKETS

Sue Mara
RTOADVISORS, L.L.C.
164 Springdale Way
Redwood City, California 94062
Telephone: (415) 902-4108
sue.mara@rtoadvisors.com

CONSULTANT TO THE
DIRECT ACCESS CUSTOMER COALITION
ALLIANCE FOR RETAIL ENERGY MARKETS

Daniel W. Douglass
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, California 91367
Telephone: (818) 961-3001
douglass@energyattorney.com

ATTORNEY FOR THE
DIRECT ACCESS CUSTOMER COALITION
ALLIANCE FOR RETAIL ENERGY MARKETS

September 8, 2014

TABLE OF CONTENTS

Table of Authorities

Summary of Recommendations

I. PARTIES FAILED TO PROVIDE ANY COMPELLING POLICY RATIONALE TO MAINTAIN "BUSINESS AS USUAL" FOR COST ALLOCATION. 1

A. Parties have failed to adhere to the Commission's principle of "cost causation." 3

B. The Commission's decision to allocate costs of SDG&E's dynamic pricing tariffs to bundled customers is equally applicable to Pacific Gas and Electric Company and SCE. 6

C. Parties argue for and against eligibility and function as principles of cost allocation in the same brief. 9

D. The practice of allocating Resource Adequacy benefits is not a policy rationale for maintaining the current flawed cost allocation of demand response costs. 11

E. The Commission's policy on "competitive neutrality" means avoiding competitive advantages among LSEs, not "equal treatment" of LSEs. 12

F. PG&E's claims should be disregarded. 15

G. CLECA's comments undercut its settlement obligations 17

II. BENEFITS ARE NOT UNIQUE TO THE IOUS' DR PROGRAMS. 18

III. THE COMMISSION HAS LONG HELD THAT DR SUBSTITUTES FOR GENERATION PROCUREMENT. 20

IV. TANGENTIAL BENEFITS DO NOT JUSTIFY COST ALLOCATION. 22

V. COMMISSION DIRECTIVES TO THE IOUS TO PROCURE DR DO NOT DICTATE COST ALLOCATION. 23

VI. CURRENT COST ALLOCATION MUST BE MODIFIED. 26

VII. CONCLUSION 27

TABLE OF AUTHORITIES

CASES

Assembly v. Public Utilities Com. (1995)
12 Cal. 4th 87, 103.) 24

Consumer Lobby Against Monopolies v. Public Utilities Com.,
25 Cal.3d at pp. 905-906 24

Southern California Edison v. Peevey (2003),
31 Cal. 4th 781, 792 23

CPUC DECISIONS, DOCKETS, RULES

Application 10-07-009 6

Application 11-03-001 12

Application 12-08-007 17

Decision 01-09-059 4

Decision 02-11-022 23

Decision 03-02-035 24

Decision 03-02-068 4

Decision 04-10-035 20

Decision 05-10-042 .... 20, 21

Decision 06-04-070 4

Decision 06-07-027 8

Decision 08-07-045 5

Decision 08-12-058 24

Decision 09-06-028 21

Decision 10-02-032 8

Decision 11-10-003 ii

Decision 12-04-045 2

Decision 12-12-004 .... 4, 6, 7, 8

Decision 12-12-033 .... 13, 14

Decision 13-01-041 .... 23, 24

Decision 13-10-040 26

Decision 14-07-027 24

Decision 87-12-066 4

Decision 95-12-063 26

Decision 96-01-009 26

Decision 97-08-056 .... 10, 21, 22

Decision 99-06-058 4

Rulemaking 07-01-041 2

Rulemaking 11-03-012 13

Rulemaking 12-06-013 .... 4, 5

Rulemaking.13-09-011 .... 3, 12, 26, 27

STATE STATUTES, CODES, REGULATIONS

Public Utilities Code, Section 365.1(c)(2) 16, 25

Public Utilities Code, Section 399.12 24

Public Utilities Code, Section 399.20 23,24

Public Utilities Code, Section 701 .... 23, 24

CONSTITUTIONAL PROVISIONS

Cal. Const., art. XII, § 6; Pub. Util. Code, §§ 399.11 et seq., 454.5, 701 23

Cal. Const., art. XII; Pub. Util Code, §§ 451, *et seq.*, 701 & 718. 24

LEGISLATION

Assembly Bill 2514 26

Assembly Bill 32 24

Senate Bill 1368 24

SUMMARY OF RECOMMENDATIONS FROM DACC-AReM OPENING BRIEF

- Adopt the uniform cost allocation principles proposed by the Direct Access Customer Coalition ("DACC") and the Alliance for Retail Energy Markets ("AReM") for utility costs associated with demand response ("DR") and related programs:
    - ***Principle #1:*** ***Market Integration/Generation Substitute*** – DR-related programs that are integrated with markets operated by the California Independent System Operator ("CAISO") or otherwise function as substitutes for generation should have the associated costs recovered like other generation and procurement costs, from bundled customers through the generation revenue requirement. A program functions as a substitute for generation if it provides (or is expected to provide) Resource Adequacy ("RA") capacity or value, perform other generation-related functions (such as shifting load off-peak), or otherwise affects utility procurement of energy/capacity to meet load.
    - ***Principle #2:*** ***Bundled-Only Tariffs*** – Utility tariffs that are applicable only to bundled customers are to be recovered solely from those bundled customers through the generation revenue requirement.
    - ***Principle #3:*** ***Avoiding Distribution Infrastructure*** -- DR-related programs that are primarily designed to avoid distribution infrastructure additions may be recovered from all customers through distribution rates.
    - ***Principle #4*****:** ***Open Eligibility Without Generation or Procurement Functions*** – DR programs that do not meet the conditions of Principles 1 through 3 are to be recovered though the distribution revenue requirement if the utility DR program (or any DR-related costs in support of such program) is (a) applicable and available to all customers, (b) not integrated or expected to be integrated with CAISO markets, and (c) does not provide any generation-related value or support any procurement function of the utility.
    - ***Principle #5*****:** ***All Program Benefits Flow to the Customers Paying the Costs --*** To the extent that bundled customers pay for the utilities' DR program costs, they should retain all associated benefits, such as any applicable RA capacity credit or reduced load forecasts used for RA compliance purposes. Conversely, if all customers pay for

the utilities' DR program costs, the associated benefits must be allocated proportionally to all such customers.

- Direct the utilities to apply these uniform cost allocation principles going forward in all general rate cases, rate design window proceedings, and applications for cost recovery of DR-related costs.
- Direct the utilities to allocate the costs associated with the proposed pilot of the Demand Response Auction Mechanism ("DRAM") to their respective generation revenue requirements, in accordance with the uniform cost allocation principles adopted herein.
- Direct the utilities to allocate the costs of the expert hired to assist the proposed Load Modifying Resource Valuation Working Group to their generation revenue requirements, in accordance with the uniform cost allocation principles adopted herein.
- Determine that the Commission did not adopt a policy to prohibit use of back-up generators for DR resources in Decision 11-10-003, but left the issue open for further consideration.
- Include a commitment to address the appropriate use of back-up generators for DR resources thought a collaborative approach in a new phase of this proceeding or in another proceeding as appropriate.
- Approve the Settlement Agreement filed on August 4, 2014 jointly by multiple parties to this proceeding, including DACC and AReM.

