

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)

**Consumer Federation of California Reply
To Briefs on Unresolved Phase 2 and 3 Issues**

Introduction

Consumer Federation of California (CFC) would like to thank the California Public Utilities Commission (the Commission) and the Administrative Law Judge (ALJ) for the opportunity to file this reply brief.

CFC is a non-for-profit 501(c) (4) federation of individual consumer members and organizations that are comprised of California consumers, consumer groups, senior citizen groups, labor groups, community based groups and other organizations.

1. Cost Allocation¹

Costs related to Supply Resources should be allocated to generation rates while costs for Load Modifying Resources should be allocated to distribution rates. This approach promotes competitive neutrality, a stated goal, in the Demand Response (DR) Resource market and prevents cross-subsidization between bundled customers and Direct Access (DA) / Community Choice Aggregation (CCA) customers.

CFC agrees with TURN, SDG&E, Shell Oil² and others who suggest that the cost allocation should take into consideration the type of DR resource. Different methodologies should be applied depending on how the DR is being utilized, on whether the DR resource is a Load Modifying Resource or a Supply Resource.

It is CFC's position that, in general, application of the appropriate cost allocation

¹ We use the term cost allocation, for the purpose of this proceeding, to refer to the methods and procedures used by IOUs' to allocate DR costs among generation and distribution components of IOU rates.

² See Joint Opening Brief of San Diego Gas and Electric Company (U 902 E) and The Utility Reform Action Network on Cost Allocation starting on page 1. See also Opening Brief of Shell Energy North America (US), L.P. starting at page starting on page 3.

methodology, which depends on the type of DR resource in question, will ensure DR costs are only allocated to those benefitting from the programs. This approach also eliminates certain entry barriers, promotes third-party entry DR into the CAISO wholesale market, eliminates certain cross-subsidies, and is in keeping with cost-causation principles.

A. Supply Resources

Costs for Supply Resources should be allocated to generation rates. Today Investor Owned Utilities (IOUs) are allowed to allocate the costs and expenses associated with supply-side demand response programs to all distribution service customers by charging customers through its standard distribution rates. This methodology results in *all* distribution service customers being charged for costs associated with DR, whether they are participating (or eligible to participate) in a demand response program or not.

However, as CAISO³ and others have pointed out, third-party aggregators are not permitted to allocate costs to non-participating customers like the IOUs can. This creates cross-subsidies, a situation the Commission instructed the parties to address, and a situation the Commission is trying to avoid. The cross-subsidy occurs because direct access customers and other similarly situated customers are paying for the costs associated with DR, a program for which they are not eligible, and a program from which they derive no direct benefits.

Allocating costs to non-participating customers also creates an uneven playing field that acts as a barrier to entry because, as it stands today, the IOUs have an unfair advantage over third parties because the IOUs may allocate costs in a way that allows the utility to charge non-participating customers. And as stated, third party cost allocation options are much more limited and act as a disincentive to third-party aggregators from entering the CAISO wholesale market. The Commission should eliminate cost allocation mechanisms that act as a disincentive to third-party aggregators from entering the CAISO wholesale market as well as those that foster and promote cross-subsidies.

Should the Commission adopt our suggestions regarding DR cost allocation cost allocation methodologies currently employed by the IOUs may have to be revisited.

³ See: Response of the California Independent System Operator Corporation to the Phase 2 Foundational Issues, 12.13.2013, starting at page 12.

B. Load Modifying Resources

The costs and expenses associated with Load Modifying Resources should be allocated to distribution rates. The reason for this is when DR resources are used to curtail the load on the grid, all customers receive benefits in several ways. The benefits that accrue “market-wide” include environmental benefits, grid reliability benefits, may very well result in lower Resource Adequacy (RA) requirements⁴ and lower energy prices in the future.

For these reasons, we agree with those parties who suggested that allocating costs for load modifying resources to distribution rates is in keeping with cost-causation principles.

C. Cost Causation and Cross-subsidization

CFC believes this focus on the actual function of a DR resource in determining the proper cost allocation approach is reasonable, CFC’s proposed methodology adheres to cost causation principles and eliminates cross-subsidies created by cost allocation methodologies currently being used by the IOUs. If costs for Supply Resources are not allocated to generation rates and costs for load modifying resources are not allocated to distribution rates, the result will be cross-subsidization in terms of who pays for DR programs.

2. Back-up Generators (BUGs)⁵

DR is a key element in the Commission’s Energy Action Plan. This is because DR is touted as a way to incentivize electricity consumers to curtail electricity use, thereby reducing the amount of greenhouse gasses being spewed into the atmosphere caused by the back-up generation of electricity using fossil fuels. It is therefore illogical to think the Commission would endorse a rule that acts to increase greenhouse gasses.

