

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



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Application of Pacific Gas and Electric
Company (U39E) for Approval of Demand
Response Programs, Pilots and Budgets for
Program Years 2018-2022.

Application 17-01-012
(Filed January 17, 2017)

And Related Matters.

Application 17-01-018
Application 17-01-019

**OPENING COMMENTS OF
CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL ON
ADMINISTRATIVE LAW JUDGE'S RULING DIRECTING RESPONSES TO
QUESTIONS RESULTING FROM THE FEBRUARY 11-12, 2019 DEMAND RESPONSE
AUCTION MECHANISM WORKSHOP AND COMMENTS ON PROPOSALS TO
IMPROVE THE MECHANISM**

Dated: March 29, 2019

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I. INTRODUCTION

The California Efficiency + Demand Management Council (the “Council”) respectfully submits these Opening Comments on the Administrative Law Judge’s Ruling Directing Responses to Questions Resulting from the February 11-12, 2019 Demand Response Auction Mechanism (“DRAM”) Workshop and Comments on Proposals to Improve the Mechanism, issued in this proceeding on February 28, 2019 (“ALJ Ruling”). These comments are timely filed pursuant to the California Public Utilities Commission’s (“CPUC” or “Commission”) Rules of Practice and Procedure and the ALJ Ruling.

II. BACKGROUND

The Council is a statewide trade association of non-utility companies that provide efficiency, demand response and data analytics products and services in California.¹ Our

¹ More information about the Council, including the organization’s current membership, Board of Directors, and antitrust guidelines, can be found at <http://www.cedmc.org/>. The views expressed by the Council are not necessarily those of its individual members.

member companies employ many thousands of Californians throughout the state. They include implementation and evaluation experts, energy service companies, engineering and architecture firms, contractors, financing experts, workforce training entities, and manufacturers of energy efficiency products and equipment. The mission of the Council is to support energy efficiency and demand management policies and programs for all Californians to create sustainable jobs, long-term economic vitality, stable and reasonably priced energy systems, and environmental improvement.

III. SUMMARY OF THE COUNCIL'S POSITION

The Council appreciates the opportunity to respond to the Ruling questions in the subsequent section following a summary of its comments.

The Commission should seek to improve regulatory certainty. Since the DRAM was created as a pilot, there have been four auctions and a highly comprehensive evaluation of the mechanism. During this time, the DRAM has been demonstrated to be an effective tool for procuring economic demand response (“DR”). Though more work is needed to improve the DRAM, it is clear that it should be retained by the investor owned utilities (“IOUs”) for procuring DR. As such, the Commission should increase the regulatory certainty surrounding it and approve a long-term budget of 3-5 years and an ongoing, regular process for making improvements to the DRAM.

The Commission should allow more time for parties to discuss February 6 working group proposals. Parties’ February 6 working group proposals have not been fully vetted to the point where the Commission has been presented with a succinct set of substantive improvements to the DRAM. Further work is needed to narrow down the number of proposals for each subgroup topic and consider how those remaining proposals interact with one another. If the Commission seeks to complete the record by August 30 in time for a December decision, it should immediately reconvene more workshops to further develop the February 6 working group proposals. In the short term, the Commission should issue a decision on June 13 rather than July 11 that addresses the key issues to allow the DRAM to go forward: 1) improvements that can be made without the advice letter process, 2) a bridge solicitation and associated budget, 3) a process for completing the record by August 30 for a December decision, and 4) a standardized process for making regular improvements to the DRAM going forward. As illustrated in the

Council’s response to Question 4, below, even a decision as early as June 13 with IOU advice letters and Commission approval of winning bids severely compresses the schedule. However, approving improvements that do not require an advice letter and waiving the right to approve the winning contracts for Step 1 would add sufficient time to support a June 13 decision, while still making a July 11 decision very challenging.

This approach will ensure that a DRAM auction for 2020 delivery can go forward while also ensuring that most, if not all, improvements addressed in the February 6 working group proposals can be approved in a December decision.

The Commission should direct the development of a service level agreement for the provision of Revenue Quality Meter Data (“RQMD”), customer authorization, and accurate and timely Electric Rule 24/32 data. One of the key issues that came up during the February 11-12 workshops was the timely provision of RQMD by the IOUs to DR providers. Though Electric Rule 24/32 (“Rule 24/32”) governs the provision of RQMD, it has become clear that its provisions are not sufficiently robust. Therefore, the Commission should direct parties to develop a service-level agreement (“SLA”) that provides more specific requirements, including timelines, for the provision of RQMD to DR providers.

The Commission should adopt a standard process to make regular improvements to the DRAM. The Commission should adopt a process similar to the annual process used in the Resource Adequacy proceeding through which parties could propose improvements to the DRAM while still allowing time for IOU advice letters (as needed) and a timely auction for the following year.