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)

REPLY BRIEF OF THE DIRECT ACCESS CUSTOMER COALITION AND ALLIANCE FOR RETAIL ENERGY MARKETS

The Direct Access Customer Coalition[1] ("DACC") and Alliance for Retail Energy Markets[2] ("AReM") respectfully submit this joint reply brief in the demand response ("DR") policy rulemaking pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission" or "CPUC") and the schedule set forth by Administrative Law Judge ("ALJ") Kelly A. Hymes, in the *E-Mail Ruling Revising Schedule*, issued on July 31, 2014, which set this date for filing of reply briefs.

I. PARTIES FAILED TO PROVIDE ANY COMPELLING POLICY RATIONALE TO MAINTAIN "BUSINESS AS USUAL" FOR COST ALLOCATION.

The investor-owned utilities ("IOUs") and other parties have argued[3] for "business as usual" – in other words, to continue on with the current cost allocation mechanisms used by each of the IOUs today, in which the majority of the IOUs' costs are recovered through distribution

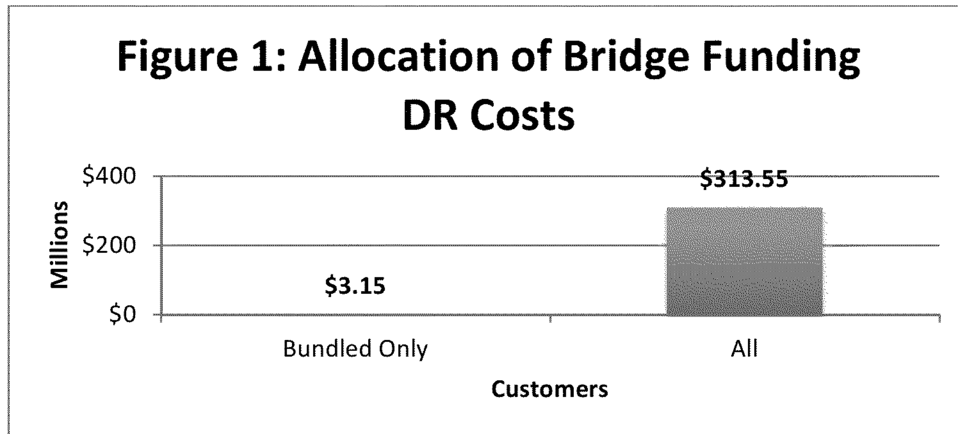
[1] DACC is a regulatory alliance of educational, commercial, industrial and governmental customers who have opted for direct access to meet some or all of their electricity needs. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled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

[2] 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.

[3] Unless otherwise stated, all cites in this Reply Brief are to the Opening Briefs submitted by parties on August 25, 2014 in this proceeding.

SB_GT&S_0342730

rates.[4] Using our best available data,[5] Figure 1 shows the breakdown of cost allocation between generation and distribution for the Bridge Funding decision, in which 99% of the costs are recovered through distribution rates – an outcome that violates cost causation and competitive principles.



The parties arguing for "business as usual" supported their requests by providing often conflicting arguments that fail to provide either the compelling policy rationale or coherent principles required to form the basis of the "consistent" cost allocation policy sought by this Commission.[6]

For example, Southern California Edison Company ("SCE") argues that the Commission should allow its existing cost allocation approach, based on eligibility, to continue.[7] However, SCE simultaneously argues that direct access customers should be required to pay for IOU DR programs from which they "benefit," regardless of eligibility.[8] A well-reasoned cost allocation

---

[4] See, for example: Exhibit PGE-01, Witness Haertle, p. 8-2, lines3-8; Exhibit SGE-04, Witness Besa, p. AB-5, lines4-6; Exhibit ORA-01, Witness Gokhale, p. 17, lines 28-29; SCE, p. 3; and CLECA, p. 12.

[5] Table 1, DACC-AReM, p. 3.

[6] See, D.12-04-045, p. 204: "[W]e 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 an 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." (Emphasis added).

[7] SCE, p. 3.

[8] SCE, p. 4.

SB_GT&S_0342731

principle cannot be based on whether a customer is "eligible" to participate, only to have that principle arbitrarily set aside in favor of a principle based on "who benefits." There is no policy rhyme or reason to adopt this approach, other than to ensure that the widest possible group of customers pays the costs of the IOUs' DR programs – an anti-competitive outcome that imposes continuing cross-subsidies on direct access and community choice retail customers and is unsupported by the function of DR as a generation substitute.

The appropriate outcome for this proceeding is to restructure cost allocation for DR to:

- Acknowledge the functionality of most DR programs as generation- and procurement-related resources, and therefore recoverable in generation rates;[9]
- Allow the bundled customers paying those generation rates to retain the resource adequacy ("RA") benefits that flow from those programs;[10] and
- Recognize that a direct access customer's eligibility to provide service to the IOUs and their bundled customers through participation in the IOUs' DR programs is not a reason to make them pay for those programs – but merely a case of the customer providing a resource for procurement by the IOUs.[11]

Below, we address cost allocation proposals raised by other parties and their objections to the cost allocation principles proposed by DACC and AReM.

A. Parties have failed to adhere to the Commission's principle of "cost causation."

All parties (including DACC and AReM) argue that their cost allocation proposals are justified based on cost causation principles. However, a review of their arguments reveals that

[9] See, summary of the record on this point DACC-AReM, pp. 9-10 and Principles #1 through 4, pp. 8-9.

[10] See, DACC-AReM, p. 9, Principle #5.

[11] See, DACC-AReM, p. 14 and *Administrative Law Judge's Ruling Addressing Workshop Report*, R.13-09-011, August 7, 2014, Attachment 1, DACC-AReM's June 9th Workshop Presentation, pp. 3 and 4.

SB_GT&S_0342732

their interpretation of this long-standing Commission principle does not adhere to the Commission's meaning of cost causation.

Specifically, the Commission has stated a general rule for "cost causation":

> "Our policy has consistently been that costs should be allocated to those customers who impose them."[12]

Additional comments from the Commission on its cost causation principle are as follows:

> "Costs should be allocated on a cost causation basis."[13]
>
> "[F]rom a cost causation standpoint, if a distribution system is not interconnected to the grid and therefore imposes no costs on the transmission system, customers on that system should not be required to pay transmission charges."[14]

In the Commission's recent Rulemaking 12-06-013, initiating a review of the utilities' residential rates, the Commission further explained that "[c]ost causation means that costs should be borne by those customers who cause the utility to incur the expense."[15] The Commission also cited its 1987 decision, which "noted that avoiding cross-subsidies and supporting cost-causation principles 'achieves equity in rates by relating the costs imposed on the utility system to the customer responsible for those costs.'"[16]

DACC and AReM's cost allocation principles are consistent with the Commission's definition of cost causation. For instance, the Commission determined in D.12-12-004 that San Diego Gas & Electric Company's ("SDG&E") dynamic pricing tariffs were solely applicable to bundled utility customers and that SDG&E's proposal to require direct access customers to pay

---

[12] *In re San Diego Gas and Electric Company*, D.99-06-058 (mimeo p. 7), 194 P.U.R. 4th 521; *see also* D.01-09-059, 213 P.U.R. 4th 1 (2001) (rejecting principle of cost causation in this case on grounds specific to this case).

