

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

AGENDA ID 15147
RESOLUTION E-4803
September 29, 2016

R E S O L U T I O N

Resolution E-4803. Approval with Modifications to *PG&E's Demand Response Auction Mechanism Purchase Agreements*

PROPOSED OUTCOME:

- This Resolution approves, with modifications, the request of Pacific Gas and Electric Company (PG&E) to approve contracts resulting from its 2017 Demand Response Auction Mechanism (DRAM) Request for Offer (RFO).
- Specifically, this Resolution adopts the contracts that PG&E submitted to the Commission in AL 4880-E, on July 22, 2016, and requires PG&E to procure additional contracts to bring PG&E into compliance with Commission direction.

SAFETY CONSIDERATIONS:

- This Resolution approves fourteen (14) power purchase agreements that contain 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:

- Actual costs are confidential at this time.

By Advice Letter 4880-E (Pacific Gas and Electric Company), Filed on July 22, 2016.

SUMMARY

This Resolution approves, with modifications, Pacific Gas and Electric Company's (PG&E) Advice Letter (AL) 4880-E, wherein PG&E requests Commission approval of fourteen contracts with five counterparties to provide resource adequacy capacity from demand response resources in 2017. This Resolution also requires PG&E to procure additional resources from its 2017 DRAM solicitation, up to one of the applicable procurement limitations first articulated in Resolution E-4728 and again in Resolution E-4754.

Within 30 days from the Commission vote on this Resolution, the PG&E shall file a new Advice Letter with the Energy Division demonstrating compliance with the modifications and directives in this Resolution.

BACKGROUND

As set forth in a Scoping Memo,¹ 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 relating to the DRAM. Subsequently, parties proposed a 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,² 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,

¹ 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>.

² The Commission later modified D.14-12-024 by revising the term "Settlement Agreement" to "Joint Proposal" in D.15-02-007.

for the first year of the DRAM, and requested the ability to file a second AL for the second year of DRAM. These ALs were approved by the Commission, with modifications, by Resolution E-4728. That Resolution also approved the IOUs' request to file a second AL for the second year of DRAM. On October 9, 2015, SCE filed advice letter ("AL") 3292-E, PG&E filed AL 4719-E, and SDG&E filed AL 2796-E, for the second year of the DRAM pilot. The Commission approved the second DRAM auction, for deliveries to the CAISO commencing on January 1, 2017, with Resolution E-4754 on January 28, 2016.

PG&E filed AL 4880-E on July 22, 2016, and requests approval of the 14 contracts PG&E entered into as a result of the 2017 DRAM solicitation.

NOTICE

Notice of Advice Letter 4880-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

Advice Letter (AL) 4880-E was protested.

On August 11, 2016, AL 4880-E was timely protested by EnergyHub, The Utility Reform Network ("TURN"), EnerNOC, Inc., Johnson Controls, Inc., Comverge, Inc., CPower and EnergyHub (collectively, the "Joint DR Parties"), Dynamic Grid Council, eMotorWerks, OhmConnect and Stem, Inc. (collectively, "Co-DRP"), and Sierra Club, Environmental Defense Fund and Natural Resources Defense Council (collectively, the "Joint Environmental Parties").

PG&E responded to the protests on August 18, 2016.

Relief Requested – Additional DRAM Procurement

All protestants request similar relief.

First, each protestant supports that the Commission approve the fourteen contracts that PG&E filed for approval in AL 4880-E. Several parties urge the Commission to do so quickly in order "...to continue to move the DRAM Pilot process forward expeditiously."³ No protestant presented any concern or opposition to any of the contracts.

Second, all protestants point to evidence that PG&E failed to procure DRAM resources consistent with Commission direction and expectations, as originally articulated in Resolution E-4728 and later reinforced in Resolution E-4754. Specifically, protestants point to the articulation in each Resolution that either the approved amount of Rule 24/32 registrations or the approved budget applicable to the auction are to serve as the upward bound on DRAM procurement. Co-DRP claims that PG&E E "...disregarded the Commission's unambiguous directive in Resolution E-4754 to exhaust its budget or its available customer registrations for the 2017 DRAM".⁴ The Joint Environmental Parties, EnergyHub and The Joint DR Parties also all point to the directives in the two aforementioned Resolutions to procure up to either cap, and point to PG&E's apparent failure to do so.⁵

On this point, TURN states in its protest that PG&E received additional cost-effective demand response bids that it is not procuring, and provides additional detail as to the specific costs in its confidential protest. TURN objects to PG&E's decision to limit DRAM procurement to 50% of the total allotment of registrations authorized in Decision (D.) 16-06-008. TURN states its concern that such limitation will result in less cost-effective demand response for 2017 and could stifle the growth of the competitive demand response market.

