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 REPLY COMMENTS OF CPOWER, ENEL X NORTH AMERICA, INC., AND ENERGYHUB (JOINT DR PARTIES) PURSUANT TO THE ADMINISTRATIVE LAW JUDGE'S RULING OF FEBRUARY 28, 2019

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April 10, 2019

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CPower, Enel X North America, Inc. (Enel X (formerly known as EnerNOC, Inc.)), and EnergyHub (Joint DR Parties) respectfully submit these Joint Reply Comments to the responses and comments of other parties 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 DRAM Proposals attached to that Ruling and the Energy Division's Final DRAM Evaluation Report. These Joint Reply 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, today, pursuant to Rule 11.1, the Joint DR Parties have filed a separate Motion to Strike Portions of the Response of the Public Advocates Offices to the February 28 ALJ's Ruling.

I. INTRODUCTION

On March 29, 2019, as authorized by the February 28 ALJ's Ruling, the Joint DR Parties filed their responses to the questions posed by the Ruling on DRAM and offered their comments on the DRAM proposals attached to that Ruling as well as the Energy Division Final DRAM Report. On that same day, CPower, Enel X, and EnergyHub also joined with Olivine, Inc.

(Olivine) and Stem, Inc. (Stem) in filing a Joint Response to Question 1 in the February 28 ALJ's Ruling, which response offered a Joint Proposal among these parties for how to move forward on DRAM.

The Joint DR Parties have fully reviewed the Responses and Comments filed by other parties on March 29, 2019. The Joint DR Parties' Reply to those responses and comments are set forth in Sections II. and III. below.

II.
THE JOINT DR PARTIES CONTINUE TO SUPPORT THE JOINT PROPOSAL FOR STEP 1.

The Joint Proposal submitted by the Joint DR Parties, Olivine and Stem is a reasonable proposal for Step 1 implementation. The Joint Proposal addresses some of the significant concerns raised by the Investor Owned Utilities (IOUs) and the Public Advocates Office (PAO) in terms of verification of capacity, providing incentives for performance, and does so in a timeframe that would allow for another DRAM solicitation in 2019 with deliveries in 2020. As such, the Joint DR Parties support the Joint Proposal and its adoption by the Commission in Step 1.

There are several proposals supported by the IOUs for Step 1 that are not practical to implement in a timely way so as to allow for both to slow down either the auction or the commencement of the delivery period. Further, the level of effort to implement some of these efforts is not practical for a one-year bridge period and should be deferred to Step 2 for further discussion and consideration. The Joint DR Parties will identify these measures in the section below.

It is worth noting that, in addition to comments and responses to the ALJ's questions, the Joint DR Parties, and the other members of the Joint Proposal, took the time and effort to

collaborate and to put forward a reasonable and workable compromise position for consideration as a possible route to settlement and resolution in this proceeding. No other parties have submitted a possible settlement proposal. As such, the Joint DR Parties comments here are in response to litigation positions espoused by the other parties.

III.
THE JOINT DR PARTIES OPPOSE PROPOSALS MADE BY THE IOUS AND PAO CERTAIN OF THEIR ALLEGATIONS AND RECOMMENDATIONS, ALONG WITH ONE RECOMMENDATION MADE BY CAISO.

A. Treatment of DRAM Should Be No More Onerous Than the Investor-Owned Utilities' DR Programs.

In their Responses and Comments, the PAO and the IOUs made certain proposals that would impose more stringent criteria on DRAM resources than on the IOUs' DR programs or on other Resource Adequacy (RA) resources. The shortcomings of each of these proposals, as well as certain unsupported allegations, are examined as follows:

1. The Feedback Loop Proposal.

In their responses, PAO, Southern California Edison Company (SCE), San Diego Gas and Electric Company (SDG&E) and Pacific Gas and Electric Company (PG&E) proposed that the amount of qualifying capacity (QC) associated with a DR resource ought to be informed by the demonstrated capacity (DC) from the prior month.[1] This is completely inconsistent with the manner in which QC is determined for the IOUs' DR programs. The QC for the IOUs' DR programs is determined by the load impact protocols (LIP). The IOUs claim RA credit based upon the LIP. There are no adjustments to the IOUs RA value in the present year as a result of differences in performance and what was expected to occur through the LIP. To adjust the RA

[1] PAO Response, at pp. 2, 3 and 5; SCE Response, at p. 2; SDG&E Response, at p. 2; PG&E Response, at p. 4.

value, which is what the QC is, for third party DRAM providers would be a significant disparity in treatment between IOU programs and DRAM.

