

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric  
Company (U 39 E) for Approval of its  
Demand Response Programs, Pilots and  
Budgets for Program Years 2023-2027

Application 22-05-002  
(Filed May 2, 2022)

And Related Matters.

Application 22-05-003  
Application 22-05-004

**JOINT REPLY COMMENTS OF  
THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL, CPOWER,  
LEAPFROG POWER, INC., AND VOLTUS, INC. ON  
PROPOSED DECISION APPROVING DEMAND RESPONSE AUCTION MECHANISM  
PILOT FOR PILOT YEAR 2024**

Dated: January 5, 2023

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**I. INTRODUCTION**

The California Efficiency + Demand Management Council, CPower, Leapfrog Power, Inc., and Voltus, Inc. (collectively, the “Joint Parties”) respectfully submit these Reply Comments on the Proposed Decision Approving Demand Response Auction Mechanism Pilot for Pilot Year 2024 (“Proposed Decision” or “PD”), mailed in this proceeding on December 9, 2022. These Reply Comments are timely filed and served pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the instructions accompanying the Proposed Decision, and the extension of time granted in the ALJ’s Email Ruling of December 29, 2022.

**II. SUMMARY OF THE JOINT PARTIES’ RECOMMENDATIONS**

The Joint Parties respectfully make the following recommendations:

- The Commission should disregard the Public Advocates Office arguments for discontinuing the DRAM Pilot because they have already been considered and rejected.
- The PD should be revised by removing the last full sentence in Section 5.4, at page 22, to correct legal error and avoid prejudging issues to be addressed in Phase 2.

### **III. THE JOINT PARTIES' REPLY COMMENTS**

#### **A. A vast majority of parties support or do not oppose a DRAM extension.**

Eight of the ten parties filing comments accept the one-year DRAM extension, including Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), OhmConnect, Inc., as well as the Joint Parties. The California Large Energy Consumers Association (“CLECA”) chose not to take a position. Only the Public Advocates Office (“PAO”) has opposed a DRAM extension. PAO’s opposition stands out in contrast to PG&E and SCE, who despite strongly arguing against retaining the DRAM throughout this proceeding, do not oppose an extension while the long-term disposition of the DRAM is considered. PAO’s position comes in spite of the numerous arguments made throughout this proceeding about why a DRAM extension is appropriate from both a policy and reliability standpoint. In the absence of any convincing evidence otherwise, the Commission should disregard PAO’s arguments and adopt a DRAM extension.

#### **B. PAO’s Opening Comments simply repeat past arguments.**

In its Opening Comments, PAO continues its pattern of repeating the same arguments it has made throughout this proceeding while making no effort whatsoever to address other parties’ rebuttal of these arguments. For example, PAO’s claim that DRAM is “incapable of addressing reliability problems”<sup>1</sup> mirrors the argument in its Opening Testimony that “DRAM resources were not reliable during the times of greatest need”<sup>2</sup> and in its Opening Brief that “DRAM resources were not reliable during the times of greatest need.”<sup>3</sup> Similarly, PAO’s claim that “the record supports the conclusion that there are sufficient opportunities for DRPs to obtain contracts outside of DRAM or to otherwise continue participating in DR”<sup>4</sup> matches the argument it made in Opening Testimony<sup>5</sup> and its Opening Brief.<sup>6</sup> In neither instance has PAO ever addressed the responses of other parties to these claims. In light of that, the Commission has already taken into consideration all parties’ arguments (or lack thereof) in developing this PD so it should disregard PAO’s repackaged arguments.

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<sup>1</sup> PAO Opening Comments, at p. 2.

<sup>2</sup> Exhibit (Ex.) CalAdvocates-02, at p. 1-4, lines 1-2 (PAO (Castello)).

<sup>3</sup> PAO Opening Brief, at p. 5.

<sup>4</sup> PAO Opening Comments, at p. 3.

<sup>5</sup> Ex. CalAdvocates-02, at p. 1-3, lines 4-14 (PAO (Castello)).

<sup>6</sup> PAO Opening Brief, at p. 4.

**C. The proposed burden of proof to permanently adopt the DRAM is problematic and unsupported by the record.**

SCE expresses support for the PD’s direction that, for the DRAM to be transitioned out of pilot status, the Commission must be shown “that the DRAM successfully served as a cost-effective and reliable demand response resource for Californians.”<sup>7</sup> Although the Joint Parties do not dispute the need for DRAM to be subject to the same requirements as any other program or resource once it is adopted as a permanent program, SCE disregards the clear direction adopted in Decision (“D.”) 19-12-040 that the DRAM Pilot be exempted from a cost-effectiveness requirement.<sup>8</sup> SCE also does not address how to define “reliable” in this context or how proponents of adopting DRAM permanently can reasonably be expected to prove its reliability without being able to conduct discovery on the Nexant Report or cross-examine its authors. The Joint Parties also note that, to our knowledge, conditioning adoption of DRAM on a permanent basis on a demonstration that the DRAM Pilot has been “reliable” is counter to the treatment of any previous Commission-approved pilot.

For these reasons, the Joint Parties recommend that the PD be modified to make the following points clear, which, at the least, require the elimination of the last full sentence in Section 5.4, at page 22, to correct legal error and avoid prejudging issues to be addressed in Phase 2:

1. A cost-effectiveness evaluation has not been undertaken for the DRAM Pilot because of its pilot status, and no basis exists for one to be developed after-the-fact for retroactive application to the DRAM Pilot as a basis to determine whether it should be transitioned to a permanent program;
2. The Commission has recognized that, in that instance, the determination of whether to transition the DRAM Pilot to a permanent program will be made, not on a cost-effectiveness evaluation, where again, none exists, but rather based on criteria adopted in D.16-09-056 to determine its “success”;<sup>9</sup> and

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<sup>7</sup> SCE Opening Comments, at p. 2; see, Proposed Decision, at p. 22 and n. 9, *infra*.

<sup>8</sup> Decision 19-12-040, at pp. 42-43.

<sup>9</sup> Decision 16-09-056, at pp. 64-66. The Proposed Decision cites to D.16-09-056 at page 64 to support its statement at page 22 that in Phase 2 the Commission “must be shown” that DRAM “successfully served as a cost-effective and reliable demand response resource.” In doing so, however, the Proposed Decision takes the term “cost-effective” completely out-of-context with the entirety of D.16-09-056’s adopted measurement for how or whether DRAM will be transitioned to a permanent program. Where no cost-effectiveness analysis has been adopted or applied to DRAM as a pilot, D.16-09-056 instead adopted

3. Any analysis or evaluation of that criteria or data used to support that criteria will be assessed in an open, transparent manner that will permit discovery and cross-examination in an evidentiary hearing as required.

While a cost-effectiveness evaluation could be adopted for application prospectively to DRAM if it becomes permanent, that would require a full and fair opportunity for its development with all parties having equal access to the data being used and input on the evaluation criteria to be applied. These circumstances also require clarification of the Amended Scoping Memo issued on December 19, 2022.

**D. The Joint Parties support PG&E’s proposed revised schedule.**

The Joint Parties support PG&E’s proposed schedule for the 2023 DRAM RFO and recommend the Commission adopt it.<sup>10</sup>

**IV. CONCLUSION**

The Joint Parties appreciate this opportunity to provide reply comments on the PD and respectfully urge the Commission to make the revisions recommended herein.

Dated: January 5, 2023

Respectfully submitted,

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“success” measurement criteria for making that determination. It is those criteria that must be applied in Phase 2. Further, while certain of those criteria were examined in the Nexant Report, what was missing was the other requirement of D.16-09-056 at page 66 that: “The demand response auction mechanism pilot review process should ensure *transparency and due process* to stakeholders.” (Emphasis added.) Unless and until all stakeholders, including the DR providers, have the opportunity to engage in discovery and conduct cross-examination of the authors of the Nexant Report, those protections have not been preserved.

<sup>10</sup> PG&E Opening Comments, at p. 2.