

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

ENERGY DIVISION

RESOLUTION E-4728

July 23, 2015

**R E S O L U T I O N**

Resolution E-4728. Approval with Modifications to the *Joint Utility Proposal for a Demand Response Auction Mechanism Pilot Pursuant to Ordering Paragraph 5 of Decision 14-12-024*.

PROPOSED OUTCOME:

- This Resolution approves, with modifications, the proposal of Southern California Edison, San Diego Gas and Electric Company and Pacific Gas and Electric Company, to create an auction mechanism for demand response capacity, called the Demand Response Auction Mechanism.
- Specifically, this Resolution adopts with modifications, the auction design, protocols, standard pro forma contract, evaluation criteria and non-binding cost estimates.
- This Resolution requires San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company to exclude fossil-fueled back-up generation from Demand Response Auction Mechanism bids.

SAFETY CONSIDERATIONS:

- This Resolution approves a pro forma power purchase agreement that contains provisions requiring compliance of sellers and their agents with all applicable laws, including laws related to permitting and safe operations. No additional incremental safety measures are or need be associated with this Resolution.

ESTIMATED COST:

- No additional costs are requested for the pilot. As required in Ordering Paragraph 5c of Decision 14-12-024, the Advice Letters contain a non-binding cost estimate of \$9 million dollars across the three IOUs.

- Ordering Paragraph 5d of the same decision gave the IOUs the authority to shift funds from existing demand response budgets to fund the pilot.

By Advice Letters 3208-E (Southern California Edison), 4618-E (Pacific Gas and Electric Company), and 2729-E (San Diego Gas and Electric Company), Filed on April 20, 2015.

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## **SUMMARY**

This Resolution approves, with modifications, the auction design, protocols, standard pro forma contract, evaluation criteria and non-binding cost estimates for the first year of the Demand Response Auction Mechanism (DRAM) pilot program, for the three IOUs. In Decision (D.) 14-12-024<sup>1</sup>, the Commission ordered the IOUs to file all of these elements of the DRAM pilot, as well as set-aside proposals.

The pilot auction design and standard contract approved via this Resolution is for the first year only – the auction will be held in 2015, for deliveries in 2016. A second advice letter is expected to be filed later in 2015 with the auction design, protocols and standard pro forma contract for the second year of the pilot – an auction held in 2016 for deliveries in 2017. The pilot program provisions approved in the Resolution shall remain in effect for the full pilot period until/unless the Commission takes further action to modify it.

Within 30 days of the effective date of this Resolution, the IOUs shall file a Tier 1 Advice Letter with the Energy Division demonstrating compliance with the modifications approved in this Resolution.

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<sup>1</sup> The Decision is available at:  
<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M143/K552/143552239.pdf>.

## **BACKGROUND**

As set forth in a Scoping Memo<sup>2</sup>, in Rulemaking (R.) 13-09-011, issued on April 2, 2014, and pursuant to D.14-03-026, a competitive procurement mechanism for demand response (DR) capacity will be developed, piloted and implemented. That Scoping Memo contained an Energy Division staff proposal for a reverse auction mechanism for DR, called the Demand Response Auction Mechanism (DRAM). The Energy Division held one workshop in April 2014, and parties submitted comments on a list of questions relating to the DRAM, and contained in the Scoping Memo. That commentary was received in testimony and reply testimony served in May 2014. Subsequently, parties proposed a settlement process to resolve issues in phases 2 and 3 of R.13-09-011. Parties submitted a proposed Settlement Agreement for Commission consideration in August 2014. The Settlement proposed that the Commission embark upon a pilot of the DRAM with an auction in 2015 for 2016 delivery and a second auction in 2016 for 2017 deliveries.

The Commission accepted the Settlement Agreement, with modifications, in Decision (D.) 14-12-024. Pursuant to D.14-12-024, on April 20, 2015, SCE filed advice letter (“AL”) 3208-E, PG&E filed AL 4618-E, and SDG&E filed AL 2729-E (hereafter “AL 3208-E et al”). In AL 3208-E et al, the IOUs seek approval of their bidding protocols and standard power purchase agreements. They also propose new program details or standard terms and conditions that were not addressed in the Decision. The IOUs propose several details in the auction protocols, and terms of the standard contract, that differ from direction in the Decision.

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<sup>2</sup> The Scoping Memo, *Joint Assigned Commissioner And Administrative Law Judge Ruling And Revised Scoping Memo Defining Scope And Schedule For Phase Three, Revising Schedule For Phase Two, And Providing Guidance For Testimony And Hearings*, is available at: <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M089/K323/89323807.PDF>.

## **NOTICE**

Notice of Advice Letters 3208-E, 4618-E and 2729-E was made by publication in the Commission's Daily Calendar. SCE, PG&E and SDG&E state that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

## **PROTESTS**

Advice Letters 3208-E, 4618-E and 2729-E (collectively, "AL 3208-E et al") were protested.

On May 11, 2015, AL 3208-E et al were timely protested by Olivine, Inc., Office of Ratepayer Advocates ("ORA"), California Large Energy Consumers Association ("CLECA"), South Coast Air Quality Management District ("SCAQMD"), Sierra Club, and EnerNOC, Inc., Johnson Controls, Inc., Converge, Inc., and Enerwise Global Technologies, Inc. D/B/A CPower (collectively, the "Joint DR Parties").

Southern California Edison, filing on behalf of the three IOUs, responded to the protests of Olivine, Inc., ORA, CLECA, SCAQMD, Sierra Club and the Joint DR Parties, on May 18, 2015.

### **Back-up Generation in Conjunction with DRAM Contracts**

The protests of SCAQMD, CLECA, ORA, Sierra Club and Joint DR Parties all include positions on the use of back-up generation (BUGs) in conjunction with DRAM contracts, at varying levels of specificity.

SCAQMD, ORA and the Sierra Club all contend that BUGs should be disallowed for customers participating in the DRAM, and urge the Commission to both adopt the approach proposed by SDG&E to ban BUGs in DRAM bids, and require the same of PG&E and SCE. Each of these protesting parties argue that allowing BUGs into DRAM is inconsistent with Commission resource adequacy

(RA) and demand response (DR) policy<sup>3</sup>. SCAQMD argues that allowing BUGs into a PDR bid would require the BUG to be dispatched more frequently than current emissions limits allow.<sup>4</sup> More specifically:

- SCAQMD describes state and federal permit limitations on operation of back-up generation, both for emergency and non-emergency purposes. In this context, SCAQMD demonstrates that DRAM dispatches, if offset by back-up generation, would run in excess of allowable permit hours. Further, the SCAQMD believes that allowing DRAM participants to utilize back-up generation is contrary to state environmental policy and Commission policy, and advocates banning BUG usage in the DRAM.
- The Sierra Club contends that Commission RA policy explicitly disallows RA credit for DR resources coupled with BUGs, via D.11-10-003. To the extent that the Commission allows for BUGs in the DRAM, the Sierra Club contends that the utilities be required to collect hourly data, consistent with the direction in OP 14 of D.14-12-024.
- ORA echoes the concern that CPUC RA policy already prohibits the use of BUGs in conjunction with DR, and thus BUG usage for the DRAM should not be allowed.

In reply, the IOUs contend that the proposed treatment of BUGs is consistent with current Commission policy to collect information on BUG usage, as required by Ordering Paragraphs (OP) 12, 13 and 14 of D.14-12-024, and pending

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<sup>3</sup> Protest of the Office of Ratepayer Advocates to Joint Utilities Advice Filing of the Demand Response Auction Mechanism Pilot Pursuant to Decision 14-12-024. (AL3208-E SCE, AL 4618-E PG&E, AL 2729-E SDG&E), filed May 11, 2015, pages 7-9; and, Protest of the Sierra Club to SCE Advice Letter (AL) 3208-E and PG&E AL 4618-E on Demand Response Auction Pilot Pursuant to Ordering Paragraph 5 of Decision 14-12-024, filed May 11, 2015, pages 2-3.