Further, IOU DRPs are not penalized for the under-performance of its resource by reducing the RA value in that or a subsequent month. Instead, all of the performance data, and the performance conditions, are taken into account in developing the LIP for the next year. This is an important point to understand about LIP, they are backward looking, meaning they are based upon historical data and are not adjusted in the delivery year.

To require DRAM resources to adjust their QC on a monthly basis based upon recent performance would create a significant difference in the treatment of third-party DRPs versus the IOU DRPs. Additionally, due to the lateness of meter data being received, this feedback loop could easily lag by more than an additional month. In the feedback loop suggestion, DRPs QC would be adjusted based upon DC, in a prior month. Such adjustments would not take into consideration frequency of dispatch, weather conditions, changes in composition of the portfolio, etc. DRPs would stand to be financially harmed by adjusting the QC on a monthly basis, based upon the feedback loop proposal.

Rather than implement the feedback loop proposal, the Joint DR Parties recommend that the IOUs, or a program administrator, conduct a plausibility check on any supply plans that they determine to be implausible, with the ability to adjust the supply plan to a plausible level, and the ability to implement penalties for failure to meet the supply plan capacity in a manner recommended by the Joint DR Parties, Energy Division Staff Report and the Joint Proposal. The penalty structure would provide linear payments for performance unless performance is below 60%, but above 50%, performance relative to the supply plan. Performance in this range would

be discounted by 50%.[2] Performance below 50% of the supply plan would not receive a payment.[3]

2. The Event-of-Default Level Proposed by SDG&E.

The event-of-default level as proposed by SDG&E is unreasonable. SDG&E proposes that an event of default would occur if a Demand Response Provider (DRP) fails to perform at 85% or better for more than 2 months or fails to meet its milestones.[4] PG&E more rationally proposes that an event of default would occur if performance falls below 60% in more than two months.[5] SDG&E's proposal, in particular, is not a reasonable default trigger, and is significantly out-of-synch with retail DR programs. This proposal should not be adopted. Alternatively, the Commission could consider the event of default provisions in the former Aggregator Managed Portfolio Contracts or as proposed in the revised contract language appended to these comments.

3. Allegations of Whether DRPs Met Their Obligations.

PAO alleges that DRPs did not deliver the expected results and ratepayer benefits.[6] SCE refers to the Staff Report to claim that there is no evidence that DRPs or DRAM were meeting RA.[7]

Yet, the Staff Report also states that high performing DRPs submitted 98% of the contract capacity in their supply plans and 97% of the contract capacity as demonstrated capacity.[8] If 98% of the contract capacity was contained in the supply plans, that would indicate that these DRPs were meeting their contract obligations. The Staff Report indicated that it could

[2] Joint DR Parties Response, at p. 17.
[3] Joint Proposal Response, at p. 7.
[4] SDG&E Response, at p. 5.
[5] PG&E Response, at p 14.
[6] PAO Response, at pp. 5 and 8.
[7] SCE Response, at p. 10.
[8] DRAM Interim Evaluation Report, at pp. 73-74.

not validate all DRPs met the Must Offer Obligation (MOO), due to data glitches between California Independent System Operator (CAISO) and the DRPs. That is not indicative of a failure to meet RA; it is indicative of a failure to obtain appropriate data to validate the MOO was met. Therefore, these statements by PAO and SCE are not supported by the Staff Report. The Joint DR Parties caution about using sweeping language that the analysis to date does not support and that does not apply to all DRPs across the board.

