

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)
Application of San Diego Gas & Electric Company (U 902-E) Requesting Approval and Funding of its Demand Response Portfolio for Bridge Year 2023 and Program Years 2024-2027.	Application 22-05-003 (Filed May 2, 2022)
Application of Southern California Edison Company (U 338-E) for Approval of Demand Response Programs and Budgets for 2023-2027.	Application 22-05-004 (Filed May 2, 2022)

**CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL AND CPOWER
NOTICE OF EX PARTE COMMUNICATIONS**

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January 11, 2023

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NOTICE OF EX PARTE COMMUNICATIONS**

Pursuant to Rule 8.4 of the Commission's Rules of Practice and Procedure, the California Efficiency + Demand Management Council (“Council”) and CPower hereby timely provide notice of two ex parte communications.¹

The two communications were oral. Each communication took place remotely by Webex provided by the Commission’s office at 505 Van Ness Avenue, San Francisco, California 94102. Each communication lasted approximately 30 minutes, and both were for the same purpose of discussing the Council’s and CPower’s positions on the Proposed Decision Approving Demand Response Auction Mechanism Pilot Year 2024 (“Proposed Decision”) mailed in this proceeding on December 9, 2022.

¹ Pursuant to Rule 8.4(a) of the Commission’s Rules of Practice and Procedure, the “notice may address multiple ex parte communications in the same proceeding, provided that notice of each communication identified therein is timely.” The two ex parte communications reported took place in the same proceeding and for the same purpose and are timely filed today. Pursuant to Rule 8.2(c)(2)(B), the Council and CPower also timely filed and served the required three working days’ advance notice of the grant of these meetings on January 3, 2023.

Both communications took place on Friday, January 6, 2023. The first communication took place at 1:30 p.m. with Kerry Fleisher and Jamie Rose Gannon, Advisors for Commission President Alice B. Reynolds, and the second communication took place at 3:00 p.m. with Maria Sotero, Advisor for Commissioner John Reynolds.

Each of the oral communications was initiated by Sara Steck Myers, attorney for CPower. Also present at the time of each of the communications, along with Ms. Myers and each advisor, were Joseph Desmond, Council Executive Director; Luke Tougas, Council Consultant; Megan M. Myers, attorney for the Council; and Jennifer Chamberlin, CPower Executive Director, Market Development. No one else was present at the time of the oral communications.

Ms. Myers began each oral communication by providing an overview of the Council's and CPower's position on the DRAM 2024 Proposed Decision. Specifically, Ms. Myers stated that the Council and CPower, jointly with Leapfrog Power, Inc., and Voltus, Inc., had filed both Opening and Reply Comments on the 2024 DRAM Proposed Decision in A.22-05-002, et al. Ms. Myers stated that those Joint Comments expressed the parties' strong support for the Proposed Decision's approval of a one-year extension of the DRAM Pilot, which was also either accepted or not opposed by the majority of the parties participating on the issue, including the Investor Owned Utilities (IOUs). According to Ms. Myers, only the Public Advocates Office (CalAdvocates) opposed a DRAM Pilot extension, but did so on grounds that had been considered and rejected and should again be disregarded. Ms. Myers indicated, however, that the Council and CPower, as also supported by Leapfrog and Voltus, did seek a limited modification of the Proposed Decision to ensure consistency with the Commission decisions governing the DRAM Pilot and any transition of that pilot to a permanent program.

With respect to support for the 2024 extension of the DRAM Pilot, Ms. Chamberlin and Mr. Desmond both provided background on the importance of the DRAM Pilot for third party Demand Response Providers (DRPs) to develop and provide supply-side demand response resources to meet California's energy needs and climate goals. Both underscored the significance in maintaining customer participation by extending the DRAM Pilot until a fuller consideration is undertaken in Phase 2 of this proceeding on whether the DRAM Pilot should be transitioned to a permanent program or a different DR procurement mechanism should be adopted. On that point, Mr. Desmond also noted that those Phase 2 issues could also be impacted by other Commission rulemakings addressing distribution energy resources (DERs).

Mr. Tougas then provided detailed background on the question of cost-effectiveness evaluation of the DRAM Pilot, an issue indirectly raised by a sentence in the Proposed Decision that required modification or, preferably, elimination to avoid any confusion on that issue in Phase 2. As Mr. Tougas explained, the Commission had continuously made clear in all previous decisions on the DRAM Pilot that, as a pilot, it was not subject to cost-effectiveness evaluation, and, in turn, no such methodology to do so for purposes of the DRAM Pilot had ever been adopted or applied. Mr. Tougas also indicated that it is appropriate in Phase 2 to conduct a full, fair, and transparent assessment of how DRAM can be improved, whether it should be transitioned to a permanent program and whether, if made permanent, how cost-effectiveness of the program will be evaluated going forward, similar to other permanent Commission procurement programs; however, there is no basis to adopt a cost-effectiveness methodology for retroactive application to the DRAM Pilot in doing so.

Mr. Tougas explained that, for these reasons, the Council, CPower, Leapfrog, and Voltus had requested that the following sentence in the DRAM 2024 Proposed Decision be eliminated

to avoid an outcome contrary to Commission decisions and due process: “In order to transition the DRAM out of pilot status, the Commission must be affirmatively shown in Phase II that the DRAM successfully served as a cost-effective and reliable demand response resource for Californians.” (Proposed Decision, at p. 22.) Mr. Tougas stated that, while this sentence was supported by reference to a page in D.16-09-056, it was actually the case that D.16-09-056 made clear that, where no cost-effectiveness test of the pilot existed, the determination of whether to transition the DRAM Pilot to a permanent program would actually be based on criteria adopted in D.16-09-056 to determine or measure its “success.”

Ms. Myers observed that, while the Nexant Report, which was not admitted into the record of A.22-05-002, et al., did examine these success criteria with respect to the DRAM Pilot, parties were deprived of the opportunity to conduct discovery or conduct cross-examination of the Nexant Report authors where they were not parties to the proceeding. On this point, Ms. Myers noted that, by D.16-09-056, the Commission had also made a commitment that the “demand response auction mechanism review process should ensure transparency and due process to stakeholders.” (D.16-09-056, at p. 66.) According to Ms. Myers, such transparency and due process can only be achieved if all parties have an opportunity to be noticed of and heard on the data and assumptions used by the Nexant Report authors in reaching their conclusions.

Mr. Desmond concluded that it was common practice in the Energy Division to provide draft versions of a Report, like the Nexant Report, to parties for review and comment prior to issuing a final report. Mr. Desmond continued that this was not done with the Nexant Report.

In further compliance with Commission rules and instructions included in Commissioners’ Meeting Request forms, this notice has been served on the A.22-05-002, et al. (IOUs DR Programs) Service List and electronically copied to

PresidentReynoldsExParte@cpuc.ca.gov; CommissionerJohnReynoldsExParte@cpuc.ca.gov;
Kerry.Fleisher@cpuc.ca.gov; Jaimerose.Gannon@cpuc.ca.gov; and Maria.Sotero@cpuc.ca.gov.

Respectfully submitted,

January 11, 2023

/s/ MEGAN M. MYERS

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