

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4754
January 28, 2016

R E S O L U T I O N

Resolution E-4754. Approval with Modifications to Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company’s Demand Response Auction Mechanism Pilot for 2017.

PROPOSED OUTCOME:

- This Resolution approves, with modifications, the proposal of Southern California Edison Company, San Diego Gas & Electric Company and Pacific Gas and Electric Company (the IOUs), 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.

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:

- As required in Ordering Paragraph 5c of Decision 14-12-024, the Advice Letters contain a non-binding cost estimate of \$13.5 million dollars across the three IOUs. These costs are recoverable from the IOUs’ 2015-2016 bridge funding budgets, authorized in D.14-05-025. No additional costs will be incurred as a result of this pilot.

- Ordering Paragraph 5d of the same decision gave the IOUs the authority to shift funds from existing demand response budgets, funded for the 2015-16 transition year, to fund the pilot.

By Advice Letters 3292-E (Southern California Edison Company), 4719-E (Pacific Gas and Electric Company), and 2796-E (San Diego Gas & Electric Company), Filed on October 9, 2015.

SUMMARY

This Resolution approves, with modifications, the auction design, protocols, standard pro forma contract, evaluation criteria and non-binding cost estimates for the second year of the Demand Response Auction Mechanism (DRAM) pilot program, for the three IOUs. In Decision (D.) 14-12-024,¹ the Commission ordered the IOUs to submit an Advice Letter filing all of these elements of the DRAM pilot.

The pilot auction design and standard contract approved via this Resolution is for the second year of the DRAM pilot – the auction will be held in 2016, for deliveries in 2017. There are two primary differences between the first and second year of DRAM: 1) in the second auction, a DRAM Seller may elect to offer deliveries over 12 months, from January to December, and 2) the second auction allows for local and flexible resource adequacy offers, in addition to system capacity.

Within 30 days from the Commission vote on this Resolution, the IOUs shall file a Supplemental Advice Letter with the Energy Division demonstrating compliance with the modifications approved in this Resolution.

¹ 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,² 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,³ 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, 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.

NOTICE

Notice of jointly filed Advice Letters 3292-E, 4719-E and 2796-E was made by publication in the Commission’s Daily Calendar. SCE, PG&E and SDG&E state

² 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>.

³ The Commission later modified D.14-12-024 by revising the term “Settlement Agreement” to “Joint Proposal” in D.15-02-007.

that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

Advice Letters 3292-E, 4719-E and 2796-E (collectively, "AL 3292-E et al") were protested.

On October 29, 2015, AL 3292-E et al were timely protested by the Office of Ratepayer Advocates ("ORA"), California Large Energy Consumers Association ("CLECA"), EnerNOC, Inc., Johnson Controls, Inc., Comverge, Inc., CPower and EnergyHub (collectively, the "Joint DR Parties"), and the Sierra Club.

Southern California Edison, filing on behalf of the three IOUs, responded to the protests of ORA, CLECA, Joint DR Parties and the Sierra Club on November 5, 2015.

The California Independent System Operator (CAISO) also filed a reply to protests on November 5, 2015. That reply is rejected because the relief requested in the reply deals with a policy question that is both inappropriate for resolution through the Advice Letter process per Section 5.1 of General Order 96-B, and is out of scope of this Advice Letter. Further, the CAISO's reply raises an important policy question, which is specifically within the scope of the Resource Adequacy (RA) docket, and was explicitly delayed for consideration within that docket, per Decision (D.) 15-06-063.