4. DRAM and Energy Benefits or an Energy Baseline.

SCE wonders whether DRAM should receive energy benefits alongside a capacity payment.[9] Capacity Bidding Program (CBP) customers receive both a capacity payment and an energy payment, when dispatched. PAO wonders if performance should be measured by using an energy, versus a capacity, baseline.[10]

First of all, in California, the cost of new entry (CONE) is determined by net-CONE methodology. For generators that are active participants in the energy market, net-CONE means that the capacity value is derived by taking CONE and deducting energy and ancillary services rents. The residual value is the capacity value of the asset. Because generators are the primary means of determining RA value in the market, the value of RA is reflective of a net-CONE methodology and reflects the fact that, for generators, a significant portion of revenues will flow from energy and ancillary services participation. The value for capacity may be further reduced by virtue of the state of depreciation of the plant and competition for capacity.

For DR resources, this net-CONE methodology reduces the capacity value, even though DR resources cannot participate in the energy and ancillary service markets, to the same extent as generators, due to their use limitations. The capacity portion of the payment is the primary

[9] SCE Response, at p. 16.
[10] PAO Response, at p. 10.

means of compensation for DR. DR is available to be dispatched during certain hours, but is not a baseload or energy resource. Since the value of capacity is driven by the RA negotiations of the generators, the value of RA is low. To start with a low capacity value and then to say that DR resources should not receive energy rents, when dispatched, would doubly penalize DR relative to generation.

As for the PAO proposal, DR is a capacity, not an energy resource. The measurement of capacity, against the baseline, is the appropriate metric.

B. Recommendations by the IOUs, PAO , and CAISO That Should Not Be Adopted.

1. Budget.

PAO recommends $9 million budget for a 2019 DRAM ($4 million each for SCE and PG&E and $1 million for SDG&E); SCE recommends $9 million budget. SDG&E supports a budget for itself of $1.2 million and $0.8 million in administrative costs and PG&E recommends a $6 million budget that would be inclusive of contract administration, audits and an independent monitor for the pilot[11]. The Joint DR Parties recommended that the budget for DRAM V be no less than the combined 2019 budget for DRAM III and DRAM IV, $27 million, plus an additional $13.5 million for growth, for a total of $40.5 million.[12] When asked about budgets and growth in DRAM, SCE replied that growth should be organic.[13] It is unclear how growth could occur organically unless budgets are available for that purpose. Any of the utility or PAO budgets would be sliding backwards on DRAM and should not be adopted.

2. Schedule.

The IOUs and the PAO do not favor parallel resolution of Step 1 and Step 2 issues. They favor sequential resolution. No permanent DRAM, or even additional DRAM pilot extension,

[11] PAO Response, at p. 6; SCE Response, at p. 5; SDG&E Response, at p. 5; PG&E Response, at p. 5.
[12] Joint DR Parties Response, at p. 8.
[13] SCE Response, at p. 11.

would come to pass until there is a thorough review of the Step 1 results. Unfortunately, the schedules provided by the IOUs for Step 1 would allow for only a partial year of delivery in 2020, which means a partial year of revenue and results.[14] The Joint DR Parties and California Energy Efficiency + Demand Management Council (Council) have proposed schedules that should allow for a full year of deliveries in 2020.[15] Further, due to the sequencing of Step 1 and Step 2, SCE does not expect a final decision on Step 2 until April 2021.[16] Under SCE's plan, DRPs would have only a partial year of revenue in 2020 and 2021 and could easily result in a 2021 DRAM gap year. These proposals chip away at the value of continuing DRAM if only partial year revenues are available not only for customers but for the DRPs, who must carry their costs of operation and overhead for a full year against a half-year's revenue, or less, for two consecutive years. If full DRAM evaluation and extension cannot be achieved for 2021 deliveries, the Commission could consider a step 2(a) and 2(b). Step one could implement the initial steps outlines in the Joint Proposal. Step 2(a) could build on these first implementation steps for 2021 and additional work, if desired, could be done for a 2022 solicitation.

This proposal would allow for further improvements, some of which may take longer to resolve and implement, without unnecessarily disrupting the DRAM solicitation and delivery processes. The transition into the wholesale market has been underway for 10 years. This is 10 years of uncertainty about the future of DR in California, one of the largest markets in the United States. We ask the Commission to take the negative implications of these extensive periods of uncertainty into account when making its decision. Everything that the IOUs and the PAO express would only continue and extend that uncertainty into the future.