[13] *Opinion Implementing Policy on Broadband Over Power Lines,* D.06-04-070, 248 P.U.R. 4th 305, 2006 Cal. PUC LEXIS 147, at *49.

[14] D.03-02-068, 2003 Cal. PUC LEXIS 129, at *53.

[15] R.12-06-013, June 28, 2012, p. 13.

[16] D.87-12-066, as cited in footnote 19 in R.12-06-013, p. 13.

SB_GT&S_0342733

to implement those tariffs would not be "consistent with cost causation principles."[17] In other words, only SDG&E's bundled customers would take electricity service under the proposed tariffs and therefore only the bundled customers caused the "utility to incur the expense" -- a classic case of "cost causation." DACC and AReM's Principle #2 adopts this same cost causation principle – that tariffs available and applicable only to bundled customers, such as the IOUs' dynamic pricing tariffs should have their costs assigned only to those bundled customers.[18]

In addition, DACC-AReM's Principle #1[19] also follows cost causation principles by requiring IOU DR costs incurred to meet their generation procurement needs (which DR resources do by reducing the amount of generation supply the IOUs must procure) and RA requirements are to be recovered from the bundled customers on whose behalf the IOUs incur the costs. DACC and AReM's Principle #1 also goes hand in hand with its Principle #5,[20] that the benefits associated with the DR programs must flow to the customers who pay for them, such that bundled customers should retain all the RA benefits from the IOUs' DR programs used to meet the IOUs' RA or other IOU procurement requirements.

By contrast, other parties have suggested other meanings of "cost causation" that differ significantly from the Commission's stated policy. For example, the California Large Energy Consumers Association ("CLECA") argues for the existence of a "corollary beneficiary principle" to cost causation without providing any citation to substantiate the existence of any such "corollary beneficiary principle."[21] Similarly, SDG&E, filing jointly with The Utility

---

[17] See DACC-AReM, p. 10. See also, D.08-07-045, pp. 41-42, as cited in R.12-06-013, p. 10, in which the Commission determined that dynamic rates should be based on cost-causation principles.

[18] DACC-AReM, p. 10.

[19] DACC-AReM, p. 8.

[20] DACC-AReM, p. 9.

[21] CLECA, p. 10.

SB_GT&S_0342734

Reform Network ("TURN"), argues that, "to be consistent with cost allocation principles," DR costs should be allocated "such that all benefitting customers pay."[22] For its part, SCE states that its cost allocation (which allocates costs based on program eligibility) is indeed based on cost causation, a policy it describes as "equitable."[23] SCE then argues that DACC/AReM's proposal "violates cost causation principles" by failing to require direct access customers "to help pay for the costs of programs they benefit from."[24] In short, these parties seem to be arguing that "cost causation" really means "who benefits" – a position unsubstantiated by Commission policy. As noted above, Commission policy with regard to cost causation is premised on who *imposes* the costs. DR programs that substitute for generation procurement for bundled customers are clear examples of costs imposed by bundled customers.

B. The Commission's decision to allocate costs of SDG&E's dynamic pricing tariffs to bundled customers is equally applicable to Pacific Gas and Electric Company and SCE.

As noted above, in D.12-12-004, the Commission ordered SDG&E to recover all the costs of implementing its dynamic pricing tariffs for residential and small commercial customers from bundled customers through generation rates. Pacific Gas and Electric Company ("PG&E") argues that D.12-12-004 should not apply to its dynamic pricing programs. Interestingly, both SDG&E and SCE were silent on the applicability of this SDG&E decision in Opening Briefs.

PG&E first misidentifies the proceeding as "SDG&E's most recent GRC 2 case."[25] In reality, the proceeding involved an application by SDG&E for cost recovery for implementing dynamic pricing tariffs.[26] PG&E also misinterprets AReM and DACC's testimony by fixating on

[22] SDG&E-TURN, p. 3.
[23] SCE, p. 3.
[24] SCE, p. 5.
[25] PG&E, p. 7.
[26] Application 10-07-009.

SB_GT&S_0342735

a reference of time-of-use ("TOU") rates.[27] PG&E correctly points out that the distribution demand charges for non-residential customers have billing determinants that differ, including some with time of use. However those differences are a natural outcome of marginal cost rate design, and not the dynamic pricing type of "TOU" rates that are at question in this proceeding.

PG&E further argues that the decision does not apply to it, because only two of its programs, Peak Day Pricing ("PDP") and Smart Rate, are solely available to bundled customers. That is DACC-AReM's very point – such bundled-only tariffs using dynamic pricing are not available or applicable to direct access customers who buy electricity from non-IOU load-serving entities ("LSEs"). The bundled customers, however, buy their electricity from the IOUs and, to the extent they buy that electricity under tariffs deemed to be "DR programs," such as dynamic pricing tariffs, those costs must be recovered from the customers that cause them, *i.e.,* the bundled customers. In fact, PG&E's PDP tariff was mentioned in DACC-AReM's Opening Brief as an example of a dynamic pricing tariff the costs of which should be recovered from bundled customers in accordance with Principle #2.[28]

PG&E then argues that cost allocation for its programs was determined "long ago"[29] – this is an irrelevant point in this proceeding, which will establish proper and uniform cost allocation going forward. PG&E's final volley is that the Commission's decision in D.12-12-004 should "not be given any weight" because the proceeding did not have the breadth or depth of representation and participation" that is present in this proceeding.[30] Again, this is an irrelevant, self-serving, and inaccurate statement. Several parties active in this proceeding were active in the SDG&E proceeding as well, including AReM, the Office of Ratepayer Advocates

---

[27] PG&E, pp.4-6.
[28] DACC-AReM, p. 13
[29] PG&E, p. 7.
[30] *Ibid*.

("ORA," then called "DRA") and SDG&E. Examination of the service list in that proceeding at the time the proposed decision was issued reveals that CLECA and SCE were monitoring the proceeding and could have engaged if they chose.[31] In addition, other parties, not active here were engaged in that proceeding, including the Utilities Consumers' Action Network ("UCAN"), the California Farm Bureau, the California Small Business Association, the Federal Executive Agencies, and The Greenlining Institute, demonstrating that the SDG&E proceeding enjoyed significant depth of representation and participation – and again revealing PG&E's misstatement of actual facts. In other words, the fact that PG&E did not participate in the SDG&E proceeding should not allow PG&E to be exempt from its outcome.

