

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

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And Related Matters.

Application 17-01-018

Application 17-01-019

**REPLY OF THE PUBLIC ADVOCATES OFFICE  
ON THE 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**

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## **I. INTRODUCTION**

Pursuant to the February 28, 2019 *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* (Ruling), the Public Advocates Office hereby submits the following replies to the responses and comments to the above Ruling.

The Ruling directed parties to respond to questions stemming from a workshop held on February 11-12, 2019 in which participants discussed: (1) goals for the Demand Response Auction Mechanism (DRAM); (2) DRAM objectives; (3) proposals to ensure the accuracy of Qualifying Capacity reporting; (4) proposals to improve performance; (5) proposals to ensure the accuracy of Demonstrated Capacity invoicing; (6) proposals for contract improvements; (7) whether DRAM should have an energy component; and (8) proposals to increase dispatch hours.

Additionally, parties discussed the option of adopting a “two-step” approach, consisting of: (1) a short-term plan where the California Public Utilities Commission (Commission) would authorize a bridge period (2019 solicitations for 2020 deliveries) for DRAM, incorporating critical improvements to the mechanism; and (2) a long-term plan where the Commission continuously improves DRAM in future decisions based on additional experience, continuous monitoring, and evaluation data from future solicitations.

## **II. SUMMARY OF RECOMMENDATIONS**

In the reply below, the Public Advocates Office makes the following recommendations:

- As a condition for authorizing any new DRAM procurements in Step One, the Commission should address critical gaps and flaws in DRAM in order to ensure that DRAM performs its basic Resource Adequacy (RA) capacity function in a reliable manner.
- The Commission should reject OhmConnect’s proposal to change the current resource-level performance to calculate Demonstrated Capacity based on the

performance of each individual customer because capacity is contracted and performs at the resource level rather than individual customer level.

### III. REPLY TO THE RULING QUESTIONS

**A. As a condition for authorizing any new DRAM procurements in Step One, the Commission should address critical gaps and flaws in DRAM in order to ensure that DRAM performs its basic RA capacity function in a reliable manner.**

The Commission should address critical gaps and flaws in DRAM as detailed and identified in Energy Division's (Staff) Evaluation Report,<sup>1</sup> Pacific Gas and Electric Company's (PG&E) *Introduction to DRAM Working Group Proposals*,<sup>2</sup> and the Independent Audit Reports from Southern California Edison Company (SCE) and PG&E,<sup>3</sup> so DRAM performs its basic RA capacity function in a reliable manner.

OhmConnect asserts in its Response that, given the short timeline and need for market certainty, the set of priority issues to be resolved through the 2019 Commission Decision should be limited to those that are feasible to implement ahead of a 2019 solicitation for a full year of 2020 deliveries.<sup>4</sup>

The Public Advocates Office agrees, but stresses that any new DRAM procurement, including a 2019 solicitation, should be contingent on improvements to address the identified critical gaps and flaws. Maintaining market certainty and

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<sup>1</sup> DRAM Evaluation Report at p. 96.

<sup>2</sup> PG&E Introduction to DRAM Working Group Proposals at p. 2.

<sup>3</sup> Independent Audit Reports from SCE and PG&E raise serious concerns and identify defects in the way certain DRPs calculate capacity on monthly invoices and supply plans. The audits suggest certain DRPs significantly misrepresented actual load shedding abilities and curtailable capacity of subject customers. As a result, ratepayers (and IOUs) paid for inflated or non-existent RA capacity. See Motion of Southern California Edison Company (U 338-E) For Inclusion of Independent Audit Report in Energy Division's Final Evaluation Report of the Demand Response Auction Mechanism and Motion of Pacific Gas and Electric Company (U 39 E) For Inclusion of "PG&E Summary of 2018-2019 DRAM RFO Audit Analysis, Results as of December 4, 2018" in Energy Division's Final Evaluation Report of the Demand Response Auction Mechanism.

<sup>4</sup> Response of OhmConnect, pp. 3-4. OhmConnect identifies three improvements that fit this criterion: (1) Methodology for calculating monthly Demonstrated Capacity in the case of CAISO test or dispatch; (2) Payment structure in cases where: (a) Supply Plan Capacity differs from Contract Capacity; or (b) Demonstrated Capacity differs from Supply Plan Capacity; and (3) Service Level Agreement (SLA) to ensure reliable and consistent data.

continuity are important, but that should not come at the expense of accountability, transparency, reliability and reasonable costs. The primary focus of extending the DRAM pilot for another year should be making improvements to get DRAM right.