<sup>4</sup> Protest of the South Coast Air Quality Management District (SCAQMD) to SCE Advice Letter 3208-E, PG&E AL 4618-E, SDG&E AL 2729-E Regarding the Demand Response Auction Mechanism Pilot Pursuant to Ordering Paragraph 5 of Decision 14-12-024, filed May 11, 2015, pages 5-7 and 9-10.

review in Advice Letters 2700-E, 4582-E and 3173-E, filed on February 9, 2015.<sup>5</sup> The IOUs point out that in allowing BUGs in conjunction with DRAM contracts, "...SCE and PG&E are not encouraging the use of fossil fuel emergency back-up generation, but rather do not want to a priori prevent customers with BUGs from participating in the DRAM, so long as their participation complies with all laws, rules, regulations and orders".<sup>6</sup>

On the other side, CLECA contends that SDG&E's proposal to exclude BUGs prejudices future Commission policy determination and should be rejected. The Joint DR Parties contend that to exclude customers with BUGs from participating in DRAM would serve to limit participation in the DRAM, inconsistent with the Commission's goal of fostering participation in the DRAM mechanism in order to give it a sufficient opportunity to be tested. The Joint DR Parties further argue for rejection of Section 3.3(d) in the proposed DRAM pro forma contract, which would require sellers to gather the BUG data required of the IOUs in D.14-12-024. That contract provision reads as follows:

*(d) Seller shall provide Notice to Buyer of whether any participating non-residential customers included in the DRAM Resource during the Delivery Period had backup generation and if so, shall include in such Notice information on the make, model and location of the generator by Customer and location consistent with the Commission direction to the Buyer in OP 12 of D.14-12-024. Additionally, Seller shall provide information regarding the hourly usage for each Customer back-up generator that Buyer needs to comply with Commission requirements under D.14-12-024, Ordering Paragraph (OP) 14, as that OP may be applicable to the Dispatch of Seller's PDR(s) pursuant to this Agreement.*

The Joint DR Parties contend both that the IOUs do not have the authority to transfer their data collection responsibilities to third party DRAM participants, and that the collection of this data is out of step with the Commission's direction

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<sup>5</sup> Southern California Edison Company's Joint IOU Reply to Protests Filed to SCE Advice 3208-E, PG&E Advice 4618-E and SDG&E Advice 2729-E, on Demand Response Auction Mechanism Pilot Pursuant to Decision 14-12-024, filed May 18, 2015, page 4.

<sup>6</sup> Ibid, page 5.

as there will be no utility events under the DRAM. In sum, the Joint DR Parties argue that BUG data should not be collected for the DRAM and, if it is required to be collected, that the requirement be limited to a subset of the information required by D.14-12-024.

In reply, the IOUs state that the treatment of BUGs in the first year of DRAM “...must avoid prejudging the way forward for the Commission’s ultimate decision on implementation of its policies on what role would be appropriate for customers with fossil fuel emergency back-up generation where its decisions in R.13-09-011 contemplate increasing demand response”<sup>7</sup>. In response to the concerns presented by the Joint DR Parties, the IOUs point out that they cannot perform the hourly mapping of BUG usage against DR events, as the IOU will not control the dispatch of a DRAM resource. The IOUs oppose the Joint DR Parties’ contentions to remove the contract provision, as “(i)f the Commission believes it may want back-up generator information from the DRAM Sellers’ customers for evaluation in OP 14 of D.14-12-024, the DRAM contract must make provision of that information one of Seller’s obligations under the contract, because the IOUs need the authority and a mechanism to require the Seller to provide the necessary information”.<sup>8</sup> The IOUs further point out that “(t)here is no indication that the Sellers would be willing to work cooperatively with the utility Buyer absent the contract provision”.<sup>9</sup>

### **Participation of Net Energy Metered Customers in DRAM**

The Joint DR Parties protest SDG&E’s proposal to exclude NEM customers from the DRAM, in that such limitation would run counter to the Commission’s goal of encouraging participation in the DRAM pilot. The Joint DR Parties further support the inclusion of NEM customers, as proposed by PG&E and SCE, as such

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid, page 6.

<sup>9</sup> Ibid.

participation would better inform the Commission and the CAISO as to the relevant policy and practical interactions.<sup>10</sup>

On the other hand, ORA protests the inclusion of NEM customers in DRAM until the Commission fully assesses and resolves any issues associated with such dual participation, and thus supports SDG&E's proposal to exclude NEM customers and urges that PG&E and SCE be required to do the same.<sup>11</sup> ORA notes that AL 3208-E et al) identifies potential issues associated with NEM customers in DRAM, but fails to adequately or accurately define those issues. ORA further states that "(t)he utilities should elaborate on the mechanics of potential double payment to allow the Commission to understand NEM impacts on PDR".<sup>12</sup>

### **Set-Aside Proposals**

In its protest, ORA recommends that the Commission approve SDG&E's proposal for limits to the participation in its Capacity Bidding Program (CBP) to encourage participation in the DRAM, and require the same for PG&E and SCE. ORA claims that "(t)his set-aside provision motivates new and existing aggregators to participate in the DRAM and the limits it places on CBP is more reflective of ORA and TURN's proposals for set-asides"<sup>13</sup>. The Joint DR Parties, on the other hand, recommend rejection of SDG&E's proposal to limit participation in CBP, and that "...SDG&E should be required to follow the same approach used by PG&E and SCE to allow new aggregator entrants into the CBP".<sup>14</sup>

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<sup>10</sup> Advice Letter 3208-E, et al. (DRAM PILOT) Joint Protest of Enernoc, Inc., Johnson Controls, Inc., Comverge, Inc., and CPower, filed May 11, 2015, page 13

<sup>11</sup> Protest of the Office of Ratepayer Advocates to Joint Utilities Advice Filing of the Demand Response Auction Mechanism Pilot Pursuant to Decision 14-12-024. (AL 3208-E SCE, AL 4618-E PG&E, AL 2729-E SDG&E), filed May 11, 2015, page 7.

<sup>12</sup> Ibid, page 6.

<sup>13</sup> Ibid, page 11.

<sup>14</sup> Advice Letter 3208-E, et al. (DRAM Pilot) Joint Protest of Enernoc, Inc., Johnson Controls, Inc., Comverge, Inc., and CPower, filed May 11, 2015, page 5.



In reply, the IOUs, in sum, argue that the set-asides should be approved as they were originally proposed in AL 3208-E et al. The IOUs argue for allowing for differences in set-aside proposals among IOUs:

“If IOUs were forced to apply the same provisions across the state, the impact of the CBP set-aside may be harder to identify and the learnings from the pilot may be diminished.”<sup>15</sup>

They also contend that the set-aside proposals are compliant with the direction in Ordering Paragraph 5b in D.14-12-024 to “develop and recommend a proposal for a set-aside for the Demand Response Auction Mechanism pilot, based on location, customer class or attribute, or end uses”.

### **Resource Adequacy Issues**

ORA, CLECA and the Joint DR Parties comment on different aspects of resource adequacy policy associated with the DRAM.

CLECA supported the proposal in both AL 3208-E et al, and a motion<sup>16</sup> filed in the 2016 resource adequacy proceeding, R.14-10-010, which was since approved in D.15-06-063, to use the contracted capacity as the qualifying capacity for the first year of the DRAM.

In protest, ORA takes the following positions on several RA aspects of AL 3208-E et al: 1) Reject the request for waiver of CPUC penalties for RA shortfalls directly related to DRAM sellers’ failure to deliver; 2) Require DRAM bidders to

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<sup>15</sup> Southern California Edison Company’s Joint IOU Reply to Protests Filed to SCE Advice 3208-E, PG&E Advice 4618-E and SDG&E Advice 2729-E, on Demand Response Auction Mechanism Pilot Pursuant to Decision 14-12-024, filed May 18, 2015, page 2.

<sup>16</sup> Motion Of Southern California Edison Company (U 338 E) And San Diego Gas And Electric Company (U 902 E) For An Order Adopting Proposed Methodologies To Permit The Megawatt Contract Quantities In The Commission Approved Demand Response Auction Mechanism 2016 Pilot Contracts To Count Toward Meeting System Resource Adequacy Requirements Per Decision 14-06-050, filed April 20, 2015.

“...provide a reasonable demonstration that they could achieve the capacity in their bids”<sup>17</sup>; 3) Require DRAM contracts to adhere to RA criteria for DR; 4) Modify the list of options for capacity demonstration in Section 1.6 of the pro forma contract to require that demonstrated capacity “...be equal to the average of the hourly load reduction rather than the maximum load reduction as proposed by the Utilities”<sup>18</sup>; and, 5) Disallow the second option (ii) on the list of options for capacity demonstration in Section 1.6 of the pro forma contract for the first showing month and for any month in which the monthly capacity is greater than that of the prior month.

The Joint DR Parties requested that, if the motion in R.14-10-010 was adopted, that DRAM sellers be exempt from performing a load impact analysis, and that Section 3.3(b) be removed from the DRAM pro forma contract.

In response to the issues raised by ORA, the IOUs in reply advocate for rejection of ORA’s recommendations concerning RA policy for purposes of the DRAM pilots, as incorporating these recommendations could limit participation in the pilot.<sup>19</sup> The IOUs clarify both that DRAM resources must meet current CPUC RA requirements, and that these obligations are reflected in the pro forma contract<sup>20</sup>, and the reasons associated with the request for exemptions from load impact analysis for the DRAM pilots.<sup>21</sup> The IOUs state that requiring Sellers to demonstrate that customers are enrolled prior to the auction is “...unrealistic, and would reduce participation, if not eliminate it entirely.”<sup>22</sup> To ORA’s concern

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<sup>17</sup> Protest of the Office of Ratepayer Advocates to Joint Utilities Advice Filing of the Demand Response Auction Mechanism Pilot Pursuant to Decision 14-12-024. (AL 3208-E SCE, AL 4618-E PG&E, AL 2729-E SDG&E), filed May 11 2015, page 4.

<sup>18</sup> Ibid. pages 9-10.