³ Advice Letters 4880-E (PG&E), 2926-E (SDG&E), and 3442-E (SCE) (2017 DRAM Pilot Results) - Response Of EnergyHub, filed August 11, 2016, page 2.; supported by TURN Protest to SDG&E Advice Letter No. 2926-E Re. the 2017 DRAM Solicitation, filed August 9, 2016, page 1.

⁴ Co-DRP Protest of Pacific Gas and Electric Company Advice 2926-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 11, 2016, page 1.

⁵ Advice Letters 4880-E (PG&E), 2926-E (SDG&E), and 3442-E (SCE) (2017 DRAM Pilot Results) - Response Of EnergyHub, filed August 11, 2016, page 3.; Comments of Environmental Defense Fund, the Sierra Club, and the Natural Resources Defense Council on Utility Advice Letters Concerning Demand Response Auction Mechanism (DRAM) Pilot Results, filed August 11, 2016, page 1.; and, Advice Letters (ALs) 4880-E (PG&E), 2926-E (SDG&E), and 3442-E (SCE) (2017 DRAM Pilot Results) - Joint Response Of Joint DR Parties, filed August 11, 2016, pages 4-5.

Further, TURN is of the opinion that the “DRAM appears to be working, with market bids that are less expensive than some existing demand response programs and products.”⁶

Third, similar, though not identical, requests for relief are found in each protest to AL 2926-E. These requests are summarized as follows:

- Commission directs PG&E to re-evaluate all DRAM bids received in response to the original solicitation and procure additional DRAM capacity until either the applicable budget limitation is hit or approved Rule 24 registrations are exhausted.⁷
- Commission directs PG&E to procure additional DRAM capacity, for delivery starting in March or April 2017, up to either the registration limit, budget cap, or up to a point after which there are clear price outliers.⁸
- Commission should ensure that its procurement directives for the DRAM are satisfied by PG&E’s procurement, and procurement not improperly limited, before approving AL 4880-E.⁹

In its reply filed on August 18, 2016, PG&E responds to these requests for relief as follows:

- Customers who register under Rule 24 in March 2017 would not be able to deliver in April 2017, because sellers must submit a supply plan 60 days in advance of the first day of the showing month.
- Executing contracts with Delivery Periods beginning in the summer of 2017 would be inappropriate and deviate from the evaluation criteria described in the DRAM Protocol.

⁶ TURN Protest to PG&E Advice Letter No. 4880-E Re. the 2017 DRAM Solicitation, filed August 9, 2016, pages 2-3.

⁷ Co-DRP Protest of Pacific and Electric Company Advice 2926-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 11, 2016, page 1; and, Advice Letters 4880-E (PG&E), 2926-E (SDG&E), and 3442-E (SCE) (2017 DRAM Pilot Results) - Response Of EnergyHub, filed August 11, 2016, page 3.

⁸ TURN Protest to PG&E Advice Letter No. 2926-E Re. the 2017 DRAM Solicitation, filed August 9, 2016, page 1.

⁹ Advice Letters (ALs) 4880-E (PG&E), 2926-E (SDG&E), and 3442-E (SCE) (2017 DRAM Pilot Results) - Joint Response Of Joint DR Parties, filed August 11, 2016, pages 2-3.

- It was normal practice to wait until after issuance of CPUC's final decision on Intermediate Implementation on June 9, 2016, D.16-06-008, to act on the Intermediate Implementation step.
- Rule 24 registrations used for the 2016 DRAM are not available to 2017 DRAM winners.
- PG&E acted in accordance with Resolution E-4754 in limiting the registrations available for the 2017 DRAM, given the implementation timeline ordered by D.16-06-008.
- {REDACTED}

Procurement Ceiling for the DRAM and Chosen Limit of 20,000 Registrations

Each protestant agrees that the Resolutions authorizing the DRAM pilots, Resolutions E-4728 and E-4754, required that PG&E procure either up to their available Rule 24 registrations or budget cap. All protestants express concern that PG&E limited its procurement inappropriately.

Co-DRP states that the Commission's intention was that PG&E exhaust either its budget or available Rule 24 registrations, and points to the following language in Resolution E-4754:

"For the limited purpose of this pilot alone, we [...] intend for either the budget or available Rule 24 registrations, whichever comes first, to serve as the upward bound on DRAM procurement, and the IOUs are expected to exhaust either."

