

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Pacific Gas and Electric
Company for Approval of Demand Response
Programs, Pilots and Budgets for 2012-2014

Application 11-03-001
(Filed March 1, 2011)

And Related Matters.

Application 11-03-002
Application 11-03-003

**COMMENTS OF THE DIRECT ACCESS CUSTOMER COALITION
AND THE ALLIANCE FOR RETAIL ENERGY MARKETS
ON THE ALTERNATE PROPOSED DECISION
OF COMMISSIONER MARK J. FERRON**

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of San Diego Gas & Electric Company (U902E) for Adoption of its Smart Grid Deployment Plan	Application 11-06-006 (Filed June 6, 2011)
And Related Matters.	Application 11-06-029 Application 11-07-001

**COMMENTS OF THE DIRECT ACCESS CUSTOMER COALITION
AND THE ALLIANCE FOR RETAIL ENERGY MARKETS
ON THE ALTERNATE PROPOSED DECISION
OF COMMISSIONER MARK J. FERRON**

The Direct Access Customer Coalition¹ (“DACC”) and the Alliance for Retail Energy Markets (“AReM”)² submit these comments on the Alternate Proposed Decision (“Alternate PD”) of Commissioner Mark J. Ferron, issued March 20, 2012.

In these comments DACC and AReM note their support for the promise in this Alternate PD that competitive markets will play an increasing role in California’s demand response (“DR”) framework. Such Commission support is much needed for DR to reach its full potential. DACC and AReM also note, however, that the Alternate PD falls short by excluding consideration of principles for proper cost allocation in its upcoming DR policy review, and instead seems to be

¹ DACC is a regulatory alliance of commercial, industrial and governmental customers who have opted for direct access to meet some or all of their electricity needs.

² AReM 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.

relegating this critical issue to future rate design proceedings conducted by each Investor Owned Utility (“IOU”). Leaving this critical cost allocation policy issue to an uncertain future will undermine the very DR markets the Commission hopes to expand. Accordingly, DACC and AReM respectfully request that the Commission correct this aspect of the Alternate PD before its adoption, as described below.

I. THE ALTERNATE PD MAKES A BOLD AND MUCH NEEDED STAND FOR COMPETITIVE MARKETS

The Alternate PD adds significant and enthusiastic support for expanding DR through competitive markets and encouraging DR product offerings by non-utility Demand Response Providers (“DRPs”).³ DACC and AReM appreciate the Alternate PD’s recognition of the benefits that increased competition will bring to the deployment of DR programs, as were presented in AReM/DACC’s testimony and briefs in this proceeding. As the Alternate PD affirms, the current utility-centric model is “changing” and DRPs can provide “additional innovation and services to the market, yielding additional uncaptured benefits to DR in California.”⁴

The Alternate PD further states its intent to advance its competitive DR policies in a “new DR policy guidance rulemaking to be opened later this year.”⁵ DACC and AReM strongly support the Alternate PD’s recommendation to address competitive DR market issues in a policy rulemaking. However, DACC and AReM are disappointed that the Alternate PD provides no specific time frame to initiate action. As the Alternate PD acknowledges, competitive issues

³ See, for example, pp. 16-18, 72, 77, 188-189.

⁴ Alternate PD, pp. 16-17.

⁵ Alternate PD, p. 17. Also, a p. 190, the Alternate PD states that the policy could also be addressed in the current DR rulemaking, R.07-01-041.

are “controversial”⁶ and adequate time is required to address and resolve any identified issues thoughtfully and deliberately so as to move away from “business as usual” as soon as possible. Therefore, the Commission should plan to complete its policy review well in advance of the next cycle of DR program applications, which the IOUs will likely submit in early 2014. DACC and AReM respectfully urge the Commission to make its DR policy review a high priority and to initiate its rulemaking no later than June 1, 2012.