<sup>19</sup> Southern California Edison Company’s Joint IOU Reply to Protests Filed to SCE Advice 3208-E, PG&E Advice 4618-E and SDG&E Advice 2729-E, on Demand Response Auction Mechanism Pilot Pursuant to Decision 14-12-024, filed May 18, 2015, page 9.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid, page 10.

<sup>22</sup> Ibid.

regarding the limited waiver of RA penalties for the Buyer for the purposes of the DRAM, the IOUs state that this waiver is intended to avoid discouraging participation in the pilot.<sup>23</sup> Finally, to ORA's recommendations associated with potential Seller gaming of the DRAM pilot, the IOUs state that ORA's recommendations would impose unnecessary burdens on the Seller, and are "...unnecessary, as the Seller (and indirectly the Scheduling Coordinator) would face significant CAISO imbalance penalties for nominating more than can be delivered."<sup>24</sup>

The IOUs did not respond to the issues regarding resource adequacy raised in either CLECA or the Joint DR Parties' protests.

### **Other Contract Provisions - Provision of Data to the CPUC (Section 3.3(a)) and Access to Financial Information (Section 5.7)**

#### *Provision of Data to the CPUC (Section 3.3(a))*

The Joint DR Parties, CLECA and Olivine, Inc., protest the requirement to provide information to the Commission, as currently proposed in Section 3.3(a) of the pro forma contract.

Olivine states "(w)e appreciate and value the Commission's thorough evaluation of the DRAM and have no concern with supporting the provision of data and information to the Energy Division staff we are not comfortable with the type of data that might be requested being more thoroughly defined [*sic*]."<sup>25</sup>

In its protest, CLECA states that it "...understands that the purpose of this data collection is to inform the evaluation of the DRAM; that evaluation is necessary and it may require Commission staff's examination of confidential data, with appropriate protections and precautions taken to ensure the confidentiality of the

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<sup>23</sup>Ibid, page 11.

<sup>24</sup> Ibid.

<sup>25</sup> Comments of Olivine, Inc. on Demand Response Auction Mechanism Advice Letter, filed May 11, 2015, page 2.

data is maintained. However, a subpoena process is already established for staff collection of data from the CAISO to evaluate the RA program.”<sup>26</sup>

CLECA also states that “...it does not seem fair to require potentially more data from demand response resources providing Resource Adequacy (RA) than is required from other resources providing RA. Further, it appears that the proposal would use a different process for requesting the data than the process used for other RA resources. CLECA recommends instead reliance on the same data collected through the same subpoena collection process used for all other RA resources”.<sup>27</sup>

The Joint DR Parties argue that Section 3.3(a) should be removed from the contract entirely, and all of the information sought by the Energy Division should be obtained via a subpoena to the CAISO. In sum, the Joint DR Parties contend that the contract provision is overly broad, unclear, and does not provide sufficient assurance of confidentiality,<sup>28</sup> and argue that the appropriate forum for developing obligations between the Commission and DR Providers is within Rule 24<sup>29</sup>. The Joint DR Parties also propose the following alternative provision, as an alternative to removing the provision:

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<sup>26</sup> California Large Energy Consumers Association Protest and Response to Pacific Gas and Electric Company Advice Letter 4618-E, San Diego Gas & Electric Company Advice Letter 2729-E, and Southern California Edison Company Advice Letter 3208-E, filed May 11, 2015, page 6.

<sup>27</sup> Ibid, page 2.

<sup>28</sup> Advice Letter 3208-E, et al. (DRAM PILOT) Joint Protest of Enernoc, Inc., Johnson Controls, Inc., Comverge, Inc., and CPower, filed May 11, 2015, pages 6-8.

<sup>29</sup> Ibid, page 9.

### Section 3.3

*(a) Within a reasonable period of time, Seller shall provide to the CPUC information requested by the CPUC by subpoena relating to the Seller's obligations pursuant to this Agreement, except such information that is exempted or prohibited from disclosure to the CPUC pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code. Any information provided by Seller to the CPUC pursuant to such request shall be held in confidence by the CPUC and excluded from public inspection, with the disclosure of any such information by an employee of the CPUC subject to applicable statutory penalties.<sup>30</sup>*

In reply, the IOUs recommend that the arguments of CLECA and the Joint DR Parties be rejected, and point out that information provided in the CAISO subpoena is at the Resource ID level, and so may not provide sufficient information for a DR resource aggregation, which would likely contain multiple customer accounts within a single Resource ID, unlike a generator. The IOUs also recommend that the alternative contract provision offered by the Joint DR Parties be rejected, as it is overly restrictive in limiting the provision of data to only the Seller's obligations under the DRAM contract.

#### *Access to Financial Information (Section 5.7)*

In protest, the Joint DR Parties raise a concern regarding the timelines for access to financial information in Section 5.7 of the pro forma contract. The Joint DR Parties request that the deadlines for sellers to provide buyer with consolidated financial information be extended from 15 days to 45 days from quarter-end close for PG&E and SDG&E and from 20 days to 60 days from year-end close for SCE. The difference between the two proposed timeframes reflects the greater effort required to provide annual information. In reply, the IOUs contend that the deadlines proposed in the contract should remain, to give the IOU sufficient time to provide the final filing to the Securities and Exchange Commission, if required. In comments to this Resolution, both the IOUs and the Joint DR Parties describe alternative contract provisions that address the concerns of both.

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<sup>30</sup> Ibid, page 15.

## **DISCUSSION**

This discussion starts with resolution of issues raised in protests filed on May 11<sup>th</sup>, and replied to on the 18<sup>th</sup>, and then proceeds to issues raised and requests made, in AL 3208-E et al, that are not the subject of protests.

### **Back up Generation in Conjunction with DRAM Contracts**

The protests of SCAQMD, ORA and the Sierra Club raise serious concerns about the usage of fossil-fueled BUGs in the DRAM. D.14-12-024 states that “applicable law supports the conclusion that the Commission has jurisdiction to bar fossil-fueled BUGs.”<sup>31</sup> In D.11-10-003, the Commission directed the utilities to work with the Energy Division to identify data on how customers intend to use back-up generation and identify the amount of demand response provided by back-up generators. In D.14-02-014, the Commission stopped short of disallowing BUGs in DR programs and ordered the collection of BUG data in order to develop an actionable policy; however, the ordering paragraphs of the aforementioned decision also stated that “The Commission confirms the following policy statement for demand response: Fossil-fueled back-up generation is antithetical to the efforts of the Energy Action Plan and the Loading Order” and “It is reasonable to adopt as a policy statement that fossil-fuel emergency back-up generation resources should not be allowed as part of a demand response program for resource adequacy purposes, subject to rules adopted in future resource adequacy proceedings.” Specifically, Findings of Fact 63, and 68 through 72, and Ordering Paragraphs 10 through 14 of D.14-12-024 detail the Commission’s findings and direction in this regard.

Commission policy clearly states that fossil-fueled BUGs run counter to Commission policy, and although the Commission stopped short of disallowing BUGs in current DR programs, it is unnecessary for the Commission to allow fossil-fueled BUGs in DRAM. Data collection on BUGs in existing DR programs will occur, and the Commission can use that data to develop a policy for existing DR programs. The DRAM is a two year pilot program that was designed to enable DR wholesale market participation by providing a competitive means to a

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<sup>31</sup> D.14.12-014 page 58.

capacity contract outside of any IOU DR program. Disallowing fossil-fueled BUGs in this pilot program could provide additional insight for the Commission when it decides the overall policy on fossil-fueled BUGs; however, the ultimate determination of that policy will not be made in the context of the DRAM. Because allowing fossil-fueled BUGs in the DRAM is unnecessary and allowing them would run counter to other Commission policies, the protests of SCAQMD, ORA and the Sierra Club are accepted in this regard. SDG&E, PG&E, and SCE are directed to disallow fossil-fueled BUGs in conjunction with DRAM bids. We are persuaded by comments that we should allow participants in SDG&E's territory to have fossil-fueled BUGs, but not use them in the DRAM. We clarify here that for purposes of the DRAM only, fossil-fueled BUGs include the following: distributed generation technologies using diesel, natural gas, gasoline, propane, or liquefied petroleum gas, in combined heat and power (CHP) or non-CHP configuration. This definition is consistent with the loading order" which prioritizes investments first in energy efficiency and demand response, followed by renewable resources and distributed generation, and only then clean conventional electricity supply. We clarify one exception: storage is allowed (and indeed encouraged) in DRAM because of its important role for renewables integration and in meeting AB 2514 storage procurement targets. To ensure that greenhouse gas (GHG) benefits are produced, we require any storage in DRAM to meet the GHG emissions factor thresholds adopted for the SGIP program. We note that R.12-11-005, the Distributed Generation proceeding, is re-examining whether dual participation of SGIP resources in DR programs should be permitted. We make no determination here about this issue.

