Decision 23-03-020 March 16, 2023

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

DECISION MODIFYING DECISION 17-10-017

Summary

This decision grants the petition for modification of Decision 17-10-017 and adopts three language modifications to the decision, specifically with respect to the four-step process to implement the demand response Competitive Neutrality Cost Causation Principle. First, this decision defines the term "affected customers" as customers who are enrolled in the relevant utility program, either directly or through an aggregator. Second, this decision clarifies that the bill credit for cost recovery of a similar demand response program, referenced in Step Four of the implementation process, shall be provided to all customers of the Community Choice Aggregator or Energy Service Provider. Third, this decision clarifies that the notification, required in Step Three to be provided by the investor-owned utilities, shall be provided to directly enrolled customers and the third-party demand response aggregators. This decision closes Rulemaking (R.) 13-09-011.

1. Background

Below is an overview of the decision requested to be modified, followed by a procedural background of the petition for modification.

1.1. Overview of Decision (D.) 17-10-017

In D.17-10-017, the Commission adopted a four-step process to implement the demand response Competitive Neutrality Cost Causation Principle, which was previously adopted by the Commission in D.14-12-024.[1] The principle states that a competing utility shall cease cost recovery from and targeted marketing to a Community Choice Aggregator (CCA) or Direct Access provider's customers when that provider implements a similar demand response program in the utility's service territory.[2] D.17-10-017 defines a similar demand response program as meeting the following four requirements: i) is offered to the same type of customer (*e.g.*, residential customer) and the approximate number of Competing Provider's[3] customers to which the Competing Utility[4] markets its similar demand response program; ii) is classified as and can be demonstrated to be the same resource, either a load modifying or supply resource, as defined by the Commission; iii) can validate that demand response program customers are not receiving load shedding incentives for the use of prohibited resources during demand response events; and iv) allows the participation of third-party demand response providers or aggregators, if the Competing Utility's program also

[1] D.17-07-017 at Ordering Paragraph 1.

[2] D.14-12-024 at Ordering Paragraph 8b.

[3] Competing Provider is the CCA, Direct Access Service Provider, or Energy Service Provider (ESP).

[4] The Competing Utility is one of the investor-owned utilities. The investor-owned utilities are Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE).

allows such third-party participation.[5] The four-step process adopted in D.17-10-017 is briefly described as:

Step One: A Competing Provider is permitted to file a Tier 3 Advice Letter requesting Commission determination of whether their proposed demand response program is similar to a Competing Utility program. The required contents of the advice letter are described in Step One A.

Step Two: Requires a regulatory process as outlined in Commission General Order 96-B.

Step Three: If the Commission deems the Competing Provider's demand response program is similar, the Competing Utility is required to begin the process (within 30 days) to cease cost recovery by and targeted marketing to the Competing Provider's customers of the similar program. Pertinent to this Petition, Step Three requires a letter to be sent (within 60 days) to the affected customers notifying them of the change.

Step Four: Requires affected customers to receive a bill credit for cost recovery of the similar program.

D.17-10-017 required the investor-owned utilities to propose an approach for determining the bill credit and ending cost recovery from Competing Providers' customers no longer eligible to participate in the similar demand response program.[6] The Commission authorized Energy Division to facilitate a workshop to discuss the proposed approach and develop a consensus.[7]

During the June 27, 2018 workshop, participants identified consensus topics, non-consensus topics, and topics requiring further clarification and

[5] D.17-10-017 at Ordering Paragraph 2.

[6] D.17-10-017 at Ordering Paragraph 3.

[7] D.17-10-017 at Ordering Paragraph 4.

guidance from the Commission. Energy Division facilitated a second workshop on July 11, 2018 to address the non-consensus topics. As a result of the July 11, 2018 workshop, parties identified three topics in D.17-07-017 requiring modification and clarification: 1) the definition of "affected customers"; 2) the recipients of the bill credit for cost recovery; and 3) the notification obligations of the investor-owned utilities.

1.2. Procedural History

On July 18, 2018, SCE, on behalf of SDG&E, PG&E, Marin Clean Energy, the Alliance for Retail Energy Markets, the Direct Access Customer Coalition, Sonoma Clean Power, the California Choice Energy Authority, and the California Large Energy Consumers Association (jointly, Workshop Participants) filed a timely petition for modification of D.17-10-017 (Petition). In the Petition, Workshop Participants requested changes and clarifications to D.17-10-017 to ensure efficient implementation of the demand response competitive neutrality cost causation policy. No party filed comments to the Petition.