IV. COUNCIL RESPONSES TO QUESTIONS IN THE ALJ RULING

- 1. Explain, in detail, whether the Commission should adopt a two-step process approach wherein the auction mechanism is adopted allowing for:**
 - a. Step One: limited critical improvements to the mechanism in the initial decision to provide for a solicitation in 2019 and deliveries in 2020 (considered to be a bridge period) and,**
 - b. Step Two: continuous and iterative improvements to the mechanism in future decision(s) based on additional experience, continuous monitoring, and evaluation data from future solicitations.**

The Council is supportive of a two-step process approach as proposed in the ALJ ruling. It is critical for the sake of maintaining some degree of momentum in the third-party DR market that there be no gap in the auctions; otherwise, the Commission risks creating additional uncertainty over the future of the DRAM which in turn would likely cool investment in the industry, as well as customer interest in DR participation. However, it is not clear that the February 6 working group proposals have been sufficiently vetted to justify Commission adoption at this point. Instead, it might be prudent to limit the initial improvements to those that can be implemented without advice letters and further develop the record on the more substantial improvements.

Given the limited amount of time available to issue a decision in time for an auction for January 2020 delivery, the Council recommends that the Commission focus on a limited scope of simple improvements that can be made in 2019 while allowing for an auction for delivery in January 2020. Even with this limited scope of improvements, an early summer decision would be required to enable a timely auction. As the Council discusses further below, the Commission should issue a decision on June 13, rather than July 11, that approves 1) improvements that can be made without the advice letter process, 2) a bridge solicitation and associated budget, 3) a process for completing the record by August 30 for a December decision, and 4) a standardized process for making regular improvements to the DRAM going forward. A June 13 decision on process issues and improvements that can be made without the advice letter process would free up more time to vet parties' February 6 proposals, whereas a July 11 decision would leave very little time for this.

The Council understands and is supportive of the importance of making substantive improvements that address the DRAM shortcomings that were identified in the January 4, 2019, *Energy Division Evaluation of Demand Response Auction Mechanism Final Report* (Evaluation Report) as quickly as possible. However, the Commission should first ensure that the improvements it considers are well-vetted before making any decisions. Parties were not given the opportunity to submit written comments on the February 6 working group proposals. The February 11-12 workshops, though valuable in providing an opportunity to better understand parties' proposals, were too abbreviated to allow for parties to narrow their differences while considering the interdependencies of the various proposals. Ideally, parties would have an

opportunity to develop a smaller number of well-defined proposals to address each working group subgroup topic for the Commission to consider in a December decision.

2. If the Commission authorizes a two-step approach, explain which critical recommendations or party proposals should be required in order to implement a solicitation in 2019 for 2020 deliveries (i.e., a bridge period). Be specific about the details of the recommendations, including timing.

As stated above, the Council recommends that a summer decision is limited in scope, approving only those improvements that do not require an advice letter. One area where changes can be made without requiring an IOU advice letter is the DRAM protocol. Examples of issues that can be addressed there are the average August price bid selection criterion and the residential set-aside. To be clear, the Council is not advocating for a particular outcome for either issue. Focusing on improvements that can be made quickly will free up time to complete the record on the remaining proposals by August 30.

3. If the Commission authorizes a two-step approach, what budget amount should the Commission authorize for the bridge period solicitation and related deliveries and why?

As stated in the Council's response to Question 1 above, the Council supports a two-step approach. It is critical for the sake of maintaining some degree of momentum in the third-party DR market that there be no gap in the auctions; otherwise, the Commission risks creating additional uncertainty over the future of the DRAM. This, in turn, would likely cool investment in the industry, as well as customer interest in DR participation for a long time to come.

If the Commission approves a two-step approach, the budget should reflect a broader effort to put the DRAM on track for long-term growth toward the 1,000 MW soft target approved in Decision 16-09-056.² The Council also urges the Commission to approve a long-term extension with growing budgets that will provide the market certainty to attract more DR providers to enter the market and existing DR providers to invest further. The large number of bids in the initial auctions demonstrates that the amount of available DRAM capacity is significantly greater than the approved funding so adopting an increased budget would support a growing role for the DRAM as a DR procurement mechanism. Otherwise, a static budget would

² Decision 16-09-056, Ordering Paragraph 12.b, October 5, 2016.

represent a missed opportunity to take advantage of the market potential of third-party DR and deter prospective and existing DR providers.

A DRAM extension with an aspirational target would support the Commission's principles adopted in D.16-09-056, specifically:³

- Demand response customers shall have the right to provide demand response through a service provider of their choice and Utilities shall support their choice by eliminating barriers to data access; and
- Demand response shall be market-driven leading to a competitive, technology-neutral, open-market in California with a preference for services provided by third-parties through performance-based contracts at competitively determined prices, and dispatched pursuant to wholesale or distribution market instructions, superseded only for emergency grid conditions.

Without the certainty and competition that would be created by an extension, customers will have fewer choices among DR providers, likely stunting innovation and opportunity. If the Commission approves a long-term extension of the DRAM, the Council recommends a three- to five-year path toward achieving a 1,000 MW target which, given that total procurement for 2019 delivery was approximately 370 MW, would translate into annual procurement growth of 125-200 MW.⁴ Given a total budget of \$27 million for 2019 delivery⁵, this would translate into a budget of \$36-\$42 million (depending on whether a three- or five- year extension is approved) for 2020 delivery and annual budget increases of \$9-\$15 million for the rest of the extension period. This annual budget growth should be contingent on continued improvement in bid competitiveness, although it might not be realistic to expect bid prices to continue falling at the current rate if the market becomes saturated.