[14] SCE proposes DRAM V deliveries begin in June 2020 (SCE Response, at p. 9). SDG&E proposes that DRAM V deliveries begin in July 2020 (SDG&E Response, at p. 6).
[15] Joint DR Parties Response, at p. 10.
[16] SCE Response, at p. 9.

3. Independent Entity Develop Load Reduction Plans.

SCE proposes that an independent entity develop 3rd party load reduction potentials and provide a rating of reasonableness of 3rd party plans, while PG&E puts forward a proposal calling for the DRP to develop the load reduction planning and submit it along with load data monthly to the Independent Monitor.[17] The part of this suggestion seeking a reasonableness review is somewhat compatible with the Joint DR Parties' comments and the Joint Proposal about a plausibility analysis.[18] The Joint DR Parties do not object to an independent entity, with confidentiality protection for information that is shared with this entity, and restrictions on its release only to ED Staff, with appropriate confidential protection on its storage and sharing.

However, the IOUs seem to take this a step further. It may not be necessary to create a new cottage industry of 3rd party verification in all cases. Some DRPs have a historic performance records that should engender a sense of comfort and support for their supply plan submissions. The Joint DR Parties are not recommending that every supply plan has to be verified by an independent entity every month. However, for those supply plans for which there is a reasonable suspicion that the resource cannot perform at the level suggested by the supply plan, it would be reasonable for an independent entity, or the IOU, to request further verification and validation.

It is also not reasonable to require an independent entity to develop a load reduction potential for all DRPs, nor is it necessary – or even possible that a DRP will have 12 or more months of historical data in report ready form 75 days prior to the delivery month as PG&E proposes.[19] Developing curtailment capability of resources is exactly the expertise that the Joint DR Parties possess as a result of years of providing DR services to thousands or hundreds of

[17] PG&E Response, at p. 11.
[18] Joint DR Parties Response, at pp. 14-15; Joint Proposal Parties Response, at pp. 3-5.
[19] PG&E Response, at p. 10-11.

thousands of customers. The companies that comprise the Joint DR Parties have developed engineering studies, algorithms, and metrics to estimate load curtailment that is proprietary and market sensitive. The Joint DR Parties believe they are the appropriate parties to develop load reduction potential for their customers, especially since it is the DRPs, and not the independent entity, that are responsible for performance relative to that estimation.

For the reasons stated herein, industry expertise and risk exposure, the Joint DR Parties do not support an independent entity developing the load reduction potential of its customers. Nor do the Joint DR Parties support the use of an independent entity to validate every supply plan. Rather, the Joint DR Parties reiterate its proposal, as also reflected in the Joint Proposal, that the IOUs, or the independent entity, subject to the protections described herein, could request verification of a supply plan when there is a significant question as to the ability of the DRP to plausibly perform under that supply plan.

4. SCE's Proposed Penalty Structure is Punitive and Should Not Be Adopted.

SCE, supported by the PAO, proposed a graduated penalty structure.[20] Penalties would be imposed for differences between the qualifying capacity (AA) and the supply plan (BB), the difference between the year-ahead supply plan and the month-ahead supply plan (CC), and the difference in performance (demonstrated capacity (DC)) and the supply plan (DD). For each difference, SCE applies a graduated penalty of 1.2 (BB), 1.5(CC) and 2.0(DD).

In this example, if the qualifying capacity and the contract quantity were 10 MW, and in each of the measures, the DRP was able to deliver 9 MW, or 90% of its contract capacity, it would only be paid for 5.3 MW (1*1.2=1.2, 1*1.5+1.5, 1*2=2; 1.2+1.5+2=4.7; 10-4.7=5.3 MW.) This is an extremely punitive proposal and should be rejected. Instead, the proposal that

[20] SCE Response, at p. 17; PAO Response, at p. 12.

the Joint DR Parties proposed in its response and as reflected in the Joint Proposal, which is a proposal consistent with CBP, should be adopted.