Back up Generation in Conjunction with DRAM Contracts

The protests of Sierra Club and ORA both include positions on the use of back-up generation (BUGs) in conjunction with DRAM contracts. Each protestant argues that Section 7.2 of the DRAM pro forma contract should be amended to allow for future determinations on a broader BUGs policy. The broader BUGs policy was initially released on September 29, 2015, as a staff proposal in Rulemaking (R.) 13-09-011 and is currently under consideration. These parties contend that the enforcement mechanisms contained in the staff proposal are

more effective than what was adopted in E-4728 for the 2016 DRAM,⁴ and that the DRAM purchase agreement be amended to allow for the staff proposal to apply to the 2017 DRAM if it is adopted by the Commission.⁵

In reply, the IOUs state that they “do not support implementing the proposed BUG participation Commission rules and requirements in the 2017 DRAM Pilot. It would be premature and speculative to modify the Pro-Forma Contract based on proposed rules not yet formally adopted by the Commission.”⁶ The IOUs advocate that BUG use rules adopted for the 2016 DRAM in Resolution E-4728 be carried over to the 2017 DRAM.

Resource Adequacy Issues

In protests, ORA, CLECA and the Joint DR Parties raise several issues associated with resource adequacy. We take each of these issues in turn, below.

Two-Hour Load Reduction Test

ORA notes that Section 1.6 of the DRAM pro forma contract allows Sellers the option of demonstrating capacity based on a minimum two-hour test. ORA

⁴ Protest of the Sierra Club to SCE Advice Letter (AL) 3292-E, PG&E AL 4719-E, and SDG&E AL 2796-E on the Demand Response Auction Mechanism Pilot for 2017, filed October 29, 2015, page 1; and, Protest of the Office of Ratepayer Advocates to Joint Utilities Advice Filing of the Demand Response Auction Mechanism Pilot for 2017; Advice Letters 3292-E (SCE), 4719-E (PG&E), and 2796-E (SDG&E), filed October 29, 2015, page 3.

⁵ Protest of the Sierra Club to SCE Advice Letter (AL) 3292-E, PG&E AL 4719-E, and SDG&E AL 2796-E on the Demand Response Auction Mechanism Pilot for 2017, filed October 29, 2015, pages 2 and 3; and, Protest of the Office of Ratepayer Advocates to Joint Utilities Advice Filing of the Demand Response Auction Mechanism Pilot for 2017; Advice Letters 3292-E (SCE), 4719-E (PG&E), and 2796-E (SDG&E), filed October 29, 2015, page 3.

⁶ Southern California Edison Company’s Joint IOU Reply to Protests Filed to SCE’s Advice 3292-E, PG&E’s Advice 4719-E and SDG&E’s Advice 2796-E, on Demand Response Auction Mechanism Pilot Pursuant to Resolution E-4728, filed November 5, 2015, page 2.

claims that this provision is inappropriate, because the DRAM is a supply-side resource and thus the capacity demonstration test in the contract must be consistent with the CPUC's RA requirement of four hours of continuous operation.⁷ In reply, the IOUs state that, "(i)n D.14-06-050, the Commission established testing requirements for Supply Resource DR. Section 12.1.1 of Appendix B of that decision stated that a two-hour test event is required for a Supply Resource DR, and only if the resource has not been dispatched for two hours or more for the given calendar year."⁸

Load Impact Protocol Requirement

The Joint DR Parties advocate for exempting 2017 DRAM Sellers from performing a load impact analysis. Specifically, the Joint DR Parties point to the IOUs' proposal in AL 3292 et al to use program design as the basis for calculating the qualifying capacity (QC) and effective flexible capacity (EFC) and state that this original request should have been to exempt DRAM Sellers from performing a load impact analysis to determine QC and EFC.⁹ The Joint DR Parties also state that the obligation of Sellers to perform load impact analyses for DRAM participation beyond the pilot period should be addressed, as the issues cited in AL 3292-E et al will likely continue.¹⁰

In reply, the IOUs express support for the Joint DR Parties' request for an exemption, as long as the contracted QC and EFC are not negatively impacted,

⁷ Protest of the Office of Ratepayer Advocates to Joint Utilities Advice Filing of the Demand Response Auction Mechanism Pilot for 2017; Advice Letters 3292-E (SCE), 4719-E (PG&E), and 2796-E (SDG&E), filed October 29, 2015, page 3.