4. If the Commission authorizes a two-step approach, describe the solicitation schedule the Commission should approve for the bridge period (a 2019 auction for 2020 deliveries). Include in your response a proposed schedule in which a final decision is issued by July 11, 2019 and the proceeding remains open to address the second step improvements. Include details on the timing for the deliveries.

The Commission should adopt a solicitation schedule for the bridge period that allows for a full year of deliveries in 2020 (i.e. beginning in January) and should reflect to what extent the

³ Decision 16-09-056, Ordering Paragraph 8, October 5, 2016.

⁴ Evaluation Report, p. 20.

⁵ Ibid.

Commission expects to approve DRAM improvements that require an advice letter to implement. Even if any of the working group proposals were ripe for consideration in the upcoming decision, a July 11 or even June 13 decision would almost assuredly leave insufficient time for the Commission to approve advice letters revising the DRAM contract and/or Rule 24/32 in time for an auction for January 2020 delivery. Given that IOUs require supply plans 30 days in advance of their October 31 year-ahead Resource Adequacy filings, DR providers must provide their supply plans by September 30, 2019. With these constraints in mind, the Council provides proposed schedules for the following scenarios:

- Scenario 1A: June 13 decision with improvements requiring an IOU advice letter; Commission approval of winning contracts required.
- Scenario 1B: June 13 decision with no improvements requiring an IOU advice letter; Commission approval of winning contracts not required.
- Scenario 2A: July 11 decision with improvements requiring an IOU advice letter; Commission approval of winning contracts required.
- Scenario 2B: July 11 decision with no improvements requiring an IOU advice letter; Commission approval of winning contracts not required.

In these scenarios, the Council assumes expedited periods for protests/comments and Commission review for IOU advice letters following a decision; solicitation milestones and associated times are compressed compared to those used in the most recent auction for 2019 delivery.

	<u>Scenario 1A</u> June 13 Decision (w/ IOU advice letters)	<u>Scenario 1B</u> June 13 Decision (no IOU advice letters)	<u>Scenario 2A</u> July 11 Decision (w/ IOU advice letters)	<u>Scenario 2B</u> July 11 Decision (no IOU advice letters)
Proposed Decision	May 13, 2019	May 13, 2019	June 11, 2019	June 11, 2019
Final Decision	June 13, 2019	June 13, 2019	July 11, 2019	July 11, 2019
IOU Advice Letters	June 24, 2019	N/A	July 18, 2019	N/A
Comments/Protests of IOU Advice Letters	June 28, 2019	N/A	July 23, 2019	N/A
IOU Responses to Protests/Comments	July 5, 2019	N/A	July 29, 2019	N/A
CPUC Approval of IOU Advice Letters	July 15, 2019	N/A	August 5, 2019	N/A
RFO Issued	July 20, 2019	June 27, 2019	August 9, 2019	July 19, 2019

Bidders' Webinar	July 27, 2019	July 5, 2019	August 14, 2019	July 25, 2019
Offers Due	August 6, 2019	July 19, 2019	August 19, 2019	August 6, 2019
Notice of Non-Conforming Bids	August 13, 2019	August 5, 2019	August 23, 2019	August 13, 2019
Bidder Cure Period Ends	August 20, 2019	August 12, 2019	August 28, 2019	August 20, 2019
Notice to Bidders of Selection	August 27, 2019	August 22, 2019	September 2, 2019	August 28, 2019
Deadline to Submit Signed PPAs	August 30, 2019	August 29, 2019	September 5, 2019	September 4, 2019
Advice Letter to Commission w/ Executed PPAs (no protest period)	September 4, 2019	September 16, 2019	September 10, 2019	September 20, 2019
Commission Approval/Rejection of PPAs	September 18, 2019	N/A	September 20, 2019	N/A
DR Provider Supply Plans Due to IOUs	September 30, 2019	September 30, 2019	September 30, 2019	September 30, 2019

As can be seen, even a June 13 decision with IOU advice letters and Commission approval of winning bids compresses the schedule severely. However, if the Commission decision only approves improvements that do not require an advice letter and if the Commission waives the right to approve the winning contracts, then the added time would likely make a June 13 decision more workable, but a July 11 decision would compress the solicitation schedule so much that it might discourage new DR providers from participating in the auction given their unfamiliarity with the California DR market..

5. In the Pilot Evaluation, Staff recommended an expedited schedule in both the bridge period and future solicitations. If the Commission authorizes a two-step process, explain whether the Commission should waive Commission-specific review and approval of contracts for the Auction Mechanism.

The Council appreciates the flexibility shown by the Commission in its consideration to waive its review process for the bridge period contracts. Waiving of Commission review of the bridge period contracts is reflected in the timelines presented in the Council's response to Question 4 in Scenarios 1B and 2B. Given that the DRAM contracts are pro forma and no DRAM contract has been rejected yet by the Commission, this would be a prudent short-term approach that would buy valuable time that could otherwise be dedicated toward creating a more

workable solicitation process timeline for bidders. However, the Council recognizes that Commission oversight is necessary so this waiver should be limited to the bridge period auction only. To ensure some degree of oversight of the bridge period contracts, the Council proposes that Energy Division staff be involved in the IOUs' respective contract selection processes in an advisory role.

