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

Application of Pacific Gas and Electric Company
(U39-E) for Approval of Demand Response
Programs, Pilots and Budgets for Program Years
2018-2022.

Application 17-01-012

And Related Matters.

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

**RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) AND
CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION TO JOINT MOTION
OF CPOWER, ENEL X NORTH AMERICA, INC., AND ENERGYHUB (JOINT DR
PARTIES) TO STRIKE PORTIONS OF THE RESPONSE OF THE PUBLIC
ADVOCATES OFFICE TO THE ADMINISTRATIVE LAW JUDGE'S RULING OF
FEBRUARY 28, 2019**

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I.

INTRODUCTION

Pursuant to Rule 11.1(e) of the Commission’s Rules of Practice and Procedure, Southern California Edison (SCE) and the California Large Energy Consumers Association (CLECA) respond to the April 10, 2019 joint motion (“Motion”) filed by CPower, Enel X North America, Inc. (formerly known as EnerNOC, Inc.), and EnergyHub (Joint DR Parties) to strike portions of the response of the Public Advocates Office to the Administrative Law Judge’s (ALJ’s) ruling of February 28, 2019 (February 28 ALJ’s Ruling). ¹

¹ Pursuant to Rule 1.8(d) of the Rules of Practice and Procedure, counsel for SCE files this response on behalf of CLECA and SCE.

II.

DISCUSSION

In the motion, Joint DR Parties argue that the Public Advocates Office seeks to introduce into the record two independent audit reports despite the fact that the ALJ denied the admission of such documents in her January 4 and February 28 ALJ's Rulings.² That is simply wrong. The ALJ has not denied the admission of these reports into the proceeding, but instead, specifically ruled that they may be considered during this proceeding. As the ALJ expressly stated in her January 4th Ruling:

“While we do not include the two utility audits as part of the Pilot Evaluation performed by staff, the results of the two audits will be considered during this proceeding.”³

The Public Advocates Office Response, which includes the audits under seal, is completely aligned with this January 4 ALJ Ruling.

On December 6, 2018, SCE filed two motions: a Motion for Inclusion of Independent Audit Report in Energy Division's Final Evaluation Report of the Demand Response Auction Mechanism and a Motion to File Audit Report Under Seal. The Motion for Inclusion attached (under seal) an independent audit report prepared by Nexant (Nexant Audit Report). Pursuant to Section 1.6(g) of the DRAM contract, SCE engaged Nexant to audit the performance of a DRAM Seller under certain contracts covering a period between July 2017 and June 2018. At the January 16, 2019 public workshop on DRAM, and in its Response to the January 4 ALJ Ruling, SCE confirmed it supports a full, public release of the Nexant Audit Report so that it can inform the future of the DRAM Pilot.⁴ While the ruling on SCE's two December 6 motions was

² See Administrative Law Judge's Ruling Issuing Evaluation Report of the Demand Response Auction Mechanism Pilot, Noticing January 16, 2019 Workshop, and Denying Motion to Require Audit Reports in the Evaluation Report (ALJ Ruling), issued January 4, 2019 (January 4 ALJ Ruling).

³ See January 4 ALJ Ruling, p. 4.

⁴ See SCE's Response to Administrative Law Judge's Ruling Authorizing the Filing of Proposed Improvements to the Demand Response Auction Mechanism, filed January 11, 2019, at p. 3.

still pending, on January 18, 2019, SCE received a data request from the Public Advocates Office seeking the audit report (public and confidential versions).⁵ SCE complied with that data request. Given the ALJ's express acknowledgment that "the results of the two audits will be considered during this proceeding," the decision of the Public Advocates Office to attach SCE's data response (with an accompanying Motion to File under Seal) to its Reply Comments to ensure these audit results are properly reflected in the evidentiary record of this proceeding is procedurally appropriate and warranted. One of the primary purposes of serving data requests is to discover "admissible evidence" that can be included in the record of a proceeding.⁶ This ability to introduce responses to discovery requests is even more important in a case such as this where the comments and responses of parties cannot be probed through cross-examination in hearings, but can only be explored through discovery. Given the concerns that have been raised by multiple parties, including the Joint DR Parties,⁷ the audit reports are needed to ensure that there is an adequate factual record and that critical performance issues are addressed to support any DRAM solicitations on a going-forward basis.

Notably the Joint DR Parties do not argue that SCE's statements about the audit results are without basis or lack support. Nor do the Joint DR Parties argue that the audit reports cannot, generally, be mentioned or referred to by the Parties. SCE has made reference to its own internal analysis and the subsequent retention of Nexant to conduct an independent audit in its original motion filed in December of 2018. SCE has continued to reference its internal analysis and the

⁵ Data Request No. CalAdvocates-SK-SCE-2019-01-18

⁶ See Commission Rule of Practice 10.1 "Without limitation to the rights of the Commission or its staff under Pub. Util. Code Sections 309.5 and 314, any party may obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence."

⁷ See Joint DR Parties' Comments, filed March 29, 2019, at p. 13 ("bad behavior should not be rewarded"); see also CESA Comments, filed March 29, 2019, at p. 5 ("the DRAM Evaluation Report revealed some concerns about some bad actors in the mechanism").

audit in public workshops and related filings. SCE and CLECA have reviewed the language the Joint DR Parties propose to strike from the Public Advocates Office Reply Comments, and find that those proposed deletions could, in effect, be used to strike from SCE's Comments, as well as the submissions made by the Public Advocates Office, any reference to its audits and the associated findings. That is neither procedurally appropriate, nor substantively justified. Indeed, the Joint DR Parties have argued that SCE's audit should be used "to inform the evaluation of DRAM" and serve "as one data point among many" when the Commission is evaluating "the basis for developing recommendations on any future DRAM structure, bidding protocol, or contract term."⁸

III.

CONCLUSION

The Commission should not foreclose the opportunity to ensure that the record takes into account all evaluations of the DRAM Pilot, in particular when it is considering whether to authorize more customer funds to direct future solicitations. SCE and CLECA support the Public Advocates Office inclusion of the audit as an attachment to its Reply Comments and find its inclusion consistent with the ALJ's January 4 Ruling. SCE and CLECA respectfully request that the ALJ deny Joint DR Parties' Motion to Strike.

⁸ See Joint DR Parties Response to SCE Motion, at p. 3 (filed December 21, 2018).

Respectfully submitted,

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And on behalf of the California Large Energy Consumers
Association

Dated: April 24, 2019