⁸ Southern California Edison Company's Joint IOU Reply to Protests Filed to SCE's Advice 3292-E, PG&E's Advice 4719-E and SDG&E's Advice 2796-E, on Demand Response Auction Mechanism Pilot Pursuant to Resolution E-4728, filed November 5, 2015, page 3.

⁹ Advice Letter 3292-E, et al. (DRAM Pilot For 2017) Joint Protest Of Comverge, Inc., CPower, Enernoc, Inc., EnergyHub, And Johnson Controls, Inc. ("Joint DR Parties"), filed October 29, 2015, page 7.

¹⁰ Ibid, page 8.

and also indicate that if the design principle allowed for in D.14-06-050 is utilized, then a load impact analysis performed by Sellers may be unnecessary.¹¹

Local Resource Adequacy Requirements

CLECA and the Joint DR Parties protest the requirement in Section 3.4(a) of the pro forma contract that, in instances where regulatory requirements conflict between the CPUC and CAISO, the Sellers must comply with the most stringent requirement. This requirement is in place because of the current conflict between a proposed requirement by the CAISO for DR resources to be dispatchable within 20 minutes in order to qualify for local reliability, and the CPUC's local RA requirements which do not include dispatch time requirements.¹²

CLECA protests this section of the contract for two primary reasons. First, the Commission has explicitly declined to adopt a dispatch time requirement for local RA resources, and deferred the issue for a future phase of the RA proceeding, in D.15-06-063. Second, this section unreasonably gives the IOUs the discretion to choose the regulatory requirements to which a resource must adhere.¹³

The Joint DR Parties also contend that the manner in which the IOUs have approached this issue in AL 3292 et al, and the pro forma contract, is unlawful and should be regarded as such by the Commission.¹⁴ Both CLECA and the Joint

¹¹ Southern California Edison Company's Joint IOU Reply to Protests Filed to SCE's Advice 3292-E, PG&E's Advice 4719-E and SDG&E's Advice 2796-E, on Demand Response Auction Mechanism Pilot Pursuant to Resolution E-4728, filed November 5, 2015, page 4.

¹² AL 3292 et al, filed October 9, 2015, page 7.

¹³ California Large Energy Consumers Association Protest to Pacific Gas and Electric Company Advice Letter 4719-E, San Diego Gas & Electric Company Advice Letter 2796-E, and Southern California Edison Company Advice Letter 3292-E, filed October 29, 2015, page 3.

¹⁴ Advice Letter 3292-E, et al. (DRAM Pilot For 2017) Joint Protest Of Comverge, Inc., CPower, Enernoc, Inc., EnergyHub, And Johnson Controls, Inc. ("Joint DR Parties"), filed October 29, 2015, page 5.

DR Parties recommend that Section 3.4(a) of the pro forma contract be modified as follows:

Seller shall, and shall cause each of the PDRs or RDRRs in the DRAM Resource and corresponding DRPs and SCs to, comply with all applicable CAISO Tariff provisions, CPUC Decisions and all other Applicable Laws, including the Bidding of the DRAM Resource into the applicable CAISO Markets during the Availability Assessment Hours as required by the CAISO Tariff. ~~In the event that these requirements conflict or the CAISO or CPUC do not provide a corresponding requirement to the other Governmental Bodies, Seller shall comply with the most stringent requirement of the Governmental Bodies.~~¹⁵

The Joint DR Parties also request that Section 3.5(b) be removed from the pro forma contract as it would inappropriately place responsibility for CAISO backstop procurement on DRAM Sellers.¹⁶ Section 3.5(b) reads as follows:

In addition to Section 3.5(a), Seller shall indemnify or reimburse Buyer for any costs allocated to Buyer by the CAISO for any capacity procured by CAISO pursuant to the Capacity Procurement Mechanism with respect to any Shortfall Capacity.