6. If the Commission authorizes a two-step approach, explain what procedural steps the Commission should use to address the remaining questions regarding the Auction Mechanism: e.g., workshops, working groups, evidentiary hearings, etc. Include, in your response, a recommended timeline through which the record is complete by August 30, 2019 and a decision can be written and adopted by December 19, 2019 to allow for a solicitation in the Spring of 2020, if the Commission authorizes a future mechanism.

As discussed above, the February 6 working group proposals have not been sufficiently vetted to the point where the Commission can make an informed decision on them. If the Commission plans to complete the record by August 30 for a December decision then, assuming steps are taken to this end only after a July 11 decision, it would be prudent for the Commission to limit its focus to a few subgroup topics from parties' February 6 proposals. With only seven weeks to at even narrow the number of subgroup proposals for the Commission to consider, this alone would be a significant task. A June 13 decision, in contrast, would leave eleven weeks, a more reasonable time span for addressing all issues associated with a single working group.

Alternatively, the Commission could choose not to wait for a June/July decision to resume the vetting process for the working group proposals. In this scenario, the Commission would plan to issue a decision in June/July that addresses primarily process issues only such as 1) a bridge period auction and budget, 2) an extension of the DRAM, and 3) a standardized process for making ongoing improvements to the DRAM after 2019, and 4) improvements that do not require an advice letter to implement. In the meantime, parties and the Energy Division could narrow down the number of proposals (or even agree on a single proposal) for each subgroup topic of the two working group categories by August 30 that could then be considered by the Commission in a December decision.

In either case, the Commission should hold workshops or working group meetings that are more narrowly focused on a single working group or a few subgroup topics (depending on the time available) with Commission direction to reduce the number of proposals for each

subgroup topic. Though the February 11-12 workshops were helpful to clarify parties' proposals, there were too many to discuss across too many topics to make enough progress in any one area. The goal in these new workshops or working groups would be to narrow down the number of proposals for each subgroup issue and better define those that remain. Following each workshop/working group session, parties would develop a report that would detail the remaining proposals for each subgroup topic. It would likely be unrealistic to expect parties to agree on a single proposal but the Commission would then have a clear set of arguments and details to consider for each subgroup topic.

The Council proposes draft timelines for the resumption of efforts to vet the February 6 proposals after a June 13 (Scenario 1) or July 11 (Scenario 2) decision. There is also a timeline for the Commission to resume the vetting process prior to a June/July decision (Scenario 3). Scenario 1 would address all issues within a single working group, Scenario 2 would address a few subgroup topics, and Scenario 3 would address all issues within both working groups.

	<u>Scenario 1</u> Start After June 13 Decision	<u>Scenario 2</u> Start after July 11 Decision	<u>Scenario 3</u> Start Before Decision
ALJ Ruling scheduling workshops	June 27, 2019	July 18, 2019	May 8, 2019
Workshop 1 on WG 1 Issues	July 15, 2019	July 29, 2019	May 29, 2019
Workshop 2 on WG 1 Issues	July 16, 2019	July 30, 2019	May 30, 2019
Workshop Report on WG 1 Issues	August 6, 2019	August 13, 2019	June 27, 2019
Opening Comments on WG 1 Workshop Report	August 23, 2019	August 23, 2019	July 11, 2019
Reply Comments on WG 1 Workshop Report	August 30, 2019	August 30, 2019	July 18, 2019
Workshop 1 on WG 2 Issues	N/A	N/A	June 13, 2019

Workshop 2 on WG 2 Issues	N/A	N/A	June 14, 2019
Workshop Report on WG 2 Issues	N/A	N/A	August 6, 2019
Opening Comments on WG 2 Workshop Report	N/A	N/A	August 20, 2019
Reply Comments on WG 2 Workshop Report	N/A	N/A	August 30, 2019

7. If the Commission authorizes a two-step approach, explain the procedural steps and timeline the Commission should use to address improvements for future years of the Auction Mechanism. How often should the Commission address iterative improvements to the Auction Mechanism?

If the Commission authorizes a two-step approach, which the Council supports, it should seek to create clear market certainty by explicitly approving a substantial extension of the DRAM while laying out a regular process and timeline for identifying areas of improvement and a mechanism for vetting solutions. This would demonstrate a Commission commitment to the DRAM by acknowledging that it is a work in progress while also reflecting a belief by the Commission that it can continue to be improved over time.

The Council recommends that the Commission create a regular, predictable process by which improvements can be made to the DRAM. Once the bridge-period improvements to the DRAM are approved by the Commission, the Council proposes an annual process, similar to the process used in the Resource Adequacy proceeding, in which the Commission would issue a ruling seeking input from parties on the highest priority improvements for the DRAM. Parties would then submit their priority issues along with associated proposals that would then be followed up with a workshop where parties can present their proposals. Following the workshop, the ALJ could issue a ruling requesting responses to key clarifying questions that would then inform a decision by April of each year. This would leave time for the IOUs to submit advice letters to implement the approved improvements prior to the next auction. As part of this ongoing process for making improvements to the DRAM, the Commission could include a test

phase for new improvements to ensure that they have the desired effect before adopting them fully.