Finally, it is worth pointing out, that the penalty structure proposed by the Joint DR Parties would apply only on a contract basis, and not on a resource basis. This is because the contract quantity is the commitment made by the DRP to the IOU. DRPs have not committed to individual resource performance. This issue about how to apply penalties moving forward may need further discussion, especially if an energy component is adopted, although that is not the Joint DR Parties position. Currently, performance is calculated on a per event basis. All other RA resources, in terms of the RA and capacity value, are evaluated based upon monthly or annual performance. The Joint DR Parties would support moving the evaluation of DR and DRAM to be consistent with other RA resources.

5. Testing.

The Joint DR Parties oppose the IOUs' and PAO's position that resources should be tested every other month,[21] especially if contract quantities are not changing month-over-month. This would be an exercise in redundancy. Tests do not receive energy payments, which means that these are lower value dispatches to customers.

Further, repeated testing would reduce the amount of customer availability to respond to actual dispatches. Because the Joint DR Parties are supporting mechanisms to give the IOUs more certainty about the resource, although not all resources merit this additional review, and that the Joint DR Parties are proposing performance penalties, in combination, these should discipline bidders. There is a tipping point where adding regulatory complexity and administration begins to erode both customer and DRP value in participating in DRAM and other DR programs. The Commission should consider how many "bells and whistles" it adds to

[21] PAO Response, at p. 5; SCE Response, at pp. 18-19; SDG&E Response, at pp. 16-17.

DRAM for a one-year bridge of the pilot because it risks not being able to discern which bell was effective and which was redundant.

6. Energy Component.

The Joint DR Parties do not support an energy component to DRAM, as supported by the PAO,[22] without extensive evaluation and understanding as to what goal the energy component would achieve. The discussion relative to an energy component should occur in Step 2, not Step 1. As PG&E points out, with limited time to implement changes in the bridge period, PG&E does not recommend either an energy or a minimum dispatch requirement.[23] SCE does not support an energy component either.[24]

7. Partitioning and Contract Reassignment.

The IOUs state that this is burdensome for the IOUs and should not be allowed.[25] Other than words to that effect, the IOUs have provided no evidence of the burden, financially or otherwise, that partitioning or contract reassignment impose upon them. From a DRP perspective, if a DRP cannot partition or reassignment capacity that, for various reasons, it cannot fulfill, then a portion of the DRAM will go unfulfilled, even though others may have willingly stepped into the shoes of another. There is already a limited amount of DRAM capacity available and the auction results have demonstrated that the demand for DRAM capacity is outstripping supply. If suppliers do not receive capacity through the auction, partitioning or reassignment provide an opportunity to receive some capacity and revenues in a year where the seller may otherwise be without. Sellers should be able to utilize a secondary market to offload excess capacity or find partners.

[22] PAO Response, at pp. 1, 11.
[23] PG&E Response, at p. 12.
[24] SCE Response, at p. 16.
[25] SCE Response, at p. 20; SDG&E Response, at pp. 17-18.

PG&E suggested that partners could work together under the original contract[26], but this does pose significant legal and financial risk for the party subcontracting for MW, lessens the likelihood that subcontracting will be an solution and dilutes the transparency of DRAM contracting. The Commission should not limit the ability to partition contracts, so long as the buyer is financially viable, can meet the requirements established by the CPUC and the CAISO for wholesale market participation, as well as the terms of the agreement. The only suggested subjective qualifier would be to reject assignments or partitioning to entities that have performed poorly in DRAM, or have not been compliant with Commission rules, in previous years.

8. Load Impact Protocols.

The Joint DR Parties disagree with the IOUs and PAO that load impact protocols should be implemented for Step 1.[27] Again, the proposals for verification and penalties should discipline seller behavior. We should evaluate the results before we can determine that.

9. Reporting.

It is premature to require monthly public DRAM reports while in a pilot stage. The information contained in the reports would be considered confidential, if filed by each DRP. Today, the information can be shared with the Energy Division to the extent is it is not obtained through the annual RA subpoena process. In addition, the IOUs already have the supply plans for each DRP and the IOUs are jurisdictional to the Commission. This information can be provided by the IOUs, under seal, each month if warranted.

