

**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)

**JOINT UTILITIES' PROPOSAL ON COMPETITIVE NEUTRALITY
COST CAUSATION PRINCIPLES IN RESPONSE TO ADMINISTRATIVE
LAW JUDGE HYMES' DECEMBER 2, 2016 RULING**

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In response to ALJ Hymes' December 2, 2016 ruling (ALJ Ruling), Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) (together, Joint Utilities) submit their joint proposal and comments for implementing the competitive neutrality cost causation principle.^{1/} This proposal is filed pursuant to the schedule in ALJ Hymes' January 11, 2017 ruling.^{2/}

I. BACKGROUND AND KEY PRINCIPLES

California's legislative and regulatory goals for carbon emission reductions and renewable energy are changing the power grid's dynamics. As the state continues this transition to 50% Renewable Portfolio Standard by 2030, careful planning will be required to ensure that resources with the right characteristics are available to meet the changing grid needs. The state has long recognized the potential of demand response (DR) to provide important resources for keeping the electricity grid stable and efficient, to defer upgrades to generation, transmission and distribution systems, and to deliver customer economic benefits. However, as noted in the Lawrence Berkeley National Laboratory 2015 California Demand Response Potential Study, dated November 14, 2016 (DR Phase 2 Report), new and different DR resources will be required to meet the grid's evolving needs.

1/ Under Commission Rules of Practice and Procedure 1.8 (d), SDG&E and SCE, have authorized PG&E to file this Joint Proposal on their behalf.

2/ After comments and reply comments, there will be a workshop to discuss the proposals to implement the competitive neutrality cost causation principle (Decision (D.) 14-12-024, Ordering Paragraph (OP) 8.b.)

Although the Commission has traditionally relied on the Joint Utilities to meet the state's demand response goals, it recently acknowledged that utility-offered programs could pose a barrier for CCAs interested in offering similar programs to their customers. As a result, the Commission adopted the following "competitive neutrality cost causation principle" in D.14-12-024 Ordering Paragraph (OP) 8b:

Once a direct access or community choice provider implements its own demand response program, the competing utility shall, no later than one year following the implementation of that program: i) end cost recovery from that provider's customers for any similar program and ii) cease providing the similar program to that provider's customers.^{3/}

The implementation of the competitive neutrality cost causation principle comes at a time of significant increases in CCA activity. Today, approximately 16 percent of the Joint Utilities' total retail load receives generation service from a CCA or a Direct Access Energy Service Provider (ESP).^{4/} This figure has the potential to increase to about 80 percent of the Joint Utilities' total retail load.^{5/} It is critical that all DR, regardless of administrator, be effective in meeting state policy goals and provide meaningful benefits to the electricity grid.

The Joint Utilities have identified the following principles to ground the implementation of Competitive Neutrality Cost Causation and provide flexibility to accommodate upcoming changes to the role and nature of DR:

3/ OP 8a provides "Any demand response program or tariff that is available to all customers shall be paid for by all customers. If a demand response program or tariff is only available to bundled customers, the costs for that program or tariff can only be borne by bundled customers." OP 8a was not included in the ALJ Ruling, so it apparently is not in scope for the Joint Utilities proposal. OP 8b does not apply to demand response programs that provide electric distribution capacity services pursuant to Public Utilities Code Section 769 distribution resource plans (DRPs). Demand-response related distribution services are being evaluated and considered in other Commission proceedings, including R.14-08-013 and R.14-10-003.

4/ The 16 percent estimate is on an energy basis, and is derived from the PG&E and SCE ex parte notices referenced in footnote 5.

5/ See, ex parte notice of PG&E in A.16-06-003, filed January 27, 2017, copy attached, and also ex parte notice of SCE in R.03-10-003, filed January 27, 2017.

1. Support mechanisms to provide DR services to meet grid needs in a way that is even-handed and fair to CCAs, ESPs, aggregators, the utilities, and to bundled and unbundled customers.^{6/}
 - a. Treat the utilities, CCA providers and ESPs in a manner that does not disadvantage one relative to the other.
 - b. Encourage mechanisms for collaboration amongst different parties.
2. Establish a sustainable framework that provides sufficient flexibility to accommodate the changing nature of DR, and the roles of various participants.

Elements include:

- a. Changing the role of DR to include support for renewable integration;
- b. Development of a robust and competitive third-party DR market.

The cost of DR systems and assets with multiple year lives, if any, should continue to be recoverable from CCA and ESP customers irrespective of the one-year period.^{7/}

3. Focus on simplicity in implementation, with an emphasis on reducing customer confusion and minimizing implementation costs. This should include consideration of the following matters:
 - a. Coordination and timing with the Resource Adequacy (RA) allocation process;
 - b. CCA and IOU program comparisons, processes and communications that involve IOU tools and resources (e.g. incentive or rate comparison tools), should not be subject to OP 8b, but should be addressed in the proceedings where they are approved, or their costs are requested for recovery.

6/ Under the Public Utilities Code, the Commission's decisions on utility services must include express consideration of the competitive impact of the decisions. (Cf., *Northern California Power Agency v. Public Utilities Commission*, 5 C.3d 370 (1971).) Here, the lawfulness of restrictions on the ability of utilities and non-utilities to provide demand response services in competition with each other must consider and ensure that such restrictions do not adversely affect competition and the ability of utility customers to choose among different demand response providers in competitive markets.

7/ For instance, SCE's W-LAB DR contracts from the LCR RFO, which resulted from the Southern California electric reliability situation triggered by Aliso Canyon developments in 2015-2016. See, Section V. D, post.

4. Recognize CCA/ESP responsibilities to deliver on their DR obligations based on the shift of customers to the CCA/ESP and make corresponding reductions in IOU targets to deliver DR.^{8/}

A. The Proposed Framework

The proposed framework has a four-part methodology to encourage a robust process and structure that can be sufficiently flexible to respond to upcoming changes for DR that cannot be fully anticipated.

