BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of Pacific Gas & Electric Company (U 39-E) 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

JOINT RESPONSES AND COMMENTS OF CPOWER, ENEL X NORTH AMERICA, INC., AND ENERGYHUB (JOINT DR PARTIES) ON QUESTIONS, DEMAND RESPONSE AUCTION MECHANISM (DRAM) PROPOSALS, AND ENERGY DIVISION FINAL DRAM EVALUATION REPORT PURSUANT TO THE ADMINISTRATIVE LAW JUDGE'S RULING OF FEBRUARY 28, 2019

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CPower, Enel X North America, Inc. (formerly known as EnerNOC, Inc.), and EnergyHub (Joint DR Parties) respectfully submit these Joint Responses and Comments on the questions posed by the Administrative Law Judge's (ALJ's) Ruling of February 28, 2019 (February 28 ALJ's Ruling) on the Demand Response Auction Mechanism (DRAM) and on the attached DRAM Proposals and Energy Division's Final DRAM Evaluation Report. These Joint Responses and Comments are timely filed and served pursuant to the Commission's Rules of Practice and Procedure and the February 28 ALJ's Ruling. In addition, each of the companies that participate as the Joint DR Parties have also joined today with Olivine, Inc. (Olivine) and Stem, Inc. (Stem) in filing a Joint Response to Question 1 in the February 28 ALJ's Ruling, which offers a Joint Proposal among these parties for how to move forward on DRAM.

I.
INTRODUCTION

By the February 28 ALJ's Ruling, parties were directed to file responses to questions posed in that Ruling on DRAM. Parties were also given the opportunity to offer comments on DRAM proposals attached to the Ruling, as well as the public version of the *Energy Division's*

*Evaluation of the Demand Response Auction Mechanism Final Repor*t attached to the January 4, 2019 ALJ's Ruling (Energy Division Final DRAM Report).[1]

The Joint DR Parties have been actively engaged in participating in approved DRAM pilots and the current consideration of the future of DRAM. Many of the points that the Joint DR Parties believe are critical in shaping that mechanism and the timing of further auctions have been made previously by the Joint DR Parties in earlier filings and in Workshops and Working Groups held most recently in January and February 2019. As permitted by the February 28 ALJ's Ruling, the Joint DR Parties respond to the questions posed by the Ruling on DRAM and offer their comments on the DRAM proposals attached to that Ruling as well as the Energy Division Final DRAM Report.

II.
JOINT DR PARTIES' RESPONSES TO DRAM QUESTIONS POSED BY FEBRUARY 28 ALJ'S RULING

The following are the Joint DR Parties' responses to the questions posed on DRAM by the February 28 ALJ's Ruling at pages 9 through 12. These responses build on the Joint DR Parties' positions on these issues to date.

Question 1: *Explain, in detail, whether the Commission should adopt a two-step approach wherein the auction mechanism is adopted allowing for:*

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,

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.

Yes. The Joint DR Parties support a two-step approach for the following reasons and with the following suggestions.

[1] February 28 ALJ's Ruling, at pp. 1, 13.

First, the Joint DR Parties strongly support having continuity in the DRAM program by conducting an auction in 2019 for 2020 deliveries. Hence, any lapse in that continuity of DRAM could be very destructive to the parties that have invested a great deal in the pilot to date. The Commission has closed past pathways for commercial and industrial DR participation through the elimination of the Aggregator Managed Portfolio contracts and the closure of the Demand Bidding Program (DBP). Also, the Base Interruptible Program (BIP) is nearly fully subscribed, so there is little to no opportunity for capacity increases through BIP. Lastly, the Capacity Bidding Program (CBP) programs that are up and running have no real digital, seamless way to enroll residential customers and cannot aggregate within multiple Load Serving Entities (LSEs), and the newly approved Federal Energy Regulatory Commission (FERC) baselines do not apply to those programs, even though they are a more accurate measure of weather sensitive loads. For commercial and industrial customers, frequency of dispatch coupled with lower pay levels have reduced customer participation in CBP.

If DRAM is suspended for a year, then customers that would have participated, must sit on the sidelines until the program is reinstated. Sometimes, customer suspensions can lead to permanent withdrawal from providing demand response. The lack of consistency, coupled with changes and closures in programs described above, make DR participation for programs too unpredictable to be reliable and perhaps not worth the customer's time and effort to participate in DR on an inconsistent basis. Considering the amount of disruption and change that has occurred over the past several years, minimizing program disruption and associated customer participation disruption are important.