[26] PG&E Response, at pp. 15-16.
[27] SCE Response, at pp. 13-15; SDG&E Response, at p. 13.

10. Goal of DR.

SCE states that DR should be clean, flexible and reliable.[28] On its face, there is little to dispute, except that the devil is in the details of how these descriptors are defined. SCE defines clean as compliant with the prohibited resource decision. Flexible means the ability to be dispatched quickly. Reliable means available to be dispatched when needed. Quickness of dispatch has not been a goal of DR. However, that is certainly been proposed for DR to meet local capacity requirements by CAISO. Reliability, meaning available to be dispatched when needed, should also be fairly straightforward. Today, that availability is determined through the Availability Assessment Hours (AAH), which aligns DR availability with grid needs. The indication to CAISO of availability is offering into the energy market during those AAH. Since SCE did not go further into detail if it had a different concept of availability for grid needs other than MOO during an AAH, the Joint DR Parties believe that DRAM satisfies both the clean and reliable portions of the DR goal.

11. Revenue Quality Meter Data (RQMD).

While the Joint DR Parties support the issuance of invoices 30 days after final RQMD data is received,[29] the Joint DR Parties do not agree with using the data available 60 days after the delivery month's end.[30] That may force the DRP to use partial or sub-standard data upon which to settle and invoice the IOU, even though it should be invoicing at the aggregation or contract level. It is quite costly to revise submitted data.

Therefore, the DRP may be stuck with receiving partial payment on incomplete data, data which could drastically undervalue the resource. Rather, the standard should be upon the utility to provide accurate and complete data in time to allow the DRP to meet the data submittal

[28] SCE Response, at p. 8.
[29] Joint DR Parties Response, at p. 21.
[30] SCE Response, at p. 20.

timeframe for settlement with the CAISO, as contained in Rule 24. This is a material term of the contract regarding the duties and obligations of the IOU to the DRP. The Joint DR Parties, as well as CAISO,[31] support including this obligation in the contract and identifying it as a material covenant. Failure to meet this term that may result in the IOU being in default of the contract and requiring the IOU to make the DRP whole for any losses incurred as a result.

12. Limit Reliability Demand Response Resource (RDRR).

CAISO recommends that the Commission should limit the authorization of RDRR resources to be procured in DRAM as they are not designed to be used on a regular basis to meet grid reliability needs[32]. The Joint DR Parties oppose this position. While the Base Interruptible Programs across the state have very limited triggers – RDRR procured in the DRAM may have the same reliability trigger – but can also participate economically in the Day Ahead energy markets. In addition, there is already a two percent cap on reliability resources in the state. To the extent that cap has not been reached in any given year DRAM should be allowed to provide that resource. Practically, both PG&E and SCE are near their caps and may not accept new enrollment in Base Interruptible Program (BIP) or RDRR .

IV.
CONCLUSION

The Joint DR Parties urge the Commission to act in accordance with the Joint DR Parties' Responses and Comments, as well as the Joint Response with Olivine and Stem to Question 1, both filed on March 29, 2019. In addition, the Commission should consider the revisions to the DRAM contract proposed to facilitate that Joint Proposal and attached and incorporated hereto as Appendix A.

[31] CAISO Comments, at p. 9.
[32] *Id*., at p. 5.

Respectfully submitted,

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APPENDIX A

JOINT DR PARTIES' PROPOSED REVISIONS TO IDENTIFIED DRAM CONTRACT PROVISIONS FOR THE JOINT PROPOSAL STEP 1.

JOINT DR PARTIES' PROPOSED REVISIONS TO IDENTIFIED DRAM CONTRACT PROVISIONS FOR THE JOINT PROPOSAL STEP 1.

PLEASE NOTE**:** *All revised language is shown in bold or bold strikethrough. Please also note some re-numbering of Articles due to the proposed addition of Article 4.*

1.4 Seller's Designation of the DRAM Resource

~~a. ii. Confirm in writing to Buyer that each PDR or RDRR identified by Seller pursuant to Section 1.4(a)(i) for each type of Product is comprised solely of Bundled Service Customers or Unbundled Service Customers.~~

Note: If CAISO removes the single LSE requirement in Fall 2019, as expected, this will no longer be relevant.