Indeed, under PG&E's logic, many if not all of the decisions that PG&E cites to support its position on the DR program cost allocation issue likewise should "not be given any weight" in that those decisions were issued in PG&E-specific proceedings.[32] The bottom line is that D.12-12-004 is highly relevant and applicable to PG&E notwithstanding the fact that D.12-12-004 was issued in an SDG&E-specific proceeding, because the Commission reached its decision on the cost allocation issue in that proceeding on the basis of (a) facts that are common to this proceeding and (b) precedent that was established in a proceeding with parties representing statewide interests. Given the Commission's finding in D.12-12-004 that it had a sufficient record in the proceeding upon which to decide the cost allocation issue,[33] and given the similar facts presented in this proceeding, the Commission should feel confident in extending the cost allocation policy adopted in that decision to all of the IOUs' dynamic pricing programs on a going forward basis, as AReM and DACC have recommended.

---

[31] The service list at the time the proposed decision was issued is available at: http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M031/K723/31723372.PDF

[32] PG&E, p. 7, cites D.10-02-032 and D.06-07-027, which were both PG&E-specific proceedings.

[33] D.12-12-004, p. 52.

C. Parties argue for and against eligibility and function as principles of cost allocation in the same brief.

As evidence of the muddled thinking on cost allocation principles, parties also argue for and against eligibility and function as principles for cost allocation in the same brief. For example, in its Opening Brief, PG&E argues simultaneously that (1) eligibility is a principle,[34] (2) but should be ignored if all customers benefit,[35] and (3) that changing requirements undermine using eligibility as a principle for cost allocation.[36] Similarly, SCE argues that eligibility is now and should continue to be the basis for allocating its DR program costs,[37] but then counters this position by arguing in the same brief that all customers who "benefit" should pay[38] – regardless whether they are eligible for the particular program in question. CLECA also takes a position similar to SCE's, arguing that eligibility should be applied as a principle for cost allocation "at a minimum," but should be ignored if the program benefits all customers.[39]

As to "function," CLECA notes this is the basis upon which costs have been allocated in the past, but that, with the bifurcation, the "appropriate basis for allocation may be changing."[40] CLECA then argues that DR should indeed be allocated on a "functional basis," but that because DR programs are "customer-service related," citing PG&E's testimony, the appropriate functionality is distribution-related.[41] Finally, CLECA argues that using function as the basis for cost allocation may not be appropriate after all because DR "performs multiple functions."[42]

---

[34] PG&E, p. 3.
[35] PG&E, pp. 4-5.
[36] PG&E, p. 7.
[37] SCE, p. 3.
[38] SCE, p. 5.
[39] CLECA, p. 10.
[40] CLECA, pp. 10-11.
[41] CLECA, p. 11.
[42] CLECA, p. 13.

SB_GT&S_0342738

All of this back and forth as to which criteria – eligibility, function, or benefit – should apply makes it exceedingly difficult to discern a cogent position of the "business as usual" proponents that is anything more than grasping at straws to maintain the current practice of having direct access customers to continue paying for the IOUs' DR programs.

In fact, DACC and AReM effectively rebutted PG&E's testimony that DR costs should be recovered through distribution rates because DR programs are "customer-service related."[43] First, DR programs do not provide a *service to customers*, but instead allow customers to provide a procurement *service to the utility*. The customer is providing a service—reduced load—to the utility, not the other way around, and in return for providing the service, the customer is paid. As such, DR cannot reasonably be seen as a "customer service" provided by the utility to the customer. Second, the Commission has already determined that customer-service costs related to the IOUs' procurement function must be recovered through generation rates in its foundational decision ordering unbundling of the utilities rates into generation, transmission and distribution rates.[44] Thus, PG&E's so-called "customer service" argument supported by CLECA fails.

As to CLECA's argument that DR programs perform multiple functions, the same can be said of many resources. For example, Helms power plant is an energy storage facility that performs multiple functions, including voltage support for the transmission system, grid reliability, emergency response, assistance for over-generation conditions on the grid, and energy to meet PG&E's bundled load. Notwithstanding the transmission and system support it provides, the costs of Helms power plant are allocated to the generation function and recovered solely from bundled customers. The point is that all resources interconnected with the grid "perform

[43] See the full discussion of this topic in Exhibit DAC-02, Witness Mara, pp. 4-6.

[44] D.97-08-056, p. 26: "We therefore reduce the utilities' distribution revenue requirements to reflect customer service and marketing costs that are more appropriately allocated to generation." Please see full citation in Exhibit DAC-02, Witness Mara, p. 6.

SB_GT&S_0342739

multiple functions." Yet, the Commission has previously, as CLECA acknowledges, used "function" as a basis for cost allocation. There is no reason to toss this concept aside now. CLECA asserts that ORA's proposal to allocate costs based on total revenues may be a way to address this issue.[45] But that misses the point. The DR costs still have to be assigned to a function – transmission, distribution, or generation – before ORA's proposed method can be applied. As explained in more detail below, DR primarily performs a generation-related function and the fact that it performs multiple functions is not unique to DR and does not undermine the policy rationale that DR costs primarily belong in the generation rate function.

D. The practice of allocating Resource Adequacy benefits is not a policy rationale for maintaining the current flawed cost allocation of demand response costs.

PG&E and CLECA argue that, because DR programs provide RA benefits to all load-serving entities ("LSEs"), their associated costs should be recovered from the customers of all LSEs.[46] However, the Commission decided to provide RA benefits to all LSEs *because* the customers of all LSEs were paying the costs of the DR programs, not the other way around. To do otherwise, would have been inequitable with customers paying for programs with benefits they did not receive.

In addition, PG&E's claims that DACC-AReM's proposal is to shift costs to bundled customers while retaining all the RA benefits, thereby forcing bundled customers to "subsidize" direct access and CCA customers is utterly incorrect.[47] As is evident from the record, DACC and AReM have *always* proposed that the RA benefits flow to the customers paying the costs of the

[45] CLECA, p. 14.

[46] PG&E, pp. 14-15 and CLECA, pp. 15-16.

[47] PG&E, pp. 20 and 21.

SB_GT&S_0342740

DR programs.[48] In DACC-AReM's Opening Brief, this element of its proposal is encapsulated in Principle #5: All Program Benefits Flow To The Customers Paying The Costs.[49]

Moreover, PG&E provides no evidence to support its claim that electric service providers ("ESPs") and Community Choice Aggregators ("CCAs") do not want to pursue DR.[50] ESPs provide DR programs to their customers today[51] and would likely do more if their customers were not forced to subsidize the IOUs' programs, as Marin Clean Energy ("MCE") also points out.[52] Thus, PG&E's accusations must be disregarded; DACC-AReM's proposal on cost allocation contains no cross subsidies; it is only the current cost allocation regime that does so.

E. The Commission's policy on "competitive neutrality" means avoiding competitive advantages among LSEs, not "equal treatment" of LSEs.

DACC and AReM have identified for the record significant competitive issues stemming from improper cost allocation of DR programs by the IOUs.[53] DACC and AReM, along with MCE and Shell, have urged the Commission to correct current IOU cost allocation to ensure competitive neutrality between the IOUs and their competitors, the ESPs and CCAs.[54] The IOUs and CLECA claim that competitive neutrality with respect to demand response cannot be achieved unless ESPs and CCAs are also subject to DR mandates. In fact, these parties have misstated the record and their associated arguments should be disregarded as a result.

---

[48] See, for example, DAC-01, Witness Mara, pp. 15 and 20, and *Administrative Law Judge's Ruling Addressing Workshop Report*, R.13-09-011, August 7, 2014, Attachment 1, DACC-AReM's June 9th Workshop Presentation, pp. 3 and 4.

[49] DACC-AReM, p. 9.

[50] PG&E, p. 20.

[51] See, *Prehearing Conference Statement* of the *Direct Access Customer Coalition and the Alliance for Retail Energy Markets*, R.13-09-011, October 14, 2013, pp. 3-4, citing p. 5-6 of *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.

[52] MCE, p. 8.

[53] The other example was from the recent decisions on the IOUs' Rule 24. See, Exhibit DAC-01, Witness Mara, pp. 5-6, and pp. 11-14.

[54] DACC-AReM, pp. 9-10; MCE, p. 1 and 7; Shell, p. 3.

SB_GT&S_0342741

While DACC and AReM offered two recent examples of actions taken by the Commission to ensure competitive neutrality,[55] SCE, PG&E and CLECA focused on one of those examples, D.12-12-033 in R.11-03-012 addressing greenhouse gas ("GHG") and California's cap-and-trade program.[56] These parties allege that the Commission determined in D.12-12-033 that its policy of "competitive neutrality" is founded on the "underlying principle" of "equal treatment of LSEs," a conclusion each party ultimately uses to support its position for continuation of the current improper cost allocation and procurement of DR by the IOUs on behalf of the ESPs and CCAs.[57] However, these allegations are not supported by the clear words in the decision.

First, in the section of D.12-12-033 cited by the parties, the reference to "equal treatment" does not apply to LSEs at all, but to the *LSE's customers*, and derives directly from the cap-and-trade statute cited therein.[58] In fact, the previous sentence in that same section, which SCE provides in its brief,[59] reveals that the Commission agrees with DACC and AReM: ensuring competitive neutrality means avoiding creating competitive advantages for the IOUs.

> Consistent with existing Commission policy and the Cap-and-Trade regulation, it is appropriate to distribute allowance revenues in a way that does not place CCAs or other load-serving entities ***at a competitive disadvantage compared to the utilities*** that we directly regulate. (Emphasis added)[60]

---

[55] Exhibit DAC-01, Witness Mara, pp. 6-7.

[56] The other example cited by DACC-AReM involved the Commission's mandate to ensure competitive neutrality in the IOUs' Rule 24.

[57] PG&E, p. 20 and footnote 23; CLECA, p. 16; SCE, pp. 5-6.

[58] See, D.12-12-033, p. 67, citing 17 CCR §95892(d)(4).

[59] SCE, p. 6.

[60] D.12-12-033, p. 67.

SB_GT&S_0342742

Second, as further evidence, maintaining "competitive neutrality" was one of the Commission's initial seven policy objectives proposed for this proceeding, which it defined as follows:

> 6) Maintain Competitive Neutrality Across Load Serving Entities
>
> Proposals that maintain competitive neutrality across load serving entities ensure that the ***relative competitive position of different entities*** that provide retail electric service, including regulated electric distribution utilities, Electric Service Providers, and CCAs, is unaffected by the adopted GHG revenue allocation methodology. (Emphasis added)[61]

Nothing in this Commission policy statement supports the allegations by the parties that the Commission's policy to ensure competitive neutrality requires "equal treatment of LSEs." Significantly, one of the actions the Commission took in the GHG proceeding to enforce its "high priority objective" of competitive neutrality[62] was to mandate that the IOUs' costs of complying with cap-and-trade "must be included in the ***generation component*** of customers' rates and … allocated to ***bundled customers***" to "***ensure competitive neutrality*** among investor-owned utilities and CCAs and Energy Service Providers." (Emphasis added)[63] In sum, the Commission has never equated "competitive neutrality" with "equal treatment of LSEs" as these parties allege, but has instead clearly defined the principle that "ensuring competitive neutrality" requires that Commission policies and decisions should avoid creating competitive advantages among LSEs.

After misstating D.12-12-033, SCE then argues that the Commission must order the IOUs to procure DR on behalf of the ESPs to maintain "competitive neutrality."[64] This outrageous suggestion should be rejected out of hand. As DACC and AReM have shown, the Commission's

---

[61] D.12-12-033, p. 54,

[62] D.12-12-033, Finding of Fact 39, p. 168, stating that a "high priority objective" of the proceeding was "maintaining competitive neutrality."

[63] D.12-12-033, Finding of Fact 136, p. 184. See also, Ordering Paragraph 3, pp. 206-207.

[64] SCE, pp. 5-6.

SB_GT&S_0342743

policy of ensuring competitive neutrality includes avoiding competitive advantages for the IOUs. A Commission dictate to the IOUs to procure DR on behalf of other LSEs and paid for by those LSEs' customers would do just that – ensure a significant competitive advantage for the IOUs. SCE even admits as much by attempting to dismiss as a "theoretical concern" that other LSEs would be competitively disadvantaged in offering their own DR programs, because their customers "will be forced to pay for both the utility and the LSE DR program."[65] This concern is not "theoretical," but real. As MCE stated, a CCA is "effectively blocked from creating and funding its own DR programs because its customers are already paying through distribution charges for IOU DR programs.[66] The same is true for ESPs. Allowing the IOUs to continue to allocate costs to all and dominate the DR market violates the Commission's "high priority objective" for competitive neutrality. As Shell Energy North America ("Shell") explains, maintaining competitive neutrality should be a fundamental objective for this Commission and carrying out that objective requires revision to current IOU cost allocation methods.[67] DACC and AReM agree and have set forth principles that ensure competitive neutrality among LSEs and urge their adoption.[68]

F. PG&E's claims should be disregarded.

First, PG&E argues that DACC and AReM have "already lost the argument that DR is the equivalent of a generation resource for which costs should be allocated only to bundled customers.[69] PG&E's source for this conclusion are decisions in the Long-Term Procurement Planning ("LTPP") proceeding, in which the Commission has authorized procurement by the IOUs

---

[65] SCE, p. 6.
[66] MCE, p. 8.
[67] Shell, pp. 3 and 6.
[68] DACC-AReM, pp. 8-9.
[69] PG&E, p. 16.

pursuant to Public Utilities Code ("PUC") Section 365.1(c)(2) with costs recovered from all customers. PG&E states that the Commission's the cost allocation determination in the LTPP proceedings "applies by analogy" in this proceeding.[70] In fact, the LTPP proceedings have never addressed whether or to what extent DR is a substitute for generation. Also, the applicable statute does not address procurement of DR at all and provides specific conditions under which the Commission may authorize procurement on behalf of the direct access and CCA customers. PG&E's claim is therefore unsubstantiated and should be rejected.