In response to party comments raising concerns about bidders demonstrating that they are not using fossil-fueled BUGs in the DRAM, we will give bidders several options: bidders may attest that they will not rely on fossil-fueled BUGs for load drops; bidders can require that none of their participants have fossil-fueled BUGs; they can monitor and enforce via metering on the units; or they can contractually require their participants to not use fossil-fueled BUGs in DRAM. Bidders must demonstrate they are not relying on fossil-fueled BUGs by utilizing at least one of these options.

### **Resource Adequacy**

The comments of ORA and CLECA regarding the motion in R.14-10-010 are out of scope for AL 3208-E et al, as the authorization to allow for this treatment for the first year of DRAM resides with the RA proceeding, R.14-10-010, and not the

extant Advice Letters. The issues in the motion in R.14-10-010 were later addressed in D.15-06-063, and dictate associated changes to the DRAM pro forma agreement. To the Joint DR Parties' concern, since the utilities' request to use contract capacity as qualifying capacity for the 2016 DRAM was adopted in the D.15-06-063, then Section 3.3(b) must be deleted from the contract, as it is now unnecessary. Similarly, the IOUs request, in AL 3208-E et al, not to perform a load impact analysis for DRAM contracts. As with the request of the Joint DR Parties, this request is approved. These exemptions would be for the limited purposes of this pilot alone.

The issues protested by ORA are addressed individually. First, ORA recommends that the Commission reject the request for waiver of penalties for RA shortfalls directly related to DRAM sellers' failure to deliver, and argues that "...the Utilities should continue to be held responsible for providing RA capacity for their RA showings."<sup>32</sup> In general, we agree in principle with ORA that utilities must be held to their obligations and penalized if those obligations are not met. However, we also note that the primary purpose of a pilot is to test a mechanism and, in order to do so effectively, participants must be reasonably attracted to that mechanism. No DR pilot program to date has incurred RA penalties, and it is our conclusion that a rejection of the RA waiver could reduce interest in participation in the DRAM pilot. Thus, for the limited purpose of this pilot, this request in the AL is granted: the IOUs have a waiver from RA penalties for any failure of DRAM sellers to deliver, for both years of the DRAM pilot period (2016-17) only. We agree with ORA that a request to modify RA requirements is "...more appropriately addressed in the RA proceeding"<sup>33</sup>, and direct the IOUs to pursue any additional request to relax or eliminate RA penalties associated with any post-pilot DRAM through the RA docket.

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<sup>32</sup> Protest of the Office of Ratepayer Advocates to Joint Utilities Advice Filing of the Demand Response Auction Mechanism Pilot Pursuant to Decision 14-12-024. (AL 3208-E SCE, AL 4618-E PG&E, AL 2729-E SDG&E), filed May 11 2015, page 4.

<sup>33</sup> Ibid.



Second, we agree with ORA that DRAM contracts must adhere to RA criteria applicable to DR, as well as the obligations and criteria of the CAISO market. AL 3208-E et al does not propose to exempt DRAM bidders from the CPUC's RA criteria. We clarify here that DRAM contracts must meet CPUC RA criteria specific to DR.

Third, we agree with the IOUs that requiring sellers to have all customers associated with DRAM bids under contract in advance of participating in the auction is overly burdensome and unrealistic, and therefore we do not support such a requirement. However, it is not clear from ORA's protest that having these customers *under contract* is the specific recommended outcome. Rather, ORA describes requirements in PJM Interconnection LLC's (PJM) Reliability Pricing Mechanism (RPM) which states that "...the Commission should order the Utilities to adopt requirements *similar* to those used by PJM to have the Sellers provide a reasonable demonstration that they could achieve the capacity in their bids".<sup>34</sup> The term "similar" is not defined, and no accounting of the inherent differences between the RPM and DRAM, or PJM and the energy market and policies of California, are made in this recommendation. It is possible that a middle ground exists, but without a more specific recommendation, or an existing standard relevant to the California market on which to make any sort of binding requirement, ORA's protest in this regard is rejected. The approach proposed in AL 3208-E et al, for contract performance to be based on monthly demonstrated capacity, is retained.

Finally, the recommendations for modifications to the three options for capacity demonstration in Section 1.6 of the pro forma contract are rejected. We are persuaded by the IOUs' arguments that the gaming that ORA wishes to guard against in advocating modification of this provision is unlikely, and would be discouraged by CAISO policy, as the type of gaming that ORA suggests could incur both availability penalties under the Resource Adequacy Availability Incentive Mechanism, as well as imbalance penalties. That said, we leave the option open to revisit this question in any future determinations around the DRAM, if there is evidence of gaming in the DRAM pilot auctions.

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<sup>34</sup> Ibid.

## **Participation of Net Energy Metered Customers in DRAM**

AL 3208-E et al states that "...there does not seem to be alignment between the CAISO's current treatment of NEM related capacity calculations for PDR and their treatment of negative load (i.e. exports to the grid), and the Commission approved demand response programs. In addition, the IOUs believe that current CAISO treatment will sometimes allow customers enrolled in Direct Participation to double collect on a portion of their capacity reductions".<sup>35</sup> We agree with ORA that AL 3208-E et al lacks description of these issues. In fact, based on our own examination in the context of AL 3208-E et al, we are not convinced that any problems or double-payment would result from NEM customers participating in DRAM.

Therefore, SDG&E is required to follow PG&E and SCE's approach and allow NEM customers to participate in the DRAM. Further, to the extent that there are concerns regarding the interaction of NEM with PDR or a DR program, the IOUs or any other interested party is encouraged to raise those issues in the appropriate policy proceeding. If these issues do exist, the Advice Letter process is not the appropriate forum for their debate or resolution.

## **Set-Aside Proposals**

D.14-12-024 required the IOUs to develop and propose set-asides for the DRAM pilot auctions in order to give the pilot a sufficient chance to be tested. We find that the set-aside proposals contained within AL 3208-E et al, do not meet the requirements of OP 5b of D.14-12-024. Specifically, OP 5b states that "(i)n addition to the items in Ordering Paragraph 3.a, the pilot design working group shall also develop and recommend a proposal for a set-aside for the Demand Response Auction Mechanism pilot, based on location, customer class or attribute, or end uses".

We note that discussion of residential customer participation in the DRAM is missing from AL 3208-E et al. While the AL does not explicitly propose to

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<sup>35</sup> AL 3208-E et al, page 5.

disallow residential customers in an aggregation, we clarify here that aggregations including, or comprised entirely of, residential customers are eligible for the DRAM. Given both the unique complexities associated with aggregations of residential customers, particularly in bidding into the CAISO market, and largely untapped demand response potential within this market segment, we believe that a set-aside reserved for residential customers in the DRAM makes sense. Therefore, we require each utility is required to create a set-aside of twenty percent of their total MWs procured under the DRAM, which shall be reserved for residential customers. The purpose of this set-aside is to attract new market players to the DRAM, and test the participation of residential aggregations in the DRAM mechanism.

We are compelled by party comments on the set-aside to adopt a minimum threshold of 90 percent residential accounts for residential aggregations, with a 10 percent capacity penalty if the aggregation falls below 90 percent residential customer accounts at any point.

We clarify that the 20% residential set-aside is first based on DRAM minimums, for a total of 4.4 MWs across all three IOUs, based on each IOU's pro rata share of DRAM capacity. This translates as a minimum residential set-aside procurement target of 2 MWs each for SCE and PG&E and 400 kW for SDG&E. We further clarify that we expect the set-aside to expand accordingly as and if the IOUs procure beyond the 22 MW minimum procurement target. So, in other words, if the IOUs collectively procure 50 MWs worth of DRAM bids, then 10 MWs should be reserved for the residential set-aside.

We further clarify that the 20% residential set-aside only applies if the IOU receives sufficient residential bids to collectively make up 20% of total DRAM capacity. If the IOU does not receive sufficient bids to comprise 20% of total DRAM capacity, then they are expected to procure the residential bids, despite the shortfall, and continue to procure bids from other customer classes. As a final point of clarification, no cost cap or consideration is adopted for the 20% set-aside.

We further require that the Independent Evaluator report include both 1) an assessment of the effectiveness of the set-aside in attracting aggregations of residential customers and, and b) recommendations for how the set-aside can be

improved to better attract residential customer aggregations in subsequent rounds of the DRAM.

Turning back to the “set-aside” proposals contained in AL 3208-E et al – while they do not meet the requirements of D.14-12-024 for a set aside, if we revise them to add the 20% minimum set-aside for residential customers, the criterion of OP 5 of D.14-12-024 is met, as residential customers are a distinct class of customers.

The proposals offered in AL 3208-E et al are useful and needed for existing DR program participants to exit certain DR programs to participate in the DRAM, and in the case of SDG&E’s proposals, actively guide DR program participants to the DRAM. We further agree with the IOUs that the proposals in the AL “...recognize(s) the differences in IOUs’ current programs and DR potential, and may provide valuable information on the impacts, positive or negative, of the CBP set-aside provision”<sup>36</sup>. Thus, we agree that the IOUs may retain differing proposals, and approve the proposals in AL 3208-E, and reject the protests of ORA and the Joint DR Parties in this regard.