To demonstrate this approach, the Council proposes the following draft timeline for a process that would begin in October 2020 (assuming that a December 2019 decision approves some substantive improvements for 2020):

- ALJ ruling soliciting comments on priority improvements: October 1
- Parties submit proposals: November 1
- Workshop to discuss proposed improvements: December 15
- ALJ ruling seeking responses to necessary questions to inform a decision: February 1
- Decision issued: April 1
- IOUs submit advice letters (as needed): May 1
- Commission approval/rejection of IOU advice letters: July 1
- RFOs issued for following year: July 15
- IOUs submit Tier 1 advice letters for winning bids: August 15
- Commission approval/rejection of winning bids: September 15
- DRAM Sellers submit supply plans to IOUs for upcoming year: September 30

- 8. Building on the small group discussion in the workshop and the developed options for a goal provided above in Table 1, what should be the goal of the Auction Mechanism? Keep in mind that a goal is abstract, not measurable and long term. For example, the adopted goal of demand response is: *Commission-regulated demand response programs shall assist the State in meeting its environmental objectives, cost-effectively meet the needs of the grid, and enable customers to meet their energy needs at a reduced cost.***

The goal of the DRAM should be to create a stable, transparent, and equitable avenue for IOUs to competitively procure cost-effective DR while incenting the growth of the third-party DR market.

9. **Building on the discussion in the workshop and the developed list of objectives and principles provided above in Table 2, what objectives and principles should the Commission adopt? Keep in mind that objectives are specific, measurable, attainable, realistic, and timed. Principles are assumptions, fundamental rules, or guiding doctrines.**

In Decision (D.) 16-09-056, the Commission stated that, “[a]s a matter of policy, the Commission adopts the use of the demand response DRAM as a primary tool to fulfill its goals of expanding the role of demand response and expanding the role of third-party providers.”⁶ The best way for this policy goal to be achieved is by creating an environment that supports a stable, equitable, and growing DRAM. The Council’s proposed objective and principles are meant to address these attributes.

Objective: The quantity of DR solicited through the DRAM should be at least equal to IOU DR programs by 2022 with a soft goal of 1 gigawatt. This objective is meant to create a predictable path toward a growing third-party DR market while aligning with the Commission’s initial ceiling adopted in D.16-09-056.⁷ Adopting an explicit growth objective would clearly indicate to existing and potential DR providers the scale of the market opportunity, improve market certainty, and drive many of the other objectives listed in Table 2 of the ALJ Ruling such as customer sustainability, customer engagement, customer performance, and emissions reduction. Without a Commission commitment to growth in the amounts of cost-effective DR procured through the DRAM, it will be very difficult to meet other objectives.

Principles:

- **Regulatory certainty is necessary for developing a healthy demand response market.** If the Commission intends to move forward with the DRAM, it is essential it create an environment of long-term certainty to attract DR providers and customer participation. A cycle of one-year extensions creates uncertainty which discourages new entrants.
- **DRPs should have fair access to customers and customer data.** DR providers should have the same access to customers and customer data that IOUs are afforded; by providing more choices to customers, participation in DR would likely improve.

⁶ Decision 16-09-056, p. 71, October 5, 2016.

⁷ Ibid, p. 74 and Finding of Fact 92.

- **The processes associated with the DRAM should be transparent.** Transparency in the bid selection process is a foundational element in a healthy market because it encourages competitive bidding and enables all DR providers to be aware of bid disqualifying factors.
- **There should be a level playing field for third-party providers and utilities.** The Commission should include consideration of the role of the DRAM in the context of considering the IOUs' periodic DR portfolio applications. Such unified planning would be administratively beneficial to the Commission in that it could consider the combined DR budget of the IOUs' DR programs and the DRAM.

10. If the Commission determines not to authorize a two-step approach, explain whether the Commission should authorize a continuation of the Auction Mechanism. If the Commission should authorize a continuation of the Auction Mechanism, provide justification for the length of time the authorization should cover, the budget the Commission should authorize, and the cost recovery approach the Commission should authorize.

The Council notes that nothing in the Evaluation Report indicates there are shortcomings to the DRAM that are so catastrophic as to support its discontinuation, so the Commission should extend it. Furthermore, despite the concerns expressed in the Evaluation Report, it would be premature to conclude that there is no way for them to be addressed.

If the Commission chooses to authorize an extension of the DRAM rather than employing a two-step approach, the Council recommends that it move forward with making well-vetted and substantive improvements to the DRAM as soon as is practical. This could be done by adopting one of the timelines proposed in response to Question 6 and then the annual process proposed in the response to Question 7 beginning in 2020. Alternatively, the Commission could initiate the proposed process in Question 7 beginning in 2019.

Regardless of what process the Commission adopts, it should authorize a continuation of the DRAM for 3-5 years beginning with an auction in 2019 for January 2020 delivery. A minimum three-year extension would better enable the Commission to consider the IOUs' next DR portfolios and budget simultaneously with the DRAM; however, a five-year extension can be easily justified because it would create much needed market certainty for DR providers.