In reply, the IOUs state their sympathy for the positions of CLECA and the Joint DR Parties, and that “(N)otwithstanding any such objections to the potential 20-minute response CAISO requirement for local capacity resources, the IOUs

¹⁵ Advice Letter 3292-E, et al. (DRAM Pilot For 2017) Joint Protest Of Comverge, Inc., CPower, Enernoc, Inc., EnergyHub, And Johnson Controls, Inc. (“Joint DR Parties”), filed October 29, 2015, page 8; and, California Large Energy Consumers Association Protest to Pacific Gas and Electric Company Advice Letter 4719-E, San Diego Gas & Electric Company Advice Letter 2796-E, and Southern California Edison Company Advice Letter 3292-E, filed October 29, 2015, page 3.

¹⁶ Advice Letter 3292-E, et al. (DRAM Pilot For 2017) Joint Protest Of Comverge, Inc., CPower, Enernoc, Inc., EnergyHub, And Johnson Controls, Inc. (“Joint DR Parties”), filed October 29, 2015, page 9.

must ensure that any Local Capacity product purchased for the benefit of their customers would fully qualify under all applicable rules. If a product qualified under CPUC RA Rules, but did not meet CAISO requirements, the IOUs could be forced to procure back-stop resources to satisfy the CAISO, exposing their customers to double-procurement costs.”¹⁷ The IOUs also state that pro forma contract section 3.5(b) must remain, which requires DRAM Sellers to indemnify IOUs for CAISO backstop procurement costs if the resource fails to meet CAISO requirements.¹⁸

DRAM Set-Asides – AMP Contract Amendments

In AL 3292 et al, the IOUs propose to not carry forward the AMP contract amendments that were part of the 2016 DRAM ALs, and approved in Resolution E-4728. The IOUs propose eliminating these amendments because AMP contracts are currently only funded through year end 2016 and funding for 2017 transition year programs has not yet been proposed or approved. The Joint DR Parties protest this elimination, and request that the AMP contract amendments approved in Resolution E-4728 for the 2016 DRAM be carried forward to the 2017 DRAM as a “...backstop provision to ensure that uncertainty would not prevent DR Providers from either entering into agreements for 2017 Transition Year programs with the IOUs or from participating in the 2017 DRAM Pilot as a mechanism to ensure the most robust participation in all DR programs.”¹⁹

The IOUs did not reply to this issue raised by the Joint DR Parties.

Bidder Confidentiality Provisions

¹⁷ Southern California Edison Company’s Joint IOU Reply to Protests Filed to SCE’s Advice 3292-E, PG&E’s Advice 4719-E and SDG&E’s Advice 2796-E, on Demand Response Auction Mechanism Pilot Pursuant to Resolution E-4728, filed November 5, 2015, page 3.

¹⁸ Ibid.

¹⁹ Advice Letter 3292-E, et al. (Dram Pilot for 2017) Joint Protest of Comverge, Inc., CPower, Enernoc, Inc., EnergyHub, and Johnson Controls, Inc. (“Joint DR Parties”), filed October 29, 2015, page 7.

The Joint DR Parties protest one issue that has carried over from the 2016 DRAM pro forma contract to the 2017 proposed DRAM pro forma contract. This issue is the mechanism by which each IOU will ensure confidentiality of Seller information in the bid process. The IOUs have different processes for ensuring this confidentiality. The Joint DR Parties contend that all IOUs should be required to execute a non-disclosure agreement (NDA) to protect Seller information, as is included in SCE's DRAM pro forma agreement.²⁰

In reply, the IOUs point out that the Joint DR Parties do not explain why SCE's process is preferable to that of the other two IOUs and why the confidentiality provisions in PG&E's and SDG&E's contracts are inadequate. The IOUs also point out that the Commission has not required NDAs in other similar situations, and also state that an NDA does not provide any additional confidentiality protection. The IOUs urge that the Commission not adopt the requirement for an NDA that the Joint DR Parties have recommended.²¹

DISCUSSION

This discussion starts with resolution of issues raised in protests filed on October 29th, and replied to on November 5th, and then proceeds to issues raised and requests made, in AL 3292-E et al, that are not the subject of protests.

Back Up Generation in Conjunction with DRAM Contracts

We concur with ORA and Sierra Club that the pro forma contract should be modified to be consistent with a broader Commission policy on the use of BUGs in conjunction with DR, should that policy be adopted before DRAM agreements are final. To that end, the IOUs are directed to modify Section 7.2(b)(v) of the pro forma contract to allow for changes in policy, if that change in policy is in place at the time that contracts are signed. Otherwise, this section shall be consistent

²⁰ Ibid, page 8.

²¹ Southern California Edison Company's Joint IOU Reply to Protests Filed to SCE's Advice 3292-E, PG&E's Advice 4719-E and SDG&E's Advice 2796-E, on Demand Response Auction Mechanism Pilot Pursuant to Resolution E-4728, filed November 5, 2015, page 4.

with the 2016 DRAM.

If the Commission adopts a broader policy before final contracts are signed for the 2017 DRAM, then those requirements of that policy will apply to the 2017 DRAM contracts. If the opposite is true, and the Commission does not adopt a broader BUG policy before 2017 DRAM contracts are signed, then the approach and associated contract language, authorized in Resolution E-4728 and staff disposition of supplemental ALs dated September 24, 2015, applies to the 2017 DRAM.

Section 7.2(b)(v) of the pro forma contract shall be modified, as follows:

During each month of the Delivery Period, if any participating Customers in the DRAM Resource have Back-up Generation, Seller shall ensure that such Back-up Generation is not used during a Dispatch by any PDR or RDRR providing Product to Buyer during such month. Seller shall use at least one of the following options to demonstrate that participating Customers did not use Back-up Generation during a Dispatch of a PDR or RDRR providing Product to Buyer: (w) provide an attestation with each invoice that no participating Customer in the PDR or RDRR providing Product in the invoiced month used Back-up Generation during a Dispatch; (x) prohibit participating Customers from having Back-up Generation in its DRAM Resource; (y) monitor metering on the participating Customer's DRAM Resource to ensure that no Back-up Generation was used during a Dispatch of a PDR or RDRR providing Product to Buyer; and (z) require, in its agreement with its participating Customers, that no Back-up Generation may be used during a Dispatch of a PDR or RDRR providing Product to Buyer. If the Commission approves a policy and/or requirement dictating an approach for regulating the usage of generation or storage during DR events on or before the date on which this contract is signed by the parties, then that policy and/or requirement shall apply, and this contract shall be modified as directed by the Commission or its staff.

Resource Adequacy Issues

Two Hour Load Reduction Test

We concur with the IOUs that a 2-hour load reduction test is explicitly allowed for, per D.14-06-050. The protest of ORA in this regard is rejected.

Load Impact Protocol Requirement

The IOUs request to utilize program design for purposes of establishing qualifying capacity (QC) and effective flexible capacity (EFC) for DRAM resources. This request cites D.14-06-050, which establishes QC and EFC determination for supply-side DR resources, which provided that when "...historical performance data is not available or appropriate, program design and/or test data may be used."²² We find this request to utilize program design to be appropriate for new DRAM resources for which historical data are not available. As with the first year of DRAM, we interpret program design to mean contracted capacity. If historical data are available for a DRAM resource, then that data must be used, and a load impact analysis performed. We further concur with the Joint DR Parties and the IOUs that 2017 DRAM Sellers may be exempt from performing a load impact analysis for resources without historical data, as that analysis is unnecessary given that program design will be utilized. Thus, we direct the IOUs to modify Section 3.3(c) of the pro forma contract, as follows, to read:

Seller shall comply with the requirements for load impact analysis in D.14-06-050, Appendix B, and provide to the CPUC a load impact evaluation consistent with the Load Impact Protocols in D. 08-04-050 and data required by D.14-06-050. This section is applicable only for DRAM resources for which historical data are available. If historical data are not available, Seller is not required to perform a load impact analysis.