### **Other Contract Provisions - Provision of Data to the CPUC (Section 3.3(a)) and Access to Financial Information (Section 5.7)**

#### *Provision of Data to the CPUC (Section 3.3(a))*

We appreciate the concerns expressed by CLECA, Olivine, Inc., and the Joint DR Parties, and also the offering of an alternative provision. We intend to request DRAM performance data from the CAISO, under subpoena, as suggested by these parties. Though we intend to obtain via subpoena the greatest level of detail possible and relevant, we concur with the IOUs that this information may not be sufficiently granular or complete enough to fully evaluate the program. Thus, the Commission staff must have the ability to confidentially request from

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<sup>36</sup> Southern California Edison Company’s Joint IOU Reply to Protests Filed to SCE Advice 3208-E, PG&E Advice 4618-E and SDG&E Advice 2729-E, on Demand Response Auction Mechanism Pilot Pursuant to Decision 14-12-024, filed May 18, 2015, page 2.

DRAM Sellers information relating to the DRAM agreement, the performance of the DRAM Sellers' resource in the CAISO market, and any other information relating to an individual DRAM Seller's participation in the DRAM program. Finally, we fully support the desire to protect market sensitive information as confidential, consistent with Commission adopted rules.

Thus, the following, alternative language, is adopted, as amended in response to comments to this Draft Resolution:

### Section 3.3

(a) Within a reasonable period of time, or such time prescribed by the CPUC, Seller shall provide to the CPUC information requested by the CPUC relating to Seller's obligations and performance pursuant to this Agreement and the 2016 DRAM Pilot underlying program to which this Agreement relates. Any information provided by Seller to the CPUC pursuant to request for confidential treatment that conforms to Commission rule and decision shall be held in confidence by the CPUC and excluded from public inspection or disclosure, unless inspection or disclosure is otherwise required by law.

### *Access to Financial Information (Section 5.7)*

We are sympathetic to the concern raised by the Joint DR Parties that the deadline to provide access to quarterly and year-end financial information in the pro forma contract is unworkable. We are also sympathetic to the needs of the IOUs in this regard. Thus, in the absence of any independent experience or view on this matter, the Draft Resolution proposed "splitting the difference" between the IOUs and Joint DR Parties' positions, and require this provision of the contract to be modified to require quarter-end financial information within 30 days of quarter close, and within 40 days of year-end close. If this solution is still not workable, we encouraged the parties to develop a negotiated solution and propose that solution in comments to this Resolution.

In comments to the Draft Resolution, the IOUs and Joint DR Parties describe that negotiated solution. In follow-up discussions, PG&E, SDG&E and a representative of the Joint DR Parties, offered the following mutually acceptable amended language for PG&E and SDG&E's contracts:

Section 5.7

The Parties agree that the Securities and Exchange Commission rules for reporting power purchase agreements may require Buyer to collect and possibly consolidate financial information. If such reporting is required for this Agreement, Buyer is obligated to obtain information from Seller to determine whether or not consolidation is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term of the Agreement:

- (a) Complete financial statements and notes to financial statements, which may include accruals and prior-month estimates with true-ups to actual activity;
- (b) Financial schedules underlying the financial statements, all within fifteen (15) business days at the end of each quarter; and,
- (c) Access to records and personnel, so that Buyer's independent auditor can conduct financial audits (in accordance with generally accepted auditing standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002).

SCE's language is mutually acceptable as originally proposed in AL 3208-E et al.

**Issues Not Addressed in Protests**

The remainder of this discussion focuses on resolution of issues and aspects, and specific requests embedded within, AL 3208-E et al.

*Authorization to File a Second Advice Letter for the Second Year of DRAM – 2017*

The IOUs request authorization to file a second advice letter for the second year of the DRAM pilot, the auction for which would run in 2016 for deliveries in 2017. We clarify that there is nothing in D.14-12-024 that prevents the IOUs from filing advice letters for each year of the pilot separately. This request is approved, with several caveats.

First, the IOUs are directed to file a proposed, non-binding schedule for the solicitation for the second year of DRAM. This schedule must be filed within

30 days of the Commission vote on this final resolution, and must include the estimated filing date for the Advice Letter with the Commission, all of the relevant steps detailed on pages 9 and 10 AL 3208-E et al plus any others, and the relevant steps in the RA process. Second, we anticipate that the lion's share of contract and program details approved in this Resolution, will remain unchanged in the Advice Letter for the second round of the DRAM.

There are three primary issues to be addressed in the AL for the second year of the DRAM that are not addressed in AL 3208-E et al. The first issue is incorporation of local and flexible RA procurement options into the DRAM, with associated bid evaluation and contract provisions. The second issue is alignment with year-ahead RA filings such that the DRAM MWs will be fully incorporated into the regular year-ahead RA process. A third issue would be any relevant major changes in regulation or law that could not be accounted for in AL 3208-E et al or this Resolution. We expect the Advice Letter for the second year of DRAM to focus on these issues alone.

#### *Independent Evaluator Report*

AL 3208-E et al proposes to employ an Independent Evaluator (IE), for the purpose of evaluating the procurement process, and requests approval to do so. This request is approved. The IE report, to be filed with the DRAM signed contracts, is required by this Resolution to contain several elements in addition to those proposed in AL 3208-E et al, including both an evaluation of outreach efforts to new DR market participants and the residential set-aside.

#### *Pre-Solicitation Elements: Outreach Efforts*

AL 3208-E et al details activities that the IOUs will undertake to advertise the DRAM pilot solicitation to aggregators whom both participate and do not participate in DR programs or procurement activities in California. We support these efforts, and require that the Independent Evaluator Report include an analysis of these outreach efforts, an assessment of the effectiveness of these efforts in attracting new DR participants, and recommendations for how to better attract new DR participants to the California market in subsequent rounds of the DRAM.

*Ceiling for DRAM Procurement*

The minimum target for the 2016 DRAM pilot is 22 MWs across all three IOUs. No cap for DRAM procurement was detailed in D.14-12-024. AL 3208-E et al states that winning bids are limited by either the budget or the applicable Commission authorized maximum for Rule 24 registrations<sup>37</sup>. We concur with this statement, and encourage IOUs to procure viable bids beyond the 22 MW minimum authorization, and up to whichever limitation is reached first, as and if applicable. Further, we note that D.14-12-024 allows for the transfer of funds from other programs in the IOUs' DR portfolios to fund the DRAM pilots, if the non-binding cost estimates are exceeded.<sup>38</sup>

AL 3208-E et al also states that PG&E is limited to 50 PDRs, without justification. We note this limitation is part of a proposal that PG&E submitted in the Rule 24 cost recovery docket, A.14-06-001 et al. While the Commission did adopt a phased approach to Rule 24 implementation, PG&E's specific 50 PDR limitation was not adopted. Further, this limitation should be unnecessary given that the limitation on service account registrations per IOU currently governs and effectively serves as an upper bound limitation on DRAM participation. Thus, PG&E may not limit its PDRs to 50 PDRs for purposes of the DRAM, whether or not such limitation would even be necessary.

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<sup>37</sup> AL 3208-E, page 9.

<sup>38</sup> OP 5d, D.14-12-024: "Fund shifting in the 2015-2016 demand response approved bridge funding budget will be allowed by Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (jointly, the Utilities) for the sole purpose of funding the Demand Response Auction Mechanism pilot with the following caveats: 1) The Utilities shall not eliminate any other approved demand response program in order to fund the pilot without proper authorization from the Commission; and 2) The Utilities shall continue to submit a Tier Two Advice Letter before shifting more than 50 percent of any one program's funds to the pilot."



### *Indicative Capacity Prices*

The IOUs offer to file indicative capacity prices with the DRAM contracts. This filing is supported and encouraged, and presumably refers to current RA contract costs. This information will give a useful data point to the cost of DRAM resources in comparison to other short-term capacity contracts, and will assist in the analysis of the program. AL 3208-E et al rightly states that cost-effectiveness evaluation does not apply to pilots. However, for purposes of fully analyzing the costs and benefits of the program, the IOUs are also required to file a benchmark capacity calculation using the relevant version of the cost effectiveness protocols approved by the Commission at the time of filing the signed DRAM pilot contracts. The IOUs are also required to file benchmark calculations of the capacity value of the IOUs' comparable DR programs:

- PG&E – AMP, CBP and BIP programs
- SDG&E – CBP and BIP programs, and LCR RFO bids and/or signed contracts
- SCE – AMP, CBP, BIP and API programs, and signed LCR RFO contracts

Finally, in addition to signed DRAM contracts, the IOUs are required to file all bids received for the DRAM pilot. The utilities are directed to file these calculations, and all bids received, in the same Tier 1 AL as the DRAM contracts.