DR, as a load modifying resource, can be said to be a substitute for generation. And, that is how DR Load Modifying Resources are used in terms of resource adequacy planning.

⁴ In theory, load modifying DR resources reduce system peak. This should translate into lower Resource Adequacy (RA) requirements. This would impact all Load Serving Entities (LSEs). In this way, all customers benefit from Load Modifying DR resources. The same can be said for benefits associated with increased grid reliability and certain avoided costs. These benefits should accrue to the benefit of all customers.

⁵ In the context of this discussion back-up generators (BUGs) are generators that are “fired up” when it is determined more electricity is needed.

Some parties⁶ believe that electricity generated by BUGs should be recognized as DR for resource adequacy planning purposes.

While it is true that conservation related DR resources are recognized as a substitute for generation for RA purposes, DR (at least in theory) decreases greenhouse gas emissions (GHG), while lowering stress on the grid. In terms of DR and conservation, DR that curtails electricity use is very much in keeping with the Commission's Energy Action Plan.

And, while it can be said that actual back-up generation does act to alleviate - to some degree - stress on the grid, by reducing demand on the grid, it cannot do so without producing greenhouse gasses. Therefore, trying to shoehorn back-up generation into the DR construct as being the same as actual curtailment DR, is very much *not* in keeping with the Commission's Energy Action Plan. For this reason alone back up generation should not be recognized as a true DR resource and should be regulated accordingly.

We would note that the Commission has already visited this contentious subject area. In October of 2011, in D. 11-10-003, the Commission, in making an official policy statement, stated that, “. . . fossil-fueled emergency back-up generation resources should not be permitted to receive system or local RA credit as demand response resources.”⁷

The decision went on to say:

As a general policy, we do not want to allow fossil-fueled emergency back-up generation to receive system or local RA credit as demand response resources. In decisions on the IOUs' last three demand response program budget cycles (2005-2011), we have consistently stated that demand response programs that rely on using back-up generation were contradictory to our vision for demand response and the Loading Order.⁸

While the decision also discusses the need for exploration, at some point in the future,⁹ of specifics relating to BUGs in the RA context, the policy statement itself, and other similar

⁶ See Opening Brief of Pacific Gas & Electric, starting on page 21 and Opening Brief of the California Large Energy Consumers Association on Phase Two Issues of Cost Allocation and Back-up Generation and the Phase Issue Regarding The Demand Response Auction Mechanism, starting at page 3.

⁷ See D. 11-10-003, at page 2.

⁸ See D.11-10-003, at page 26.

⁹ If indeed certain specifics relating to the Commission's state policy position on BUGs needs further study, there is no time like the present and CFC would urge the Commission to explore these specifics at its earliest possible convenience.

language, are unequivocal: BUGs cannot be used for resource adequacy planning within the context of a DR program.

The Commission made similar rulings and observations relating to BUGs prior to D.11-10-013. In R.02-06-01, quoting from D.03-06-032, the Commissioner, referencing a coalition of state agencies, stated: “[Tt]he Agencies’ definition of demand response does not include or encourage switching to use of fossil-fueled emergency backup generation, but high-efficiency, clean distributed generation may be used to supply on-site loads.”¹¹

In D.05-01-056, the Commission rejected PG&E’s 2005 plan for back-up generation program “because it promotes reliance on diesel generators as part of California’s resource mix, in contrast to the Energy Action Plan’s loading order Preference We continue to fail to see how a program that increases generation can be characterized as demand response(.)”¹² In D.05-01-056, the Commission observed: “These two [back-up generation] programs are extremely troubling because they are *not true demand reduction programs*. Instead, they reduce demand on the utility system by shifting load to an onsite generation resource. Thus, although they do result in a short term reduction to the grid, there is no net reduction occurring as a result of them.”(Our emphasis.)¹³ As is obvious BUGs are not the tool for lowering production of GHG.

The fundamental principle upon which D.11-10-003 and its predecessors were made is based on the Loading Order and the Commission’s finding that the Loading Order¹⁴ should apply equally to IOU and non-IOU demand response programs where RA credits are being sought for back-up generation. In other words, BUGs are not the proper resource to rely on in applying for RA credits.

In D.05-01-056 the Commission addressed back-up generation as it related to

¹¹ D.03-06-032, Attachment A at page 2.

¹² See D.05-01-056 at page 48.

¹³ See D.05-01-056 at pages 48-49.

¹⁴ The “loading order” - set forth in the 2008 Updated Energy Action - established that in California, in meeting its energy needs, electricity distribution companies are required to procure energy efficiency and demand-side resources first, followed by renewable resources. Only after those sources are exhausted can conventional electricity generation be tapped. The loading order ranks preferred energy resources and requires energy be procured from the higher ranked, “greener” sources before other sources are considered. Demand response is one of the highest priority resources (with energy efficiency) in the Loading Order. Generation is lower in order than DR.

PG&E and SDG&E proposed demand response programs. The Commission rejected PG&E's 2005 plan for back-up generation program "because it promotes reliance on diesel generators as part of California's resource mix, in contrast to the Energy Action Plan's loading order preference... We continue to fail to see how a program that increases generation can be characterized as demand response."¹⁵ (Punctuation omitted.)

Should the logic supporting the rejection of BUGs in D.05.01.056, be applied here, the Commission should, again, reject the use of BUGs in RA planning.

As we stated previously¹⁶ the concept of relying on fossil-fueled back-up generation in a DR program flies in the face of California's stated DR vision and the Commission's long established loading order requirements. CFC knows of no good reason, and has seen no good reason articulated by any of the parties, that would justify the Commission to change its policy regarding use of BUGs in DR programs.

That said, CFC urges the Commission to state, explicitly, that the use of BUGS to provide DR is strictly prohibited.

3. Encouraging participation in (DRAM) Pilot(s)

CFC remains convinced that proper and effective education and outreach is absolutely critical to the success of the pilot(s) and in the long-term success of the program overall.¹⁷ CFC believes all pilot programs should emphasize customer education and outreach that enhances customer understanding and acceptance of new rates, and minimizes and appropriately considers the bill impacts associated with such transitions.

We note that PG&E agrees with our focus on education and outreach in stating, "A solid outreach, education and recruit plan as a part of the DRAM Pilot will be a positive way to encourage participation, without restricting other Supply Resource DR and risking reducing DR overall."¹⁸

We do not maintain that education and outreach are the key to success in terms of DR programs, but we do believe that a lack of effective education and outreach could be a

¹⁵ See D.05-01-056 at page 48-49.

¹⁶ See The Consumer Federation of California Reply to Phase Two Foundational Question Responses, dated December 31, 2013 at page 6.

¹⁷ See The Consumer Federation of California Design Proposal for Rulemaking 12-06-013, at page 17

¹⁸ See Opening Brief of Pacific Gas and electric Company, at page 31.

fundamental reason for not attaining stated goals to get DR programs up and running in the way the Commission wishes.

4. DRAM Pilot / Metrics

CFC believes that the Demand Response Auction Mechanism (DRAM) should be a preferred means of procuring Supply DR. While we realize there are any number of technical hurdles to clear, CFC believes that integrating residential Demand Response resources into the CAISO wholesale market is doable. As we are sure the Commission is aware, residential DR resources are being bundled and bid into other regional wholesale markets in the northeast.

We have only this caveat. As we have stated time and time again CFC recommends the Commission be vigilant and cautious concerning new pilots and the costs associated with these pilots, cost which in the end will be paid for by the residential consumers.¹⁹ This point is important because any number of previous, expensive pilots have already been conducted with dubious results.

Toward attaining the end result of a successful pilot, CFC again recommends, if at all possible, the formulation of performance metrics to make more measurable the results from the pilots. In formulating these metrics we would recommend a strong emphasis on use of BUGs, enrollment and actual DR results. Parties should also be afforded the opportunity to review and comment on any such metrics.

We would also note that unlike past rulemakings smart meters are now much more common than even a few years ago. Given the ability of these meters to store and transmit data, CFC believes tracking and reporting of this data is reasonable, should be required and should help to improve upon historic data reporting.

There are indications in the Staff Report that accompanied the OIR in this matter that BUGs are being relied on before DR resources are. Again CFC suggests that performance metrics be developed of a kind that could be used to analyze the instance of fossil generation. CFC believe the Commission needs real, reliable metrics to test the efficacy and performance of DR pilots going out, especially in terms of when BUGs are being fired up and why.

CFC supports the Commission's suggestion that certain data relating to BUGs should be tracked and transmitted to CPUC for analysis.

¹⁹ See The Consumer Federation of California Response to Questions from Order Instituting Rulemaking to Enhance the Role of Demand Response in Meeting the State's Resource Planning Needs, at page 2.

5. Conclusion

As we have in the past, and will continue to point out, as a basic consumer-side tenet, CFC believes it is important that the electricity consumers of California accrue DR benefits commensurate with those DR benefits accrued by other market participants²⁰

CFC hopes the Commission will consider its recommendations and we hope we have been of assistance in helping the Commission sort through the various issues.

Executed on September 8, 2014, at San Francisco, CA.

Respectfully submitted,

_____/s/_____,
Donald P. Hilla
Senior Regulatory Counsel
Consumer Federation of California
433 Natoma Street, Suite 200
San Francisco CA 94103
dhilla@consumercal.org

²⁰ See, e.g., Consumer Federation of California Reply to Phase Two Foundational Question Responses, dated December 31, 2013.