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Attachment 5
Proposals for Working Group 2
Topic 2.1 Contract Reassignments

Attachment C

All Proposals for Subtopic 2.1

SOUTHERN CALIFORNIA EDISON (SCE)

Working Group 2: Improvements to DRAM Pro Forma Contracts

1. **(SUB-TOPIC #1) Contract Reassignments (Co-Leads: SCE/JDRPs) (Cpower, Enel X, Energy Hub)**
   1. **Partitioning Contracts (Co-Leads: SCE/JDRPs) (Co-Leads: (Cpower, Enel X, Energy Hub)**

Issues Summary

Allow DRAM Seller at risk of defaulting on its contract to partition the contract for reassignment. (ED Staff)

ED's proposal to allow partitioning of a contract would permit a party to take contracted capacity that is not capable of being delivering and assign it to another counterparty that may be capable of delivering that capacity. The proposal is intended to improve the overall performance of the DRAM program. Additionally, some DRAM sellers would like to have the option of assigning capacity that they contracted for but are unable to deliver. This would be beneficial to the seller as it would permit them to monetize contracted capacity they cannot provide.

Proposal:

SCE proposes that, consistent with current practice, partial assignments of contracts should not be permitted.

SCE strongly suggests not to allow these partial assignments for a number of reasons. First, a partial reassignment is administratively burdensome. In the event of a partial reassignment, one DRAM contract becomes at least two contracts, with perhaps multiple partial reassignments throughout the relatively short term of a DRAM contract. Each partial reassignment would require reviews of new sellers, new accounts, new Performance Assurance postings (cash or letter of credit), potential shifting of customers from one DRAM seller to another, and potential data management issues.

The possibility of partial reassignments also introduces new issues with performance and types of DRAM sellers. Would the CPUC allow the partial assignment to a new entrant? Any partial assignment would presumably need to occur promptly for a new entrant to be evaluated, and for customers to be enrolled in time to provide a Supply Plan that a utility could accept with any certainty that capacity could be provided. SCE is also concerned that a potential assignee who based its offer on realistic assumptions would be less likely to provide a higher bid for the assigned capacity than a potential assignee who took a more aggressive approach and viewed contracted capacity as not necessarily needing to be available during the applicable hours. Not being able to partition contracts encourages DRAM sellers to bid levels they can reasonably deliver. This should increase the level of available capacity at the time of the RFO. For these reasons, SCE does not think the partitioning of contacts will improve the performance of the DRAM program.

Finally, DRAM sellers already have methods for reassigning contracted capacity they are not capable of providing. Currently certain DRAM sellers utilize other aggregators. Additionally, if a DRAM seller has identified a seller that is capable of providing the balance of contracted capacity, it can partner with that seller and continue to operate under the current DRAM contract.

Dependencies (Other WF and Policy)

In the Working Group 2 session, participants discussed meaningful milestones after execution and before initial operation. The milestones identified were primarily related to the DRAM seller being able to participate in the market (having a scheduling coordinator, for example). However, the participants struggled to identify milestones showing the level of customer or capacity aggregation. With the challenges around aggregation-related milestones, it is critical that DRAM sellers be incentivized as much as possible to contract for capacity they are capable of delivering.

Partitioning and potential continuous partitioning of underperforming contracts does not allow the utility to reasonably estimate the level of RA that can be delivered.

(SUB-TOPIC #2) Reassigning Contracts (Co-Leads: SCE / JDRPs (Cpower, Enel X, Energy Hub)

Issues Summary

- Develop an improved process for reassigning contracts. (ED Staff)
- Disallow contract reassignments, or limit them to smaller DRPs (CLECA)
- ~~Require that contract reassignment occurs by returning to the bid stack (JDRPs)~~
- Include review process for contract assignments to limit market concentration (Olivine)
    - Olivine chose not to discuss during Working Group 2 session

The existing assignment language specifies that consent to assignment should not be unreasonably withheld, but does not specify whether reasonable grounds for withholding consent would include qualitative factors such as market concentration or an IOU's previous experience with a particular proposed assignee.

The pros to the existing process is that it is not administratively burdensome, and limits costs / operation requirements on the IOUs. Additionally, IOUs do not need to worry about disclosing confidential information with this relatively hands-off assignment process.

The cons to the current process is that it does not address any of the specific proposals. In order to improve the current process we see a few issues have been raised:

- ED voiced concerns around transparency into the assignment process: SCE agrees that there is a lack of transparency, but questions the IOUs' ability to improve transparency. Due to confidentiality the IOUs cannot make the other market participants aware of a pending assignment/sale of DRAM contracts.
- There is a lack of specificity as to the qualitative factors (if any) that can be considered to approve assignments. Because of this, it is unclear whether market concentration cannot be addressed. Additionally, this increases the risk that more realistic DRAM sellers may be replaced by parties who have a much looser view of providing capacity.

Proposals:

- The CPUC can improve transparency by making public the capacity held / assigned by DRAM sellers.
- If the policy objective is to support new market entrants, evaluate market concentration, and review sellers' previous market behavior in the assignment process we propose that the DRAM

Contract should permit DRAM parties to consider qualitative factors in determining whether or not to approve proposed assignments. This qualitative approach should also reduce participants' concerns that the majority of assignments have gone to parties that have a much looser view of providing capacity. This language could be the same as qualitative language applied to the RFO.