### *Bid Evaluation Criteria*

In AL 3208-E et al, the IOUs propose to use "...a combination of quantitative and qualitative factors in selection of winning bids to meet the DRAM procurement targets..."<sup>39</sup>

The original Settlement proposal included an outline for the DRAM pilots wherein each utility would use its own criteria to evaluate DRAM bids. This was denied in D.14-12-024, and the DRAM working group was directed to develop transparent, standard evaluation criteria. AL 3208-E et al proposes a quantitative

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<sup>39</sup>Advice Letter 3208-E, et al., page 10.

criterion, which includes bid price, weighted by month of delivery and scheduling coordinator costs, and a list of standard qualitative criteria which may be weighed, and therefore, applied, differently at each IOUs' discretion.<sup>40</sup>

While the list of both qualitative and quantitative criteria listed in AL 3208-E et al includes important elements, because the qualitative criteria can be applied uniquely by each IOU, these criteria are neither standard nor transparent. Thus, the IOUs are directed to develop a clear scoring matrix for each criterion, in a table format, with a numeric score to be assigned to each variable that will be applied equally across the IOUs. This matrix must include all criteria that will be used in scoring DRAM bids, and must be made available to bidders, incorporated into bid documents and explained at DRAM bidders' conference(s). The IOUs are required to jointly file this matrix as part of the Tier 1 compliance filing ordered in OP 19B of this Resolution.

#### *Contract Replacement and Counting*

In AL 3208-E et al, the IOUs request the ability to select the next best DRAM bid if a short-listed bid discontinues participation in the DRAM auction for whatever reason.<sup>41</sup> This request is accepted.

AL 3208-E et al clarifies that "(t)erminated contracts will not be replaced through a replacement DRAM contract".<sup>42</sup> This is a rational approach, as replacement may require an additional solicitation and the delivery period for this first round of DRAM is less than one year, making replacement impractical. However, we require that, if the MW floor is not reached in this first DRAM solicitation for any reason, then the MWs that make up the shortfall shall roll over to the next solicitation – in this case, the 2017 DRAM pilot auction. To illustrate, if the first DRAM pilot auction yields 18 MWs of signed contracts, then the floor for the second DRAM pilot auction will add the remaining 4 MWs that were not procured for a total floor of 26 MWs.

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<sup>40</sup> Ibid, page 21.

<sup>41</sup> Ibid, page 10.

<sup>42</sup> Ibid, page 11.

*Production of Public Report of DRAM Performance by Energy Division*

Finally, the AL 3208-E et al proposes that the Energy Division produce a report with aggregated data to evaluate the program. We believe that such a report could be useful but we recognize that the Commission staff may not have the necessary resources to administer the evaluation. We also note that the IE report and benchmark capacity value calculations approved in this Resolution will provide useful information to evaluate the pilot. We decline to approve this proposal in this Resolution, and leave the issue open for exploration once the DRAM pilot period closes.

**COMMENTS**

The Draft Resolution was mailed on June 18, 2015. Comments were filed timely on July 13, 2015 by Nest Labs; OhmConnect Inc.; Office of Ratepayer Advocates (“ORA”); The Utility Reform Network (“TURN”); Sierra Club, Environmental Defense Fund and Natural Resources Defense Council (“Joint Environmental Parties”); Comverge Inc., CPower, EnerNoc Inc., EnergyHub Inc., and Johnson Controls Inc. (“Joint DR Parties”); and, Pacific Gas and Electric Company, San Diego Gas and Electric Company and Southern California Edison (“IOUs”).

**DRAM Pro Forma Contract Provisions**

*Section 5.7 – Access to Financial Information*

The Joint DR Parties and the IOUs both comment that they have collaboratively resolved concerns with Section 5.7(b). Per the comments of both parties, the provision in SCE’s pro forma PPA is acceptable to the Joint DR Parties as originally proposed. Also per the comments of both parties, the pro forma contract provisions of PG&E and SDG&E will be modified to include “...a provision stating that estimates with true-ups would be acceptable...”<sup>43</sup>. We are pleased that the parties reached a mutually acceptable conclusion on this provision, and direct PG&E and SDG&E to file the amendments to Section 5.7 of

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<sup>43</sup> Comments of Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company on Draft Resolution and Alternate Draft Resolution E-4728, filed July 13, 2015, page 8.

their pro forma contracts in the Supplemental AL due 30 days following the Commission vote on this Resolution.

*Section 3.3(a) – Provision of Information*

The Joint DR Parties offer a significantly amended provision in comments<sup>44</sup>, and provide justification for each proposed change. It bears noting that the significantly amended provision offered by the Joint DR Parties in comments is far more extensive than the contract provision offered by these parties in their protest filed on May 11, 2015. We adopt two of the Joint DR Parties' recommended changes. The changes we do not accept are specific to the sentence referencing provision of information from the CAISO, as this is unnecessary and overly prescriptive, the requirement that this request be made via subpoena, and specific language regarding obtaining customer specific information. The proposed provisions regarding timeframe to obtain customer specific information are encapsulated within the term "reasonable", as used in this provision, and we decline to adopt them. We appreciate that some, but not all, requests from the CPUC may require DRAM Sellers to access customer information and, in those instances, the Seller may simply communicate an estimated timeframe for obtaining the information to the CPUC – no more is required. A subpoena is not necessary to request this information, in the Commission's view, particularly given the confidentiality provisions in Section 3.3(a) of the pro forma agreement. The new provision, with acceptable amendments, is included in the appropriate section of this Resolution.

*Section 1.6 – Demonstrated Capacity*

In comments, ORA reiterates its position expressed in its protest that option (ii) for capacity demonstration be deleted from pro forma contract Section 1.6. TURN states its support for ORA's position in its comments. This contract provision will remain intact for the 2016 DRAM pilot auction, and the request of ORA in this regard is again denied. However, as stated elsewhere in this draft Resolution, we reserve the right to revisit this clause if there is evidence of gaming in the DRAM pilot auction.

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<sup>44</sup> Draft Resolution E-4728 (DRAM) Joint Comments of the Joint DR Parties, filed July 13, 2015, page 2.

### **PDR Aggregation**

In DRAM Working Group meetings, DR aggregators have explained that DRAM Sellers may choose to aggregate more than one DRAM resource together into a single PDR, or DRAM resources with non-DRAM resources, in order to meet minimum CAISO PDR capacity thresholds. Both the Joint DR Parties and the IOUs, in comments, offer recommendations for contract provisions and capacity allocation rules should such aggregation between DRAM resources, or DRAM and non-DRAM resources, occur. The IOUs comment that they may have to add contract provisions to retain the ability of the IOUs to audit contract performance, and retain application of contract Section 3.3(a). The addition of these contract provisions is approved.

The IOUs further comment that, in the event that capacity allocation cannot be differentiated between resources in a PDR, then they will first allocate capacity "...to any non-DRAM resources, non-residential/small business customers, and/or lowest contract price resources."<sup>45</sup> The Joint DR Parties recommend both that the Seller be given the opportunity to demonstrate actual resource performance in an aggregated PDR resource, and that if Seller's demonstration is insufficient, then capacity allocation should be shared equally among DRAM and non-DRAM resources to avoid penalizing DRAM resources unnecessarily. We agree with the Joint DR Parties in this regard.

### **Residential Set-Aside**

Nest Labs, OhmConnect Inc, Joint DR Parties, and TURN all support the residential set-aside proposed by the draft Resolution. OhmConnect, Inc., Joint DR Parties and the IOUs all propose additions to the Resolution to ensure effective implementation of the set-aside. These parties recommend that the criteria for qualifying a residential bid as such be that the aggregation contains at least 90 percent residential customer service accounts, subject to verification and imposition of penalties by the IOU. The Joint DR Parties further specify a penalty of 10 percent of the capacity payment if the percentage of actual residential customers in a residential aggregation falls below the 90 percent

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<sup>45</sup> Comments of Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company on Draft Resolution and Alternate Draft Resolution E-4728, filed July 13, 2015, page 6.

threshold. The IOUs recommend a capacity penalty of 15 percent if the composition of residential customers in a residential DRAM bid falls below 90 percent and is at least 75 percent. We find the approach recommended by OhmConnect Inc. and the Joint DR Parties to be reasonable and adopt it.

Both OhmConnect Inc. and the Joint DR Parties also recommend that the 20% residential set-aside be based on capacity. To be clear, this is the case as proposed in the draft Resolution, and so no amendments are necessary in this regard.

The IOUs recommend that the 20% residential set-aside be based on DRAM minimum procurement targets only. We clarify that the 20% residential set-aside is first based on DRAM minimums, for a total of 4.4 MWs across all three IOUs, based on each IOU's pro rata share of DRAM capacity. This translates as a minimum residential set-aside procurement target of 2 MWs each for SCE and PG&E and 400 kW for SDG&E. We further clarify that the set-aside will expand accordingly as and if the IOUs procure beyond the 22 MW minimum procurement target. So, in other words, if the IOUs collectively procure 50 MWs worth of DRAM bids, then 10 MWs should be reserved for the residential set-aside.