Second, PG&E claims that bundled customers subsidize direct access and CCA customers because some of the costs associated with the utility Aggregator Managed Portfolio ("AMP") contracts are recovered from bundled customers through generation rates. PG&E complains that $10 million or "96% of the AMP program costs" are being subsidized.[71] DACC and AReM reply as follows:

- The IOUs' current cost allocation allocates a miniscule portion of overall DR program costs to the bundled customers through generation rates; costs are overwhelming allocated to distribution rates, as shown in Figure 1 above. With such one-sided cost allocation by the IOUs, the concept of a "subsidy" is absurd.
- The IOUs do not have consistent cost allocation methods for the AMP contracts. While PG&E allocates its AMP capacity incentive costs to generation rates, SCE allocates them to distribution rates.[72] So, apparently, PG&E's claim of a "subsidy" would only be relevant to PG&E, if true at all.

[70] PG&E, pp. 16-17.

[71] PG&E, p. 10.

[72] See, DACC-AReM, Table 1, p. 3.

SB_GT&S_0342745

- PG&E's AMP capacity incentive meets the RA requirement of the IOU, which does not constitute a "subsidy."

Third, PG&E's attempt to use the cost allocation applied to DR marketing/education budgets under separate proceedings as the basis for cost allocation for the IOUs' programs that are the subject of this proceeding should be disregarded.[73] Those marketing/education programs are not within scope in this proceeding and the facts now introduced by PG&E are not part of the record. Further, costs for such statewide programs could be decided in separate one-off proceedings as they have been to date.[74]

G. CLECA's comments undercut its settlement obligations

CLECA's comments with regard to deferring a decision on cost allocation issues contradict its obligations under the Settlement. Paragraph III.9 of the Settlement Agreement provides that:

> The Settling Parties shall jointly request Commission approval of this Settlement Agreement and shall actively support its prompt approval. Active support shall include written and/or oral testimony (if testimony is required), briefing (if briefing is required), comments and reply comments on the proposed decision.

The Settlement was meant to decide cost allocation once and for all, particularly for the 2017-19 years. For example, it provides, at p. 22: "iii. The allocation of expert costs among customers for the 2015-2016 bridge period, which is being recorded through existing DR-related balancing accounts, will be subject to briefing and determination by the Commission in this proceeding." And further, at p. 29, "d. the allocation of costs among customers of the 2015-2016 DRAM Pilot-related amounts recorded through existing DR-related balancing accounts shall be subject to briefing and determination by the Commission in this proceeding. The allocation of

[73] PG&E, pp. 8-10.

[74] See, for example, A.12-08-007 *et al.*

SB_GT&S_0342746

the DRAM-related amounts in 2017-2019 among customers shall be pursuant to the Commission's decision on cost allocation in this proceeding."

Yet CLECA's opening brief stakes out contrary positions that undercut and contradict the settlement and its obligations of support. CLECA states with regard to funding for 2017-19: "For the post-bridge funding period, the demand response paradigm is changing, and it may be appropriate to review cost allocation in the context of the next program cycle and under the new bifurcation paradigm. This review, however, and the ultimate determination should be informed by the actual, specific programs and associated costs to be submitted in November 2015 for the next DR program cycle; **it should not be prejudged now"** [emphasis added].[75] And further: "There may be merit to ORA's proposed approach for the 2017-2019 program period. Again, however, the final cost recovery and allocation should be informed by the actual programs themselves. Here, **the question is premature**, given the absence of facts on the programs and also the data on the current programs to be derived from the DR Potential Study" [emphasis added].[76] These positions conflict with CLECA's obligation under the Settlement to "support its prompt approval" and therefore should be disregarded.

II. BENEFITS ARE NOT UNIQUE TO THE IOUS' DR PROGRAMS.

A number of parties claim multiple "benefits" from the IOUs' DR programs, including reducing system peak, setting market clearing prices, and addressing emergencies on the distribution system. They also claim these benefits accrue to all parties, and thus conclude that all must pay for these programs. However, none of these benefits are unique to the IOUs' DR programs, but instead derive from DR programs offered by *any* LSE or Third-Party DR

[75] CLECA, p. 12.
[76] CLECA, p. 14.

SB_GT&S_0342747

Provider.[77] Moreover, these benefits derive from *any resource* on the system, DR or otherwise, regardless of the supplier. As the CAISO verified:

> [A]ny energy injection or withdrawal, no matter the source, can have an impact on price formation in the wholesale market. The rising sun increases the output of rooftop solar PV, which impacts prices. There are many different load-modifying actions that take place on the grid that have price formation impacts.[78]

So, it is a patently unreasonable position that, while any LSE/Third-Party DR program provides the same benefits to the system, only the IOUs get to shift a portion of their costs to the customers they are not serving, thereby providing the IOUs with a significant competitive advantage in the DR market. As Shell noted, this "highlights the inequity" of the current cost allocation approach.[79] It is no more appropriate for bundled customers to pay the costs of the ESPs' and CCAs' DR programs than it is for ESPs' and CCAs' customers to pay for the IOUs' programs. ESPs have offered the equivalent of "dynamic pricing" contracts to customers since the market opened in 1998,[80] but have received no contribution from bundled customer for those services. Nor do the ESPs request such reimbursement. Instead, the ESPs expect rational and competitively-neutral cost allocation of the IOUs' DR program costs that encourages innovation and third-party participation in DR in California. "Business as usual" for cost allocation fails that test.

Moreover, while the theme of these parties is "all benefit, so all must pay," the IOUs' current approach allocates most of the DR program costs to distribution, which all customers *do not pay*. It is particularly disingenuous for CLECA to argue that position, when many of its members are connected at transmission-level voltages and thus pay no distribution rates at all. The position of the IOUs, TURN, ORA and CLECA seems to be, while "everyone benefits,"

---

[77] Shell, p. 9.

[78] Exhibit ISO-04, Witness Goodin, p. 8.

[79] Shell, p. 6.

[80] Such bilateral contracts typically have prices that vary based on energy market conditions.

only those connected at distribution-level voltages must pay. And PG&E's argument that DR is used to protect system/local grid reliability due to "the combined effect of all users"[81] is only correct to the extent *generators* are included in the equation. This again serves to highlight the inequity and self-serving nature of a cost allocation proposal in which "everyone who benefits pays," when the "everyone" is really a relatively select group of distribution level retail customers that excludes large categories such as generators, municipal utilities, and transmission-voltage connected consumers.

III. THE COMMISSION HAS LONG HELD THAT DR SUBSTITUTES FOR GENERATION PROCUREMENT.

DACC and AReM have demonstrated on the record that DR substitutes for generation procurement for the vast majority of the IOUs' DR programs, which requires that such program costs be recovered through the generation revenue requirement.[82] As further evidence, most of DR benefits cited by parties are *generation-related,* such as reducing generation costs through lower market clearing prices, lower system peaks or lowering procurement costs for meeting RA requirements.[83]

The Commission has long held the same view in RA proceedings, where the value of DR programs has been debated and determined. In D.04-10-035, the Commission found that, if the LSE controls the dispatch of DR programs, "then these programs are comparable to other resources."[84] In D.05-10-042, the Commission decided that dispatchable DR programs "will be

[81] PG&E, p. 11.

