

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.

And Related Matters.

Application 17-01-012
(Filed January 17, 2017)

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

**REPLY COMMENTS OF
CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL
ON PROPOSED DECISION REFINING THE DEMAND RESPONSE AUCTION
MECHANISM**

December 10, 2019

Luke Tougas
Consultant for California Efficiency +
Demand Management Council
1111 Broadway, Suite 300
Oakland, CA 94607
Telephone: 415-994-1616
E-mail: policy@cedmc.org

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

**REPLY COMMENTS OF
CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL
ON PROPOSED DECISION REFINING THE DEMAND RESPONSE AUCTION
MECHANISM**

The California Efficiency + Demand Management Council (the Council) respectfully submits these Reply Comments on the Proposed Decision Refining the Demand Response Auction Mechanism (Proposed Decision or PD) mailed in this proceeding on November 15, 2019. These Reply Comments are timely filed and served pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure and the Proposed Decision.

**I.
THE AUCTION MECHANISM SHOULD NOT BE ELIMINATED UNTIL KEY
MILESTONES ARE MET.**

The Council agrees with the argument made by Pacific Gas and Electric Company (PG&E) that the Demand Response Auction Mechanism (DRAM) is not yet ready for alignment with the Integrated Resource Planning (IRP) process.¹ As demonstrated by the numerous revisions approved in Decision (D.) 19-07-009 and contained in the PD, refinements are needed to ensure that investor-owned utilities (IOUs) can be confident that DRAM Sellers will deliver on their contracts and that DRAM Sellers can be confident that they receive all of their initial customer data and revenue quality meter data (RQMD) on a timely basis. Integrating DRAM into the IRP or Resource Adequacy (RA) regimes before these issues are fully addressed will only create confusion and bog down these two processes.

However, the Commission should not tie itself to a specific “date certain” as recommended by San Diego Gas & Electric Company (SDG&E) because it would eliminate any

¹ PG&E Opening Comments, at pp. 1-2.

flexibility by the Commission to extend the DRAM pilot, should that be necessary, in the event that certain key criteria are not met.² First and foremost, all IOUs should be capable of delivering all required initial customer data and RQMD on a timely basis. Second, an efficient and effective approach to determining the Qualifying Capacity (QC) value of DRAM contracts is needed. The Council is not convinced that the highly arbitrary and inefficient process approved in D.19-07-009 and refined in the PD, in which DRAM Bidders are required to provide supporting data with their bids and DRAM Sellers with their year-ahead supply plans, will be effective in the long term. As discussed further below, the IOUs and DRAM Bidders are all unclear about how this should work. The Council is hopeful that a much simpler and more efficient process can be developed in the RA proceeding for non-DRAM demand response (DR) contracts and adopted for the DRAM. Third, an effective regime must be in place that gives confidence to the IOUs that DRAM Sellers will deliver on their contracts without being overly complicated and punitive for DRAM Sellers. It would seem that the second and third issues can be solved within the four-year extension period but, given the nature of the data delivery issue and the typical lead-times for IOU IT improvements, the Commission should not assume that this issue will be fully addressed by then by all IOUs.

II. ADOPTING ADDITIONAL QC PENALTIES IS PREMATURE.

The Council urges the Commission to disregard the PG&E and Southern California Edison Company (SCE) proposals for new QC penalties.³ PG&E and SCE are attempting to relitigate issues that were addressed in D.19-07-009. The Commission has already declined to adopt these penalties in the prior decision and nothing has changed since July to warrant consideration of additional penalties.⁴ Should the refinements approved in D.19-07-009 and in the current PD prove to be ineffective in ensuring that DRAM Sellers are delivering their contracted capacity, then the Commission has the flexibility to make adjustments to the penalty structure through the refinement process laid out in the PD.

² SDG&E Opening Comments, at pp. 1-2.

³ PG&E Opening Comments, at p. 4 and SCE Opening Comments, at pp. 2-3.

⁴ D.19-07-009, at p. 55.

III. CLARIFICATION ON THE QC DATA GUIDELINES IS NEEDED.

The Council supports PG&E's request for Commission clarification on the guidelines for assessing the QC of DRAM bids.⁵ Last-minute information requests from the IOUs after the cure period closes are very disruptive to DRAM Bidders, at least two of which were left scrambling during the Thanksgiving holiday to provide additional information. It is essential that both the IOUs and DRAM Bidders have an identical understanding on the supporting data required to accompany each bid as well as how the IOUs will interpret that data. Without this transparency, DRAM Bidders will be unable to put forth complete bids and will be at the mercy of subjective and inconsistent IOU interpretations of the supporting data. Though the Council supports clarification of the QC data guidelines, the recommendations put forth by PG&E either do not improve transparency or seek to relitigate the issue of performance penalties.⁶ The Council addresses each recommendation individually:

PG&E Recommendation 1: The IOUs should be permitted to use the results of the QC assessments and past performance for offer selection to ensure only bids with at least a reasonable probability of meeting the contract commitments are selected. This viability/reliability assessment should be clear to bidders at the time of the RFO launch, and formally approved through the advice letter process.⁷

Council response: This recommendation is effectively a new qualitative criterion. The PD already adopts a past performance qualitative criterion so penalizing a DRAM Bidder twice for the same behavior is unfair and excessive. Furthermore, past performance does not necessarily have bearing on the viability of current DRAM bids. Though past performance by some DRAM Sellers has been poor in some instances, it should be noted that no contractual provisions were violated and there very well may have been legitimate reasons for poor performance, including problems with receiving initial customer data from the IOU, problems with interfacing with California Independent System Operator (CAISO) and/or IOU systems, or an inadvertent over-estimation of the capacity that could be delivered. As the DRAM Evaluation Report indicated, the DRAM has attracted new entrants so it seems reasonable to expect that some might have had problems in meeting their commitments despite their best intentions – this

⁵ PG&E Opening Comments, at p. 5.

⁶ *Id.*, at p. 6.

⁷ *Id.*

is precisely why the DRAM was started as a pilot. It also seems reasonable to expect that as new entrants gain experience, they will be more realistic in their bids and they will have taken steps to address any technical or operational issues that may have impacted their performance. With approval of refinements approved in D.19-07-009 and more refinements in the current PD, the “training wheels” are being removed so the IOUs are justified in expecting better performance going forward but past performance should not influence the IOUs’ assessment of QC data. PG&E’s recommendation does nothing to provide clarity or improve transparency; instead, it would create a subjective factor that the IOUs could potentially use to put their thumb on the scale at their discretion to favor some DRAM Bidders over others.

PG&E Recommendation 2: The Commission should add penalties for shortfalls in capacity at the year-ahead supply plan and the monthly supply plan stages so that there are proper incentives to deliver the capacity contracted, and protect the IOUs and ratepayers for taking on such risk of under-delivery.⁸

Council response: This recommendation has no application to the QC assessment of DRAM bids and appears to be another attempt by PG&E to relitigate the penalties approved in D.19-07-009. For the reasons stated above, the Commission should reject it.

PG&E Recommendation 3: The QC assessment process should add rigor to the measurement of capacity, but should not be seen as an enforcement mechanism given the lack of visibility and certainty of identifying issues in such short time frames – penalties are far more effective, fair, and efficient.⁹

Council response: The Council generally agrees that penalties to enforce good performance are preferable to the opaque and subjective QC assessment process that was approved by D.19-07-009. Especially if, as the IOUs desire, DRAM is ultimately integrated with RA and/or IRP procurement processes, because the IOUs likely will not want to be burdened with the responsibility of performing QC assessments on large numbers of DRAM bids. Consistent with the Council’s position that the refinements approved in D.19-07-009 should be given an opportunity to work, the Commission should consider in the next evaluation report whether the QC assessment process is effective, transparent, and efficient.

⁸ PG&E Opening Comments, at p. 6.

⁹ *Id.*

IV. QUALITATIVE CRITERIA.

A. The Historical Record for the Application of Qualitative Criteria Should Begin in the 2020 Delivery Year.

The Council disagrees with SCE's recommendation that the qualitative criteria in Table 5 of the PD should apply beginning in 2019.¹⁰ It is inappropriate and unfair for the Commission to apply qualitative criteria on a retroactive basis because the behavior that the proposed qualitative criteria are meant to address violated no rules that were in effect at the time. Since certain undesirable practices were identified and documented in the DRAM Evaluation Report, the Commission has taken steps to prevent these practices from continuing. Retroactively applying new rules in this instance opens the door for the Commission to do this in other instances in ways that SCE may not find so agreeable. The Commission should affirm that the Table 5 qualitative criteria apply beginning in 2020. This will give all DRAM Bidders an equal footing in the next auction for 2021 delivery.

B. The Qualitative Criterion for Willful Contract Termination or Default Should Remain at 3%.

The Council does not support PG&E's proposed Cost Adjustment Score for willful contract termination or default of 15% rather than 3%.¹¹ Because the DRAM remains a pilot and is intended to attract new participants, the Council is concerned that such a significant penalty for a contract default could discourage new entrants from taking the risk to submit a bid. However, the Council is sympathetic with PG&E's apparent concern that some DRAM Sellers could conceivably default on contracts in consecutive years without a great deal of risk. To address that possibility, the Council suggests an incremental approach in which the Cost Adjustment Score begins at 3% for the first contract default or willful termination and increases another 3% each time after that. This will not overly discourage new entrants but will provide a clear signal that multiple contract defaults or willful terminations will be costly to the DRAM Seller.

VI. CONCLUSION

The Council appreciates the opportunity to provide these Reply Comments on the Proposed Decision.

¹⁰ SCE Opening Comments, at p. 4.

¹¹ PG&E Opening Comments, at p. 7.

Respectfully submitted,

December 10, 2019

/s/ LUKE TOUGAS

Luke Tougas
On Behalf of
California Efficiency + Demand
Management Council
1111 Broadway, Suite 300
Oakland, CA 94607
Telephone: 415-994-1616
E-mail: policy@cedmc.org