Co-DRP also points to Ordering Paragraph 11 of the same Resolution: "The minimum procurement targets of 10 MWs each for SCE and PG&E, and 2 MWs for SDG&E, are retained for the 2017 DRAM. As with the 2016 DRAM, the IOUs are encouraged to procure up to the 2017 budget limitation or the available authorized Rule 24 registrations, whichever comes first."¹⁰

¹⁰ Co-DRP Protest of Pacific Gas and Electric Company Advice 4880-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 11, 2016, pages 3-4.

Co-DRP goes on to quote the explanation in AL 4880-E that PG&E selected offers in the 2017 DRAM with a focus on not exceeding the applicable budget or the Rule 24 registrations PG&E expects to be able to accommodate for the 2017 DRAM. Co-DRP states that “‘(n)ot exceeding’ the Commission’s upper bound on DRAM procurement is consistent with the Commission’s intent – but not even approaching, let alone exhausting, that bound assuredly is not.”¹¹

In reply, PG&E does not dispute the applicable procurement ceilings authorized for the DRAM, but points out that D.16-06-008 required that PG&E have all 40,000 registrations available no later than March 17, 2017, which is too late to ensure delivery under the 2017 DRAM Pilot. PG&E explains that it “‘it offered contracts to offers that would require approximately 20,000 new registrations, which is the amount that PG&E will have available for the first several months of the 2017 DRAM deliveries.”¹²

Procurement Limited to 20,000 Registrations

The Joint DR Parties, TURN and Co-DRP all state concern with PG&E’s decision to limit its procurement to 20,000 of its 40,000 Rule 24 registrations authorized in D.16-06-008. The Joint DR Parties point to the clear intention of D.16-06-008, which was to “‘...give PG&E the tools to be able to utilize the full Rule 24 Intermediate Implementation Step in time for the 2017 DRAM solicitation.”¹³

TURN points out that “‘PG&E was thus on notice since at least May 2016 that it should start the intermediate implementation process so as to ensure the full amount of registrations were available for the 2017 DRAM solicitation.”¹⁴ Co-DRP points to the fact that PG&E chose to increase its available registrations to 20,000 after bids were submitted. They claim that “‘(t)he timing of PG&E’s decision to impose this limit is unfair to DRAM participants, and simply ignores D.14-12-024’s requirement for the IOUs to use ‘transparent, standard evaluation

¹¹ Ibid, page 4.

¹² PG&E’s Reply to Protest of Advice Letter 4880-E, filed August 18, 2016, page 5.

¹³ Advice Letters (ALs) 4880-E (PG&E), 2926-E (SDG&E), and 3442-E (SCE) (2017 DRAM Pilot Results) - Joint Response Of Joint DR Parties, filed August 11, 2016, page 5.

¹⁴ TURN Protest to PG&E Advice Letter No. 2926-E Re. the 2017 DRAM Solicitation, filed August 9, 2016, page 1.

criteria’ – and ‘not to use their own respective valuation processes’ as the Commission ordered in that Decision.”¹⁵

In reply, PG&E points to Ordering Paragraph 11 of Resolution E-4754’s reference to “available authorized Rule 24 registrations”, and points out that “40,000 Rule 24 registrations under the Intermediate Implementation step will not be available until March 17, 2017.” PG&E goes on to point out that “(f)or purposes of a majority of the 2017 DRAM offers, which have deliveries beginning in January 2017, these registrations would be needed by October 2016 at the latest, in order to submit Supply Plans on November 1, 2016 for the January 2017 deliveries.”¹⁶ Thus, PG&E argues that it acted appropriately in limiting its procurement to 20,000 registrations.

PG&E Should Procure Resources for an Online Date of April 1, 2017

TURN and Co-DRP both offer the specific idea that PG&E could procure up to its maximum allocation of 40,000 registrations, and allow some contracts to begin delivery in April 1, 2017. TURN recommends that the “...Commission order PG&E to contact additional rank-ordered bidders up to either the total registration limit of 40,000 or the budget limit, or up to a price benchmark...and offer those bidders the option of signing a DRAM contract with a start date of April 1, 2017.”¹⁷

Co-DRP points to reply testimony made by PG&E in Application (A.) 14-06-001 on March 25, 2016, which stated that the means of resolving insufficient availability of Rule 24 registrations agreed upon by the DRAM working group was to follow Section 1.5b of the DRAM Purchase Agreement, which allows for monthly contract quantity to be reduced or “zeroed-out” in these instances.¹⁸

¹⁵ Co-DRP Protest of Pacific Gas and Electric Company Advice 4880-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 11, 2016, page 3.