The IOUs also raise the concern that the draft Resolution requires that all other bids be rejected even if insufficient bids to achieve the 20% set aside are received. We clarify here that this is not the case. The 20% residential set-aside only applies if the IOU receives residential bids to collectively make up 20% of total DRAM capacity. If the IOU does not receive sufficient bids to comprise 20% of total DRAM capacity, then they are expected to procure the residential bids, despite the shortfall, and continue to procure bids from other customer classes.

As a final point of clarification, and reiterating that the purpose of the residential set-aside is to test the viability of residential aggregations in the DRAM and the CAISO market, no cost cap or consideration is adopted for DRAM procurement in general, or the 20% residential set-aside. The IOUs may not reject residential bids, up to the 20% set-aside, based on cost, for the purposes of the 2016 DRAM pilot.

### **Resource Adequacy Issues**

The Joint DR Parties provide recommendations for specific language changes to the Resolution to reflect the Commission partial adoption of the

April 20<sup>th</sup> motion in the RA proceeding, in Decision (D.) 15-06-063. These recommendations are accepted, and language throughout this Resolution is updated to reflect the adoption of D.15-06-063.

### **Participation of NEM Customers**

The IOUs comment that SDG&E should be permitted to prohibit NEM customers from participation in the DRAM, and vaguely state that "...allowing NEM customers in the DRAM may run counter to another Commission policy...", while still not providing any specifics as to the policy that would be violated. This section of the Resolution remains as originally drafted and, again, if any party feels that there are issues associated with NEM customers participating in DR, then they are welcome to raise those issues in the appropriate policy docket.

### **Participation of Customers with BUGs**

In comments, ORA states that the Alternate Draft Resolution should be modified to clarify that customers with BUGs are allowed to participate in DRAM but are prohibited from using BUGs during DR events in SCE's, PG&E's, and SDG&E's DRAM solicitations. As ORA states "the core issue is the use of fossil-fueled back-up generation by customers to shift their load to BUGs instead of curtailing their load during DR events." As long as a customer is not using a fossil-fueled BUG for DRAM, that customer may still participate in the program in SCE's, PG&E's, and SDG&E's service territories. Allowing participants in SDG&E's territory to have fossil-fueled BUGs, but not use them in the DRAM will also provide consistency for this policy across the three IOUs. We have made this change to the Alternate Resolution.

Both ORA and the Joint Environmental Parties recommend that the Commission require the installation of a revenue quality meter on BUG units to measure their output during DR events and adjust compensation accordingly. We agree that bidders should demonstrate that they are not relying on fossil-fueled BUGs in the DRAM. We will give bidders several options for demonstrating this: bidders may attest that they will not rely on fossil-fueled BUGs for load drops; bidders can require that none of their participants have fossil-fueled BUGs; they can monitor and enforce via metering on the units; or they can contractually require their participants to not use fossil-fueled BUGs in DRAM. Bidders must demonstrate they are not relying on fossil-fueled BUGs by utilizing at least one of these options.

The IOUs cited concerns in their comments about the lack of definition of a fossil-fueled BUG which could lead to inconsistent treatment of some retail customers. We have clarified the definition in this resolution.

### **Qualitative Evaluation Criteria**

In comments, the IOUs request that their original proposal in AL 3208-E be adopted, which would allow each IOU to apply qualitative criteria at its discretion. This request is, again, denied, as it would be both out of compliance with the direction given in D.14-12-024 in this regard, and is inconsistent with the desire for standard, transparent evaluation criteria.

### **Exclusion of Bids**

In comments, the IOUs state their ability to exclude bids that are clear outliers, or where there is evidence of market manipulation, consistent with other procurement programs. We accept this for the DRAM pilot, and require the IOUs present any bids they wish to reject to the CPUC Energy Division to explain and justify rejection in advance of actual rejection. This addition step will assist in establishing any standard threshold or other treatment for allowing exclusion of bids in subsequent rounds of the DRAM.

### **PG&E's Request to be Limited to 50 PDRs**

The IOUs comment that the draft Resolution erroneously refers to 50 service accounts, rather than PDRs. This Resolution is amended to correct this error. The IOUs further comment that the draft Resolution erroneously states that PG&E's request to limit its PDRs to 50 was not justified, and points to the justification provided by PG&E in the Rule 24 Application proceeding. To be clear, the draft Resolution refers to the fact that AL 3208-E et al, to which this Resolution directly relates, did not provide justification for the 50 PDR limitation for PG&E. That said, this Resolution makes one minor clarifying edit in this regard, and continues to decline to adopt a limitation of 50 PDRs for PG&E.

### **Participation of RDRR in 2017 DRAM**

TURN requests that participation of Reliability Demand Response Resources (RDRR) in the 2017 DRAM be added to the list of considerations in the Resolution for the 2017 DRAM auction. This request is approved, and the amendment is made herein.



## **Performance Report**

The IOUs request that their proposal in AL 3208-E et al for a DRAM performance report be approved in the Resolution. To be clear, the draft Resolution did not reject the production of such a report. The draft Resolution declines to approve the proposal for the first year of DRAM, and leaves the possibility open once the DRAM pilot period closes. This language remains intact.

## **Amendments to Discussion of ORA's Position**

ORA recommends that several editorial changes be made to the Resolution to more appropriately reflect its position. Those changes are approved and are made in this Resolution.

## **FINDINGS**

1. D.14-12-024 directed SCE, PG&E and SDG&E to file an Advice Letter with proposed auction design, protocols, set-asides, standard pro forma contract, evaluation criteria and non-binding cost estimates, for a two-year pilot of the Demand Response Auction Mechanism. The IOUs filed an Advice Letter for the first year of pilot auction, on April 20, 2015.
2. The pilot program provisions approved in the Resolution shall remain in effect for the full pilot period until/unless the Commission takes further action to modify it.
3. Fossil-fueled back-up generation is antithetical to the efforts of the Energy Action Plan and the Loading Order and it is unnecessary for the Commission to allow fossil-fueled BUGs in DRAM.
4. Allowing participants in SDG&E's territory to have fossil-fueled BUGs, but not use them in the DRAM will provide consistency across the three IOUs.
5. Bidders should demonstrate that they are not relying on fossil-fueled BUGs in the DRAM.
6. Fossil-fueled BUGs include the following: distributed generation technologies using diesel, natural gas, gasoline, propane, or liquefied petroleum gas, in CHP or non-CHP configuration. Storage is allowed

in DRAM, but must meet the GHG emissions factor thresholds adopted for the SGIP program.

7. The request of both the IOUs and the Joint DR Parties to be relieved of responsibility to perform a load impact analysis for 2016 DRAM pilot contracts is reasonable since the utilities' request to use contract capacity as qualifying capacity for the 2016 DRAM was approved by the Commission in D.15-06-063. Thus, Section 3.3(b) shall be removed from the DRAM pro forma contract.
8. Any issues relating to RA requirements or penalties associated with the DRAM, beyond the narrow purpose of the pilot, must be pursued through the RA docket.
9. DRAM contracts must adhere to CPUC RA minimum availability criteria applicable to DR, as well as the requirements of the CAISO market.
10. It may be necessary to explore the issue of gaming in the DRAM auction in future DRAM solicitations, if there is evidence of gaming in the DRAM pilot auctions.
11. We are not aware of issues associated with allowing NEM customers to participate in the DRAM, and AL 3208-E et al lacks any description or definition of these issues.
12. The set-aside proposals in AL 3208-E et al fail to capture Commission direction in D.14-12-024, which requires that the set-asides be based on location, customer class or attribute, or end uses. However, we find the set-aside proposals in AL 3208-E et al useful in that they provide the means for customers participating in DR programs or solicitations to participate in DRAM.
13. Residential customers are eligible for the DRAM and including residential customers in the DRAM will test the mechanism for that class of customers.
14. Information obtained via subpoena to the CAISO may not provide all necessary Seller information to assess the DRAM pilot program.
15. In order to effectively evaluate the DRAM pilot, and make informed decisions as to the continuation or modification of the DRAM program, Commission staff must be able to confidentially request data of DRAM Sellers that relate to the DRAM contract and all aspects of the Sellers' participation in the DRAM, including CAISO market performance.