Along with the continuity argument above, resolving all of the issues that have been discussed in the Energy Division Final Dram Report and in the Workshops and Working Groups,

to the extent warranted, would not be possible in time to conduct an additional DRAM procurement in 2019 for deliveries for 2020. The Joint DR Parties support exploring some of the more difficult issues in Step 2 in order to shape what a more permanent DRAM structure would look like. But, again, those efforts should not be at the expense of continuing to maintain continuity and holding an interim auction while the more difficult issues are being discussed.

In addition, time is of the essence in order to conduct an auction in 2019 for 2020 deliveries. Before an additional auction could be conducted, the Commission would need to issue a final decision to conduct an auction for DRAM in 2019, and, before the Investor Owned Utilities (IOUs) and third parties could execute that order, if changes to DRAM are ordered, the IOUs may need to submit subsequent advice letters. If that is the case, the Joint DR Parties request that the Commission consider shortening comment periods in order to proceed as quickly as possible to an auction. In addition, the Joint DR Parties recommend that the Commission consider waiving approval of the results of the auction, or approve the results through a Tier 1 advice letter, again, in the interest of time.

In order to achieve a minimal amount of change to effect a 2019 auction as quickly as possible, the Joint DR Parties suggest the following changes for consideration by the Commission. This list would not only improve the auction protocols, based upon comments from the Joint DR Parties, but would also mirror comments that are reflected in the Independent Evaluator's Report. These suggestions, as follows, also reflect some of the concerns expressed by the IOUs relative to DRAM.

1. The simple average August price should be eliminated as a selection criteria. August tends to be the month with the highest value of avoided capacity costs. In addition, the Independent Evaluator indicated that several bids that were more cost effective on a total cost basis, or on a net present value (NPV) basis, were passed over because of the simple average August price selection criteria.

2. The residential set-aside should be eliminated. Initially, the set-aside was instituted to encourage new market entry by residential providers and customers. By almost any measure, the set-aside has served its purpose. The Independent Evaluator also indicated that more cost-effective bids were passed over to meet the set-aside. The Joint DR Parties believe the set-aside is no longer required. However, the Joint DR Parties support a set-aside for new market entry to support the objective of growing the number of participants in the auction. The Joint DR Parties support a set-aside equal to 10% of the DRAM budget for new entrants, that is, those who have never participated or who have not been awarded a contract for 3 years.

3. The Joint DR Parties have suggested a plausibility test to validate that supply plans can provide the capacity indicated. The IOUs would have the ability to question the Demand Response Provider (DRP) as to what resources they intend to use to meet their capacity requirement. This would not be something that is triggered every month, but only when the IOU has a reasonable suspicion, based upon recent past performance[2] or based upon registrations not supporting the level of load reduction reflected by the DRP,[3] so that a party could not plausibly meet its supply plan. If the investigation supports the DRP's position, then the supply plan will stand, and no adjustment would take place. If the audit does not support the supply plan, then the supply plan will be adjusted to a reasonable number, and invoicing will be based upon the adjusted value, unless a test or dispatch occurs that warrants an increase over the adjusted value. This is fair to both parties in that the IOU can satisfy itself that the supply plan is real; but, if a demonstration of capacity supports a higher number, that is in the interest of the DRP to be paid for what they can deliver. This should not require a modification to the contract, but would allow the IOU to use the audit provision of the contract to justify the supply plan. This should also discipline bidding behavior and supply plan submittals, knowing that a spot check could occur, with reasonable doubt from the IOU.

4. The Joint DR Parties are willing to consider an interim penalty structure if the demonstrated capacity is significantly less than the supply plan. This last

[2] For example, if the last two months of a DRP's supply plans failed to perform within 30% of its supply plan when dispatched or tested, it would be plausible for the IOU to request further documentation.
[3] For example, if the customer's total load contained in the registration of the DRP is within 30% of the supply plan, then it may be reasonable to question if the supply plan is plausible.

suggestion may not be implementable in time for a 2019 auction because it does require an adjustment to the contract to include the application of penalties for failure to perform relative to the supply plan. If all resources under a contract, when dispatched, fail to achieve 60% of the supply plan commitment, the resource can only invoice for 50% of the supply plan. For performance below 60% to 50% of the aggregated supply plans pursuant to the contract, the capacity payment will be reduced by 50% relative to actual performance for performance at or below 60% of the supply plan related to a contract. This penalty will not be applied on a resource-level, unless there is only one resource per contract. If performance of the aggregated resources per contract is below 50% of the aggregated supply plans, payment will be zero. Performance above 100% up to 105% will be paid on a proportional basis, as will performance from 100% to 60%. The purpose of this proposal is to include penalties for failure to perform, even for the bridge year, to increase IOU confidence and to increase the incentive for DRPs to bid appropriately, submit more accurate supply plans and to perform when dispatched. However, this would not be precedential for the Step 2 discussions.

