

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**

11-24-14  
04:59 PM

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)

**THE OFFICE OF RATEPAYER ADVOCATES' REPLY COMMENTS  
ON PROPOSED DECISION AND ALTERNATE PROPOSED DECISION  
RESOLVING SEVERAL PHASE TWO ISSUES AND ADDRESSING  
THE MOTION FOR ADOPTION OF SETTLEMENT AGREEMENT  
ON PHASE THREE ISSUES**

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November 24, 2014

## **I. INTRODUCTION**

The Office of Ratepayer Advocates (ORA) submits the following reply comments on the Proposed Decision (PD) of Administrative Law Judge Kelly A. Hymes and the Alternate Proposed Decision (APD) of Commissioner Peevey dated October 28, 2014 addressing demand response (DR) Phase Two issues and the Motion for Adoption of Settlement Agreement on Phase Three Issues (Settlement). Joint comments from settling parties address issues related to the Settlement. These comments only address the Phase 2 and Phase 3 litigated issues regarding cost allocation and the Demand Response Auction Mechanism (DRAM).

## **II. DISCUSSION**

### **A. Allocation Of DR Costs Should Consider The Purpose Of Procuring DR And Not Based On Who Can Participate in a DR Program**

The PD and APD propose to adopt a cost causation principle that links the cost of a program to only those customers for whom the programs is available to participate<sup>1</sup>. This mistakenly disregards the fact that the State's Energy Action Plan (EAP) specifically directs the IOUs to procure DR as a preferred means of meeting growing energy needs. The EAP states that well-designed dynamic pricing tariffs and demand response programs can lower consumer costs and increase electricity system reliability.<sup>2</sup> TURN correctly states that "(t)he reason that demand response imposes "costs" is not due to the fact that a bundled or unbundled customer signs up for a particular DR program. Rather, DR imposes costs because these programs and tariffs have been authorized in order to achieve several state objectives that provide desired benefits to all customers on the grid."<sup>3</sup> SCE similarly argues that when the IOUs are authorized or ordered to obtain DR to provide system and local reliability benefits for all customers, they should be paid for by all customers.<sup>4</sup>

The PD and APD should either delete OP 7a or change it to state that the costs for DR programs or tariffs should be borne by all customers who benefit from the DR program or tariff.

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<sup>1</sup> PD and APD Ordering Paragraph (OP) 7a.

<sup>2</sup> September 21, 2005 California Energy Action Plan II, p. 4.

<sup>3</sup> TURN Opening Comments, p. 4.

<sup>4</sup> SCE Opening Comments, p. 2-3.

## **1. If The Commission Adopts OP 7a, The Same Cost Causation Principle Should Apply To Supply DR**

DACC-AReM in their comments argue for avoiding certain costs that would result from the adoption of OP 7a in the PD and APD. The Commission should disregard this misguided argument. Although DACC-AReM support the proposed cost allocation method in the PD and APD, it nevertheless argues that the cost of procuring supply DR should be recovered only from bundled customers, regardless of whether bundled, direct access or CCA customers are participating in providing such supply DR.<sup>5</sup> This not only runs counter to the principle of cost causation they support in the PD and APD, it tries to make a distinction between supply DR and load-modifying DR for how this principle is applied, where there is no real distinction for the benefits provided or the reasons for their procurement. The Commission, as well as the Settling Parties (which includes DACC-AReM) have stated that both types of DR have value – i.e., supply DR is integrated into the CAISO energy markets and can help meet the Resource Adequacy (RA) and other needs of the grid, whereas load modifying DR theoretically could help reduce the same need in a different way.<sup>6</sup>

Even in case the Commission retains current language in OP 7a, the Commission should reject DACC-AReM's attempt to avoid a legitimate share of their costs for procuring supply DR.

### **B. Issues With OP 7a and 7b Need To Be Resolved**

ORA sees several issues with OP 7a and 7b as currently written in the PD and APD that require resolution if the Commission decides to not change the cost allocation principle in OP 7a. ORA had recommended that the Commission establish a process for determining whether a new program from a direct access (DA) or community choice aggregator (CCA) provider is “similar” enough to an IOU program to warrant ending cost recovery from the provider's customers and to cease providing the IOU program to DA and CCA customers.<sup>7</sup> ORA agrees with SCE's and PG&E's suggestion that the Commission conduct a workshop on how OP 7a and 7b can be implemented.<sup>8</sup> In addition, the following issues need resolution before implementing OP 7a and 7b.

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<sup>5</sup> DACC-AReM Opening Comments, p. 4.

<sup>6</sup> D.14-03-026, p.2; Settlement Agreement, p. 7-8.

<sup>7</sup> ORA Opening Comments, p. 2-3.

<sup>8</sup> SCE Opening Comments, p. 4; PG&E Opening Comments, p. 4.

**1. RA Benefits Associated With A DR program Should Only Be Assigned To The Customers Who Are Eligible And Pay For That DR Program**

SDG&E explained how under the Settlement Agreement, load modifying DR would adjust the load forecast for which RA credits are determined in each utility's service area. This benefit of Load Modifying DR will serve to also reduce the RA procurement needs, and thereby benefit all LSEs and their customers."<sup>2</sup> SCE also points out that within the RA process, "programs whose costs are allocated to all benefitting customers also result in the ESP or CCA receiving the RA benefits associated with the program. Assuming that the Commission adequately defines "similar" the RA program must then be clarified that when the costs are no longer allocated to an ESP or CCA, that same ESP or CCA no longer receives the credit toward meeting their RA requirements from the RA DR resources for which they are not paying."<sup>10</sup> ORA shared a similar recommendation.<sup>11</sup> If the Commission determines that only those customers eligible for a DR program should pay for that program, then it should also determine that all RA benefits related to the program only be applied to those customers.