¹⁶ PG&E’s Reply to Protest of Advice Letter 4880-E, filed August 18, 2016, page 5.

¹⁷ TURN Protest to PG&E Advice Letter No. 2926-E Re. the 2017 DRAM Solicitation, filed August 9, 2016, page 4.

¹⁸ Co-DRP Protest of Pacific Gas and Electric Company Advice 4880-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 11, 2016, pages 5-6.

In reply, PG&E makes three points:

- Supply plans must be filed with the utility by sellers 60 days in advance of the showing month, which would mean, “in a best case scenario, their Supply Plans could be submitted by May 1st for a July 2017 delivery”, and goes on to estimate that “August 2017 delivery date is a more realistic goal.”¹⁹
- Section 1.5(b) of the DRAM pro forma contract “...does not require PG&E to award PAs when it knows that sufficient Rule 24 registrations will not be available.”²⁰
- If PG&E were to procure resources in the fashion recommended by Co-DRP and TURN, it would be in violation of DRAM rules and evaluation protocol.²¹

PG&E Incorrectly Considered Availability of Registrations from 2016 DRAM

Co-DRP claims that PG&E has improperly managed the availability of “old” registrations from the 2016 DRAM, in 2017 DRAM bids, and estimates that PG&E did not allow bidders in the 2017 DRAM auction to use registrations they already possess from the 2016 DRAM.²²

In reply, PG&E states that this assertion is factually incorrect, and points to its 2017 DRAM offer form, wherein PG&E required bidders to disclose both the “old” registrations it has from 2016, and any “new” registrations it will need for 2017.²³

¹⁹ PG&E’s Reply to Protest of Advice Letter 4880-E, filed August 18, 2016, page 2.

²⁰ Ibid, page 5

²¹ Ibid, pages 2-3.

²² Co-DRP Protest of Pacific Gas and Electric Company Advice 4880-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 11, 2016, page 8.

²³ PG&E’s Reply to Protest of Advice Letter 4880-E, filed August 18, 2016, page 4.

DISCUSSION

This discussion starts with resolution of issues raised in protests filed on August 11th, and replied to on August 18th, and includes consideration of confidential information by Commission staff.

Relief for PG&E

First, we agree with all parties regarding the importance of expeditiously approving the fourteen (14) contracts PG&E has filed with the Commission for approval in AL 4880-E. We have reviewed, and approve, all fourteen contracts as executed by PG&E and filed with the Commission for approval. This approval is effective as of the original AL filing date of July 22, 2016.

Second, we agree with parties that PG&E improperly limited its procurement of DRAM resources. {REDACTED}

Third, we agree with TURN that there are additional cost-competitive DR bids in PG&E's second DRAM solicitation beyond those PG&E chose to procure and file for approval with the Commission.

{REDACTED}

With this Resolution, and considering the timing issues associated with registration availability, we require PG&E to turn to the remaining bids on its shortlist, reach out to bidders and offer to sign contracts at the same price as originally submitted, and allow for adjustments downward in original capacity. PG&E is required to procure bids as close as possible to its budget limitation.

We do appreciate that bids originally submitted to PG&E and not short-listed may not be available any longer. Ideally, PG&E would be required to hold an additional solicitation to make up the difference in procurement, which would grant bidders whose bids were not chosen to re-submit. Given the date of this Resolution, and the additional time such a new solicitation would require, additional contracts would not be able to offer into the wholesale market until too late in 2017, meaning that a new solicitation for 2017 would provide little value at this point.

As stated above, if original bidders are willing to honor their original bids, no adjustments in price may be allowed, but bidders may change their monthly capacity offerings, including reducing capacity to zero for the first few months of the year, as we expect may be necessary due to timing issues with supply plan filings. In doing so, this ensures that the valuation of the bids from the original solicitation remains the same, ensuring fairness to all bidders, and that bidders will have the ability to adjust the capacity of bids that they, to date, had lost. Section 1.5(b) of the DRAM pro forma contract, as several protestants pointed out, allows for reductions in capacity for any months in which registrations are not available, which also gives a bit of leeway should the registrations not be available in time. That said, we expect that procuring in this fashion will leave PG&E with a substantial pool of registrations remaining to support the 2018 DRAM pilot.

PG&E Should Procure Resources for an Online Date of April 1, 2017

We agree with PG&E that signing of contracts for later in 2017 and use of contract Section 1.5(b) in order to manage risk is not articulated in, or envisioned by, the DRAM protocols. However, we also agree with parties that this could have been offered by PG&E as a creative solution to the inconsistencies in timeline between the DRAM RFO and Rule 24 registration authorization. We clarify here that, with the relief required by this Resolution, PG&E must allow bidders to utilize Section 1.5(b) in order to manage timing issues associated with approval of any new contracts it signs from the direction in this Resolution, obtaining customer authorization per Rule 24, receiving customer data, registration with the CAISO, and submittal of supply plans to the utility as required by the DRAM rules.

PG&E Incorrectly Considered Availability of Registrations from 2016 DRAM

We find PG&E's explanation to be valid, and reject the protest of Co-DRP on this point.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment

prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties to this Resolution.

All parties to this Resolution have stipulated to reduce the 30-day waiting period required by PU Code section 311(g)(1) to 18 days. Accordingly, this matter will be placed on the first Commission's agenda eighteen days following the mailing of this draft resolution. By stipulation of all parties, comments shall be filed no later than 18 days following the mailing of this draft Resolution.

FINDINGS

1. Resolution E-4754 approved the IOUs' advice letters to establish a second DRAM auction, including the proposed auction design, protocols, set-asides, standard pro forma contract, evaluation criteria and non-binding cost estimates.
2. Each utility, including PG&E, launched its 2017 DRAM RFO in March of 2016.
3. D.16-06-008 approved 40,000 new registrations for PG&E, and required that the entirety of these new registrations be available no later than March 17, 2017. This decision also stated that the utilities were to make these new registrations available to support the 2017 DRAM.
4. In Resolution E-4754, the Commission re-iterated its expectation, from Resolution E-4728, that the utilities were expected to procure DRAM capacity resources up to either their available Rule 24/32 registrations or authorized budget, whichever is reached first.
5. PG&E set an original level of 10,000 registrations as an upward bound on available registrations to support the 2017 DRAM pilot, and later adjusted that number to 20,000.
6. On July 22, 2016, PG&E filed AL 4880-E with the Commission, wherein the utility requests approval of fourteen contracts, for a total of {REDACTED}.

7. It is reasonable to approve the fourteen contracts that PG&E has signed and submitted for approval in AL 4880-E, with an effective date as of the date of AL filing, July 22, 2016.
8. It is reasonable to require PG&E to procure additional DRAM resources for 2017, to bring the utility into compliance with Resolution E-4754.
9. There is insufficient time in the year for a new solicitation for DRAM resources, for delivery in 2017 by the bidder.
10. It is reasonable to require PG&E to return to the next bids in its original shortlist and, in order of ranking, offer contracts at the originally bid price, while allowing for reductions in capacity.
11. PG&E correctly accounted for “old” and “new” DRAM registrations in its RFO process.

THEREFORE IT IS ORDERED THAT:

1. All fourteen contracts filed by PG&E in AL 4880-E are approved as submitted. The Commission’s approval of these contracts is effective as of the original filing date of the Advice Letter, July 22, 2016.
2. PG&E is required to immediately return to its shortlist for the 2017 DRAM and approach each bidder, in rank order, and offer a contract at the originally submitted price, while allowing for reductions in capacity at the option of the bidder. PG&E shall allow bidders 5 business days to respond indicating their acceptance or rejection, and notify PG&E of any adjusted capacity amount.
3. PG&E is required to procure either up to its budget cap of \$6 million, or to a point at which there is a clear price outlier in bids. For rejection of a clear price outlier, as required in Resolution E-4728, PG&E must first discuss with the Energy Division before rejecting the bid.

4. PG&E is required to allow bidders to reasonably utilize Section 1.5(b) of the pro forma contract in order to manage legitimate timing issues associated with approval of new contracts for the DRAM, including obtaining customer data, registering resources and submitting supply plans.
5. PG&E is required to file a new Tier 1 Advice Letter 30 days from the Commission vote on this Resolution, with any and all additional contracts for the 2017 DRAM. If all bidders reject the signing of a contract, under the parameters prescribed in this Resolution, PG&E shall include in its Advice Letter a detailed description of its process, timeline, and any reasons given for rejection.
6. In this new Tier 1 Advice Letter, the PG&E is also required to also file all of the following, as required by Resolutions E-4728 and E-4754:
 - 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, and
 - C. A calculation of PG&E's current DR portfolio of comparable programs and procurement mechanisms, including the CBP, BIP and API programs.

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 September 29, 2016, the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director