11. Describe and explain the standards that the Commission should adopt for estimating the Qualifying Capacity of an Auction Mechanism resource applicable to Supply Plans. Be specific and include comments on the options discussed during the workshop: test, market dispatch, or an ex ante estimation method. Explain the process the Commission should use to implement the standards.

As explained earlier, the Council does not believe that the February 6 proposals pertaining to Qualifying Capacity and Demonstrated Capacity have been sufficiently vetted to warrant their consideration in a June/July decision. However, as key principles, any changes to how the Qualifying Capacity of a DRAM resource is estimated should initially be simple and if they are found to be ineffective, then more complicated revisions can be made. Furthermore, any approach taken should not be unnecessarily administratively burdensome and should utilize an annual process, barring an occasional monthly audit as necessary. For example, the Commission should consider the use of a “plausibility screen” in which an IOU could utilize its audit rights to examine a few key indicators to provide assurance that the DR provider will be able to meet its contractual obligations. Finally, revisions to Qualifying Capacity and Demonstrated Capacity should not be redundant with other DRAM improvements that are meant to address the same problems.

12. Explain whether the Commission should adopt an energy component requirement for Auction Mechanism resources. If the Commission authorizes optional dispatch hours in solicitations, explain whether and how the values of the bids should be modified to account for this additional requirement. If the Commission adopts a minimum dispatch hour performance requirement, explain the parameters the Commission should adopt.

The potential adoption of an energy component requirement for the DRAM should be a long-term issue and not decided in a 2019 decision. There are several areas of the record that need to be addressed before the Commission can make an informed decision. First, the Commission should determine what problem an energy component is trying to solve. Just as important, is the Commission considering other revisions to the DRAM requirements that also address this problem? If so, the Commission should avoid “pancaking” new requirements meant to address the same problem. Second, has the adoption of a test event requirement addressed the problem that an energy component requirement is meant to solve? It should be noted that test

events are now required whereas they were not during the evaluation period, so it would be prudent to first assess the impact of the test event requirement before adopting new requirements.

The Council contends that the supposed benefits of a minimum dispatch requirement cited in the Evaluation Report are questionable and should be addressed carefully before accepting them as justification for adopting an energy component requirement. The Council provides some initial concerns below in response to the benefits cited in the Evaluation Report:⁸

- **Improving resource availability by ensuring that the technology infrastructure to enable dispatch is exercised and robust.** The Evaluation Report appears to equate the technology used to effect load reduction during a DR event with a muscle that must be exercised to be effective. In reality, this technology, if maintained properly, will function regardless of how frequently or infrequently it is dispatched.
- **Increasing customer awareness, leading to better planning for load reduction events.** Though this may be true for residential customers enrolled with a behavioral DR provider, most if not all non-residential DR participants are fully aware they are participating in a DRAM contract so it is unclear what added benefit more frequent dispatch would have for these customers. Ultimately, it is the responsibility of each DR provider to ensure its customers are prepared to respond to a DR event.
- **Increasing confidence that capacity associated with a DR resource will actually be available when the resource is called upon to relieve grid stress.** Any concerns the full capacity of a DR resource will not be delivered can be addressed through revisions to the Qualifying Capacity and Demonstrated Capacity aspects of the DRAM agreement.
- **Ensuring that resources are bid economically.** It is unclear whether more frequent dispatch promotes economic bidding in and of itself. If the opportunity cost of a DR resource is greater than the prevailing energy market clearing prices, should the DR provider be expected to bid at a lower price simply to meet an arbitrary minimum dispatch requirement?

⁸ Evaluation Report, January 4, 2019, p.105-106.

On the basis of these purported benefits and SCE's Summer Discount Plan ("SDP") program, the Evaluation Report proposed a 30-hour minimum annual dispatch requirement for May-October but also noted that it was later reduced to 20 hours in 2016-2017.⁹ It should be noted that SCE reduced the SDP program minimum economic dispatch requirement due to customer attrition. After having economically dispatched its SDP program in 2014 and 2015 for 30 hours and 35 hours respectively, SCE cited a 96% increase in the number of customers opting out of the program and a 97% decrease in associated lost megawatts.¹⁰

The Council is not rejecting an energy component requirement at this point but it is clearly premature to support approving one in a 2019 decision without further developing the record.

13. Explain whether the Commission should adopt penalties for shortfalls in both Qualifying Capacity and Demonstrated Capacity. If the Commission adopts penalties, explain at what point in time penalties should be assessed and under what conditions. Explain whether the penalties should be based on costs incurred by a utility for failure to perform or the price of the contract.

When considering the issue of penalties for shortfalls in Qualifying Capacity and Demonstrated Capacity, the Commission should avoid adopting a series of pancaked requirements that are meant to address the same issue, as there are several proposals for penalties to ensure DR providers meet their Qualifying Capacity and Demonstrated Capacity requirements. Consistent with the Council's comments above, specific penalties for shortfalls in Qualifying Capacity and Demonstrated Capacity should not be adopted in the June/July decision because additional information and vetting are needed. With this said, one potential approach that is already in practice would be to apply the performance and penalty structure used for the Capacity Bidding Program. This structure has been in practice for several years and is well-known by the IOUs, Commission, and most DR providers so little vetting should be necessary.

⁹ Ibid, p.106.