16. There was misalignment between the timeline needed for the IOUs to have quarter-end or year-end consolidated financial information from the Sellers, and the Seller's ability to produce that information within the IOUs' preferred timeline. This misalignment has been resolved and parties have arrived at mutually acceptable contract language.
17. Nothing in D.14-12-024 prevents the IOUs from filing two separate Advice Letters for each of the two years of pilot auction.
18. The second Advice Letter for the DRAM pilot should focus on the following three issues: 1) incorporation of local and flexible capacity offerings; 2) alignment of the DRAM auction timing with year-ahead RA timing; and, 3) any changes in law or regulation that necessitate changes to the pilot or pro forma contract.
19. The IOUs' request to employ an Independent Evaluator is reasonable.
20. No explicit ceiling for DRAM procurement was detailed in D.14-12-024.
21. As a practical matter, winning bids are limited by either the budget authorized in the Decision or the applicable Commission authorized maximum for Rule 24 registrations.
22. PG&E's proposed limit of 50 PDRs is unnecessary given that the limitation on service account registrations per IOU governs and serves as an upward bound limitation on DRAM participation.
23. Indicative capacity cost data will assist the Commission in assessing the DRAM program.
24. D.14-12-024 directed the DRAM Working Group to develop transparent, standard evaluation criteria for DRAM bids.
25. It is reasonable to allow the IOUs to select the next best DRAM bid if a short-listed bid discontinues participation in the DRAM auction.
26. AL 3208-E et al does not explicitly propose to disallow residential customers in an aggregation.
27. We find that a set-aside of 20 percent of DRAM capacity, reserved for residential customers, is reasonable and complies with OP 5b in D.14-12-024.
28. We find that for purposes of determining the percentage of residential versus the percentage of small commercial comprising the residential set-aside, an aggregator must have a minimum of 90 percent of customers on residential

tariffs and no more than 10 percent of customers on small commercial tariffs. Should a residential aggregation fall below this 90 percent threshold, the aggregation will be subject to a 10 percent capacity payment penalty.

29. We find that no cost containment, or safety valve, shall be imposed for the 20% residential set-aside.
30. We find that the 20% residential set-aside is based on total procured DRAM capacity, and not solely the minimum DRAM capacity. We further find that the set-aside may be reduced if an IOU does not receive bids sufficient to make up 20 percent of total DRAM capacity.
31. Sellers may choose to aggregate their resources together into a single PDR in order to meet the PDR capacity minimum, which may combine DRAM resources with non-DRAM resources. Additional contract provisions may be necessary to maintain the ability of the IOUs to audit contract performance. In the event of either partial non-performance of a combined DRAM PDR, the Sellers shall first have the ability to demonstrate actual resource performance. In the event that this demonstration is inconclusive, the IOUs shall allocate capacity equally between the PDR resources.
32. It is reasonable to allow the IOUs to reject DRAM bids that are clear outliers and/or where there is evidence of market manipulation, subject to verification by the CPUC Energy Division.

**THEREFORE IT IS ORDERED THAT:**

1. The request of SCE, PG&E and SDG&E (collectively, "IOUs") to approve the first year of the DRAM pilot program, as requested in Advice Letter AL 3208-E et al, is approved with modifications as specified herein.
2. SCE, PG&E, and SDG&E are ordered to exclude fossil-fueled BUGS from DRAM bids.
3. SDG&E's proposal to exclude any customer with a fossil-fueled BUG from the DRAM is denied.
4. Bidders must demonstrate they are not relying on fossil-fueled BUGs by utilizing at least one of these options: bidders may attest that they will not rely on fossil-fueled BUGs for load drops; bidders can require that none of their participants have fossil-fueled BUGs; they can monitor and enforce via

metering on the units; or they can contractually require their participants to not use fossil-fueled BUGs in DRAM.

5. The DRAM shall be exempt from the load impact analysis for the purposes of RA qualifying capacity is reasonable and approved because the utilities' request to use contract capacity as qualifying capacity for the 2016 DRAM was approved by the Commission in D.15-06-063. This exemption shall be for the limited purposes of the first year of the DRAM pilot alone.
6. The IOUs' request for a waiver from RA penalties for any failure of DRAM sellers to deliver is approved for the pilot period only.
7. The IOUs' proposed methods for basing contract performance on monthly demonstrated capacity are approved.
8. SDG&E shall allow NEM customers to participate in the DRAM.
9. Section 3.3(a), as modified by this Resolution, captures both the needs of the Energy Division to obtain usable information, and the desire of DRAM Sellers for clarity, and is adopted. The IOUs shall replace the proposed Section 3.3(a) with the modified provision in this Resolution, as follows:

Within a reasonable period of time, or such time prescribed by the CPUC, Seller shall provide to the CPUC information requested by the CPUC relating to Seller's obligations and performance pursuant to this Agreement and the 2016 DRAM Pilot to which this Agreement relates. In responding to any information request from the CPUC, the Seller may designate information for confidential treatment consistent with CAISO and/or Commission rule, tariff or decision. Any such confidential information provided by Seller to the CPUC shall be held in confidence by the CPUC and excluded from public inspection or disclosure, unless inspection or disclosure is otherwise required by law.

10. PG&E and SDG&E are directed to modify Section 5.7 of the pro forma contract to incorporate the following language:

The Parties agree that the Securities and Exchange Commission rules for reporting power purchase agreements may require Buyer to collect and possibly consolidate financial information. If such reporting is required for this Agreement, Buyer is obligated to obtain information from Seller to determine whether or not consolidation is required. If Buyer determines

that consolidation is required, Buyer shall require the following during every calendar quarter for the Term of the Agreement:

- (a) Complete financial statements and notes to financial statements, which may include accruals and prior-month estimates with true-ups to actual activity;
  - (b) Financial schedules underlying the financial statements, all within fifteen (15) business days at the end of each quarter; and,
  - (c) Access to records and personnel, so that Buyer's independent auditor can conduct financial audits (in accordance with generally accepted auditing standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002).
11. The request of the IOUs to file a second Advice Letter with proposed auction design, protocols, set-asides, standard pro forma contract, evaluation criteria and non-binding cost estimates, for the second year of the DRAM pilot, is approved.
12. The IOUs shall focus the advice letter for the second year of DRAM only on 1) any modifications associated with the provision of local and flexible capacity, 2) alignment of schedules between the DRAM and the year-ahead RA process; 3) any changes to law or regulation that would impact the second year of DRAM; and, 4) consideration of including RDRR in addition to PDR.
13. The IOUs' request to employ an IE is approved. In addition to the elements proposed in AL 3208-E et al, the IE's final report shall include:
- A. An assessment of the effectiveness of IOUs efforts in soliciting and attracting new DR participants, and recommendations for how to better attract new DR participants to the California market in subsequent rounds of the DRAM, and
  - B. The effectiveness of the residential set-aside and recommendation for how to better attract residential customers to the California market in subsequent rounds of the DRAM.
14. IOUs are encouraged to procure viable bids beyond the 22 MW minimum authorization, up to either the applicable Rule 24 registration limit or budget limitation.
15. PG&E shall not limit its PDRs to 50 for purposes of the DRAM pilot.

16. In their Tier 1 Advice Letters in which the DRAM contracts are submitted for approval, the IOUs are required to also file all of the following:
  - A. Indicative short-run RA capacity costs,
  - B. Long-run avoided capacity information using the values in the avoided capacity costs in the current cost-effectiveness protocols,
  - C. A calculation of each IOUs' current DR portfolio of comparable programs and procurement mechanisms, including the AMP, CBP, BIP and API programs, and LCR RFO bids and contracts, and
  - D. All bids received for the DRAM pilot.
17. The IOUs' request the ability to select the next best DRAM bid if a short-listed bid discontinues participation in the DRAM auction. This request is accepted.
18. If the capacity (MW) floor is not reached in this first DRAM solicitation for any reason, then the IOUs shall make up the shortfall in the next solicitation.
19. The IOUs shall create a set-aside of 20% of the total capacity procured in the DRAM, for residential aggregations. A residential aggregation means one that is comprised of at least 90% residential accounts, subject to a 10% capacity penalty should the aggregation fall below this percentage. The remaining 10% may be made up of small commercial customers. The set-aside may be reduced only if an IOU demonstrates that it does not receive bids sufficient to make up 20 percent of total DRAM capacity. No cost cap is approved for this set-aside.
20. The IOUs are directed to work with parties to develop contract provisions to account for the possibility that resources may be aggregated together in a single PDR, consistent with Finding 30 in this Resolution. The IOUs are further directed to include this contract language among modifications to the pro forma contract, to be filed 30 days from the Commission vote on this Resolution.
21. The IOUs are directed to each inform the CPUC Energy Division immediately if there are bids that it wishes to reject that are either clear outliers or where there is evidence of market manipulation, present those bids and explain the reasons for rejection in advance of actually rejecting the bids.
22. Thirty days from the Commission vote on this Resolution, the IOUs are directed to file the following in a Supplemental Advice Letter:

- A. Modifications to the pro forma contract, as required by this Resolution.
- B. A clear scoring matrix for each evaluation criterion, in table format, with a numeric score for each variable. This matrix must include all criteria that will be used in scoring DRAM bids. This matrix shall be made available to bidders, incorporated into bid documents and explained at DRAM bidders' conference(s).
- C. Modifications of program (BIP, CBP, and API) tariffs, as well as amended AMP contracts, needed to implement the set-asides in proposals approved in this Resolution.
- D. A proposed, non-binding schedule for the solicitation for the second year of DRAM. This schedule must include the estimated filing date for the Advice Letter, all of the relevant steps detailed on pages 9 and 10 AL 3208-E et al plus any others, and the relevant milestones in the resource adequacy process.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on July 23, 2015 the following Commissioners voting favorably thereon:

/s/TIMOTHY J. SULLIVAN \_\_\_\_\_

TIMOTHY J. SULLIVAN  
Executive Director

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners