



U.S. DEPARTMENT
of **ENERGY**

Office of Critical Minerals
and Energy Innovation

Federal Energy Management Program

Federal Utility Partnership Working Group Seminar

August 6–7, 2026



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Energy Lawyers and Contracting Officers Forum: Demand Response and Performance Contracting

Bridgette Rodgers, Oak Ridge National Laboratory (ORNL)

Billie Holecek, Lawrence Berkeley National Laboratory (LBNL)

Jacob Sigler, Defense Logistics Agency (DLA)

Chris Halpin, Celtic Energy

Agenda:

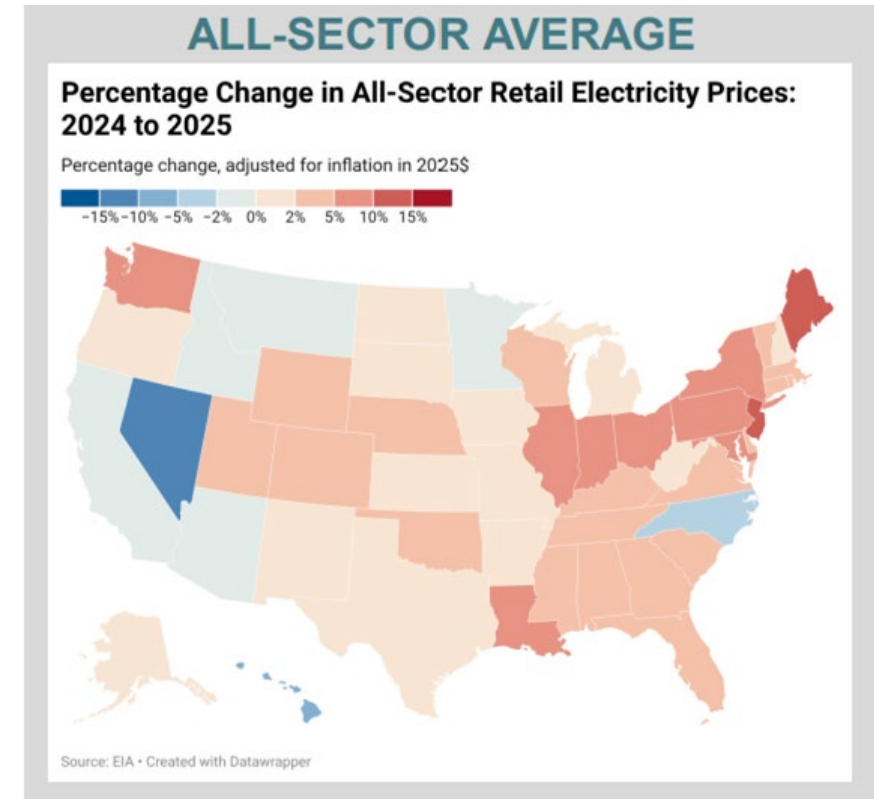
Today's objective: Explore how federal agencies can use performance contracting to directly capture, retain, and re-invest incentives from demand response programs and markets

- Introduction to demand response (Billie Holecek, LBNL)
- DLA demand response program (Jacob Sigler, DLA Energy)
- Evaluating inclusion of demand response in a performance contract (Bridgette Rodgers, ORNL)
- Discussion (Chris Halpin, Celtic Energy PLLC)