On January 31, 2023, the assigned Administrative Law Judge issued a ruling stating that "while no entity has applied to the Commission to have its demand response program deemed similar to an investor-owned utilities' demand response program, it is important to ensure a process is in place." Recognizing the nearly five-year lapse of time since the filing of the Petition, the Ruling found that the Petition remains appropriate. The ruling sought information on any actions or events that have occurred since the filing that may result in changes in circumstances or changes in the agreements of the Workshop Participants. Parties were instructed to file comments responding to the ruling. In response, two sets of comments were filed: one jointly filed by PG&E, SDG&E, and SCE, and one filed by the Alliance for Retail Energy Markets and

Direct Access Customer Coalition. Both sets of commenters submit that there is no other information for the Commission to consider and contend the Petition remains relevant.

1.3. Overview of Petition

In the Petition, Workshop Participants request the following three modifications and clarifications in D.17-10-017: 1) revise Finding of Fact 20 to define the term "affected customers" as CCA/ESP customers who are enrolled in the investor-owned utility program, either directly or through an aggregator; 2) clarify whether the bill credit discussed in Step Four of the implementation process would be provided to all of the involved CCA/ESP's customers or affected customers, as defined in Finding of Fact 20; and 3) clarify whether the recipient of the notification obligation by the investor-owned utilities refers to directly enrolled customers and the third-party demand response providers and aggregators.

2. Issues Before the Commission

This decision solely addresses whether to grant the Petition, as described in Section 1.3.

3. The Commission Should Grant the Petition for Modification

As described in Subsection 3.1 through Subsection 3.3 below, the Commission finds the requested modifications to D.17-10-017 should eliminate confusion with respect to Step Three and Step Four of the four-step implementation of the demand response Competitive Neutrality Cost Causation Principle and result in the effective delivery of the letter required by Step Three.

3.1. Redefining "Affected Customers" Eliminates Confusion in Step Three

In their Petition, Workshop Participants explain that in D.17-10-017, Finding of Fact 20 defines the term "affected customers" as "the Competing Provider's customers to who the Competing Provider will market the demand response program deemed similar."[8] Workshop Participants request the Commission to revise this definition such that affected customers are defined as "those customers enrolled in the utility program, either directly or through an aggregator." Absent this modification, Workshop Participants contend that trying to identify to whom a CCA or an ESP would market their similar demand response program would be problematic.

The Commission finds that the current definition of the term "affected customers" is inadequate. In addition to the inability to identify to whom a CCA or an ESP would market their similar demand response program, the Workshop Participants point to variation, in D.17-10-017, in the identification of who should receive the notification letter.[9] The Commission finds that the proposed definition should eliminate the need to identify to whom a CCA or ESP would market their similar demand response program and would create consistency of the term throughout the decision. The revised definition of "affected customers" proposed by the Petition should be adopted.

3.2. Clarifying the Recipients of the Bill Credit

Workshop Participants contend that neither the proposed revised definition of "affected customers" (if adopted by the Commission) nor the

[8] Petition at 2.

[9] Petition at 3

current definition of "affected customers" are appropriate for describing which customers should be the recipient of the bill credit for cost recovery of the similar program, as directed in Step Four. Workshop Participants contend both the existing and proposed definition of "affected customers" would result in inequitable treatment of customers, would be inconsistent with the intent of D.17-10-017, and would violate the requirements adopted in D.17-10-017. Workshop Participants allege that all customers of the CCA/ESP should receive the bill credit for cost recovery of the similar program and argue that this is the intention described in D.14-12-024.

The Commission agrees with this position. As pointed out by Workshop Participants, D.14-12-024 directs that once a Direct Access provider or CCA implements its own demand response program, the competing utility shall "end cost recovery from that provider's customers for any similar program."[10] Accordingly, the Commission concludes that D.17-10-017 should be modified to clarify that all customers of the CCA/ESP should receive the bill credit for cost recovery of that similar program.

3.3. Clarifying the Utilities' Notification Requirements

As currently written, Step Three requires a letter to affected customers to be provided within 60 days after the Commission deems a demand response program to be similar. If the current language is maintained, affected customers would include customers in demand response aggregator portfolios. All Workshop Participants agree that demand response aggregators should be responsible for further communicating with their customers about the CCA/ESP

[10] Petition at 4, Footnote 3 citing D.14-12-024 at Ordering Paragraph 8b.

demand response program deemed similar and the customers' removal from the Competing Utility's demand response program.