JOINT DR PARTIES

Working Group 2.1 –Contract Partitioning/Assignment

Problem Statement: If it becomes clear a contract cannot be fully delivered, the only current option is to cancel the contract, not to partially fulfill it. If a contract is reassigned there isn't any market visibility of this fact.

Proposal: Contracts may be partitioned off and partially reassigned. This must be done at least 30 days before the supply plan for a given month is due. The partitioned contract must have the same price/terms as the original contract, such that the prices are identical and the sum of kW in both parts of the contract must be identical to the original contract. If a contract is reassigned – in whole, or in part, an advice letter must be filed notifying market participants that this occurred and the new signatories for market visibility. The confidentiality provisions of the contract may need to be revisited in order to allow assignment or partitioning to happen. As in awarding contracts, past performance, and the ability to perform under prior DRAM contracts, should be a consideration in assigning contracts.

Discussion:

- While the JDRP removed this from the table, there is some argument to be made for going back to the bid stack if we are truly creating a market mechanism. Based on the data we've seen on DRAM prices declining over time, paired with the evidence that most sellers have offloaded their contracts, one could come to the conclusion that prices are declining because some sellers are bidding low and then realizing they can't deliver at that price, artificially blocking more reasonably priced bids from securing a contract. By pursuing the reassignment approach to contracts, we are supporting this behavior. It is possible that parties will not accept a contract assignment at the price that a loss leader accepted.

OHMCONNECT

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Working Group 2.1 (Sub-Topic: Contract Reassignments)
Proposal: Contract Partitioning and Reassignment

A. Problem Statement

Throughout the DRAM Pilot, DRPs terminated and reassigned contracts. Energy Division's Evaluation of the DRAM Final Report ("DRAM Evaluation Report"), published January 4, 2019, noted that several DRPs indicated that the reason for the termination or reassignment was rooted in performance due to IOU integration factors. DRPs that were underperforming – even if they were, at some level, delivering – were left with two main options: default on the contract, or reassign the contract in its entirety to a different Seller DRP. Staff recommends in the DRAM Evaluation Report that improvements to the Contract Reassignments process might include partitioning of contracts (specifically for a DRAM Seller at risk of defaulting) and reassignment of contracts.[1] Allowing a struggling DRP to partition its contract(s) and thereby reassign *part* of its portfolio would present a third option that would: (1) enable the DRP to keep the portion of its contract(s) it can deliver and avoid default; and (2) enable an alternate DRP Seller (i.e. counterparty) to deliver the remaining capacity the struggling DRP cannot provide. In aggregate, this would increase the total amount of delivered DRAM capacity.[2]

B. Description of Methodology

We propose the following process to facilitate the partitioning and reassignment of a given DRAM contract:

1. The DRP identifies the number of MWs it wishes to partition and reassign.
2. The DRP updates relevant contract documents (in draft format) with modified MW quantities based on (1) above. The DRP should have two sets of draft contract documents - one with the MW quantity it wishes to keep, and the other with the MW quantity it wishes to reassign.
3. (Optionally) the DRP informs the Buyer (the IOU) that it is seeking a contract partitioning and reassignment. The IOU, with the permission of the DRP, contacts all Sellers on its DRAM solicitation mailing list requesting responses from any interested DRP willing to provide the MW that is to be partitioned and reassigned. The IOU will then forward all responses to the reassigning DRP. The DRP and IOU should agree to a date by which interested DRPs must respond to the IOU.
4. The DRP identifies a willing counterparty to take on the full capacity that the DRP wishes to reassign.

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[1] Energy Division's Evaluation of Demand Response Auction Mechanism Final Report, at p. 123.
[2] For example, suppose DRP 1 has a contract for 10 MW; however, DRP 1 is only able to provide 4 MW and is at risk of defaulting on the contract. Under the current DRAM construct, DRP 1 would only have the option to reassign the entire contract, or default on the contract. If there was no willing DRP to take on the 10 MW contract, DRP 1 would default and the 4 MW that DRP 1 was capable of delivering would vanish. However, if DRP 1 could partition the contract into a 4 MW contract and a 6 MW contract, DRP 1 could seek another DRP that was willing to take on 6 MW (as opposed to the full 10 MW). If DRP 1 was able to identify a willing DRP (DRP 2), then the contract could be partitioned and reassigned, and DRP 1 would provide 4 MW while DRP 2 would provide 6 MW, for a total of 10 MW supplied (and a net gain of 6 MW).

5. The DRP and the willing counterparty agree to the contract partitioning and reassignment.
6. The DRP formally informs the Buyer (the IOU) of the contract partitioning and reassignment, and identifies the willing counterparty. The DRP provides the IOU and the willing counterparty with the updated contract documents from (2). Each party signs the appropriate contract.

The contract partitioning and reassignment must be fully completed in advance of the monthly Supply Plan deadline (presently 60 days prior to the delivery month).

The Commission and/or other stakeholders may seek to establish certain conditions that would allow partial reassignment, such as:

- The DRP seeking reassignment is demonstrably in danger of default. For example, this could be determined by the DRP routinely showing on an ex ante basis a Supply Plan Capacity that is 50% or below the Contract Capacity; or, the DRP has submitted Demonstrated Capacity values that indicate a risk of default at a later point or for the remainder of the contract.
- Partitioning and reassignment should be contingent on the identification of a willing counterparty. The DRP should not be permitted to partition a contract without subsequent reassignment, as otherwise this may incentivize bidders to seek a DRAM position that they have a relatively low likelihood of delivering because they believe they can partition away the portion that might cause them to default.

Similarly, the Commission and/or other stakeholders may seek to establish certain conditions that would prevent partial reassignment, such as:

- The DRP has already partitioned and reassigned the specific contract at least once.
- The counterparty is not registered as a DRP at the CPUC.

C. Discussion

This proposal seeks to establish a consistent and uniform set of steps that DRPs should undertake to partition and reassign a portion of its existing DRAM contract(s). The intent is to provide DRPs with another option, besides full reassignment or default, that will enable a struggling DRP to remain in the market to deliver the capacity it *is* capable of delivering. However, the proposal is not intended to give a "free pass" to DRPs to take on an unrealistic quantity of capacity in each auction – contracts should not be allowed to be repeatedly partitioned, and DRPs should still face real consequences of a potential default. Ultimately, the proposal presents an important policy question: if a Seller DRP can deliver a *portion* of the capacity for which it has contracted, but it is at significant risk of default, is it preferred to lose the entire capacity or to allow the Seller to partition and reassign a portion of the contract?

Another option for struggling DRPs is to subcontract with another party to provide a portion of the contracted capacity. However, the DRP would need to maintain the full contracted collateral obligation with the IOU, which could hamstring business operations if the DRP is only responsible for a portion of the contracted capacity. Furthermore, the subcontracting business arrangement would retain the risk and burden associated with the contract on the DRP, while minimizing exposure for the subcontracted party.

The DRP and the subcontracting party may also undergo significant administrative overhead, especially with the facilitation of authorizing data sharing between all parties.

Finally, this proposal is not likely to exacerbate market concentration (although this proposal does not intend to state a position on whether market concentration is inherently problematic). In the absence of contract partitioning and reassignment, a struggling DRP would either have to reassign the entirety of the contract, or default. Staff found, in the DRAM Evaluation Report, that this paradigm tended to increase market concentration (although it would not necessarily, if the DRP reassigned the contract to another DRP that did not have a relatively large position). However, if the struggling DRP was able to retain a portion of the capacity, then it would remain in the market (alleviating market concentration) and the new DRP fulfilling the remainder of the contract would have a smaller portfolio growth (potentially also alleviating market concentration).

D. Pros/Cons

Operational efficacy: Partitioning and reassignment is likely more efficient than the existing state of the DRAM whereby the entire capacity (some of which may be capably delivered by the DRP) disappears if no other DRP is willing to take on the entire contract.

Verifiability: The partitioning and reassignment will be verifiable by the DRPs engaging in the reassignment and by the IOU that is the contract's Buyer. In addition, the contract is a publicly-available pro forma contract, save for different MW quantities.

Costs: There are likely to be added administrative costs for the IOUs to facilitate the signing of new contracts. Feedback from the DRAM Working Group indicated that these costs might be non-trivial, which could suggest that a certain MW threshold must be met to initiate a contract reassignment.

Impacts on new entrants: This proposal is likely to benefit new entrants. The DRAM Evaluation Report notes that IOU integration challenges were one of the primary factors in DRPs choosing to reassign contracts. The additional optionality that this proposal provides to new entrants may allow them to stay in the market if these integration challenges prevent full contract delivery. Furthermore, prospective entrants could take on some of the capacity that a DRP may be seeking to partition and reassign as a means of entering the market.

Impacts on good actors: Good actors, defined here broadly as DRPs that seek to deliver as much of their contracted capacity as possible, will benefit from this proposal. Overall, the proposal aims to ensure that the maximum level of DRAM capacity is provided to the Buyers.

Parties' positions (for and against): Parties have expressed (e.g. in the working group meetings) that it may be appropriate to add a certain threshold for undertaking a contract reassignment. It may also be appropriate to restrict the number of instances that a given contract may be partitioned. The IOUs have expressed that there is non-trivial administrative overhead to the contract partitioning and reassignment process, even if the contract language itself is kept consistent except for a change to the capacity quantity.

Concerns were raised in the working group that this proposal would simply shift customers from one DRP to another. However, this is *not* the intent of the proposal, nor is it a requirement. The DRP taking on the partitioned contract can fulfill that contract with any set of customers.

E. <u>Dependencies</u>

The proposal is potentially dependent on stakeholders' and Staff's efforts to specify precisely the conditions that would trigger an event of default due to Seller underperformance (with regard to either monthly Supply Plan Capacity or monthly Demonstrated Capacity). Without this, struggling DRPs may not have strong incentives to partition and reassign their contracts. Furthermore, the risk of default may be used to determine whether the contract is eligible to be partitioned.