II. ADDRESSING DR POLICY WITHOUT DR COST ALLOCATION UNDERCUTS THE MARKETS THE COMMISSION INTENDS TO EXPAND

While the Alternate PD makes clear that the next DR Rulemaking will address further transitioning of DR markets away from utility-based programs to competitive markets, the Alternate PD fails to include consideration of principles for proper allocation of the IOUs’ DR program costs as a policy matter in that Rulemaking. As DACC and AReM have previously demonstrated through testimony and briefs in this proceeding, the success or failure of the competitive market for DR products and services is inextricably linked to the IOUs’ allocation of costs for DR programs. The Alternate PD fails to recognize this linkage.

In fact, the Alternate PD states that cost allocation issues are “best handled in rate design.”⁷ “Rate design” typically takes place in Phase II of each IOUs’ General Rate Cases (“GRCs”). Contrary to the arguments propounded by some parties to this proceeding, individual IOU GRCs are precisely the wrong venue to address the competitive effects of DR cost allocation. Just as the Commission’s review and evaluation of competitive DR market issues require a *policy* rulemaking rather than a IOU-specific rulemaking, cost allocation issues that

⁶ Alternate PD, p. 188.

⁷ Alternate PD, p. 203.

affect competitive DR markets deserve and demand the same consistent treatment. In fact, a statewide policy for DR cost allocation is essential to ensure uniform treatment among the IOUs and a comprehensive, consistent, and rational DR policy. None of these objectives can be achieved through GRCs.

In recommending that the DR policy rulemaking address cost allocation, DACC and AReM are not suggesting that this new rulemaking engage in detailed rate design. DACC and AReM agree with the Alternate PD that such matters are best left to the IOUs' GRCs.⁸ To the contrary, DACC and AReM are proposing that the Commission consider the proper principles for allocation of all of the IOUs' DR program costs to ensure DR market success. These Commission-defined principles would then be applied uniformly and consistently in each of the IOUs' GRCs, thereby implementing a uniform statewide policy on DR that will ensure successful DR market expansion. The Commission took a similar approach in Decision ("D.") 11-07-029 regarding plug-in electric vehicles, in which it implemented rules to avoid providing an unfair competitive advantage to the IOUs and to ensure the success of that nascent market.⁹ Similar action is warranted here.

Moreover, it is misguided to believe that DACC and AReM could effectively pursue and address DR cost allocation in each of the IOU's various rate case proceedings. In reality, GRCs are massive, detailed, and full of other complicated issues. As noted in DACC's and AReM's reply testimony in this proceeding, "the other parties in those proceedings seem to have bigger

⁸ Alternate PD, p. 203.

⁹ D.11-07-029, p. 47.

fish to fry, with this particular issue being consistently swept under the table.”¹⁰ Further, utility rate cases are conducted only every three years on a staggered basis. Thus, cost allocation issues would not be resolved on a timely basis. Most importantly, the GRC approach could lead to disparate results among the three utilities, with cost allocation being treated differently for each utility. This is neither efficient nor productive. Just as competitive issues should be addressed in a comprehensive statewide proceeding, so should cost allocation, which is inextricably linked to competitive DR market issues.

As DACC and AReM explained in great detail throughout this proceeding, improper cost allocation harms and undermines competition because customers taking DR service from a competitive supplier essentially would be forced to pay twice for those services, once to the IOU for its DR programs they are not using, and then again to the DRP from whom they are actually receiving the DR products or services.¹¹ The resulting cost advantage held by the IOUs would be discriminatory and discourages non-utility DRPs from entering the California market. For example, if DRP-A has X dollars to invest in a new market, why would the company choose to invest in a state where its major competitors have no market risk and are allowed to recover their program costs through non-bypassable charges to all customers, including the ones that DRP-A would seek to serve? Further, whenever the IOUs’ DR costs are allocated improperly as non-bypassable charges, it creates a “double whammy” effect by increasing the non-bypassable rates for direct access and community choice aggregation customers and at the same time artificially lowering the IOU generation rates against which electric service providers (“ESPs”)

¹⁰ DACC/AReM Reply Testimony, July 11, 2011, DAC-2, p. 3, lines 14-15.

¹¹ DACC/AReM Opening Testimony, June 16, 2011, DAC-1, p. 6, lines 1-8; DACC/AReM Opening Brief, August 22, 2011, p. 18.

must directly compete. As a consequence, DRPs, ESPs and Community Choice Aggregators (“CCAs”) find it more difficult to design DR programs that can effectively compete against the utility, thereby discouraging competition and impairing competitive DR markets.