#### Adequate Penalty Structures

The Commission should adopt a penalty structure that deters unwarranted representations of resource capacity and compensates ratepayers for promised capacity that is not, or cannot be, delivered. Both the Joint Demand Response Parties (JDRP) and OhmConnect propose a “plausibility demonstration” or test to verify Qualifying Capacity of DRAM resources as reported on Sellers’ monthly Supply Plans.<sup>5</sup> This plausibility test does not sufficiently ensure that supply plans can provide the capacity indicated. JDRP and OhmConnect also propose an associated penalty structure that does not provide sufficient penalties to deter unwarranted representations of resource capacity.

OhmConnect correctly identifies instances where there should be penalties (i.e., when Supply Plan capacity is below Contract Capacity and when Demonstrated Capacity is below Supply Plan capacity) but the proposed penalties are insufficient. JDRP proposes penalties that trigger only when performance (Demonstrated Capacity) is below 60% of Supply Plan capacity.<sup>6</sup> The only consequence for any underperformance above the 60% threshold is that Investor-Owned Utilities (IOUs) are not obligated to pay for the shortfall in capacity. However, pro-rating capacity payments is not a penalty and will do little to deter unwarranted representations of resource capacity. OhmConnect also proposes a structure that does not carry any penalty where Demonstrated Capacity is less than Supply Plan capacity unless the shortfall is more than 50%.<sup>7</sup>

As a result, the proposals put forth by OhmConnect and JDRP do not provide any deterrent for the willful over-representations of resource capacity by Demand Response Providers except in the most egregious cases. The Commission should instead utilize SCE’s penalty structure proposal Part A that varies by when the Demand Response

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<sup>5</sup> Response of OhmConnect, p. 13; Response of JDRP, p. 3.

<sup>6</sup> Response of JDRP, p. 7.

<sup>7</sup> Response of OhmConnect, Appendix B, p. 29.

Provider notifies the Load Serving Entity of a lower RA megawatt quantity and includes penalties for when Demonstrated Capacity is lower than Supply Plan capacity.<sup>8</sup>

### Incentives for Overperformance

The Commission should not adopt incentives for overperformance. In their discussions of penalty structures, OhmConnect and JDRP suggest including incentives for performance above 100% of Supply Plan capacity.<sup>9</sup> The Public Advocates Office disagrees.<sup>10</sup> Ratepayer funds should not be used to incentivize over-performance because over-performance does not provide any additional RA benefit.<sup>11</sup> Moreover, were the Commission to create an overperformance incentive, it would then have to institute a system for distinguishing intentional overperformance and any incidental overperformance (free-ridership) by a Demand Response Provider. Given the lack of RA value for overperformance and the complexities incentivizing overperformance would entail, the Commission should refrain from adopting any new overperformance incentives at this time.

### Feedback Mechanism

The Commission should adopt a feedback mechanism that ensures the year ahead showing and Qualifying Capacity are reasonable and supported. The plausibility test proposed by OhmConnect and JDRP does not sufficiently ensure that supply plans can provide the capacity indicated.

Under the plausibility test outlined by the JDRP, “the IOUs or a neutral third party would have the ability to ask a [Demand Response Provider] for substantiation of its Supply Plan capacity if the IOU et al believes that it may be warranted.”<sup>12</sup> The JDRP suggest the request for substantiation “should be triggered only when there is reasonable

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<sup>8</sup> See SCE WG Proposal 1.3 at pp. 1-2; Response of Public Advocates Office, p. 12.

<sup>9</sup> Response of OhmConnect, Appendix B, p. 30; Response of JDRP, p. 6.

<sup>10</sup> Response of Public Advocates Office, pp. 12-13.

<sup>11</sup> Response of Public Advocates Office, pp. 12-13.

