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)

REPLY BRIEF OF MARIN CLEAN ENERGY

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In accordance with the California Public Utilities Commission ("Commission") Rules of Practice and Procedure and Administrative Law Judge Hymes' July 31, 2014 Ruling Revising Schedule, Marin Clean Energy ("MCE") submits this reply brief addressing Phase Two and Three Issues.

I. INTRODUCTION

MCE appreciates the opportunity the Commission has afforded in this proceeding to develop a Demand Response ("DR") cost allocation approach that is more consistent and that respects the role of CCAs as potential DR program administrators, and the unique situation of CCA customers as customers of both the IOU and CCA. MCE is disappointed, however, that it is only the representatives of non-Investor-Owned Utility ("IOU") Load Serving Entities ("LSEs") that have offered any alternative to the current outdated DR cost allocation construct.

As discussed in MCE's opening comments and below, there is clearly a problem that needs to be addressed, and the time to address it is now. The Commission has recently taken important steps toward expanding the potential role of DR in California's resource portfolio and enabling third party aggregators to participate in the market. At the same time, the utilities are allocating the costs for DR programs according to outdated assumptions and practices that

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effectively deny non-IOU LSEs a fair opportunity to participate as providers of DR programs and services. CCAs like MCE are uniquely affected, since CCAs have a legislative mandate to develop their own resource procurement programs and a unique ability to create DR programs that target the CCA's geographical and demographic constituency.

The parties defending the current practice of passing virtually all DR costs through to all customers in distribution rates largely rely on assertions that this practice is historically justified and reflects an undifferentiated benefit to all customers that DR provides. These are not good reasons for not adopting a fairer and more competitively neutral approach to cost allocation. MCE urges the Commission to move forward toward its goal of an expanded and more inclusive vision of DR in California by adopting guidelines that: 1) more fairly reflect the character of the resource, who benefits from the program, and who has access to the program, 2) establish a process for enabling CCAs access to real time AMI meter data, and 3) ensure that the incentive structure of IOU DR programs is consistent with fundamental principles of fairness to all participating customers and competitive neutrality.

II. THE STATUS QUO IS NOT A SOLUTION

Much of the discussion in the utilities' opening briefs simply describes the Commission's current, outdated approach to recovering the costs of DR programs, and suggests that the Commission do nothing to change it. For example, Pacific Gas and Electric Company ("PG&E") argues that cost allocation for its DR programs was addressed "long ago" -- in decisions dating back to 2006 and 2010 and in past general rate cases.[1] Relying on such historical practices, and broadly asserting that IOU DR programs benefit all customers, the three

[1] PG&E Opening Brief at 7.

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utilities and CLECA recommend that the Commission retain the current practice of allocating most DR program costs to all customers through distribution rates.

Maintaining the status quo is not a viable alternative. While retaining the current approach to cost allocation may be "simple and holistic" (PG&E Opening Brief at 8), it is not fair to non-bundled customers, it does not establish a level playing field for CCAs and ESPs to develop their own customer-focused DR programs, and it certainly does not help expand participation in DR and move beyond a utility-centric approach to DR. MCE strongly agrees with the Direct Access Customer Coalition and the Alliance for Retail Energy Markets ("DACC/AReM") that the Commission should adopt uniform cost allocation principles in this proceeding, and require the utilities to apply those principles going forward for all of their DR procurement and programs proposed in individual program applications, general rate cases, or Rate Design Window proceedings.[2]

CLECA suggests that the Commission maintain current cost recovery practices through 2016 and then possibly "review cost allocation in the context of the next program cycle and under the new bifurcation paradigm."[3] MCE disagrees. Delaying implementation of cost allocation reforms means that MCE will continue to be denied a fair opportunity to develop its own DR programs on a level playing field with the utilities, and MCE customers will continue to pay for PG&E DR programs to which they do not have access. The Commission should establish cost allocation principles in this proceeding and begin implementing them as soon as possible. MCE is committed to working with the Commission and other stakeholders on

[2] DACC/AReM Opening Brief at 5.
[3] CLECA Opening Brief at 12.

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implementation of a fairer and more competitively neutral approach to allocating the costs of IOU DR programs between bundled and unbundled customers.

III. THE "UNIVERSAL BENEFIT" ARGUMENT IS OVERBROAD AND DOES NOT ADDRESS THE PROBLEMS OF UNFAIRNESS AND BARRIERS TO ENTRY

The argument for retaining the current DR cost allocation approach rests primarily on a sweeping assertion that all DR, regardless of classification or program characteristics, provides benefits to all customers. For load-modifying resources, "benefits" is defined broadly in terms such as "supporting system reliability,"[4] "reducing system peak demand" (which "tends to" reduce wholesale market clearing prices"),[5] and achieving a "smoother load shape."[6] For supply resource DR, "benefits" are extrapolated from allocation of RA credits on a load-share basis.[7] As the argument goes, these universal benefits justify universal cost allocation, without meaningful consideration of the nature of the DR resource or the consequences for non-bundled customers and non-IOU LSE DR program development.

There are at least two problems with this "universal benefit" argument. First, it overgeneralizes the benefits to non-bundled customers of both supply-side and load-modifying DR resources, and dismisses or minimizes the degree to which benefits accrue disproportionately to IOU bundled customers. As the Commission noted in allocating the costs for SDG&E's dynamic pricing program to bundled customers only, unbundled customers should not pay for dynamic pricing tariffs "that do not significantly benefit them."[8] The Commission should reject

[4] PG&E Opening Brief at 13.
[5] SDG&E/TURN Opening Brief at 3.
[6] CLECA Opening Brief at 16.
[7] PG&E Opening Brief at 14-15.
[8] D.12-12-004 at 53.

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the "universal benefit" argument and adopt a more analytical approach to determining who primarily benefits from IOU DR programs.

Second, and more importantly, even if the utilities' broad argument that universal benefit justifies across-the-board DR cost sharing were defensible, *it is not applied equally to both IOUs and non-IOU LSEs* and so is inherently flawed as a basis for simplistically allocating all IOU DR program costs to non-bundled customers. As Shell Energy North America ("SENA") points out:

> Unlike the costs of an *IOUs'* DR resources, the costs of DR supply resources provided by a third party will *not* be allocated to all system customers, regardless of whether the third-party DR supply resources provide "reliability" benefits for all customers.[9]

In other words, an MCE DR program would (applying the utilities' reasoning) presumptively provide reliability, load shaping and other benefits to IOU customers, but unlike the IOUs, MCE does not have the option of billing the costs for its program to all IOU customers. This imbalance needs to be taken into consideration in developing guidelines for cost allocation in this proceeding.

IV. THE FACT THAT THE COMMISSION DOES NOT HAVE A STATUTORY OBLIGATION TO MANDATE AND OVERSEE ESP AND CCA DR PROGRAMS IS IRRELEVANT TO THE QUESTION OF COST ALLOCATION

SDG&E and TURN maintain that allocating IOU DR program costs to customers of non-IOU LSEs is justified because ESPs and CCAs "are not required to procure a proportionate share of DR…."[10] SCE similarly argues that:

> Given that the Commission does not have the authority to impose DR obligations on non-IOU LSEs, the Commission must instead direct the

[9] SENA Opening Brief at 6. While SENA's statement relates to supply resources, it is also true with respect to load-modifying resources.
[10] SDG&E/TURN Opening Brief at 2.

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utilities to purchase DR on behalf of all LSEs and spread the costs and benefits.[11]

This argument is patently flawed. Investor-owned utilities, ESPs and CCAs are separate statutory entities with unique regulatory rights, obligations, and status under California law. SCE is correct in pointing out that the Commission does not have the authority to *impose* DR obligations on MCE. But it does not follow that the Commission can or should direct PG&E to purchase DR "on behalf of" MCE's customers or to spread the costs of such purchases to MCE customers. And it does not mean the Commission should preserve cost allocation rules that are currently preventing MCE from exercising its statutory right to develop its own DR programs.

As discussed in MCE's opening brief, MCE clearly has been authorized by the Legislature to develop DR programs and contract for DR from third parties.[12] MCE has a statutory right to autonomy in its procurement of generation and energy services.[13] MCE is deeply committed to the goal of offering DR programs that are tailored to the needs and preferences of MCE customers and to pioneer new DR technologies and programs. And MCE is already administering an ambitious array of EE programs and wants to expand its offerings in this area as well as DR.[14] While MCE is interested in collaborating with PG&E to develop DR opportunities for itself and its customers, MCE does not want or need the utilities to purchase DR on behalf of CCA customers.

Rather than imputing from CCAs' statutory status a mandate for utility DR procurement and cost sharing, the Commission should explicitly acknowledge IOUs', CCAs' and ESPs' respective rights and responsibilities, and adopt DR cost allocation guidelines that accord with

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[11] SCE Opening Brief at 6.
[12] MCE Opening Brief at 8.
[13] Id. at 8-9.
[14] MCE Opening Brief at 3-4.

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them and advance the Commission's overall objectives of expanding DR programs and participation.

V. DOUBLE PAYMENT BY NON-BUNDLED CUSTOMERS IS NOT A "THEORETICAL" CONCERN

None of the parties arguing for retaining the current practice of allocating all or most DR costs to all customers offer any recommendations for addressing the impact of this practice on CCAs and other non-utility LSEs. SCE acknowledges that:

> non-utility LSEs may wish to offer their own DR programs and therefore may be concerned that their customers will be forced to pay for both the utility and the LSE DR program.[15]

But SCE offers no proposal for addressing this concern, instead dismissing it as nothing more than "a theoretical concern at this point…"[16]

Double payment is not a "theoretical concern." It is a very *real* concern that is currently preventing MCE from initiating new DR offerings targeted at the particular needs and capabilities of MCE customers. MCE cannot be expected to develop, administer, and allocate to its customers the cost for dynamic pricing or other DR programs if PG&E is already charging MCE customers for the same programs. MCE has proposed guidelines to address the double payment issue and remove the current obstacles preventing MCE and other non-IOU LSEs from implementing their own DR programs. In particular, adoption of MCE's proposed guidelines prohibiting the IOUs from charging CCA customers for DR programs that (i) MCE customers are not eligible for; and/or (ii) duplicate an MCE DR program, will go a long way towards enabling MCE to begin developing its own locally focused and innovative DR program.

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[15] SCE Opening Brief at 6.
[16] Id.

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PG&E responds to the recommendation that cost allocation be linked to eligibility by suggesting that this "would also require changing cost allocation within the bundled customer group" because some bundled customers are not eligible for some IOU DR programs.[17] This statement is factually incorrect and a distraction. The purpose of establishing eligibility as one criterion for cost allocation is to enable non-IOU LSEs to implement their own programs without exposing their customers to double payment. Whether or not an IOU DR program is available to all bundled customers, those customers will only pay for the program once, so their eligibility or non-eligibility is beside the point.

VI. REFERENCES TO "CAM" AND A "CAM-LIKE MECHANISM" ARE NOT RELEVANT TO THE DISCUSSION OF DR COST ALLOCATION

At the end of the section of their opening brief discussing cost allocation for Supply Resource DR, SDG&E and TURN add without offering any foundation or discussion that "to the extent equivalent supply DR procurement obligations are not imposed on non-IOU LSEs, above market costs and costs that provide capacity benefits to all customers can be allocated through a Cost Allocation Mechanism (CAM)." This flawed assertion is followed by a confusing reference to the use of a "CAM-like mechanism" in a completely unrelated context.[18]

The Commission should disregard this portion of SDG&E/TURN's argument. While the CAM and "CAM-like" references are offered in passing and not supported as a recommendation, they concern MCE. In addressing any issue related to supply-side procurement of resources providing capacity benefits the Commission has an obligation under Section 380 of the Public Utilities Code to maximize the ability of CCAs to determine the generation resources used to

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[17] PG&E Opening Brief at 6.
[18] SDG&E/TURN Opening Brief at 6.

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serve their customers.[19] Any consideration of using a CAM or "CAM-like mechanism" (whatever that is supposed to mean) would raise questions under Section 380 and other regulatory issues ranging well beyond the scope of this proceeding.

VII. CONCLUSION

MCE appreciates that the Commission has identified this proceeding as the time and place for addressing DR cost allocation policies that are preventing MCE from developing a strong, customer-focused DR program. MCE urges the Commission to adopt and implement MCE's proposed cost allocation guidelines.

Respectfully submitted,

By: /s/

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[19] Cal. Pub. Util. Code §380(b)(4). See also §380(h)(5).

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