Moreover, the California Independent System Operator (“CAISO”) has strongly concurred with DACC’s and AReM’s concerns regarding improper cost allocation and urged that the Commission address this issue in its proposed DR policy rulemaking. In its Reply Brief, the CAISO raised the spectre of the competitive advantage conferred on the IOUs by improper cost allocation:

The cost of IOU demand response programs are imbedded in the IOUs rate base, spreading the costs among all bundled customers, whether those customers participate or not. This ability to “peanut butter” costs over all customers can be seen as a competitive advantage over third-party aggregator programs. ... The Commission should consider this issue of IOU competitive advantage though IOU ability to embed demand response program costs to its general body of ratepayers.¹²

More significantly, in its reply comments on the original proposed decision (“Original PD”) issued in this proceeding on October 28, 2011, the CAISO similarly argued that cost allocation is a “fundamental issue” that must be addressed in the DR policy proceeding to ensure the development of a competitive DR market:

The CAISO believes that *cost allocation is a fundamental issue that the Commission must take up in earnest in the DR proceeding R.07-01-041*. ...

The CAISO agrees that the way IOU demand response costs are allocated can create an unlevel playing field where a competitive market exists for demand response products and services. In a competitive market, individual competitors can only allocate costs to their own customers, not to all customers, and the ability to do otherwise can bestow significant competitive advantage. The utility-

¹² CAISO’s Reply Brief, September 9, 2011, pp. 17-18.

centric model that exists today effectively spreads DR program costs to all customers. *If a competitive demand response market is to ever develop in California, this fundamental cost allocation concern must be addressed as a first order priority.* (emphasis added, footnote excluded)¹³

In fact, DACC and AReM raised these cost allocation concerns with respect to the original proposed decision issued in this proceeding on October 28, 2011 by Administrative Law Judge (“ALJ”) Kelly A. Hymes.¹⁴ On December 14, 2011, ALJ Hymes released a revised version of her proposed decision, which addressed DACC’s and AReM’s concerns by including the following revised sentence:

However, we agree that these issues should be considered in a consistent manner across all three utilities and thus are best handled in one proceeding, the DR rulemaking R.07-01-041 or its successor.¹⁵

DACC and AReM respectfully and urgently request that this same language be added to the Alternate PD.¹⁶ This proposed addition is necessary to ensure that proper cost allocation for the IOUs’ DR programs is considered in lock-step and comprehensively with DR market competition in the same proceeding. Only in this way can the Commission ensure a comprehensive assessment and resolution of the issues as well as uniform application of the resulting policy determinations to all three utilities.

III. CONCLUSION

DACC and AReM support and applaud the Alternate PD’s emphasis on expanding the competitive DR market through a subsequent DR policy rulemaking and urge the Commission to

¹³ *Reply Comments of the California Independent System Operator to Proposed Decision of ALJ Hymes*, A.11-03-001 *et al*, November 22, 2011, p. 3.

¹⁴ *Comments of the Direct Access Customer Coalition and the Alliance for Retail Energy Markets on Proposed Decision Adopting Demand Response Activities and Budgets for 2012 Through 2014*, November 17, 2011, pp. 4-9.

¹⁵ Revised Proposed Decision of ALJ Hymes, issued December 14, 2011, redline version, p. 217.

¹⁶ DACC and AReM propose that this sentence be added at the end of the first full paragraph on p. 203 of the Alternate PD.

begin this proceeding no later than June 1, 2012. However, allocation of DR program costs directly affects the success or failure of DR markets and, thus, uniform principles for proper cost allocation are fundamental to DR policy reform. Accordingly, DACC and AReM strongly urge the Commission to make one important modification to the Alternate PD by adopting the proposed language provided herein to clarify that the Commission will consider principles for proper cost allocation as a policy matter in its new DR policy rulemaking.

Respectfully submitted,

A handwritten signature in cursive script that reads "Susan J. Mara".

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