<sup>12</sup> Response of JDRP, p. 3.

suspicion that a party may not plausibly meet its supply plan.”<sup>13</sup> The JDRP propose that “if the resources loads are at least 130% of the Supply Plan capacity for this resource it should be deemed plausible.”<sup>14</sup>

While the JDRP claim that this should discipline bidding behavior and supply plan submittals because DRPs know that a spot check could occur, the only consequence of failing a plausibility test audit is that the supply plan and invoicing will be adjusted to reflect the adjusted value determined by the audit.<sup>15</sup> The proposal stops short of including a deterrent in the form of a penalty for overrepresentation on Supply Plan submissions.

Moreover, the proposal would have IOUs (and ratepayers) pay for “plausible” Supply Plan capacity rather than actual, verified real capacity. The Public Advocates Office reiterates its recommendation from its initial Response that the Commission adopt a feedback mechanism based on verified performance to ensure that ratepayers only pay for actual, deliverable capacity.<sup>16</sup>

**B. The Commission should reject OhmConnect’s proposal to change the current resource-level performance to calculate Demonstrated Capacity based on the performance of each individual customer because capacity is contracted and performs at the resource level rather than individual customer level.**

As OhmConnect notes, presently, the Demonstrated Capacity construct utilizes California Independent System Operator (CAISO) Resource-level performance for invoicing purposes. OhmConnect argues that:

the focus on measuring Resource-level performance creates a mismatch in granularity: DRAM contract capacity changes (at greatest frequency) on a

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<sup>13</sup> Response of JDRP, p. 3.

<sup>14</sup> Response of JDRP, p. 4.

<sup>15</sup> Response of JDRP, p. 4.

<sup>16</sup> Response of Public Advocates Office, p. 10. “The Public Advocates Office supports the short-term “feedback loop” proposal put forth by PG&E that utilizes past Demonstrated Capacity quantities (with CAISO and CPUC approved Demonstrated Capacity energy baseline) to calculate Qualifying Capacity for Annual and Monthly RA Supply Plans. As part of this proposal, the Public Advocates Office recommends disallowing the use of MOO to demonstrate capacity.”

monthly basis, whereas the customer composition of a CAISO Resource may change on as frequent as a daily basis. The potential for changing CAISO Resource composition within a delivery month has led several parties to express concern that certain customers dispatched or tested as part of a third party [Demand Response Provider's] program could be either double-counted or not counted at all within the end-of month DRAM invoice.<sup>17</sup>

To address the double-counting issue OhmConnect proposes an optional method to calculate Demonstrated Capacity based on customers' aggregated individual performance during CAISO dispatch or test events. OhmConnect argues its optional method is preferable to simultaneous dispatch/testing of CAISO Resources because the latter merely represents a snapshot of performance during a particular hour on a particular date.<sup>18</sup>

Although the potential for changing CAISO Resource composition within a delivery month is a concern, OhmConnect's optional method would completely bypass the direct link between the payment to Demand Response Providers and Demand Response Provider's load reduction performance during a Demand Response (DR) test or actual event. Instead, OhmConnect's proposal would have invoices paid based on a theoretical and complicated method that uses customers' aggregated *individual* performance during CAISO dispatch or test events.

The Commission should reject such change. Capacity is contracted and performs at the aggregate, resource level rather than individual customer level. What counts in a DR event is what all the customers in a DR resource as a whole can provide during the event, regardless of what any individual customer is capable of under the best circumstances.

SCE has proposed revisions to Section 3.4(e) of the DRAM pro forma contract intended to mitigate concerns with service account shuffling between Proxy Demand Resource (PDR)/Reliability Demand Response Resource (RDRR) registrations, which

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<sup>17</sup> Response of OhmConnect, p. 15.

<sup>18</sup> Response of OhmConnect, p. 17.

can cause load drop from one service account to be counted multiple times in the determination of Demonstrated Capacity.<sup>19</sup> The Public Advocates Office supports SCE's proposed pro forma revisions.

The Commission should continue to use CAISO Resource-level performance for invoicing purposes. In addition, DRAM Contract should be updated to restrict a Seller from moving customer service accounts between PDRs/RDRRs within a Showing Month.

#### **IV. CONCLUSION**

For the foregoing reasons, the Public Advocates Office respectfully requests that the Commission adopt the recommendations contained herein.

Respectfully submitted,

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<sup>19</sup> Response of SCE, p. 19.