3.4 Seller's Obligations

(INSERT)

d. Seller shall deliver an invoice to Buyer within 30 days of receiving all revenue quality meter data necessary to calculate the invoice.

(INSERT)

ARTICLE 4: BUYER'S OBLIGATIONS

4.1 Revenue Quality Meter Data

Buyer acknowledges that determination of customer and PDR or RDRR performance is dependent upon receipt of revenue quality meter data (RQMD) from the utility data systems. Seller, or Seller's SC, is dependent upon the provision of RQMD through utility data systems in order to provide Settlement Quality Meter Data (SQMD) within the timeframes prescribed in the CAISO Tariff in order for Seller or Seller's SC to receive settlements from CAISO. To the extent that Buyer's RQMD is incomplete, missing or incorrect, the Seller will be submitting similarly incomplete, missing or incorrect SQMD to CAISO causing Seller's settlements to be incorrect. Resettling with the CAISO is at a cost to Seller, which would not be required, but for Seller's receipt of missing, incomplete or incorrect data from Buyer's data systems. Further, Seller is delayed in invoicing Seller by virtue of incomplete and incorrect data being available. Rule 24/32 allows the Seller to invoice Buyer for costs incurred as a result of Buyer's failure to provide complete and accurate data to allow Seller to completely and accurately settle with the CAISO. Buyer agrees to provide accurate and complete data to Seller, through its data systems, in advance of the timeframe required by CAISO in its Tariff for Sellers to provide SQMD for settlement. Buyer agrees that, to the extent it fails to meet this obligation, that it will be responsible for costs incurred by the Seller related to Buyer's failure to meet this obligation. Failure to comply is also a material breach of the contract.

RENUMBERED ARTICLE 5 [*Due to addition of Article 4 above*]: PAYMENT AND BILLING

Renumbered 5.1 Delivered Capacity Payment

Buyer shall make a monthly payment to Seller, after the applicable Showing Month, ("Delivered Capacity Payment") equal to the product of (A x B x C x D **x E**) for each type of Product.

Delivered Capacity Payment = [A x B x C x D **x E**]

Where:

A = The Contract Price of the applicable type of Product for the applicable Showing Month, including SC costs.

B = The lesser of (i) the Demonstrated Capacity for each type of Product for the applicable Showing Month, and (ii) the corresponding Product Monthly Quantity for the applicable Showing Month

C = 1.0 if Seller has chosen (i) not to deliver Residential Customer Product in Section 1.1(c) or (ii) to deliver Residential Customer Product in Section 1.1(c) and the Product delivered meets the definition of Residential Customer Product, or 0.90 if the Product delivered does not meet the definition of Residential Customer Product.

D = (i) 1.0 if Seller has chosen to deliver RDRR in Section 1.1(e); or (ii) if Seller has chosen to deliver PDR in Section 1.1(e), the percentage of Product delivered that is PDR.

E = 0.5 if Demonstrated Capacity is less than 60% for each type of Product for the applicable Showing Month relative to the aggregated Supply Plans for the Product or 0.0 if Demonstrated Capacity is less than 50% of the aggregated supply plans of the Product.

RENUMBERED ARTICLE 8 [*Due to addition of Article 4 above*]: REPRESENTATIONS, WARRANTIES AND COVENANTS

Renumbered 8.1 Representations and Warranties of Both Parties

NOTE: This will not be possible for PG&E to represent given the bankruptcy proceedings.

(e) It is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or become Bankrupt

RENUMBERED ARTICLE 10 [*Due to addition of Article 4 above*]: EVENTS OF DEFAULT

b. With Respect to Seller

(INSERT)

vi. During the Term, Seller fails to deliver 50% of its Supply Plan capacity, through test or dispatch of the DRAM Resource, in two consecutive months during a 12-month term.

(INSERT)

c. With Respect to Buyer

i. Failure to timely pay invoices to Seller, unless subject to dispute

ii. Failure to provide timely and accurate RQMD