5. The Joint DR Parties have worked with the Supply Side Working Group (SSWG) to support an alternative year-ahead demonstration versus a requirement to submit supply plans in time for the utilities to submit their year-ahead resource adequacy demonstrations. That proposal was submitted by the Supply Side Working Group in Track 2 of the RA Proceeding (R.17-09-020) and resubmitted by the Joint DR Parties in Track 3 of the same proceeding.

6. Several DRPs have expressed concern about the timeliness and accuracy of data made available to DRPs for purposes of submitting timely invoices to the utilities. The Joint DR Parties support a requirement to submit an invoice within 30 days of receipt of complete and accurate data from the utilities.

Relative to Step 2, the Joint DR Parties will provide further discussion below as to what issues should be deferred and further investigated in Step 2. Examples of issues that can be explored in Step 2 include: the goals, principles and objectives, whether there should be an energy component to a Resource Adequacy (RA) contract, how qualifying capacity should be determined, how customers can unenroll/enroll easier with providers, penalty structures, market

share limitations, etc. The Joint DR Parties support workshops and comments as the primary means of resolving Step 2 issues, as opposed to evidentiary hearings.

For the DRP community, it is extremely important to establish a timeframe wherein DRAM auctions will occur with expected growth and associated budgets, including a way of attaining the original goal of 1 GW over a reasonable period of time. DR growth has been stunted during this transition period with limited growth opportunities while DRAM was in a pilot phase. This is not a sustainable model to attract providers, customers, and investment in DR. The Joint DR Parties also appreciate that growth in DRAM will be related to resolution of the issues described in the paragraph above. However, providing an opportunity for DRAM growth, in that context, is extremely important.

In addition, it is advisable to have regular, but not continuous, evaluation of how well DRAM is meeting any new goals, objectives and principles that are established in Step 2. However, the Joint DR Parties hope that the Commission will not rely upon such an intense amount of information provided from DRPs as has been provided for the most recent analysis. It would be preferable to evaluate DRAM en par with the evaluation of other RA resources, that relies upon data provided through a subpoena of the California Independent System Operator (CAISO).

Question 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.*

The Joint DR Parties' Response to Question 1 provides the Joint DR Parties' position on this question at this time and is incorporated herein.

Question 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?*

It is important that the Commission provide an increasing amount of budget for each solicitation to provide a growth trajectory for DRAM. An increasing budget would provide an opportunity for growth and send a signal of support for DRAM to the market. The signal would be that DRAM is a good place to invest for growth for the future. The Joint DR Parties support a budget for a 3-5 year period in which annual DRAM auctions will be conducted with a reasonable amount of time in advance of the delivery year. This process may need to be synchronized with the forward RA procurement requirements.

The Joint DR Parties recommend a budget of $40.5 million for a 2019 DRAM V solicitation with deliveries in 2020. This would be another increment of $13.5 million of budget relative to the budget for DRAM III and IV for the 2019 delivery year. This is a reasonable increase based upon the historical levels of funding in past DRAM solicitations. The initial budget for DRAM I (2016 deliveries) was $13.5 million:[4] $6 million each for PG&E and SCE and $1.5 million for SDG&E. The DRAM II budget was doubled ($27 million) for 2017, the first, full year of deliveries.[5] The DRAM III budget was also ($27 million); however, it was for a two-year period (2018 and 2019 deliveries).[6] DRAM IV was an additional solicitation for 2019 equal to $13.5 million,[7] such that, in total, 2019 had about $27 million available. While this amount of budget is relatively flat, it is important to continue an increasing trajectory for the future. Going forward, for future DRAM solicitations, the budgets should establish a trajectory to meet the 1 GW target the Commission established in Decision (D.) 15-11-042.

[4] Resolution E-4754, Ordering Paragraph 8, at p. 30.
[5] D.16-06-029, Ordering Paragraph 21, at p. 92.
[6] Resolution E-4817, Ordering Paragraph 8, at p. 51.
[7] D.17-10-017, Ordering Paragraph 8, at p. 89.

Question 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.*

If the Commission adopts a two-step process, the Joint DR Parties encourage the Commission to issue a final decision before July 11, 2019, and do so by June 13, 2019. Below, however, the Joint DR Parties offer proposed schedules for both decision timeframes, with 4 scenarios: Scenarios 1A and 1B based on a final decision by June 13, 2019, and Scenarios 2A and 2B, based on a final decision by July 11, 2019.

With that said, even with compressed times to implement a final order and conduct the auction, Scenario 1B provides the most "buffer" time to complete the processes in time for the IOUs to submit its year-ahead RA demonstration and is the Scenario that the Joint DR Parties recommend. Scenario 2A is the least likely to meet the year-ahead demonstration timeframe. Hence, either solicitation will not be included in the year-ahead RA demonstrations of the IOUs and may not include a full year of deliveries, since the month-ahead demonstrations require supply plans to be submitted by November 1st for January 1st deliveries.

PROPOSED TIMEFRAMES

EVENT	**Scenario 1A June 13 Decision (w/ IOU advice letters)**	**Scenario 1B June 13 Decision (no IOU advice letters)**	**Scenario 2A July 11 Decision (w/ IOU advice letters**	**Scenario 2B 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 21, 2019	N/A	July 19, 2019	N/A
Comments/Protests of IOU Advice Letters	June 27, 2019	N/A	July 25, 2019	N/A
IOU Responses to Protests/Comments	July 3, 2019	N/A	July 30, 2019	N/A
CPUC Approval of IOU Advice Letters	July 15, 2019	N/A	August 15, 2019	N/A
RFO Issued	July 22, 2019	June 24, 2019	August 26, 2019	July 19, 2019
Bidders' Webinar	July 26, 2019	June 28, 2019	August 30, 2019	July 25, 2019
Offers Due	August 6, 2019	July 5, 2019	September 6, 2019	August 6, 2019
Notice of Non-Conforming Bids	August 13, 2019	July 12, 2019	September 12, 2019	August 13, 2019
Bidder Cure Period Ends	August 20, 2019	July 18, 2019	September 18, 2019	August 20, 2019
Notice to Bidders of Selection	August 27, 2019	July 24, 2019	September 24, 2019	August 28, 2019
Deadline to Submit Signed PPAs	August 30, 2019	July 31, 2019	September 30, 2019	September 4, 2019
Advice Letter to Commission w/ Executed PPAs (no protest period)	September 6, 2019	August 9, 2019	October 7, 2019	September 20, 2019
Commission Approval/ Rejection of PPAs	September 12, 2019	N/A	October 17, 2019	N/A
IOUs use SAWG Proposed YA Process for DRAM	September 30, 2019	August 30, 2019	October 30, 2019	September 30, 2019

Question 5: *In the Pilot Evaluation, Staff recommended an expedited scheduled 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.*

For the bridge period, the Joint DR Parties recommend that the Commission waive specific review and approval of contracts. However, whether this waiver is permanent for Step 2 should be examined more fully.

Question 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.*

The Joint DR Parties' Response to Question 1 provides the Joint DR Parties' position on this question at this time and is incorporated herein.

Question 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?*

This question requires a balancing of the evaluation of the DRAM and consistency of operation and rules for DRAM. Major changes should be limited to every 3 years. Minor changes can happen more frequently. However, there should continue to be discussion of what constitutes major and minor changes and the implication and implementation of such changes through workshops and comments.

Question 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 is to expand the utilization of DR to provide reliable, scalable grid services that are cost-effective, achieve net benefit test (NBT), and are also beneficial to consumers. By fueling the growth of third party, reliable, technology agnostic (solar, storage, DR, energy efficiency (EE)) load responsive products, and providing options for the sales and purchase of these resources in a competitive manner, this approach can provide market certainty to providers and customers and ensure that appropriate investments are made to ensure the long-term viability of the California market and support the loading order.

Question 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*.

The Joint DR Parties recommend the following Objectives and Principles:

Objectives	Procurement Increase: Resources procured by the Auction Mechanism represent 10 percent of the evening ramp resources procured by 2025 and decreasing the mid-day trough by 10% as well by 2025.
	Customer Sustainability: The number of current customers leaving DR programs decreases to 5% Year over Year.
	Level Playing Field: Standards for DR participation by utilities and by third-party providers are equal by 2025.
	Customer Performance: Customer performance is 90 % by 2025.
	Customer Enrollment: 25% of all customers in CA are enrolled in DR by 2030.
	Customer Performance: Monthly Demonstrated Capacity equals 90 percent by 2025.
	Resource makeup: 10% of all load is served by new entrants annually by 2025.

Principles	The Auction Mechanism and its processes should be transparent.
	Oversight should be consistent across all contracts.
	There should be a level playing field for all third-party providers.
	There should be a level playing field for third-party providers and utilities.
	Bad behavior should not be rewarded.

Question 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 Joint DR Parties believe that the two-step process discussed above is the appropriate way to move forward at this time. If the Commission determines not to authorize the two-step option, with the first step including such enhancements to DRAM as can be accomplished quickly and with minimal contract changes, the Commission should immediately continue a working group process to finalize the record on a more substantive set of program changes and associated contract amendments. These changes could be developed over the summer and provide a framework for a 3-5-year DRAM program with initial procurements for a partial year 2020 DRAM utilizing only system RA and continue with procurements the following years. A three-year initial budget authorization would allow additional DRAM years to be considered alongside the IOU DR Applications. 3-5 years with a budget trajectory to 1 GW

As previously noted the 2019 DRAM Budget totaled $27 million. The Joint DR parties believe the bridge year (2020) should be at least $40.5 million ($27 million plus $13.5 million) so that the Commission could continue the growth of DR budgets noted in response to Question

3. Current cost recovery approach could be continued until the next DR Application and budget cycle.

Question 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.*

At the DRAM Workshops held on February 12 and 13, 2019, the Joint DR Parties proposed a plausibility test to validate that supply plans can provide the capacity indicated. The Joint DR Parties continue to believe that this approach, coupled with the current testing regime, the methods of demonstrated capacity, and the initiation of penalties for underperformance, will provide needed discipline in supply plan capacity.

Under the Joint DR Parties' proposed plausibility test, the IOUs or a neutral third party such as an Independent Evaluator would have the ability to ask a DRP for substantiation of its supply plan capacity if the IOU et al believes that it may be warranted. In response, the DRP could provide information on enrolled customers and their historical loads during availability assessment hours as a plausibility screen as to whether a portfolio could reasonably be expected to perform the claimed curtailment.

This process is not something that is triggered every month, but only when the IOU has a reasonable suspicion that a party could not plausibly meet its supply plan. If the initial screen supports the DRP's position, such as having loads available of at least 130% of the supply plan capacity, then the supply plan will stand and no adjustment would take place. If the screen does not seem to support the supply plan, then the supply plan can be adjusted, and invoicing will be based upon the adjusted value, unless a test or dispatch occurs in the delivery month that

warrants an increase over the adjusted value – essentially supporting the unadjusted supply plan value. Payment in this case can be up to the original supply plan value.

This approach is fair to both parties in that the IOU can satisfy itself that the supply plan is real; but, if a demonstration of capacity supports a higher number up to the value originally submitted in the supply plan, that is in the interest of the DRP to be paid for what they can deliver. This should not require a modification to the contract, but would allow the IOU to use the audit provision of the contract to ask DRPs justify supply plan submissions if warranted. This should also discipline bidding behavior and supply plan submittals, knowing that a spot check could occur, with reasonable doubt from the IOU. This screening process being tied to the audit provision of the contract would not prevent the IOU from utilizing the audit provision to perform a full-blown audit for this or other purposes.

Question 12: *Explain whether the Commission should adopt an energy component requirement 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 Joint DR Parties believe that, at this time, it is not appropriate to adopt an energy component requirement for DRAM resources. While this proceeding is exploring what DRAM could be in the future, no policy guidance has come that DRAM should be more than what it currently is – at its core, it is fundamentally a resource adequacy product composed of non-emitting customer locations rather than power plants. Until new or different goals for DRAM are adopted, no changes should be made, and, whether a two-step or one-step continuation of the DRAM is initially authorized, additional DRAM program elements can still be considered in the future.

Additionally, while Staff did yeoman's work in analyzing the DRAM pilots to date, they have not yet explored the correlation of high system demand with high energy prices. The Joint DR Parties expect that high demand is not highly correlative with high energy prices due to the high levels of solar production during those times. As such, if DR is not being dispatched during times of high demand, it is because energy prices are not indicating a need for dispatch.

The JDRP believe that this topic should be addressed after the future principles and goals for DRAM are established. It is critical that, rather than setting an arbitrary energy dispatch requirement, the Commission should look at what system conditions it seeks to relieve and construct a requirement to satisfy those conditions.

Question 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.*

In a two-step approach, the first step could appropriately tackle a penalty for substantial deviations between Supply Plan Capacity and Demonstrated Capacity. Instituting penalties at all phases, such as the IOUs have proposed, could create perverse incentives. For example, instituting penalties for failure for the supply plan to meet the contract capacity would create an incentive for parties to inflate their supply plans to avoid a penalty for being under the contract capacity. It is more important for supply plans to reflect what parties can truly deliver closer to real time. Such a penalty structure could increase inaccuracies just as the Commission and stakeholders are seeking ways to provide more certainty as to the "realness" of the DRAM resource. Any additional layer of penalties should only be considered in future evaluation phases of the DRAM.

As noted in the Joint DR Parties' Response to Question 1 above, if all resources under a contract, when dispatched, fail to achieve 60% of the supply plan commitment, the resource can only invoice for 50% of the supply plan value. This de-rates the capacity payment relative to actual performance for performance at or below 60% of the supply plan related to a contract, not on a resource-level. If performance is below 50% of the supply plan, payment will be zero. Performance above 100% up to 105% will be paid on a proportional basis, as will performance from 100% to 60%. The purpose of this proposal is to include penalties for failure to perform, even for the bridge year, to increase IOU confidence and to increase the incentive for DRPs to bid appropriately, to submit more accurate supply plans, and to perform when dispatched. However, this would not be precedential for the Step 2 discussions.

Ideally, any penalties associated with contract underperformance would be tied to actual costs, but the Joint DR Parties recognize that there are challenges in reaching those points for Step 1 of a 2-Step process and offer this as a starting point for adding penalties to discipline the process and balance the plausibility screen as an ex ante look at Qualifying/Supply Plan capacity levels. Step 2 should explore ways for penalties to reflect costs to the injured party.

Question 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.*

DRAM can be improved by providing, within reasonable bounds, for over-performance incentives for excess delivery of DRAM capacity. As suggested in the Joint DR Parties' response to Question 1 above, performance above 100% up to 105% should be paid on a proportional basis, as should performance from 100% to 60%. A cap of 5% overperformance should help address any shortfalls in performance of other DRPs, but is low enough as not to require IOUs to pay for more RA than they need.

Question 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.*

For Step 1 of the bridge DRAM, the Commission should maintain the current regime of demonstrating capacity on invoices. The current order of demonstration is:

1. If there is a 1-hour dispatch of a resource (i.e., individual PDR) in a month, the results must be used for demonstrated capacity.
2. If there is a 2-hour test of a resource in a month, the results must be used for demonstrated capacity.
3. Only if there is no dispatch or test of a resource in a month can the bidding details for a resource under the Must Offer Obligation be used to demonstrate capacity,
4. Additionally, a full dispatch/test requirement in the first 6 months of a year-long 1contract should be maintained as well as the requirement that all resources receive a dispatch or test and the results be used as the Demonstrated Capacity for invoicing.

DRPs should be allowed to calculate performance of dispatches and tests using any approved CAISO baseline. The baseline for each Proxy Demand Resource (PDR) should be identified, and a DRP should indicate on invoices that the submission of data under Demonstrated Capacity comports with the required order for the demonstration to help provide the IOU certainty that the order of demonstration preference was followed.

Additionally, to address concerns about locations moving between resources, locations should be prohibited from moving from one resource to another during a delivery month except under the following specific circumstances:

1. Newly enrolled customers can be added to a resource.
2. A customer who exits DRAM may be dropped for a resource.
3. If the above changes make a resource trigger the 10 MW telemetry requirement, or have it drop below the minimum PDR/RDRR size of 100

kw/500 kW resources, resources may be split or combined mid-month to continue to meet CAISO market requirements.

4. A Customer changes LSEs, in the event the CAISO has not removed the single LSE per PDR requirement by 2020.

Question 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.*

The Joint DR Parties support giving DRPs flexibility as to how the contract commitments are fulfilled under DRAM. There can be very legitimate reasons why a DRP is unable to fulfill part or all of its contract commitment. For example, the DRP may have lost some of its sales staff at a critical point, or customers served by a Community Choice Aggregator (CCA) may opt into a CCA DR program, or a significant number of customers may have decided to move to a different DRP. The ability to partition or reassign allows the commitment to follow customer migration, if the buyer and seller are able to reach agreeable commercial terms.

However, partitioning or reassignment should not change the financial or operational terms relative to the IOU and the ultimate seller. In other words, the contract still needs to provide RA value to the IOU, under the terms contained in the original DRAM contract. To be clear, partitioning allows the Seller (DRP) to retain a portion of the total commitment that was made to the IOU and enter into another agreement with another DRP to fulfill the remainder of the obligation.

Partitioning or reassignment raises a question as to who holds the ultimate obligation to the IOU. The Joint DR Parties suggest that each party under the partitioned contract retain an individual obligation to the IOU for its portion of the contract. In that way, each party will be responsible for demonstrating performance and posting credit and collateral for its respective portion of the overall capacity.

The Joint DR Parties do not support partitioning such that the original contractor would act as a general contractor and sub-contract a portion of its capacity to another DRP. The reason is that each DRP wants to receive credit, and avoid blame, for performance that is unrelated to its actions. In addition, the combined performance would not provide a true reflection of the capability of either party and may send a false signal to the IOU and the Commission. Further, the general contractor may request less favorable terms from the subcontractor. It is important to keep arms-length relationships between entities engaged in partitioning or reassignment to preserve and protect the confidentiality of information for either party, including its customer information.

Reassignment is a whole cloth assignment of the full contract capacity to another DRP. Again, reassignment, or partitioning, to a DRP should only occur if the assignor has met the Commission and CAISO requirements, has posted credit and collateral with the IOUs, and has the capability of meeting the requirements of the reassigned contract, whose terms and conditions are identical to those of the original contractor. The performance history of DRPs should be taken into account before either partitioning or reassignment occurs. In short, if the IOU has evidence that the assignee, of either a partitioned or reassigned contract, is not qualified to accept the assignment, due to a lack of historical experience, or failure to meet the obligations of the contract, or failure to meet the requirements established by either the CAISO or the CPUC, the IOU should be able to exercise a right to reject the assignment.

Lastly, there are terms in the contract that make it very difficult, if not impossible, for parties to explore partitioning or reassignment without the IOU's consent without running afoul of the confidentiality provisions of the contract. This is an area that should be explored in Step 2.

Question 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 Commission should adopt a contract remedy for an IOU's failure to deliver Revenue Quality Meter Data (RQMD) in time for CAISO settlement. The Joint DR Parties' recommend that any deadline for DRAM Sellers to submit invoices should be removed if there is no deadline, in turn, for IOUs to provide the revenue quality meter data needed to support any demonstrated capacity via a test or event in an invoice. We suggest instead that invoices be due from a DRP 30 days after the IOU has provided RQMD, allowing the DRP sufficient time to perform any analysis and submit its invoice.

In order to improve communication (similar to the response to Question 18 below), the Joint DR Parties recommend a regularly scheduled call between the IOU and the DRP to discuss any data issues. These can be tracked via spreadsheet or within a ticketing system (like Jira)[8] so that each party is aware of the status on each issue and the progress, or lack thereof, being made.

Question 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.*

It may be appropriate for the Commission to approve implementation milestones that show a DRP is operationally ready to deliver DRAM capacity. The Joint DR Parties do not propose customer acquisition milestones. What the Joint DR Parties have learned during the DRAM process to date is that customers generally will not sign final agreements and execute CISR DRP and prohibited resources attestations until close to the delivery period – even if outreach begins 6-8 months earlier. Customer acquisition targets would not be meaningful to the final DRAM capacity presented.

[8] This is a commonly used engineering technical system for managing bugs and other issues.

The Joint DR Parties propose that there are operational milestones that could occur to show the seller is preparing to deliver contracted capacity on time as follows:

- Applicable IOU DRP agreement signed.
- Commission registration obtained and bond posted if required.
- Seller becomes or contracts with a Scheduling Coordinator and CAISO DRP.
- Communication and data exchange channel established with the IOU. Using a vendor such as the Scheduling Coordinator (SC)/Wholesale DRP is acceptable but the vendor must be identified. This communication can provide as much advance notification as possible of significant changes in the DRP meeting its contract commitments.
- Dispatch methodology/platform identified (e.g., is there a company scheduling desk, cloud-based system, etc.).
- Acknowledgement of year-ahead supply plan process – preferably addressed via mechanism in SSWG that allows IOU to apply Contract Quantity as a year-ahead supply plan credit.
- In the month before the first supply plan is due under the contract, Seller and Buyer to have a discussion on progress, resource creation and expectation about where Seller is in meeting Qualifying Capacity (QC).
- Month-ahead supply plan filed – 60 days ahead of delivery month.
- Buyer may ask for a plausibility screen or audit supply plan QC.

Question 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 regular performance reporting from the third-party DRPs. DRAM is an RA resource, and should be treated like other RA resources, whose performance and market data are received by the Commission under subpoenas from the CAISO and, if necessary, under data requests from the IOUs who, under the DRAM contracts, have audit rights over their contracts with third party DRPs. The Joint DR Parties have provided a great deal of data for the pilot to date, because it is a pilot and because the CAISO data had some

issues. However, the Joint DR Parties would not want that level of detailed investigation to be a normal course of business. First of all, it was fairly burdensome for third parties and their scheduling coordinators, but it was also burdensome for Staff. Further, as a result of some of the modifications that are discussed herein, the ability for the IOUs to have greater certainty of the resources than they claim to have now should be addressed. Lastly, the IOUs have the ability to audit any invoices that they feel are inaccurate.