Prior Commission decisions have consistently acknowledged that demand response aggregators have the relationship with their customers and should bear the responsibility to conduct communication. Most relevant to this decision, the Commission stated in D.16-09-56 that "because [demand response] aggregators are the direct contract for customers in aggregator programs, it is the responsibility of the third-party aggregator to provide such notification and outreach."[11] Hence, this decision concludes the language in Step Three should be modified to require the investor-owned utilities to send a notification letter to directly enrolled customers and third-party demand response aggregators. The third-party demand response aggregators will be responsible for communicating the changes to aggregator enrolled customers.

4. Modifications to D.17-10-017

D.17-10-017 should be modified in three instances.

1. Finding of Fact 20 should state: For purposes of the letter described in Step Three, affected customers are defined as the Competing Provider's customers who are enrolled in the Competing Utility's demand response program deemed similar, either directly or through an aggregator.
2. Step Four in Attachment 1 and on page 28 of D.17-10-017 should state: Within one billing cycle following the end of the cost recovery and targeted marketing by the Competing Utility to the Competing Providers' customers of the similar demand response program(s), all customers of the CCA/ESP identified as the Competing Provider shall receive a bill credit for cost recovery of the similar program(s).

[11] Petition at 6 citing D.16-09-056 (*Decision Adopting Guidance for Future Demand Response Portfolios and Modifying D.14-12-024*) at 33.

3. An additional paragraph should be added to Step Three in Attachment 1: The Utilities shall comply with this directive by sending a notification letter to their directly enrolled customers and a notification letter to third-party demand response aggregators. The third-party aggregators shall communicate the pending changes to third-party enrolled customers the pending changes.

There being no additional business before the Commission in this proceeding, R.13-09-011 should be closed.

5. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding. No member of the public filed a comment on this matter.

6. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Section 311(g)(2) and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

Alice Reynolds is the assigned Commissioner and Kelly A. Hymes is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The current definition of the term "affected customers" is inadequate.
2. Workshop Participants propose that the term "affected customers" should be defined as those customers enrolled in the investor-owned utility program, either directly or through a demand response aggregator.

3. The proposed definition of the term "affected customers" should eliminate the need to identify to whom a CCA or ESP would market their similar demand response program and would create consistency of the term throughout the decision.

4. D.14-12-024 directs that once a Direct Access provider or CCA implements its own demand response program, the competing utility shall end cost recovery from that ESP's customers for any similar program.

5. Prior Commission decisions have consistently acknowledged that demand response aggregators have the relationship with their customers and should bear the responsibility to conduct communication.

6. This is an uncontested matter in which the decision grants the relief requested.

Conclusions of Law

1. The revised definition of "affected customers," as proposed in the Petition, should be adopted.

2. The intention of D.14-12-024 is that all customers of the CCA/ESP should receive the bill credit for cost recovery of the similar program.

3. Step Four of D.17-10-017 should be modified to clarify that all customers of the CCA/ESP should receive the bill credit for cost recovery of the similar program.

4. The language in Step Three should be modified to direct the investor-owned utilities to send the required notification letter to customers directly enrolled by the utility in the similar program and third-party demand response aggregators, who will convey the information to third-party enrolled customers.

5. The applicable 30-day period for public review and comment should be waived.

O R D E R

IT IS ORDERED that:

1. Decision 17-10-017, Finding of Fact 20 is revised as follows: For purposes of the letter described in Step Three, affected customers are defined as the Competing Provider's customers who are enrolled in the Competing Utility's demand response program deemed similar, either directly or through an aggregator.

2. Decision 17-10-017, Attachment 1, Step Four and Decision 17-10-017 on page 28 are revised as follows: Within one billing cycle following the end of the cost recovery and targeted marketing by the Competing Utility to the Competing Providers' customers of the similar demand response program, all customers of the CCA/ESP identified as the Competing Provider shall receive a bill credit for cost recovery of the similar program(s).

3. Decision 17-10-017, Attachment 1, Step Three is revised to add the following paragraph at the end of the current description: The Utilities shall comply with this directive by sending a notification letter to their directly enrolled customers and a notification letter to the third-party aggregators. The third-party aggregators shall communicate the impending changes to third-party enrolled customers.

4. Rulemaking 13-09-011 is closed.

This order is effective today.

Dated March 16, 2023, at San Francisco, California.

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners