

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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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 REPLY COMMENTS OF CPOWER, ENERNOC, INC., AND ENERGYHUB
("JOINT DR PARTIES") ON THE PROPOSED DECISION ADDRESSING
COMPETITIVE NEUTRALITY COST CAUSATION PRINCIPLE,
DEMAND RESPONSE AUCTION MECHANISM, AND
NEW MODELS OF DEMAND RESPONSE**

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CPower, EnerNOC, Inc., and EnergyHub ("Joint DR Parties") respectfully submit these Joint Reply Comments on the Opening Comments on the Proposed Decision (PD) of Administrative Law Judges (ALJs) Hymes and Atamturk implementing the Competitive Neutrality Cost Causation Principle, declining to authorize a 2018 Demand Response Auction Mechanism (DRAM) Pilot auction, and establishing working groups for the creation of new models of demand response.¹ These Reply Comments are timely filed and served pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure and the instructions accompanying the PD.

**I.
COMMENTS IN SUPPORT OF THE PD, WHICH DECLINES TO APPROVE A
2018 DRAM AUCTION FOR 2019 DELIVERIES, ARE VAGUE AND IGNORE
COMMISSION POLICY AND FACTS APPLICABLE TO THE DRAM.**

In their Joint Opening Comments, the Joint DR Parties provided strong support for the Commission's adoption of the Alternate Proposed Decision (APD) of Commissioner Guzman-Aceves, and not the PD, which declines to authorize a 2018 DRAM Pilot auction. In contrast, as detailed in the Joint DR Parties' Opening Comments, it is the APD, in authorizing 2018 DRAM Pilot auctions for all three Utilities (Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E)), that "fully accounts for the record on the issue of an additional DRAM auction and further

¹ Because several parties filed separate Opening Comments on the PD and on the APD, the Joint DR Parties have filed separate Reply Comments today on the PD (here) and on the APD (also filed and served today).

appropriately comprehends and supports the significance of and the demonstrated need for another DRAM auction.”² To that end, the Joint DR Parties strongly recommended, and continue to do so here, adoption by the Commission of the APD with modifications to extend the requirement (not just authorization) to conduct a 2018 DRAM auction to PG&E, along with SCE and SDG&E.

Among the Opening Comments filed on the PD, however, there were those that supported the PD declining to require an additional 2018 DRAM Pilot Auction. However, the bases offered in support by those parties are either entirely vague, provide limited reasoning or no support for their claims, or seek to further Utility programs that are not the same as, and do not offer the competitive opportunity for third parties, represented by the DRAM.

Thus, PG&E and SCE in their Joint Comments on the PD claim only that “PG&E simply does not have a need for additional Resource Adequacy.”³ In its Comments, again specific to the PD, SDG&E states only that it “supports” the PD.⁴ Finally, the California Large Energy Consumers Association (CLECA) and Olivine, Inc. (Olivine) support the PD to permit the completion of the currently pending evaluation of past DRAM procurements.⁵ CLECA also states an auction should not be required if there is no need, but ties the absence of “need” for an additional DRAM solely on PG&E’s contention that PG&E has no Resource Adequacy need in 2019.⁶ CLECA attempts to create a “record” where none exists to extend that rationale to SCE and SDG&E by having both “inform the record here on their likely 2019 RA needs.”⁷

On this last claim, while SCE and SDG&E had an opportunity to do make claims regarding their 2019 RA needs, neither chose to provide that information and no facts can be assumed in the absence of their doing so. Further, of greater significance are the Comments by many other parties, including the California Independent System Operator (CAISO), OhmConnect, Inc., Electric Motor Werks, Inc., Stem, Inc., and the California Energy Storage

² Joint DR Parties Opening Comments, at p. 3.

³ PG&E and SCE Joint Comments on PD, at p. 2. In its separate Comments on the APD, SCE states, with *no support*, that there is “no evidence” that, as the APD establishes, business opportunities for growth in third party-provided DR in 2019 have been limited. (SCE Comments on APD, at p. 3.) PG&E’s similar claim is based on the existence of the non-competitive Utility Capacity Bidding Program (CBP) (PG&E Comments on APD, at p. 2).

⁴ SDG&E Comments on PD, at p. 1.

⁵ SDG&E Comments on PD, at 1.

⁶ CLECA Comments, at pp. 9-10; Olivine Comments, at p. 3.

⁷ CLECA Comments, at p. 10.

Alliance (CESA), that, along with the Comments filed by the Joint DR Parties, clearly demonstrate and support the facts and multiple legal and policy bases for the Commission requiring an additional DRAM Pilot auction for all three Utilities, including compliance with current Commission directives and policies.⁸

Of particular note are the Comments filed by CAISO, into whose wholesale market DRAM resources are to be bid. CAISO's Comments offer a detailed repudiation of the PD's "rationale" for declining to order an additional DRAM auction, which, in turn, also serves to refute the limited arguments in favor of the PD noted above. Thus, CAISO states that "a 2018 DRAM pilot is necessary to ensure that the competitive market for demand response resources continues to thrive."⁹ The CAISO also correctly advises that, given that the Commission "has not yet established a formal competitive solicitation process for demand response resources," if the "Commission terminates the DRAM without a clear competitive solicitation path going forward, ... the nascent competitive demand response market could wither."¹⁰ To prevent that, CAISO argues that the DRAM should be continued for "another year while establishing a clear policy on how demand response capacity will be procured in the future."¹¹

The errors in the PD declining to order an additional DRAM auction are also clearly identified by CAISO to include inconsistencies in its findings that are also at odds with Commission policy and directives. Thus, while the PD states that the Commission wants to ensure that third party entities (DR providers and aggregators) "have a level playing field in order to increase customer choice and competition," the PD then wrongly "rejects the 2018 DRAM auction, which is a key building block for developing strong third-party demand response capability and presence" and, by eliminating the DRAM, will in fact be limiting "choice and competition and harm third parties' abilities to compete on a level playing field."¹²

CAISO's Comments also clearly refute the claims that PG&E's lack of RA need (or any other similar claim by SCE or SDG&E if it were ever made) or asserted other opportunities for DRP contracts exist or serve as any basis to reject an additional DRAM auction. Of note, CAISO confirms that the "policy rationale" of PG&E's RA need serving as a basis not to require

⁸ CAISO Comments, at pp. 1-2; OhmConnect/EWerks/Stem Comments, at pp. 3-9 ; CESA Comments, at pp. 3, 6-7.

⁹ CAISO Comments, at p. 1.

¹⁰ *Id.*, at p. 1.

¹¹ *Id.*, at pp. 1-2.

¹² *Id.*, at p. 2.

an additional DRAM auction “is not applied consistently to competitively solicited demand response and utility-run demand response programs.”¹³ Thus, “[r]ejecting the 2018 DRAM solicitation while simultaneously leaving in place policies that continue to fund non-competitively procured, utility-run demand response programs is inconsistent with limiting procurement in areas where there is excess capacity.”¹⁴

Thus, assertions by CLECA or the Utilities that other “opportunities” exist fall squarely within the scope of utility-run programs that are not competitive procurements at all. The Joint DR Parties certainly share CAISO’s opinion that the “Commission should carefully consider the policies it adopts here and consider the broader implications and potential inconsistencies this rationale introduces by continuing to sustain utility-offered demand response programs while failing to continue the DRAM.”¹⁵ Even the Office of Ratepayer Advocates (ORA) seems to admit that the DRAM is the means of ensuring “the Commission is meeting its objective to procure more DR resources from third parties via a competitive market mechanism.”¹⁶

For all of these reasons, the PD should not be adopted by the Commission. Instead, the APD should be issued with the modifications proposed by the Joint DR Parties in their Opening Comments, including requiring, not simply authorizing, PG&E to conduct a 2018 DRAM Auction, along with SDG&E and SCE.

II. SDG&E’S COMMENTS ON THE PD SEEK MODIFICATIONS TO THE 1 GW “FIGURE” AND ITS RATIO SHARE OF MEETING THAT “FIGURE” THAT ARE NOT SUPPORTED BY APPLICABLE LAW OR PROCESS.

In its Opening Comments on the PD, SDG&E seeks the following two modifications: (1) for the Commission to modify D.16-09-056 to reduce SDG&E’s “ratio share” of the “statewide 1 gigawatt for DR resources” established by that decision, and (2) to change what the “1 gigawatt” represents.¹⁷ Both of these requested modifications should be rejected.

As to the first request, SDG&E is seeking a change in D.16-09-056 that is not before the Commission in either the PD or APD or considered as part of the record on which either is based and uses factual claims regarding this “ratio” allocation that are also not part of that record. To

¹³ CAISO Comments, at p. 2.

¹⁴ Id.

¹⁵ Id.

¹⁶ ORA Comments, at p. 2.

¹⁷ SDG&E Comments on PD, at pp. 2-4.

the extent that SDG&E believes and can demonstrate that a change in D.16-09-056 relative to its findings and orders on the “ratio share” of the 1 gigawatt between the Utilities must be modified, it is incumbent on SDG&E to follow the correct process and file a Petition for Modification of D.16-09-056 accordingly.

As to the second request made by SDG&E to alter the “1 gigawatt” from a “requirement” to “a ceiling and an aspiration,” nothing in the PD or the record supporting the PD or D.16-09-056 supports this change. What the PD states is that “the parameters adopted in D.16-09-056” for an auction mechanism, “including the 1 gigawatt figure, are contingent upon approval by the Commission of a transition from pilot status” to “permanent auction mechanism.”¹⁸ In Finding of Fact 23, the Commission again refers to the “1 gigawatt figure” as not being a “procurement target.”¹⁹ SDG&E wrongly uses these limitations on what the Commission is prepared to state on the “1 gigawatt figure” in the PD to now restrict that “figure” to being only an “aspiration” and a “ceiling” on procurement. While the Joint DR Parties do dispute the PD reducing the 1 gigawatt to simply a “figure,” especially based on an order in D.16-09-056 that says no such thing,²⁰ it very much contests its characterization being reduced further to merely an “aspiration” or a “ceiling” and ask the Commission to reject this proposed modification by SDG&E. There are no supporting facts or law for such a change and, to do so, will only further impede “growth” in DR where it continues to lag in the first place and is certainly far from meeting any such “figure” or goal.

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Respectfully submitted,

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¹⁸ PD, at p. 35.

¹⁹ PD, at p. 59.

²⁰ Joint DR Parties Comments, at p. 9.