

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

**RESPONSE OF
CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL
TO THE JOINT APPLICATION OF CPOWER AND ENEL X NORTH AMERICA, INC.
FOR REHEARING OF DECISION 19-12-040**

February 6, 2020

Greg Wikler
Executive Director
California Efficiency +
Demand Management Council
1111 Broadway, Suite 300
Oakland, CA 94607
Telephone: 925-286-1710
E-mail: policy@cedmc.org

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The California Efficiency + Demand Management Council (the Council) respectfully and timely submits this Response to the Joint Application for Rehearing of Decision (D.) 19-12-040 filed by CPower and Enel X North America, Inc. (Enel X) in this proceeding on January 22, 2020. This Response is timely filed and served pursuant to Rule 16.1(d) of the Commission Rules of Practice and Procedure.

**I.
INTRODUCTION**

The Council is in full accord with CPower and Enel X. As such, the Council urges the Commission to act quickly to grant the relief requested and, at the least, eliminate Ordering Paragraphs 3 and 4 and prevent the imposition of a Required Energy Quantity (REQ) on Demand Response (DR) Auction Mechanism (DRAM) resources.

**II.
THE COMMISSION SHOULD ADDRESS THE ISSUES RAISED IN THE APPLICATION
FOR REHEARING QUICKLY GIVEN THE CLEAR LEGAL ARGUMENTS.**

CPower and Enel X lay out a clear and compelling set of legal and policy arguments detailing why the Commission does not have the authority to impose a REQ, “minimum energy delivery requirement, to imposed on a DR capacity resource.”¹ To begin with, CPower and Enel X correctly note that D.19-12-040 errs by imposing energy dispatch requirements for DRAM resources that are contrary to law, and that the imposition of a REQ for DRAM resources is not

¹ Application for Rehearing, at p. 2.

supported by any findings of fact or conclusions of law.² In addition, CPower and Enel X correctly argued that the Commission violated its “long-standing practice of evaluating resource adequacy (RA) requirements in the docket or rulemaking specific to RA.”³ Finally, the Council agrees with CPower and Enel X that the Commission abused its discretion and violated statutory and constitutional rights of due process by imposing a REQ for DRAM resources in D.19-12-040.⁴

III.
THE COUNCIL AGREES WITH CPOWER AND ENEL X THAT D.19-12-040 MUST BE MODIFIED TO ELIMINATE THE REQ REQUIREMENT THAT WAS IMPOSED ON DR CAPACITY RESOURCES.

CPower and Enel X correctly state that “[t]he Commission did not proceed in the manner required by law by creating and implementing a REQ, minimum energy delivery requirement, upon a DR capacity resource outside of an RA rulemaking.”⁵ Furthermore, the Council agrees with CPower and Enel X that in adopting D.19-12-040, the Commission discriminated against one resource type, DRAM and that the Commission improperly acted outside of the current RA Rulemaking.⁶ Lastly, as noted above, the Commission did not have any legal or factual support to make this determination.⁷

When the Proposed Decision which was ultimately adopted as D.19-12-040 was issued, the Council, CPower and Enel X submitted comments highlighting the problems with imposing a REQ requirement.⁸ The Council, CPower and Enel X argued that the Proposed Decision “contradicts its own determination that RA-related DR issues will be addressed in the RA proceeding.”⁹ The Council, CPower and Enel X also stated that the Proposed Decision’s “adoption of a REQ is not supported by the record, contradicts the PD’s own finding that

² Application for Rehearing, at pp. 3-10.

³ Application for Rehearing, at p. 3.

⁴ Application for Rehearing, at pp. 10-11.

⁵ Application for Rehearing, at p. 11.

⁶ Application for Rehearing, at p.11.

⁷ Application for Rehearing, at p. 11.

⁸ Opening Comments of the Council, CPower and Enel X on Proposed Decision Refining the Demand Response Auction Mechanism (Opening Comments of the Council, CPower and Enel X), submitted December 5, 2019.

⁹ Opening Comments of the Council, CPower and Enel X, at p. 4.

Resource Adequacy (RA) issues should be addressed in the RA proceeding, and does not account for late delivery of meter data.”¹⁰

Furthermore, as CPower and Enel X correctly noted, the sole authority that the Commission cited to applying a REQ to DRAM was D.19-10-021 which was the Decision Affirming Resource Adequacy Import Rules in R.17-09-020, the previous RA proceeding.¹¹ However, this Decision was stayed and the Council agrees with CPower and Enel X that it is “inappropriate for the Commission to rely upon [D.19-10-021] for any purpose until and unless that stay is lifted.”¹²

Lastly, the Commission recently issued a Scoping Memo and Ruling in the new RA proceeding, R.19-11-009, which specifically states that Track 3 of this proceeding will consider structural changes and refinements to the RA program, including energy attributes and hourly capacity requirements.¹³ As such, the issue that is the subject of the Application for Rehearing is pending consideration in the current RA proceeding and has not yet been resolved for RA purposes.

IV. CONCLUSION

The Council appreciates the opportunity to provide this Response to CPower and Enel X’s Application for Rehearing of D.19-12-040.

Respectfully submitted,

February 6, 2020

/s/ GREG WIKLER
Greg Wikler
Executive Director
California Efficiency + Demand
Management Council
1111 Broadway, Suite 300
Oakland, CA 94607
Telephone: 925-286-1710
E-mail: policy@cedmc.org

¹⁰ Opening Comments of the Council, CPower and Enel X, at p. 1.

¹¹ Application for Rehearing, at p. 6.

¹² Application for Rehearing, at p. 6.

¹³ Scoping Memo and Ruling in R.19-11-009, at p. 7.