Introduction to Demand Response

Adapting to Rising Utility Costs

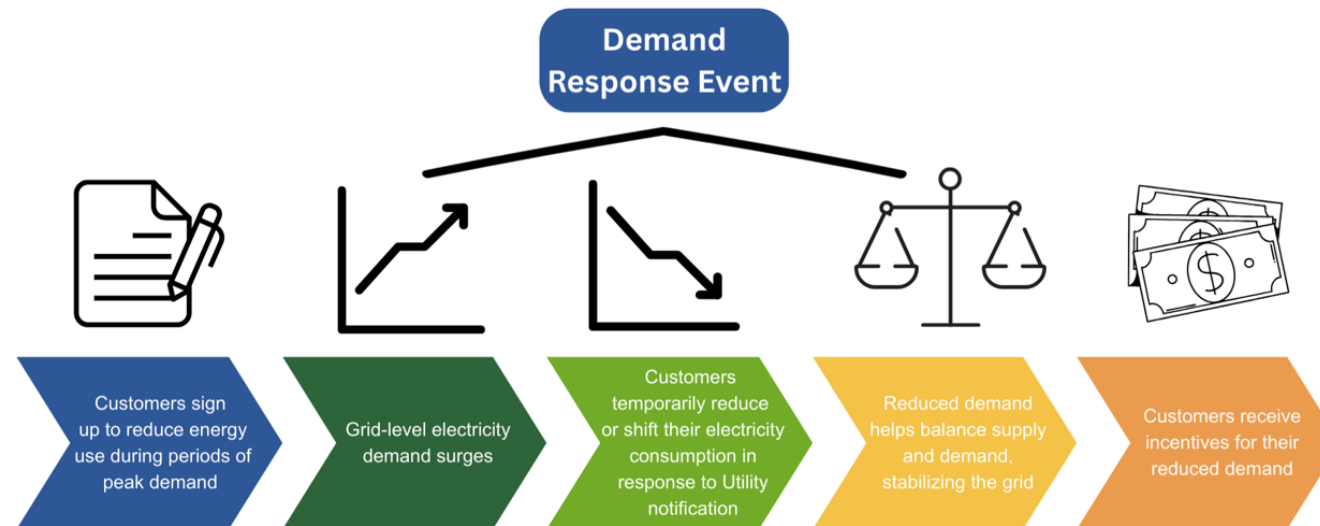
- Federal agencies are seeing rising utility costs due to increased demand and energy charges
 - In some cases, demand charges have increased by over 400% and energy charges have increased by almost 70% within one year
- Participation in demand response programs provides a way for sites to reduce their utility costs



Lawrence Berkeley National Laboratory. (2026, July). Retail price trends: 2026 edition (July update) [Briefing]. U.S. Department of Energy. https://emp.lbl.gov/sites/default/files/2026-07/Retail%20Price%20Trends_2026%20edition_JulyUpdate.pdf

Demand Response Programs and Markets

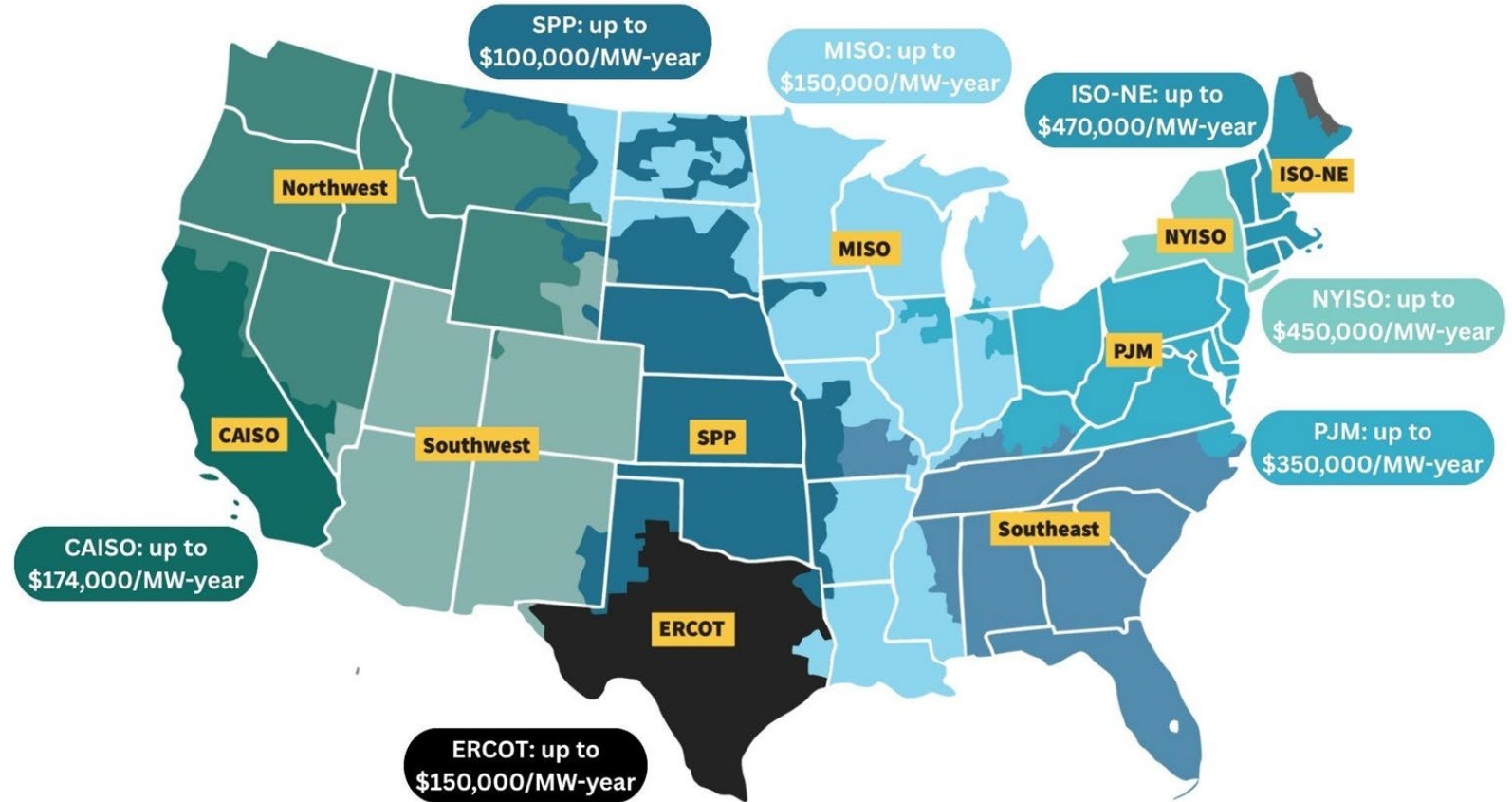
- Utilities, Independent System Operators (ISOs), and Regional Transmission Organizations (RTOs) offer financial incentives for reducing load during periods of peak demand
- Program rules and payments vary widely
 - Some require enrollment through Curtailment Service Providers (CSPs) while others do not



Learn more about the role of Curtailment Service Providers: <https://www.energy.gov/cmei/femp/demand-response-made-easier-role-curtailment-service-providers>

Demand Response Incentives

Incentives* vary drastically by location and revenue-sharing agreement with Curtailment Service Providers or Aggregators



*Incentive estimates derived from <https://www.voltus.co/>

Map adapted from: <https://www.ferc.gov/power-sales-and-markets/rtos-and-isos>

Capturing the Financial Incentive

- Agencies are authorized to participate in utility incentive/demand response programs through 10 U.S.C. §2919 (DoW) and 42 U.S.C. § 8256 (Civilian)
- Typically, federal sites will accept the incentive in the form of a bill credit
 - Helpful in the short term but can reduce utility budgets for future years
 - Sites may be more willing to engage in demand response if they can retain incentives for their site

Today's objective: Explore how federal agencies can use performance contracting to directly capture, retain, and re-invest these financial incentives

DLA Energy Demand Response Program Overview

10 U.S.C. §2919: Department of War participation in programs for management of energy demand or reduction of energy usage during peak periods

- Authorizes participation in demand response (DR) for:
 - Management of energy demand
 - Reduction of energy usage during peak periods
- Conducted by any of the following:
 - Electric utility
 - Independent System Operator
 - State agency
 - Third-party entity implementing DR programs on behalf of an above entity (Curtailment Service Provider [CSP])
- Financial incentives shall be:
 - Received as a cost reduction in the utility bill for a facility; or
 - Deposited into the Energy Savings Financial Incentives Fund for use, to the extent provided for in an appropriations Act, for energy management initiatives

DLA Energy and Third-Party Agreements

- DLA Energy facilitates participation by:
 - Establishing DR master agreements with CSPs
 - Pre-negotiating the overarching terms of the agreement
 - Ensures agreements are consistent with DR authority
- Master Agreements
 - Maximum 5-year term
 - Based on each CSP's standard commercial agreement
 - Minimal changes negotiated to ensure compliance with DR authority
 - Subject to federal (not state) law
 - Removal of indemnification language
 - Ensure no federal expenditure

Supplemental Agreements

- Installation contracts master agreement holders
- Installation determines which CSP to work with and negotiates:
 - Which DR program(s) to participate in
 - Which accounts are to be enrolled
 - Level of commitment
 - Level of compensation (typically percent split)
- CSP drafts supplemental agreement
 - Subject to the master agreement
 - Memorializing the installation-specific terms
- DLA Energy reviews supplemental agreement for compliance with:
 - Applicable authority
 - Terms of master agreement
 - Installation's written acceptance
- DLA Energy signs supplemental agreement on behalf of installation

Benefits and Limitations

Benefits

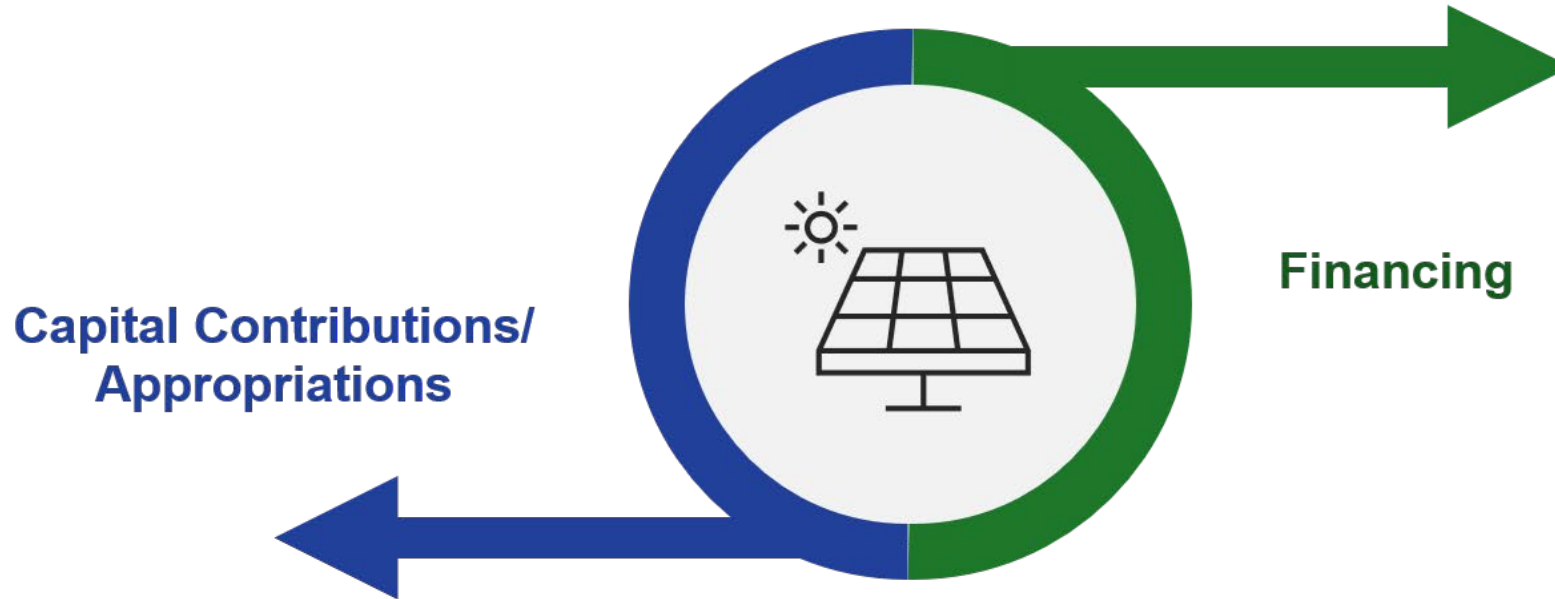
- Streamlined process
- Master agreement terms pre-approved
 - Subject to DLA Energy legal review
- Agreements ensure compliance with 10 U.S.C. §2919
- No funding requirements
- Civilian agency participation

Limitations

- 5-year maximum term for master and supplemental agreements
- Future bill credits may be reduced for non/under-performance
- Any equipment or services provided by CSP must be ancillary/incidental to the DR program covered by the agreement

Evaluating Inclusion of Demand Response in a Performance Contract

Funding Overview



Agencies are authorized to use “any combination” of appropriated funds and financing to pay for performance contracts.

[42 U.S.C. § 8253\(f\)\(10\)\(B\)](#) and [42 U.S.C. § 8287\(a\)\(2\)\(E\)](#)

Demand Response in Performance Contracts

- Participation may offer annual cost savings or one-time payments
- The savings streams may not be constant
 - Demand response programs often depend on system-wide demand, which is dependent on weather conditions
- There are multiple ways to account for demand response savings in Energy Performance Contracts (EPCs)
 - Include in the payment stream
 - Include as a one-time payment
 - Include in reserve accounts



Evaluating Risk in a Performance Contract

Responsible Party	Risk	Risk Impact
Energy Service Company (ESCO)/Utility	Energy Conservation Measure (ECM) performance	Agency will withhold portion of payment
ESCO/Utility	ECM maintenance	Agency will withhold portion of payment
ESCO/Utility	Guaranteed savings/performance assurance	Agency will withhold portion of payment if government impact
Agency	Government impact to savings, savings not fully realized	Savings don't exceed payments and government is responsible for shortfall
Agency	Energy cost	Energy/demand cost risk is always with the agency
Agency	DR program changes	Energy/demand cost risk is always with the agency
Agency	User participation/mission changes	Lost revenue

Considerations for Demand Response in a Performance Contract

- Longevity of the DR program or market/funding
- Predictable load of the facilities
- Program requirements for shifting or shedding load
- Financial implications/penalties



Discussion

DR is moving from “occasional curtailment” toward routine, contract-relevant operational value

- DR has evolved from a niche, mostly emergency tool to a regular operational resource embedded in retail and wholesale programs
- Event frequency has clearly increased in recent years, driven by weather, grid conditions, and new fast-response products, with recent years setting record numbers of DR calls for some major aggregators
- The underlying DR capability has steadily expanded as AMI has gone from under 5% penetration in 2007 to more than three-quarters of U.S. meters in 2023, enabling more granular and frequent dispatch

ESPC Example for Discussion



Energy Generation, Battery
Energy Storage

Key ECMs

- 11,000 dimmable LEDs, 1 megawatt (MW) solar photovoltaic, 1.5 MW/3 megawatt-hour battery energy storage system
- Building-level microgrid controls to integrate Building Automation System controls and generation assets
- Window glazing, rain gardens
- Redesign of existing HVAC to reduce chiller tonnage by 250 tons

Impacts

- Energy consumption: 62% reduction
- Demand response load shedding capability: 1 MW

Question One: Contract Structure

- If an agency wants to incorporate DR into a performance contract, what are the most workable ways to structure the value stream?
- Could DR be treated as annual savings, a one-time payment, a reserve account, or contingent upside outside the guaranteed stream?
- Which of these approaches is most defensible for federal contracting purposes?
- Other options?

Question Two: Project Structuring

- Which vehicle is better suited for DR integration: Utility Energy Service Contract (UESC) or Energy Savings Performance Contract (ESPC)?
- How could we handle the mismatch between long project terms and DR incentive levels that may change annually?
- Could contracts assume only a conservative minimum DR value and leave additional revenue outside the core financing structure?

Question Three: Payments and Parties

- Under what circumstances can DR-related revenues flow to the ESCO or through a CSP supporting the project?
- Can a CSP function as part of the ESCO delivery team without creating unacceptable legal, privity, or payment issues?
- If DR payments must flow to the government first, what is the most workable mechanism for applying that value to project economics?

Question Four: DR in the Task Order

- What specific task-order structure would you accept for including DR as part of the project value proposition?
- If DR revenue is event-based and variable, what evidentiary standard would be sufficient: historical events, a conservative floor, annual reconciliation, or reserve treatment?
- What should be included in guaranteed savings versus treated as contingent upside to the agency?

Resources

- Visit FEMP's [Technical Assistance Portal](#)
- Visit FEMP's [Utility Program Navigator](#) to find relevant programs and rates
- Contact DLA Energy (Dlaenergy.eteam@dla.mil or Jacob.sigler@dla.mil) to receive support with curtailment service providers or signing up for demand response programs

Thank you!

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