[82] Exhibit DAC-01, Witness Mara, pp. 17-18 and DACC-AReM, p. 10, citing the location on the CPUC web site at which the IOUs' DR programs receiving RA credits are listed: http://www.cpuc.ca.gov/PUC/energy/Procurement/RA/ra_compliance_materials.htm.

[83] See, for example, SDG&E-TURN, pp. 3-4 and p. 5, SCE, p. 5, Exhibit JDP-03, Witnesses Tierney-Lloyd/Meehan, p. 3.

[84] D.04-10-035, p. 21.

SB_GT&S_0342749

considered as resources and counted as qualifying capacity."[85] And in D.09-06-028, the Commission determined that "[s]ince bundled service ratepayers generally provide funding for those DR program benefits, they effectively ***procure capacity***." (Emphasis added)[86] Put simply, the Commission has long considered DR to be comparable to other generation resources, part of the procurement tools available to the IOUs, and qualified to meet the Commission's RA requirements that apply equally to all LSEs.

In fact, SDG&E/TURN concurred to some extent with DACC and AReM, proposing that the costs an LSE incurs to meet its RA requirements "at market prices" benefits the LSE and its customers and thus should be allocated to and paid for by that LSE's customers.[87] This approach corresponds with Principle #1 of DACC and AReM, which provides that all RA procurement costs are allocated to generation, and Principle #5, which provides that the program benefits flow to the customers paying the costs.[88]

Improperly allocating costs that should be collected in generation rates to distribution rates artificially lowers utility *generation* rates, thereby creating both harmful market inefficiencies and competitive advantages for the utilities, as DACC and AReM have demonstrated.[89] Moreover, in D.97-08-056, the Commission explicitly considered the proper allocation of utility costs to reflect the opening of the competitive retail market and *prohibited* allocating utility generation costs to distribution.[90] The Commission took this action to avoid "artificially low utility generation rates" that it worried would "provide competitive advantages,

---

[85] D.05-10-042, p. 37.

[86] D.09-06-028, p. 27.

[87] SDG&E/TURN, p. 4.

[88] DACC-AReM, pp. 8-9.

[89] See, Exhibit DAC-01, Witness Mara, pp. 11-13.

[90] See, Exhibit DAC-01, Witness Mara, pp. 5-6 for a discussion of the Commission's determination in D.97-08-056.

SB_GT&S_0342750

which would stifle competition to the utilities."[91] It is time to put into practice the reality that DR substitutes for generation and allocate the costs accordingly.

IV. TANGENTIAL BENEFITS DO NOT JUSTIFY COST ALLOCATION.

As noted above, some parties argue that DR provides many benefits, but make no case that non-generation-related benefits are anything other than tangential. The Commission has already determined that such tangential benefits are an insufficient reason to justify allocating costs to the customers.

Specifically, in a case with similar cost allocation issues, the Commission determined that allocating costs based on tangential benefits would be arbitrary and speculative. The case involved the proposed allocation of a bond charge to all customers for costs incurred by the utilities in procuring electricity from the California Department of Water Resources during the Energy Crisis, including to those who had procured no electricity from the utilities. The Commission stated:

> Attempting to assign a charge to DA customers ***based solely on indirect societal benefits*** would be arbitrary and speculative. Moreover, it would be ***unfairly discriminatory*** to assess a uniform bond charge among DA customers when some of them had actually consumed DWR power ***while others had consumed none.*** (Emphasis added.)[92]

As is evident, this citation makes two points relevant to this proceeding. First, parties have listed vague and unquantifiable benefits associated with the IOUs' DR programs, such as "protect grid reliability,"[93] providing "reliability and stability,"[94] and "preventing outages affecting all customers."[95] There has been no quantification of such indirect benefits, nor can there be.

[91] D.97-08-056, p. 8.
[92] D.02-11-022, p. 57.
[93] PG&E, p. 11.
[94] CLECA, p. 15.
[95] ORA, p. 12.

Moreover, as AReM and DACC have demonstrated, any such indirect benefits are not unique to the IOUs' DR programs, but derive from *all* interconnected resources and energy reductions. Second, parties have argued that direct access customers should pay for the costs of implementing the IOUs' dynamic pricing tariffs, under which they can procure no electricity. The Commission ruled in D.02-11-022 that allocating costs to such customers would be "unfairly discriminatory." The Commission found this reasoning sufficiently compelling in the recent SDG&E proceeding to reject SDG&E's claim of "system benefits" associated with its dynamic pricing tariffs and order that all associated costs be recovered solely from bundled customers through generation rates.[96]

V. COMMISSION DIRECTIVES TO THE IOUS TO PROCURE DR DO NOT DICTATE COST ALLOCATION.

The Commission has broad authority to direct the IOUs' procurement pursuant to PUC Section 701 (granting Commission authority to "do all things" that are "necessary and convenient" in exercise of power to "supervise and regulate every public utility in the State"). This was confirmed in Southern California Edison v. Peevey (2003), 31 Cal. 4th 781, 792 (holding the Commission has broad powers over public utilities, including setting rates and allocating costs between customers, and these powers have been liberally construed). Further, D.13-01-041 held that the Commission is not restricted from adopting Feed-in-Tariff program requirements in addition to those specified in PUC Section 399.20, so long those requirements do not contravene other statutory requirements).

> The Commission has broad authority over public utilities, including authority over the utilities' resource portfolios and procurement planning, and in implementing the RPS Program. (See, e.g., Cal. Const., art. XII, § 6; Pub. Util. Code, §§ 399.11 et seq., 454.5, 701.) The Commission has the authority to act even in cases where there is no express statutory authorization so long as the additional power and jurisdiction the Commission exercises are cognate and

[96] D.12-12-004, pp. 51-52.

> germane to the regulation of public utilities, and do not contravene or disregard an express legislative directive. (Pub. Util. Code, § 701; Consumer Lobby Against Monopolies v. Public Utilities Com., supra, 25 Cal.3d at pp. 905-906; Assembly v. Public Utilities Com. (1995) 12 Cal. 4th 87, 103.)
>
> Based on the foregoing, we modify the Decision, as set forth in the ordering paragraphs below, to delete any language that suggests that section 399.20(f) restricts the Commission's authority. As explained above, the Commission is not restricted from adopting additional program requirements for the FiT, so long as the imposition of these requirements does not contravene other statutory requirements.[97]

Further, in D.03-02-035,[98] the Commission held that, "In regulating public utilities, we have broad authority to set just and reasonable rates and charges for utilities, as well as determine how costs will be recovered.[99]

This point was emphasized in a recent Commission decision on rehearing, in which the Commission rejected the IOUs' claims that the Commission should require the ESPs and CCAs to procure through the Renewable Auction Mechanism ("RAM"), because all LSEs must be "treated the same" under PUC Section 399.12.[100] The Commission: (1) affirmed that it had discretion under the applicable law to have different requirements for ESPs than utilities;[101] and (2) found that, in adopting the RAM for the IOUs, it was exercising its "jurisdictional oversight of IOU procurement."[102] The Commission further found that it can direct the IOUs to employ specific procurement tools, but does not have such authority over the ESPs/CCAs.[103]

---

[97] D.13-01-041, at p.11. *See, also*, D.08-12-058 at p. 264 (granting CPCN to SDG&E for Sunrise Powerlink Transmission Project): "The Commission's broad authority over the procurement process is guided by the State's aggressive greenhouse gas abatement mandates contained in SB 1368 and AB 32, which collectively require that SDG&E and the other IOUs continue to aggressively procure renewable resources and limit their use of fossil-fired (and especially coal-fired) energy.