A summary of the proposed framework follows:

- Step 1: CCA provider or ESP notification of its DR program

The CCA provider or ESP develops a package with a thorough explanation of its proposed DR program and information on how its DR program meets the standards and attributes for determining whether it is similar to an existing utility DR program. Among other things, the package must address whether the CCA or ESP program would allow or involve reliance on a utility's DR program. The package would be provided to the utility, the Commission, and other entities that may be involved in the determination. All stakeholders including ratepayer advocates and third party providers would be permitted to file comments on the package

- Step 2: Determination of program's support of state policy and Commission mandates

As a matter of sound policy, the CCA or ESP DR program should support state policy and Commission mandates. Based on the Commission's guidance, a CCA or ESP program that does not meet these foundational requirements would cease to further be considered for similarity to a utility-offered program. This approach maintains the ability of the Commission to influence CCA provider and ESP DR programs, to ensure that they continue to advance California's policies when displacing the regulated utility's DR programs. Whether or not the Commission has direct authority over CCA and ESP programs, the Commission regulates the

^{8/} It is envisioned the DR Phase 2 Report would help inform targets that would ultimately be established as part of the Integrated Resource Planning (IRP) process.

Joint Utilities, and has the authority to determine the conditions under which CCA and ESP customers may participate in utility DR programs and assist with recovery of the associated costs.^{9/}

- Step 3: Formal Determination by the Commission

If Step 2 is satisfied (i.e., proposed program is supportive of state policies), there would be a detailed assessment of the program attributes proposed by the CCA provider or ESP. CCA and ESP DR program attributes could be decisive in determining whether the CCA and ESP DR programs qualify under OP 8b. However, if a CCA or ESP program were to rely on or use a utility DR program, the CCA or ESP program would not satisfy the competitive neutrality cost causation provisions in D.14-12-024.^{10/}

This detailed attribute assessment would be undertaken by the Commission, in a workshop if necessary. The assessment of the program attributes should include objective criteria as agreed upon by stakeholders and approved by the Commission.

The preliminary results of the assessment would be provided to the CCA provider or ESP, and the DR stakeholders. If contested, the Commission would need to address the issues involved in the disputed result.

- Step 4: Implementation

If the Commission determines that the CCA or ESP program meets the standards for establishing similarity to a utility program, the utility would implement OP 8b for the utility DR program deemed similar to the CCA or ESP DR program. This would include removing the CCA's or ESP's customers from the impacted utility DR program along with exempting the

9/ The Commission has found that it has jurisdiction over third party demand response providers. (D.12-11-025, page 2, and D.13-05-012, Order Modifying Decision (D.) 12-11-025 And Denying Rehearing, As Modified.) Separately, if CCA providers' demand response is deemed to be a resource for purposes of the CCA's Integrated Resource Plans ("IRPs" in the IRP proceeding (Rulemaking 16-02-007), the Commission has jurisdiction over the CCA for procurement plan purposes.

10/ See footnote 30 post, for an example of CCA use of a utility DR program.

CCA's or ESP's customers from helping pay the utility program costs.^{11/} Timing to complete implementation of these changes should be approximately one year from issuance of the Commission's determination, with some flexibility, for instance, for coordination with utility rate mechanisms, as needed.

II. STEP 2: DETERMINATION OF PROGRAM'S SUPPORT OF STATE POLICY AND COMMISSION MANDATES: CRITICAL PRINCIPLES FOR IMPORTANT COMMISSION POLICIES THAT MUST BE HONORED BY CCA AND ESP DR PROGRAMS FOR IMPLEMENTATION OF COMPETITIVE NEUTRALITY COST CAUSATION

The Joint Utilities believe that the Commission should determine at the outset whether certain clearly articulated Commission requirements that are applicable to utility DR should also be applicable for CCA and ESP DR in order to warrant OP 8b implementation. This includes sufficient financial backing to achieve Commission DR goals, enabling third party providers and aggregators in the CCA and ESP DR programs to be able to acquire CCA/ESP retail customers for direct participation in the California Independent System Operator (CAISO) wholesale market, the prohibition of fossil-fueled resources for DR purposes, establishment of verification compliance procedures (D.16-09-056), and the bifurcation of DR into supply-side and load-modifying DR (D.14-03-026.) This list is based on Commission directives to date. The Commission may identify other policies and requirements.

A. The CCA Providers And ESPs Must Provide Sufficient Detail and Sufficient Financial Backing to Have a Reasonable Probability to Achieve Commission DR Goals

The CCA provider or ESP DR program should be described in sufficient detail and provide for sufficient financial backing, including incentives and marketing budgets, to have a reasonable probability to help achieve the Commission's DR goals. The CCA or ESP is substituting its proposed programs for the utility's DR programs, so it should have similar responsibilities to contribute toward the state's goals. For example, the Commission should not

^{11/} Due to existing rate adjustment mechanisms that may not coincide with the one year period, how to best handle cost recovery changes may vary by utility, including the ability to use bill credits.

simply allow a program to be considered similar if the tariffs look identical to the utility's tariffs, but the customer incentive payment is a small fraction of that required to acquire customers to participate. Conversely, the CCA provider or ESP DR program should not have to mimic a utility DR program if the proposed program appears to have a similar probability of acquiring customer load drop as the utility DR program based on information from the DR Potential Phase 2 Study, while serving the same grid need. Additionally, the Commission may want to consider how often it reviews the CCA's or ESP's DR programs on an ongoing basis to determine if such programs remain "similar" under the parameters described herein. Neglecting ongoing review of such programs would be inappropriate, since the IOUs are updating their programs both to meet market changes as well as to achieve the state's evolving energy goals. The same minimum thresholds, at least broadly, should apply to CCAs and ESPs for their DR programs to remain "similar."

B. CCA Providers And ESPs Should Be Required To Open Some of Their DR Programs To Third Party DR Providers Or Aggregators On A Non-discriminatory Basis In Order To Meet OP 8b.

For the Joint Utilities' DR programs, the Commission has supported and encouraged third party participation to grow both the number of participants and the amount of DR they provide.^{12/} Direct participation from third parties is an important part of the Commission's goal for the future of DR, as indicated in the strong support for the transition of the Demand Response Auction Mechanism (DRAM) from a pilot to a full-fledged program, in the guidance decision, D.16-09-056. The Joint Utilities' DRAM Request for Offers (RFOs) provide utility contracts to winning bidders, where the winning sellers will aggregate retail customers into CAISO Proxy Demand Resources (PDR) and/or Reliability Demand Response Resources (RDRR).^{13/} The

12/ The aggregators contract with retail customers on the aggregator's own terms to use the customers for DR purposes. The arrangement between the aggregator and the customer has not been subject to Commission review or oversight, except for limited notification requirements for residential and small commercial customers.

13/ Once the customer location is enrolled in the CAISO Demand Response Registration System (DRRS), the aggregator can move the customer location among its various PDRs and RDRRs, or even to the PDRs or RDRRs of another aggregator, as long as CAISO rules are satisfied, such as

winning sellers will have discretion over their bidding strategies and use of customers in the CAISO wholesale market, as long as they satisfy their DRAM contract commitments.^{14/15/}

The Joint Utilities have the responsibility to provide utility distribution service to all customers in their service areas, and energy procurement service to customers who do not receive their energy from a CCA provider or ESP. Providing robust, competitive opportunities through the utility's programs to enable third party DR providers to serve retail customers is consistent with the Commission's regulatory policies and authority over the Joint Utilities.

CCA providers and ESPs may see themselves as being in a different situation than the Joint Utilities. The CCA providers and ESPs may want more control over whether and whom they allow to acquire their customers for participation in their DR programs. Therefore, the Joint Utilities do not support a blanket requirement for CCA providers and ESPs to make all their DR programs open on a non-discriminatory basis for third party DR provider and aggregator participation. However, in order to advance the Commission's policy for an open competitive market for participation in DR programs, the Joint Utilities believe that some CCA or ESP DR programs should provide the opportunity for third party DR providers and aggregators to participate in an open, non-exclusive manner. As an example, to the extent a CCA provider or ESP uses an RFO, such as the DRAM, that process should allow a wide pool of third parties to bid. (In addition, as discussed in Section III G, below, the Commission must resolve how third-party DR providers' participation in utility programs, like DRAM, will be treated under OP 8b.)

limiting the PDR/RDRR to one load serving entity's (LSE) customer, and using the same Scheduling Coordinator (SC).

14/ In D.16-09-056 (page 67) states an intent that "a demand response auction mechanism program [...] become a primary means of sourcing demand response in the future." D.16-09-056 (page 74) also identifies a DRAM procurement goal after the pilot of 1 GW.

15/ The Commission has also expressed its support for DR aggregators' requirements to make the Electric Rule 24/32 process for aggregators to obtain customer information for direct participation work better for aggregators and customers. The recent "click through" process that starts and ends on the aggregator's website is part of that effort. (D. 16-06-008; PG&E January 3, 2017 Advice Letter 4992-E; SCE January 3, 2017 Advice Letter 3541-E; SDG&E January 3, 2017 Advice Letter.)

Proposed Principle: Some of the CCA provider or ESP’s DR programs must allow aggregators and third party DR providers to participate on a non-exclusive and non-discriminatory basis.

C. The Commission’s Requirements Limiting the Use of Fossil-fuel Back-up Generation During DR Events Should Apply to CCA and ESP DR Programs

The CCA and ESP programs should have to satisfy the Commission’s Back-up Generator (BUG) policy and verification requirements to meet the OP 8b “similar” standard. If customers in the CCA and ESP programs could use fossil-fuel back-up generation during DR events to produce the load drop, that result would conflict with the Commission’s firm BUG prohibition, and would conflict with the key goal of keeping a level playing field.^{16/} Therefore, the following principle should be a requirement:

Proposed principle: The CCA or ESP DR program must comply with the Commission’s policy limiting the use of BUGS during DR events, and must verify compliance consistent with the Commission-approved verification plan.

D. The Commission Requirements for Bifurcation of Demand Response into Supply Side Resource for Participation in CAISO Wholesale Market Versus Load Modifying Resource Should Be Applicable to CCA and ESP DR Programs

The Commission has ordered bifurcation of DR into supply-side and load-modifying DR resources to begin in 2017, and to become fully effective in 2018.^{17/} Since utility DR is subject to the Commission’s bifurcation requirement (supply resource in CAISO market, versus load-modifying resource), the CCA and ESP DR program should be required to attain the same classification. To be consistent with this Commission policy, the CCA and ESP DR programs must emphasize being bid into the CAISO wholesale market, similar to the utility’s DR program.^{18/}

16/ D.16-09-056, pages 14 to 42, and OPs 1, 2, 3, 4 and 5.

17/ D.14-03-026, OP 1; D.14-12-024, page 84.

18/ Currently the main way for DR to participate in the CAISO market is through Proxy Demand Resources (PDR) and Reliability Demand Response Resources (RDRR), which contain retail customer locations that have been enrolled in the CAISO Demand Response Registration system

At the same time, the framework needs to be flexible because the CAISO, as well as the Commission, is in the midst of considering how DR needs to change to improve its ability to support the grid in the future, as discussed in the DR Potential Study. Presently, there is no way to forecast what will result from these initiatives. Consequently, any standard for similarity between a CCA provider's or ESP's program and the utility program with respect to bifurcation and supply-side qualification may need to be modified at a future date. For now, the Joint Utilities propose the following requirement, with the understanding that it may need to be re-addressed in the future:

Proposed principle: The CCA or ESP DR program must be bid into the CAISO wholesale market if the utility DR program is bid into the CAISO wholesale market, including, without limitation, meeting the same CAISO/CPUC performance requirements (RAAIM, RA, etc.) as the utility program.

E. Compliance with Dual Participation Rules Should be Required for CCA and ESP DR Programs

Both the Commission and the CAISO have adopted rules addressing dual participation of customers in more than one DR program. These rules apply at the retail and wholesale levels:

- At the CAISO, the customer may not participate in DR programs offered by different providers. To satisfy CAISO requirements, the customer may only have one DR provider.^{19/}
- CPUC rules for retail programs help minimize conflicts that could arise if the same customer were to participate in multiple DR programs, by ensuring that the customer's response is not double counted.^{20/}

(DRRS). The DR provider bids to provide DR to the CAISO and in response to CAISO awards, then dispatches customer locations in its PDRs and RDRRs. That bidding and dispatch in the wholesale market can occur under a retail DR program, but it does not have to be part of a retail program.

19/ An example of the operation of the CAISO rule is in Electric Rule 24/32. In order for a third party provider to complete enrollment of a customer in the CAISO DRRS, the customer must not be in a utility event-based DR program or another third party provider's Resource Registration. (Rule 24, section C. 2. d.)

20/ See D.09-08-027, affirmed in D.12-04-045, for the CPUC rules for utility retail DR programs.

Without this principle, the DR would provide less capacity than expected, potentially harming grid reliability. There could also be double payment for the same DR response, despite the fact that the benefits for the grid would only occur once. The Joint Utilities consider the dual participation rules to be very important. With respect to the OP 8 implementation, the Joint Utilities have not had sufficient time to develop a proposed methodology to serve the same purpose as the existing dual participation rules. Therefore, this important issue should be reserved for a proposal to be developed in the future.

Proposed Principle: For participation in the CAISO wholesale market, the CCA or ESP DR program will be subject to CAISO rules on dual participation, which state that a customer may not participate concurrently in programs offered by different DR providers. Development of dual participation rules for OP 8b implementation for retail programs shall be addressed in a future proposal.

III. STEP 3: ASSESSMENT OF PROGRAM ATTRIBUTES: ATTRIBUTES RELEVANT TO DETERMINATION OF WHETHER CCA/ESP DR PROGRAMS ARE SIMILAR TO UTILITY PROGRAMS

The Joint Utilities consider the policies and principles discussed above to be applicable on a broad basis for implementation of the competitive neutrality cost causation principle under OP 8b. On a more granular level, the Commission also may want to consider specific characteristics of a given DR program for the “similarity” standard in OP 8b. At the same time, the major changes affecting the future of DR create great uncertainty over what DR will become, and how it will operate. For now, the Joint Utilities need to use current DR programs to perform analysis for near-term implementation of OP 8b.

A. Definition of “Similar”

A definition of “similar” is important to foster a common understanding among the Commission, Joint Utilities, and other stakeholders. The definition in Webster’s New Collegiate Dictionary (Merriam-Webster) reads in part “1: having characteristics in common : strictly

comparable 2: alike in substance or essentials . . .” (G & C Merriam Co., ed. 1976, page 1082.)^{21/} Another definition is “resembling without being identical.”^{22/} The Joint Utilities suggest that the Commission use the definition from the Merriam-Webster dictionary, such that the CCA or DA DR program must resemble, and be alike in substance by achieving a comparable load response, and serving the same grid needs, to the comparable utility program. These comparisons need to occur on a program level to really provide a meaningful comparison.

Proposed Definition for “Similar”: Having characteristics in common and alike in substance or essentials, such that the CCA or ESP DR program resembles the utility program in question.^{23/}

B. Customer Class Eligibility to Participate in CCA or ESP DR Program

Utility DR programs historically have been developed for different customer classes. For instance Base Interruptible Program (BIP) was developed for large and medium industrial customers. Medium and large commercial and industrial customers have been eligible for CBP. Air conditioner cycling programs have primarily been focused on smaller customers, like residential customers to date. Programs such as agricultural pumping can exist for agricultural customers. DRAM aggregators can use residential, commercial, agricultural and industrial retail customers to fulfill their contract obligations.^{24/} As the utility DR programs evolve, the eligible customer groups can change too.^{25/}

In order to keep DR options available for different customer groups, the Commission’s review of the CCA or ESP program should include the customer groups that are eligible. If the

21/ See, information at <https://www.merriam-webster.com/dictionary/similar>

22/ <https://www.google.com/search?q=Definition+of+similar&oq=Definition+of+similar&aqs=chrome..69i57j0l5.8486j0j8&sourceid=chrome&ie=UTF-8>

23/ The Commission may want to consider performance requirements memorialized in tariffs and/or contracts as part of the assessment process.

24/ There is a residential customer specific requirement for the current DRAM pilot, because at least 20 percent of DRAM MWs must be fulfilled through residential customer set-aside, including a limited percentage of qualifying for small commercial customers.

25/ For instance, PG&E proposes to open its CBP program to residential customers, through their aggregators, in its 2018-2022 application, A. 17-01-012.

utility will not be allowed to offer its DR program to the CCA provider's or ESP's customers, the CCA or ESP program must be open specifically to those customers who are losing access to the comparable utility DR program. Therefore the Joint Utilities recommend the following standard.

Proposed Attribute: At a minimum, the CCA or ESP DR program should be available to the CCA's or ESP's customer groups who would be eligible for the utility DR program, but for implementation of OP 8b.

C. Net-Energy Metering

The Joint Utilities' customers receiving service under net-energy metering tariffs are eligible to participate in utility programs for load reductions down to zero.^{26/} The Commission has provided strong support for net-energy metering, and the ability of net-energy metering customers to participate in utility DR programs has been well-established. To be similar to a utility program, CCA and ESP DR programs should be required to allow net-energy metering customers to participate in the CCA or ESP DR program on similar terms and conditions as are applicable to the utility program. Adopting that principle is important for maintaining parity between the utility and CCA/ESP programs, and for supporting the Commission's policies and practices regarding net-energy metering. **Proposed Principle: In order for the CCA or ESP program to be found similar under OP 8b, a CCA or ESP DR program must allow the CCA provider's or ESP's net-energy metering customers to participate on terms that are similar to the terms for net-energy metering customers to participate in the utility DR program.**

26/ When the customer location is exporting under net-energy metering, the exports are not treated as demand response load reductions for utility DR programs, with one exception. PG&E Advice Letter 4932-E-A allows PG&E net-energy metering customers who are eligible for Peak Day Pricing (PDP) and take service under PDP, to receive PDP adjustments on exports that are not subject to the customer's capacity reservation level (CRL.)
The CAISO also does not recognize net exports in its DR wholesale market.

D. The CCA or ESP DR Program Must Provide Similar Benefits to the Grid as the Utility DR Program

Existing utility DR programs provide benefits for the electric grid due to customer load response in several ways. DR can provide RA so the grid will have sufficient capacity. If the DR is bid into the CAISO market and responds to CAISO economic awards, DR can assist in lowering the cost of supplying the grid. DR can also play an important role when the CAISO issues a Warning notice, or when the grid faces CAISO stage 1, 2 or 3 emergencies.

The Joint Utilities do not know how Commission RA requirements or the CAISO Resource Adequacy Availability Incentive Mechanism (RAAIM hours) will change in the future. In addition, DR itself will evolve in ways that may serve different purposes on the grid. For instance, Time-of-Use (TOU) period hours are changing, which may affect DR such as load-modifying that may enable the “Shift” or “Shape” type products discussed in the DR Phase 2 Report (pages 5-1 to 5-15.). Those changes will be addressed in future Commission or CAISO proceedings.^{27/} As the Commission implements the TOU guidelines and new RA guidelines, and the CAISO makes changes in parameters such as RAAIM, the application of those guidelines and changes to utility DR programs, CCA and ESP DR programs should be consistent, in order to provide consistent benefits to the grid.

Therefore, at some point in the future, the Commission may need to revisit and revise whether and how to determine if the benefits produced from the CCA and ESP program, including the TOU, RA, and RAAIM hours applicable to the various programs, are comparable to those under the various utility DR programs.

Proposed Attribute: To qualify as being similar to an IOU DR program under OP 8b, the CCA or ESP DR program needs to provide similar benefits to the grid, i.e. it

27/ D.17-01-006, page 1: “This decision adopts a framework, including guiding principles, for designing, implementing, and modifying the time intervals reflected in time-of-use (TOU) rates. We do not adopt specific TOU time intervals or rate design elements herein, but do adopt high-level principles to apply in rate proceedings where TOU time periods and TOU rate design elements will be adopted for each of the three investor-owned electric utilities subject to this rulemaking.² In this decision, we identify relevant principles and related data requirements at a broad level to assess TOU time periods during which customers, generators, and providers of energy services should be encouraged to modify electric usage and supply.”

must be a supply-side resource if the utility DR program qualifies as supply-side, and similar TOU period and RA requirements should apply.

E. DR Enabling Technology

The Joint Utilities' DR portfolios include DR enabling technology incentives such as auto-DR (ADR), and technical assistance (TI). While the utility DR programs themselves are generally end-use agnostic,^{28/} a DR enabling technology program such as ADR provides customers with an incentive to utilize ADR-enabled end-use technologies for automated response to the DR programs. Since DR enabling technology incentives are not a DR program on their own, the Joint Utilities suggest that DR enabling technology programs could be determined to be out-of-scope for OP 8b.

To earn and keep the entire ADR incentive, the customer is required to enroll in and stay enrolled on a qualifying utility DR program for a specific period of time. As long as there is a utility DR program for which the CCA provider or ESP does not have a similar DR program, that the CCA's or ESP's customers can use to qualify for the utility's DR enabling technology incentives, then the CCA or ESP's customers are eligible to participate in the utility ADR program, and the utility DR enabling technology program costs are recoverable from the CCA's or ESP's customers. For example, DRAM is open to unbundled customers, as well as bundled. DRAM is also a utility DR program for purposes of qualifying for the utility's ADR program. Therefore, if the CCA or ESP does not have its own independent "similar" DRAM program, the utility's DR enabling technology program costs would be recoverable from the CCA and ESP's customers, (even if the DR enabling technology incentive could be paired with another utility DR program for which OP 8b has triggered.)

For a DR program where the enabling technology is an integral part of the DR program, such as the air-conditioner cycling programs, however, the CCA or ESP program should be

28/ Direct load control of AC switches DR programs, like PG&E's SmartAC™, are legacy exceptions to the Commission's principle that DR be technology-neutral per D.16-09-056, OP 8.

required to have comparable control technologies in order to satisfy the “similar” requirement in OP 8b.

Proposed Attribute: Utility DR enabling technology programs should be determined to be out of scope for OP 8. The DR enabling technology program costs will be recoverable from a CCA provider’s and ESP’s customer as a group as long as the utility DR enabling technology program can be used by the CCA’s or ESP’s customers in a qualifying utility DR program.^{29/}

F. If a CCA or ESP Program Allows Reliance on, Operation Through, or Builds on, a Utility DR Program, OP 8 b Will Not Be Applicable to the Utility DR Program

If a CCA or ESP DR program allows use of a utility DR program, or partners with other participants to use a utility program to provide demand response, that CCA or ESP program effectively depends on the utility program, and cannot be treated as similar under OP 8b. For example, if a CCA provider or ESP were to develop a DR program in cooperation with third party providers who would obtain contracts from the utility under a utility program, like DRAM, the resulting CCA or ESP program would not be independent of the utility program.^{30/} Under these circumstances, the CCA or ESP program would not be “similar” to the utility program, since it actually would be performing through the utility program, in whole or in part. This attribute of requiring the CCA or ESP program to be independent from utility DR programs, would also potentially apply to any utility program where aggregators participate.

29/ The proposal; applies to the enabling technology programs as a whole, and the CCA and ESP customers as a group. However, the existing rules that require individual customers receiving enabling technology incentives to repay some of the incentive if the customer does not fulfill its requirements to remain on a qualifying utility DR program will still apply to individual CCA and ESP customers, who leave the utility DR program before the customer has completed its commitments for receiving the DR enabling technology incentive.

30/ In its June 2016 Board package, (pg. 24), Sonoma Clean Power (SCP) indicates that it is partnering with EMotorWerks to participate in PG&E’s DRAM. <https://sonomacleanpower.org/wp-content/uploads/2015/01/SCPA-BOC-2016.06.23-Agenda-Packet.pdf> EMotorWerks was a successful bidder in PG&E’s 2017 DRAM pilot auction. See, PG&E Advice Letters 4880-E and 4946-E.

Proposed Principle: A CCA or ESP DR program that permits or involves using a utility DR program for its implementation or performance for DR from the CCA or ESP customers is not a similar program under OP 8b.

G. Under What Circumstances Are Third Party DR Providers Or Aggregators In A Utility DR Program Barred From Using a CCA's Or ESP's Customers In The Utility's Program, If The CCA Provider Or ESP Has A Similar Program

Utility DR programs often operate through third parties who acquire the retail customers for use in the utility program. Sometimes, the third party is the Demand Response Provider (DRP) in its own right under the utility program, e.g. DRAM. Other times, the utility is the DRP and aggregators sign up customers who the aggregator can use based on the utilities' instructions.

As an example, the DRAM pilot is entirely dependent on third party DRPs (DRAM sellers) who operate directly in the CAISO market. The DRAM sellers enroll their customers in the CAISO Demand Response Registration System (DRRS), place the customer locations in PDRs and RDRRs, implement their own bidding strategy into the CAISO markets, and decide how to dispatch customer locations in their PDRs and RDRRs to respond to CAISO awards.^{31/} The DRAM seller can move its customers among its different PDRs and RDRRs, and can bid its PDRs and RDRRs at times that would not be covered by its DRAM contract. The DRAM sellers also make their own decisions about how to respond to a CAISO award.

When the utility is the DRP, (e.g. CBP) the aggregator acquires the customers, but the utility enrolls them in the CAISO DRRS, places them in PDRs and RDRRs, decides how to bid the PDRs and RDRRs, and determines how to respond to CAISO bid awards. The utility will convey its decisions to the aggregator, who manages the customers' responses based on the utility's instructions.

31/ The Commission's and utility's interest are a higher, more general level, e.g., that DRAM Sellers submit timely and accurate supply plans, bid their contract quantities during the CAISO Availability Assessment Hours, and actually have the contract capacity is available.

Therefore, the Commission must consider how the third party DRPs or aggregators operating under the different types of utility DR programs should be treated under the competitive neutrality cost causation principle. The question is whether the third party DR provider or the aggregator must stop recruiting or using the CCA provider's or ESP's customers.

One interpretation of OP 8b would preclude third party DRPs or aggregators under the utility program (i.e., a utility DRAM or a utility program where the utility is the DRP) from recruiting and using the CCA provider's or ESP customers, if the CCA or ESP has a similar DR program. However, there may be reasons to treat DRAM differently than programs where the utility is the DRP.

When the utility is the DRP under its own DR program, the aggregators are bringing their DR customers to the utility for use. Although the aggregator will have its own private arrangements with its customers and will have some flexibility to decide how to use its customers when the utility give a dispatch order, the utility is still in charge of enrolling and forming the PDR/RDRR, bidding into the CAISO market, and deciding how to respond to a CAISO award. Therefore, if the utility were to be precluded from using the CCA provider or ESP's customers under OP 8 when the utility is the DRP, the likely conclusion is that the aggregator will be subject to the same prohibition for the utility program. However, this results in an uneven playing field if the CCA provider and ESP can recruit bundled customers for their DR program. If the Commission is concerned about the potential impact on aggregators, it should solicit input from stakeholders and provide more guidance.

Under DRAM, the DRAM seller is a third party DRP directly participating in the CAISO market with its customers.^{32/} The DRAM seller is not constrained to limit the use of its customers to the DRAM, but can undertake additional activities in the CAISO market with them as long as it also meets its DRAM commitments. For those reasons, the DRAM seller may want to be allowed to recruit and retain CCA and ESP customers for the utility's DRAM, even if the

^{32/} The DRAM seller is also responsible for complying with Electric Rule 24/32 for purposes of direct participation.

CCA provider or ESP has its own DRAM program. Otherwise, if OP 8b applies to the utilities' DRAM sellers, the DRAM sellers would not be able to recruit, keep or use CCA and ESP customers, if the CCA provider or ESP has a similar program. The Commission should invite stakeholders to address these questions, and provide its proposed resolution of the issues.

In Section IV. C below, the Joint Utilities point out that future utility DR goals or mandates, if any, need to be adjusted to the extent utility load departs for CCA or ESP service, and implementation of OP 8 causes the utility (and its aggregators and third party DR providers) to curtail their DR offerings to CCA and ESP customers. For instance, if CCA providers and ESPs with their own DRAMs or their own DRP DR programs, have 40 percent of a utility's retail load, the utility's MW target, if any, should be reduced by 40 percent and the CCA providers and ESPs should be responsible for meeting their portions of the target through their own DR programs. In this circumstance, the CCA providers and ESPs apparently would be able to recruit bundled customers for their DR programs, as well as their own CCA and ESP customers. The main point is that as access to customers for their DR programs diminishes, the utilities' targets and requirements to obtain DR must be scaled back proportionately while the CCA providers and ESPs must shoulder their share of the responsibility for obtaining DR to support the state's loading order.

Proposal: The Commission must provide clarity on whether, under OP 8b, third party DRPs and aggregators under a utility's DR program will be allowed to recruit and use a CCA provider's or ESP's customers for third party DR provider participation in DRAM, or the aggregator's participation in the utility program where the utility is the DRP. And with the reduction in the customers available for utility DR programs, the utility's DR targets must be reduced in proportion to the migration of its customers to CCA and ESP, with the CCA provider and ESP responsible for satisfying their proportion with their own DR programs.

The Joint Utilities are aware that the Commission's answer on these topics could eventually affect the viability of utility DR programs that depend on third party DRPs and

aggregators. That consequence would be another reason the Commission would need to adjust any DR goals or expectations that it may adopt for the Joint Utilities' DR programs.

IV. STEP 5: IMPLEMENTATION, COST RECOVERY

A. Use Credit On Bill, And Future Development Of Methodology To Develop Credit

Different CCA providers and ESPs are bound to have different DR programs, depending on what their customers are like, and what their governing boards approve.^{33/} Consequently, utilities with multiple CCA providers and ESPs likely will have different CCA and ESP programs potentially displacing various utility programs (i.e. CCA A may have a program similar to utility program x, while another CCA B may have a program similar to utility program y). The upshot would be differences among CCA providers and ESPs in a utility's service area, regarding what utility DR costs should be excluded for CCA A versus CCA B. The utility cannot implement different individualized rates for customers of different CCA providers or ESPs. Instead, the utility should be allowed to use a credit on the CCA or ESP customer's bill, because credits are more amenable to being applied and implemented on bills based on the customer's CCA or ESP status.

A method for determining the credit, based on individual programs, needs to be developed through a stakeholder workshop process. The methodology likely would use forecast costs and sales. In addition, treatment of cost shifting authorized between programs, and the return of revenue collected but unspent for the program, may need to be addressed.^{34/} The Joint Utilities suggest that the details of cost recovery implementation should be addressed when the Joint Utilities have had sufficient time to develop a proposed cost recovery mechanism.

33/ The California Community Choice Association slide deck prepared for the California Legislature, dated January 26, 2017, (page 22), indicates that Sonoma Clean Power has a DR program, while Marin Clean Energy and Peninsula Clean Energy have DR programs under development. The Joint Utilities do not have any further information, other than described in footnote 30.

34/ It is noted that SDG&E has a different cost recovery mechanism that will require different calculations.

B. Getting CCA And ESP Customers Off The Utility DR Programs And Coordination With Other Proceedings, Including RA Allocations

If a CCA or ESP DR program is determined to be similar to a utility DR program, the utility has a year to stop offering its program to the CCA's or ESP's customers.^{35/} Besides ceasing to offer its program, the utility presumably will need to remove any of the CCA's or ESP's customers that are already participating in the utility program.^{36/} If the CCA provider's or ESP's customers have any obligations that will be triggered by their removal from the utility program, the customers will remain responsible for fulfilling these obligations, e.g. for not completing its obligations for ADR incentives. Alternatively, the CCA provider or ESP can assume its customers' liabilities and pay off the costs so the transition is smooth for its customers.

Closing a utility's program to a CCA's or ESP's customers will also require coordination with the RA allocation process. Currently, RA from the utility's DR programs is subject to allocation among the load serving entities (LSEs), i.e. the utility, the CCA providers and the ESPs in the RA proceedings. However, if a CCA provider's or DA's customers cannot participate in a utility's program(s), and do not pay for the associated costs, the CCA provider or ESP should not receive an allocation of the RA. They will instead receive RA credit through their DR programs.

C. Size of CCA or ESP DR program and Its Load Impact

The size of the utility programs, both in terms of number of participants, ex ante load impacts, and ex post load impacts, are reported to the Commission and other parties through the

35/ The utility will continue to be able to offer its DR program for which the CCA/ESP has a similar program, to bundled customers in the CCA provider's service area. The utility DR program will also be open to customers who have opted-out of CCA service, or who are willing to opt-out in order to obtain DR service under the PG&E-implemented DR program.

36/ Timing to complete implementation of these changes should be approximately one year from issuance of the Commission's determination, may need to synchronize with the billing cycle of the utility (or other changes occurring in the billing process), and provide flexibility for coordination with utility rate mechanisms, as needed.

Joint Utilities' monthly Interruptible Load Impact reports.^{37/} Load impact information is also provided in the Joint Utilities' annual Load Impact reports, due April 1 each year. In addition, forecasts for programs in the Joint Utilities' applications for 2018-2022 are presented there, and used in the cost effectiveness analyses that are part of the utilities' testimony. The utilities' information generally is presented for their systems, and is not broken into CCA service areas.

OP 8b mandates that the utility stop offering its similar DR program to the CCA provider's or ESP's customers "no later than one year following implementation of that program."^{38/} During that period, the CCA or ESP program may be in early stages of growth. Therefore its size, both in terms of its participating customers and load impact, can be expected to be less than the comparable utility program. At some future time, the Commission should require load impact information from the CCA provider and ESP about their programs, in order to evaluate the CCA or ESP DR program for purposes of achievement of DR goals and RA assignment.

At the same time, the implementation of OP 8b will reduce the population of customers who are eligible to participate in the utility's DR programs. This will reduce the utilities' ability to achieve any DR goals or MW mandates that may be established for the Joint Utilities. Therefore, the Commission should require that any such future DR goals or mandates be done by the LSE based on an allocation of responsibility using the DR Potential 2 study, (which would need to be revised to be disaggregated by LSE). The Commission should require that any future DR goals or mandates be done by the LSE based on the percentage of the retail utility load served by the utility and other LSEs.

Proposal: For implementation of OP 8b, the Commission will allow future DR goals or mandates, if any, to be adjusted to reflect all LSEs' responsibilities. At a time

37/ PG&E's public December 2016 report is available at https://www.pge.com/en_US/business/save-energy-money/energy-management-programs/demand-response-programs/case-studies/case-studies.page#ilp.

38/ The prohibition only applies to the utility's DR program that has been determined to be similar to the CCA provider's or ESP's program. Nothing precludes the utility from offering its programs that are not similar to the CCA or ESP customer.

deemed appropriate by the Commission, the CCA provider or ESP must provide data on the participation of its customers in its program, cost effectiveness, and the load impact of the CCA provider or ESP DR program.

D. Stranded Costs, If Any, Should Be Recovered From All Customers

In the past, the periods for DR cost recovery have been relatively short (i.e. 3 years) and the costs have been expense rather than capital. For these reasons, the utilities believe that there are probably no authorized existing costs that would likely be stranded in the next few years, except possibly for the SCE contracts discussed in Section V. D below. However, the upcoming test period is longer (i.e. 5 years, 2018-2022). Over that period, with the changing needs of the grid and the uncertainties about future DR, the Commission should refrain from requiring the IOUs to undertake any long-term DR investments so future authorized costs will not become stranded. For instance, a large volume of 5-year DRAM contracts may create the potential for stranded costs. Also, if the utilities are called on to support more DR enabling technology that enable or automate DR, but could be stranded, the costs should be recovered from all customers, including CCA and ESP customers, regardless of the one-year transition period.

V. CERTAIN DR-RELATED ACTIVITIES THAT ARE OR SHOULD BE OUT OF SCOPE

A. Rule 24, And Programs That Are Simply Platforms For DR Program Enablement, Are Out-of-Scope

Certain utility DR-related activities are necessary for qualifying and using retail customers for DR, but are not DR programs themselves because they don't actually produce DR benefits to the grid. Electric Rule 24/32 is a prime example. The process under Electric Rule 24/32 is necessary for the following activities:

1. Customer authentication and authorization to release its specific information to third party demand response providers.
2. The continual provision of the customer's electric interval data to the third party demand response providers.

3. Related processes, such as standards for data provision, and revocation of the customer's consent to the provision of its data.

As noted in D.15-03-042, pages 51 to 52, and finding of fact 54, the direct participation rules apply to all customers, including unbundled customers; and the unbundled customers need the direct participation rules in order to be able to bid into the CAISO market. Therefore all customers share in the costs of Electric Rule 24/32. Electric Rule 24/32 is not a DR program itself, but it applies to services for all customers to engage in the CAISO market for demand response.

To the extent other utility activity or initiatives, like Electric Rule 24/32, provide systems, rules, services or tools that are available for aggregator, CCA or DA customers, those activities are outside the scope of the competitive neutrality cost causation principle.

B. Rate Design, Such as Distribution Rates, Are Inappropriate for OP 8b Purposes

The DR Phase 2 Report raises fundamental questions about the form of DR needed for managing a substantially cleaner electricity system. The DR Phase 2 Report identified the potential for using TOU rates to shape/shift customer loads to help in managing the electric grid. These rates would not necessarily be event-based, but would include peak hours during the day, or other designated periods.^{39/} For example, in the future, a split-week rate design might be considered to encourage shifting load among different days, where needed at specific locations on the distribution system.^{40/}

If a particular retail rate used to shape or shift load were limited to generation rate components, OP 8a of D.12-04-024 would apply, since unbundled customers obtain generation

39/ DR Phase 2 Report, Section 5.

40/ A split week rate design would have different rates applying on different days of the week. For instance, in a targeted distribution area, customers may be assigned to one of two alternatives, e.g. rate X on Monday through Wednesday + rate Y on Thursday through Saturday, with the other alternative charging rate Y on Monday through Wednesday + rate X on Thursday through Saturday. For a past example, see PG&E Electric Schedule AG-R, which was extended due to the drought. (See February 3, 2014 letter to Executive Director, served in A. 10-03-014, and the February 6, 2014 Executive Director letter granting the extension request.)

service from their CCA or DA provider, not the utility. An example of a DR program based solely on the generation costs and rate component is PG&E's event-based Peak Day Pricing (PDP), which imposes a hefty surcharge when PDP events are called based on triggers found in the tariff.^{41/} Since PDP is generation-related, it is available to customers who take generation service from the utility. Customers who do not receive generation service from the utility are not charged the utility's generation rate and therefore are not eligible for the utility's PDP. Since CCA and ESP customers are not eligible for the utility's PDP, they do not help pay for the utility's program under D.14-12-024, OP 8a. Consequently, OP 8b is irrelevant for a utility program like PDP. Of course, the CCA provider or ESP can offer its own PDP to its customers, but that is not required for limiting utility PDP cost recovery to customers who take generation service from the utility.^{42/}

However, if retail rates involved in a utility DR program were to be related to the utility's distribution services, or other non-generation rate components, the retail rates would be recovering the utility's costs for providing distribution service, which all customers receive, whether bundled or unbundled.^{43/} For electric distribution purposes, the utility is responsible for serving the unbundled CCA and ESP customers; the CCA provider and ESP does not have that ability. Therefore, since the CCA provider and ESP cannot offer distribution service or rates, a utility DR program that is based on rate design in the non-generation, distribution rate component cannot be subject to OP 8b competitive neutrality cost causation. Otherwise, a loophole would be created that would allow CCA and ESP customers to escape their responsibility for paying the rates that recover the utilities' costs of providing distribution service.

41/ PDP also provides credits in order to make the program revenue neutral.

42/ As far as PG&E is aware, no CCA provider in its service territory has implemented a PDP-type offering for its generation rate.

43/ As explained in the January 27, 2017 "Comments Of Pacific Gas & Electric Company On DR Potential Study Phase 2 Results And Responses To ALJ Questions (Part 1 Of 2)," page 4, retail electric rate design must serve many mandates, policies and objectives, including recovery of the authorized distribution revenue requirement.

C. Distribution Electric Resources Plan For Deferring Traditional Distribution or Transmission System Investment Is Being Considered In Other Proceedings or Venues And Is Out-of-Scope Here

In the Integrated Distributed Energy Resources (IDER) (R. 14-10-003) and the Distribution Resources Plan (DRP) dockets (R.14-08-013), the Commission has authorized the Joint Utilities to commence developing pilots that will involve issuing RFOs where third parties could bid to provide Distributed Energy Resources (DERs) that would enable the utility to defer investments in traditional electric infrastructure. These utility RFOs will be open for different types of DER to compete, such as energy storage, electric vehicle technology, and demand response. The Joint Utilities anticipate that CCA providers and ESPs could bid into these RFOs, with any eligible DER, including their demand response programs.^{44/} The results of the RFO would be the responsibility of distribution utility since the utility is responsible for providing distribution services to all customers, bundled and unbundled, and the costs of the procured DER services would therefore be paid by all customers. Thus, targeted DR for purposes of utility distribution facility deferral would not be subject to OP 8b.

With respect to transmission, planning and additions to the transmission system are undertaken at the CAISO level, under CAISO processes. Therefore, the potential use of DR to defer transmission system investment is beyond the scope of this Commission proceeding.

D. Costs Related to Programs Ordered Due to Emergency Conditions Should be Recovered from all Customers

Utility emergency programs developed to support system reliability provide system benefits and as such, the cost of such procurement and programs should be shared among all distribution customers.

D.13-02-015 and D.14-03-004 ordered SCE to procure preferred resources to meet local capacity needs in the Western LA Basin. Subsequently, SCE launched its Local Capacity

^{44/} Third parties like CCA providers and ESPs would not be entitled to hold RFOs aimed at deferring utility investments in electric infrastructure.

Requirement (LCR) RFO to meet the Commission's order. The Commission addressed the Cost Allocation Method (CAM) as follows:

The Cost Allocation Mechanism, or CAM, is designed to ensure that the costs of new resources procured to ensure local or system reliability are shared equally among all utility distribution customers, regardless of their generation provider. CAM is based on the principle that reliability is a collective good and that the customers of Electrical Service Providers (ESPs) and Community Choice Aggregators (CCAs) will also benefit from investments in system reliability made by regulated utilities.

Recognizing that the cost of resource procurement to meet system reliability should be shared by all distribution customers, SCE proposed the CAM in A.14-11-012, and no parties recommended other methods for cost recovery. On March 27, 2015, SCE, the Alliance for Retail Energy Markets and Direct Access Customer Coalition (AReM and DACC) filed a Joint Motion to enter a Joint Memorandum of Understanding into the record. At the crux of the Joint Memo, SCE and AReM/ DACC reached meaningful agreement with regard to the cost allocation of the preferred resources. D.15-11-041 found that CAM and the Joint Memo of Understanding should be utilized to allocate the costs of the preferred resources.

Proposal: Costs related to utility DR programs ordered by the Commission to be procured to ensure local or system reliability will be shared equally among all utility distribution customers, regardless of their generation provider.

VI. CONCLUSION

Identifying and developing the Joint Utilities' discussion in this pleading revealed that fleshing out and implementing the competitive neutrality cost causation principle in OP 8b is a complex matter, which involves major policies and aspirations the Commission has for the Joint Utilities' DR programs. As stated earlier, the huge potential for CCA providers and ESPs to become responsible for provision of generation service to approximately 80 percent of the Joint Utilities' retail customer load materially changes the environment for provision of DR services to retail customers. The pace at which this potential may materialize is unknown for now. If it unfolds gradually, implementation presumably would not occur in a compressed time frame. But