¹⁰ *Southern California Edison Company's Proposal in Response to Assigned Commissioner's Ruling Directing Activities In Response to Natural Gas Leak at Alisa Canyon Storage*, April 4, 2016, p.6.

14. Explain whether over-performance should be incentivized and what the incentive should be. Explain whether there should be a cap and what the cap should be.

To ensure over-performance is treated equally to under-performance, over-performance should be rewarded at a level consistent with any penalties for under-performance. For example, the Capacity Bidding Program payment structure utilizes a pro rata payment when deliveries are between 75%-105% of committed capacity. One corollary to this approach would be to utilize a performance band to account for the difficulty associated with accurately forecasting weather-sensitive load. Using a 5% performance band as an example, delivery of 95%-105% of Qualifying Capacity would be deemed as 100% delivery. A cap is unnecessary at this time because there is little evidence to support one. Indeed, all of February 6 working group proposals are meant to address under-performance rather than over-performance.

15. Explain the approach the Commission should adopt regarding Demonstrated Capacity on invoices including Must-Offer Obligation invoices and full or partial dispatch or test requirements. Explain what method demand response providers should use to calculate performance. Explain how the Commission should address the issue of locations moving between resources in a given month.

When considering how to treat Demonstrated Capacity, a single methodology may not work well for all types of DR providers and customer classes so the Commission should allow for some degree of flexibility for DR providers to choose the one that best matches the characteristics of the load comprising a resource. For instance, for weather-sensitive load, the Commission should allow the Must-Offer Obligation (“MOO”) value of the resource to be used. If temperatures are significantly below 1-in-2 weather conditions (which may occur if the Commission adopts a minimum dispatch requirement), then weather-sensitive DR resources would be at a disadvantage relative to non-weather-sensitive resources (e.g. more process-related load) because their Demonstrated Capacity is more subject to weather conditions. Regardless of what approach the Commission adopts, it should continue to allow the use the MOO as an option for Demonstrated Capacity use if resource dispatch and test event are not applicable.

Furthermore, the Council cautions against seeking to align wholesale and retail baselines simply for the sake of doing so. As Southern California Edison stated in its January 3, 2019 prehearing conference statement, the Commission should note that the intended purpose of a

baseline is to accurately measure DR performance.¹¹ The Council agrees with SCE's recommendation that more work be done on baselines before making a determination. The March 22 workshop on DR baselines in this proceeding was a good start down that road.

16. Explain whether the Commission should allow partitioning of contracts for reassignment and under what conditions. Explain whether and how the Commission can improve the transparency of the reassignment process. Describe the deadlines the Commission should require for invoices and any exceptions that should be made.

Conceptually, the Commission should allow partitioning of DRAM contracts for reassignment. If the goals for the DRAM include growing the number of DR providers and the amount of DR procured, then allowing the partial reassignment of contracts will reduce the risk for DR providers to enter the market while rewarding those DR providers that have the capability to provide more DR. However, based on parties' comments at the February 11 workshop, it is evident that more discussion is needed on how this would be managed operationally while ensuring an appropriate degree of transparency. At minimum, when partial reassignments do occur, the impacted IOU should notify the service list of the two parties involved without indicating the number of megawatts reassigned.

17. Explain whether the Commission should adopt a contract remedy for a utility's failure to deliver Revenue Quality Meter Data in time for CAISO settlement and what the remedy should be. Explain what improvements could be made to streamline communication between utilities and third-party demand response providers regarding missing data, data quality concerns, and gaps in data.

The most important role the IOUs play in implementing the DRAM is the timely provision of RQMD to DR providers for CAISO settlement. If they fail to do this, DR providers are unable to invoice the IOUs, are subject to CAISO penalties, and are not paid for their dispatches. Though there have been some instances when an IOU has failed to meet this obligation, modifying the DRAM agreement may not be the best approach to limit these instances in the future because this issue is already governed by other documents. The IOUs' Rule 24/32 tariff already contains language explaining the obligations of the IOUs in their role as Meter Data Management Agents (MDMA) as well as their liability for any CAISO penalties

¹¹ *Pre-hearing Conference Statement of Southern California Edison Company*, January 3, 2019, p.4.

imposed on a DR provider for failure to submit timely and accurate RQMD.¹² However, for a DR provider to recoup its CAISO penalty payments from the IOU, it must do so through the Commission's remedy and dispute resolution process which can be lengthy and burdensome so there is room for improvement in this area. Furthermore, the Rule 24/32 language lacks the detail needed to explicitly define the IOU's and DR provider's responsibilities.

Rather than adding a provision in the DRAM contract or revising Rule 24/32, the Commission should direct the creation of a separate service-level agreement (SLA) that more specifically details the obligations of the IOU and DR provider, timeline associated with data transfer, and a simple mechanism for DR providers to be reimbursed for any CAISO penalties due to late RQMD. An SLA would be a longer-term effort and, given the narrow scope of this topic, it might be appropriate to create a dedicated working group process to address this. The SLA should also address IOU verification of customer authorization and the provision of accurate and timely Rule 24/32 data. Though Rule 24/32 specify the process for customers to authorize the sharing of their data to third-party DR providers, a specific set of requirements and timelines would better ensure that both the DR provider and IOU are fulfilling their obligations. In the short term (i.e. the June/July decision), the Commission should direct the IOUs to work with parties to create a meter data management SLA with a goal of submitting the SLA to the Commission via advice letter for Commission approval as early in 2020 as possible. Alternatively, this greater level of detail can be addressed through revisions to Rule 24/32 for Commission approval in time for the (presumed) 2020 auction.