[98] D.03-02-035, p. 6 (denying rehearing of decision authorizing the SCE Historical Procurement Charge).

[99] See, e.g., Cal. Const., art. XII; Pub. Util Code, §§ 451, *et seq*., 701 & 718.

[100] D.14-07-027, p. 6.

[101] D.14-07-027, p. 8.

[102] D.14-07-027, p. 9.

[103] D.14-07-027, pp. 9-10.

SCE also argues that, when the IOUs are not procuring DR on "least cost/best fit" basis, but to meet a state policy goal – all customers must share the costs and benefits equally.[104] However, SCE ignores that fact that IOUs procure all the time to meet state policy goals, as do the ESPs, and that "all customers" do not necessarily share these IOU or ESP costs. Significantly, the costs of all IOU procurement of renewables, through RAM or otherwise, are recovered solely from bundled customers through the generation revenue requirement – in spite of the fact that renewables provide "system benefits" and are procured to meet a state policy goal.[105] Except to the extent the Commission has approved cost recovery through the cost allocation mechanism ("CAM") for specific resources pursuant to PUC Section 365.1(c)(2), the IOUs procure to meet their own requirements and the ESPs/CCAs do the same. Each LSE's costs are paid by their own customers – the costs are not "shared" among the customers of the LSEs – even though the LSEs are meeting state or Commission policy goals and the procurement provides "system benefits" to all. In short, the Commission's exercise of its jurisdictional authority over the IOUs' procurement does not expand its jurisdictional authority over the procurement of ESPs and CCAs – there is no Commission policy that, simply because it has ordered procurement by the IOUs, customers of all LSEs must "share" in those costs.

Moreover, there is no statutory authority pursuant to which the Commission may impose specific DR procurement obligations on ESPs and CCAs. Therefore, the issue before the Commission in this proceeding is whether its jurisdictional decision to require the IOUs to procure DR as part of their procurement to meet their bundled customers' energy requirements should impose costs on ESPs and CCAs customers. DACC and AReM have clearly proven that it should not. If and when there is a statutory obligation for all LSEs to procure DR, the terms

[104] SCE, p.4.

[105] Departing load customers are required to pay any "stranded costs" of such IOU procurement through non-bypassable charges.

SB_GT&S_0342754

and conditions for implementing that obligation will likely fall to the Commission, much as it did with respect to energy storage, subsequent to the passage of Assembly Bill 2514. In that proceeding, the Commission has adopted a framework that meets the statutory requirements by assigning to each LSE an energy storage requirement with no "sharing" of those costs among the customers of the LSEs.[106]

VI. CURRENT COST ALLOCATION MUST BE MODIFIED.

DACC-AReM, MCE and Shell have each made compelling cases that the current cost allocation methods of the IOUs must change. Other parties support "business as usual." In reality, this decision comes down to a policy choice for this Commission:

- Is the Commission serious about its "new vision" for DR?[107]
- Does the Commission want to expand opportunities for 3rd party DR providers?[108]
- Does the Commission want to see DR innovation and new market entrants?[109]
- Will the Commission ensure competitive neutrality and retail choice?[110]

If the Commission elects to answer any of these questions in the affirmative, then the Commission must take action to modify the IOUs' current DR cost allocation to ensure proper cost causation, fairness and competitive neutrality. Put simply, the presence of ratepayer-funded utility DR programs creates higher costs for consumers and serves as a direct barrier to competitive markets that could work to lower those costs and bring innovation. As the CAISO has previously explained, the current cost allocation approach is a "major policy issue" that

[106] D.13-10-040, pp. 43 and 46; Ordering Paragraph 2.
[107] R.13-09-011, pp. 15-16.
[108] R.13-09-011, p. 16.
[109] *Ibid.*
[110] See, *Preferred Policy Decision*, D.95-12-063, as modified by D.96-01-009: "From the beginning, our policy preference has inclined strongly in the direction of competition and market mechanisms. As we move from the realm of theoretical discussion toward deployment, our task is to ensure that the competition is genuine and market mechanisms are open to competitive entrants and transparent to those who must depend upon their function."

SB_GT&S_0342755

improperly allocates IOU DR program costs to distribution rates thereby creating an "un-level and anti-competitive playing field," which is a "current barrier to the development of a competitive demand response market" and prevents a "viable competitive" DR market from taking "root."[111]

DACC and AReM have proposed reasonable and rational cost allocation principles that correct the current inequities and can be easily applied to existing and future IOU DR programs.[112] We urge their adoption.

VII. CONCLUSION

The "business as usual" approach advocated by the IOUs and some other parties undermines the Commission's long-standing goal of a "new vision" for DR resources and continues the current reality of limited third-party participation in DR in California because of subsidized IOU costs. In addition to basic fairness, ensuring competitive neutrality requires the Commission to establish cost allocation policies that do not create competitive advantages for the IOUs. Allowing the IOUs' current cost allocation methods to continue would violate competitive neutrality by requiring direct access and CCA customers to subsidize IOU procurement to meet the IOUs' RA and generation procurement needs. Each LSE has its own procurement obligations and the associated costs should be recovered from its own customers. The parties' opposing change have failed to provide any compelling policy rationale to maintain the *status quo*. DACC and AReM have demonstrated competitive and fairness issues inherent in the IOUs' current cost allocation approach and have proposed uniform principles that correct

---

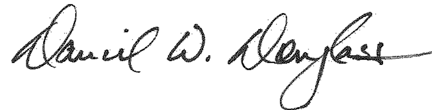
[111] *Prehearing Conference Statement* of the *Direct Access Customer Coalition and the Alliance for Retail Energy Markets*, R.13-09-011, October 14, 2013, pp. 4-5.

[112] DACC-AReM, pp. 8-9 and 11-17.

SB_GT&S_0342756

existing inequities. DACC and AReM respectfully urge the Commission to adopt the proposed principles and apply them going forward.

Respectfully submitted,



Sue Mara
RTOADVISORS, L.L.C.
164 Springdale Way
Redwood City, California 94062
Telephone: (415) 902-4108
sue.mara@rtoadvisors.com

CONSULTANT TO THE
DIRECT ACCESS CUSTOMER COALITION
ALLIANCE FOR RETAIL ENERGY MARKETS

Daniel W. Douglass
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, California 91367
Telephone: (818) 961-3001
douglass@energyattorney.com

ATTORNEY FOR THE
DIRECT ACCESS CUSTOMER COALITION
ALLIANCE FOR RETAIL ENERGY MARKETS

September 8, 2014

SB_GT&S_0342757