During the DRAM Workshops held on February 12 and 13, 2019, San Diego Gas and Electric Company (SDG&E), on behalf of the IOUs, proposed Sub-Topic 2.5 that requested incredibly detailed performance reports to be submitted monthly to the Commission including detailed customer information and market bid pricing. This data is very sensitive and, if submitted simply through a data request process to the Commission, would not provide either the DRP or customer confidentially protections afforded through the current RA subpoena process. The Joint DR Parties are adamantly opposed to this proposal as well as the IOUs' proposal for monthly reporting on ex ante load impacts.

Question 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. A streamlined iterative evaluation process should be developed. Guidelines and principles should be developed to align with additional improvements to the DRAM in Step 2. As noted above, the Joint DR Parties believe that major design and program changes should be limited to every 3 years. Minor changes can happen more frequently. However, there should continue to be discussion of what constitutes major and minor changes and the implication and implementation of such changes through workshops and comments.

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

The Joint DR Parties are wary of artificial limits that could provide a negative impact on the competitiveness of the market. However, the Joint DR Parties are also cognizant that there may be reasons to seek to limit participation of specific DRPs for reasons other than competitiveness; subjective bid evaluation and criteria as well as set asides may eliminate the need for these somewhat punitive market share caps. In a well-designed market, market share concentration for good performers is not a bad thing, so long as the solicitation is truly competitive.

Question 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 Auction Mechanism each year for residential aggregation.*

The Joint DR Parties support a reduced residential set-aside; namely, one that would be reserved for new entrants or those without existing awards. The Joint DR Parties note that only having one residential provider "left standing" as a participant does not mean that others cannot be viable. Technical, integration, and enrollment process issues have kept potentially viable DRPs from the DRAM market, as has the knowledge that other providers are circumventing those issues with, for example, improper treatment of customer data.

As the concentration of providers has been fairly dense, efforts should be made to find a way to encourage new providers. Smaller organizations with less experience and less resources will certainly face hurdles in this new DR construct, and a little boost may help diversify the resources and ensure its longevity.

Question 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 Commission should eliminate the simple average August bid price cap. This approach has near unanimous support and was recommended by the Independent Evaluators in the DRAM 4 bid selection process, where use of this cap had the unintended consequence of eliminating more competitive bids. The Joint DR Parties do not think that either the Net Market Value cap or the Long Run Avoided Cost of Generation described in the Pilot Evaluation should be adopted for Step 1. The Joint DR Parties believe that, as part of Step 2 of the DRAM development, each of these concepts should be discussed, with examples and the opportunity to vet for a more complete record of the potential implications, in a workshop or working group process.

III.
COMMENTS ON DRAM PROPOSALS AND ENERGY DIVISION FINAL DRAM REPORT

As noted above, the February 28 ALJ's Ruling also gave parties the opportunity to comment on DRAM proposals attached to the Ruling, as well as the public version of the Energy Division Final DRAM Report.[9] The Joint DR Parties took an active part in the Working Groups that developed many of the DRAM proposals attached to the Ruling.

Today, the Joint DR Parties have joined with Olivine and Stem in filing a Joint Response to Question 1, which offers a Joint Proposal among these parties for how to move forward on DRAM. To the extent that this Joint Proposal is not adopted or its recommended steps are not taken, the Joint DR Parties continue to support the proposals that the Joint DR Parties offered in the Working Group process that are recited and included in Attachments 1 through 5 and 7 of the

[9] February 28 ALJ's Ruling, at pp. 1, 13.

February 28 ALJ's Ruling, except as otherwise refined or updated by the above Responses to the Questions posed by the Ruling. These proposals include:

Topic 1.1 Qualifying Capacity in Supply Plans: Attachment 1, beginning at page 1.

Topic 1.2 Dispatch Hours: Attachment 2, at page 1.

Topic 1.3 Penalties and Incentives for Performance: Attachment 3, beginning at PDF page 9.

Topic 1.4 Demonstrated Capacity Invoicing: Attachment 4, beginning at PDF page 4.

Topic 2.1 Contract Reassignments: Attachment 5, beginning at PDF page 7.

Topic 2.4 Qualifying Capacity in Supply Plans: Attachment 7, beginning at page 3.

With respect to the Energy Division Final DRAM Report, the Joint DR Parties filed their recommended improvements to DRAM in this proceeding on January 11, 2019. The Joint DR Parties continue to support those improvements.

IV.
CONCLUSION

The Joint DR Parties welcome this opportunity to provide their responses to the Questions posed by the February 28 ALJ's Ruling and to continue to support the Joint DR Parties' positions on the DRAM Proposals developed in the Working Groups and their recommended improvements to DRAM. In addition, the three companies that participate as the Joint DR Parties further support the Joint Response to Question 1 filed today with Olivine and Stem, which offers a Joint Proposal for moving forward with DRAM.

Respectfully submitted,

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