18. Explain whether the Commission should approve implementation milestones with regard to utility systems, Commission registration, CAISO registration, and customer acquisition and what the milestones should be.

The Council sees value in establishing implementation milestones with regard to CAISO registration and Commission registration because it is not dependent on a DR provider enrolling customers an unrealistic amount of time in advance. For this reason, customer action is not required to meet them. The Commission should not adopt customer acquisition and CISR-DRP-

¹² See PG&E's and SCE's Electric Rule 24, Section F, and SDG&E Electric Rule 32, Section E.

related utility systems implementation milestones for DR providers if these milestones are to fall significantly earlier than the delivery period.

The intent of this proposal appears to overlap with consideration of under-performance penalties and how to verify Demonstrated Capacity. It is also unclear how the customer acquisition and CISR-DRP-related utility system milestones would be determined. Because auctions are held roughly mid-year prior to the delivery year, this would require DR providers to demonstrate customer acquisition further in advance than some are able to meet. As DR providers explained in the February 11-12 workshops, customers typically do not plan as far ahead as the Commission or the IOUs may prefer so forcing a premature milestone would likely result in some customers simply not participating in DR.

19. Explain whether the Commission should require third-party demand response providers participating in the Auction Mechanism to submit performance reports for the purpose of evaluation or providing a feedback loop. If the Commission should require performance reports, explain who should receive these reports and what should be included in the reports.

The Commission should not require third-party DR providers to submit regular performance reports. The Commission should resist the urge to require reporting for the sake of reporting. If the Commission plans to perform a regular evaluation of the DRAM similar to the Evaluation Report, it should only collect performance data from the DR providers for these instances. For example, collecting data from the DR providers on a monthly basis for an annual or biennial evaluation would be unnecessary and impractical. The Council notes that the Commission can subpoena the CAISO and IOUs at any time, and the IOUs have audit rights of the DR providers. Should the Commission be determined to impose regular reporting, it should first decide for what purpose the data are being collected and limit reporting to the data needed only to meet that purpose.

The recommendation in favor of performance reporting in the Evaluation Report highlights delays in receipt of the Energy Division's requests for information for the purposes of conducting the evaluation, as well as formatting differences in the data when it was provided.¹³ Delays in receiving the data may have been due to this being the first time DR providers had

¹³ Evaluation Report, January 4, 2019, at p. 112.

been requested to provide these data. If DR providers know in advance what specific data will be requested by the Commission for an evaluation, they will have the visibility to prepare to respond to this request in a timely manner. Problems with inconsistent formatting can easily be addressed by creating a single, standardized template far in advance of future evaluations so that DR providers will be able to plan to provide the data in a consistent manner that works best for the evaluator.

20. Should the Commission create a process for monitoring and evaluating the Auction Mechanism and what should be the guidelines or principles for that process?

Yes, there should be a process created for future evaluations, and the process needs to include a determination of the appropriate criteria for the evaluation. In addition, the schedule and scope of these evaluations should be predictable. As discussed in Question 19, transparency regarding the schedule of the evaluations and the data needed by the evaluator will ensure that DR providers will be prepared to respond to information requests. Once the evaluation scope and criteria are determined, the Commission should select an independent third-party evaluator to perform the evaluation.

21. Should the Commission set a limit on market share? Explain what the limit should be.

The Council respectfully reserves comment at this time but reserves the right to respond to other parties' comments.

22. Explain whether the Commission should maintain, revise, or eliminate the set aside of 20 percent for each utility of the total megawatts procured under the DRAM each year for residential aggregation.

The Council respectfully reserves comment at this time but reserves the right to respond to other parties' comments.

23. Explain whether the Commission should maintain, replace or eliminate the simple average August bid price cap. If the Commission decides to replace the average August bid price cap, should the Commission adopt the Net Market Value cap as the replacement, as proposed by SDG&E, based on the adjusted Long Run Avoided Cost of Generation described in the Pilot Evaluation?

The Council supports eliminating the simple average August bid price cap. As the Evaluation Report noted, defining cost effectiveness solely by the August month bid sends a

distorted market signal that prevents the IOUs from selecting the bids with a higher Net Market Value.¹⁴ The Council cannot recommend adopting the SDG&E proposal at this point without further clarification. Whatever replacement the Commission adopts, should it decide one is needed, should be as simple and transparent as possible.

V. CONCLUSION

The Council appreciates the opportunity to respond to the ALJ Ruling and reiterates its primary recommendations:

- The Commission should seek to improve regulatory certainty.
- The Commission should allow more time for parties to discuss February 6 working group proposals.
- The Commission should direct the development of a service level agreement for the provision of Revenue Quality Meter Data (“RQMD”), customer authorization, and accurate and timely Electric Rule 24/32 data.
- The Commission should adopt a standard process to make regular improvements to the DRAM.

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¹⁴ Ibid, at pp. 95-96.