**2. OP 7b Would Decrease Customer Choice And Potentially Decrease Participation In DR Overall**

The PD errs by disallowing customers to choose between the IOU's DR programs and a "similar" DA or CCA provider's program by requiring the IOU's to cease providing the program to the other provider's customers.<sup>12</sup> It presumes that the DA/CCA customers would want to participate in the other provider's program when in fact they could cease participation in DR altogether. CLECA, DACC-AReM and SCE recognize that this proposal limits customer choice and could lead to decreased participation in demand response.<sup>13</sup> As this is contrary to the Commissions goals, the Commission should reject OP 7b and instead establish a process to determine the consequences and requirements of implementing such a proposal.

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<sup>2</sup> SDG&E Opening Comments, p. 1.

<sup>10</sup> SCE Opening Comments, p. 4.

<sup>11</sup> ORA Opening Comments, p. 3.

<sup>12</sup> PD and APD OP 7b.

<sup>13</sup> CLECA, p. 4-5; DACC-AReM, p. 3; SCE, p. 3.

**3. The PD And APD Does Not Address The Situation Where A DA Or CCA Provider's DR Program Is NOT "Similar" To An IOU Program**

The Commission must also establish how the costs and benefits of the DA or CCA provider's program should be allocated if it determines that a DA or CCA program is not similar to an IOU program. ORA's understanding is that only customers of the DA or CCA provider would be eligible for participation in their DR program, the program would not be available to bundled customers. So consistent with OP 7a, the costs for that program should only be borne by the DA or CCA customers. And as argued in Section B.1., the RA benefits associated with the program should only be assigned to the DA or CCA providing the DR program.

**C. The Commission Should Maintain The Requirement For A Set Aside For The DRAM**

PG&E, Joint Parties, and CLECA argue against requiring the DRAM Working Group to develop a set-aside for the DRAM Pilot.<sup>14</sup> The Commission should disregard this recommendation.

In briefs, ORA had argued that there should be a limit on IOUs' AMP contracts in their applications for 2017 and beyond DR programs to encourage participation in the DRAM pilots planned for 2015 and 2016. Otherwise, the IOUs' 2017-2019 DR cycle applications with AMP contracts for supply and load-modifying DR without any limit could adversely affect the participation in DRAM pilots.<sup>15</sup> TURN similarly argued that the current mechanisms for DR procurement for 2017-2019 may offer more attractive terms to demand response providers than a competitive auction and therefore some measures to provide the DRAM pilot a reasonably-sized test market are likely necessary for a meaningful pilot.<sup>16</sup> In its opening comments on the PD/APD, CLECA argues that "No party presented evidence on the impacts of restrictions on DR program participation in connection with encouraging DRAM pilot participation because there isn't any such evidence."<sup>17</sup> This is a matter of simple logic as to which option customers are likely to choose - the current procurement process where essentially all DR that meets the Commission's cost effectiveness criteria is procured or the competitive DRAM

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<sup>14</sup> PG&E Opening Comments, p. 5; Joint Parties' Opening comments, p.3; CLECA Opening Comments, p. 5.

<sup>15</sup> ORA Opening Brief, p. 6-7.

<sup>16</sup> TURN Opening Brief, p. 8; APD, p. 64.

<sup>17</sup> CLECA Opening Comments, p. 5.

auctions where customers have to compete with each other in addition to meeting the cost effectiveness criteria. In fact, CLECA itself previously suggested that there will be little incentive to participate in DRAM if IOU DR programs are available to customers. CLECA asked, “why would customers participate in DRAM for potentially lower payments in a competitive auction than what is available through participation in utility programs?”<sup>18</sup>

CLECA also argues that Commission should let the 2015 auction occur without restricting existing programs, and then, if needed, consider restrictions or TURN’s proposed set aside for the 2016 auction.<sup>19</sup> However, this suggestion is totally unworkable and unnecessary. By the time results of the 2015 DRAM auction participation are available, the IOUs would have either filed or fully prepared their applications for 2017-2019 DR programs cycle.<sup>20</sup>

PG&E argues that, “a set-aside, however, does not “level the field”, but instead makes the field lop-sided by cutting-off other DR opportunities for customers and aggregators.”<sup>21</sup> The Joint DR Parties make similar arguments about reducing the ability of customers to participate in any DR program.<sup>22</sup> Contrary to PG&E and Joint DR Parties’ assertions, a set-aside for DRAM pilots does not prevent opportunities for customers in the set-aside area to participate in load-modifying DR programs if they do not make a winning bid in DRAM as a supply-side resource. A set-aside will help ensure that a reasonable test market for DRAM exists to demonstrate DRAM’s viability as competitive mechanism for procuring supply DR.

The Commission should disregard CLECA’s, PG&E’s and Joint DR Parties’ illogical arguments or proposals against PD/APD’s set-aside for the DRAM pilots.

### **III. CONCLUSION**

ORA recommends its proposed changes be incorporated in the PD and APD and to disregard CLECA, PG&E and the Joint DR Parties’ illogical arguments against the set-aside for the DRAM pilots.

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<sup>18</sup> Ex. CLE-01, p. 27.

<sup>19</sup> CLECA Opening Comments, p. 5.

<sup>20</sup> The expected date for filing applications is November 2015.

<sup>21</sup> PG&E Opening Comments, p. 5.

<sup>22</sup> Joint DR Parties’ Opening Comments, p. 3.

Respectfully submitted,

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November 24, 2014