We note that, while this solution is workable for the 2017 DRAM, there may be a need to revisit the QC and EFC methodology and policy authorized in D.14-06-050 to craft a durable solution for subsequent DRAM program years beyond the pilot period, if so authorized by the Commission.

²² Decision 14-06-050, page B-5.

Local Resource Adequacy Requirements

We are sympathetic to the position of the Joint DR Parties, CLECA and the IOUs on this topic. At the time of writing this Resolution, the CAISO has proposed but not yet adopted an amendment to its Reliability Business Practice Manual (BPM), which would require PDR and RDRR resources to be fully dispatchable within 20 minutes of notification in order to qualify for local RA. The CPUC has not adopted such a requirement.²³

We understand that, in crafting the DRAM pro forma contract proposed in AL 3292 et al, Section 3.4(a) represents an attempt to balance between conflicting regulatory requirements for local RA. Nonetheless, we concur with CLECA and the Joint DR Parties that a pro forma contract in a pilot program is an inappropriate venue in which to resolve any conflict between regulatory requirements. Further, this language potentially delegates to the CAISO authority over the RA program design, which is assigned to the CPUC by Public Utilities Code Section 380. Thus, we concur that the last sentence of Section 3.4(a) should be stricken, to read as follows:

Seller shall, and shall cause each of the PDRs or RDRRs in the DRAM Resource and corresponding DRPs and SCs to, comply with all applicable CAISO Tariff provisions, CPUC Decisions and all other Applicable Laws, including the Bidding of the DRAM Resource into the applicable CAISO Markets during the Availability Assessment Hours as required by the CAISO Tariff. ~~In the event that these requirements conflict or the CAISO or CPUC do not provide a corresponding requirement to the other Governmental Bodies, Seller shall comply with the most stringent requirement of the Governmental Bodies.~~

We further note that the manner in which Section 3.4(a) is crafted, even with the now omitted sentence, it could easily be interpreted to not include the refined requirements that are articulated in BPMs but not in the CAISO tariff, as this Section is specific to the CAISO tariff.

²³ Decision 15-06-063, page 35.

Turning our attention to Section 3.5 of the proposed pro forma contract, we share the concern of the Joint DR Parties. Specifically, we are concerned about the proposed new Section 3.5(b), which reads as follows:

In addition to Section 3.5(a), Seller shall indemnify or reimburse Buyer for any costs allocated to Buyer by the CAISO for any capacity procured by CAISO pursuant to the Capacity Procurement Mechanism with respect to any Shortfall Capacity.

We note that Section 3.5 of the pro forma contract approved for the first DRAM auction, in Resolution E-4728 and subsequent disposition letter, is in direct conflict with this newly proposed Section 3.5(b). Section 3.5 of the pro forma contract for the first auction specifically exempted Sellers from any Capacity Procurement Mechanism (CPM) cost, and reads as follows:

3.5. Indemnities for Failure to Perform.

Seller agrees to indemnify, defend and hold harmless Buyer from any costs, penalties, fines or charges assessed against Buyer by the CPUC or the CAISO, resulting from Seller's failure to do, or cause to be done, any of the following:

- (a) Provide any portion of the Monthly Quantity for any portion of the Delivery Period, except to the extent (i) such failure is solely the result of a failure by Buyer to perform any of its obligations pursuant to Section 6.2, or (ii) Seller reduces a Monthly Quantity in compliance with Section 1.5(b);
- (b) Submit timely and accurate Supply Plans that identify Buyer's right to the Monthly Quantity for each Showing Month;
- (c) Comply with the requirements in Section 3.2 to enable Buyer to meet its RAR; or
- (d) Meet CPUC Resource Adequacy requirements per CPUC 2016 Final RA Guide.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize any such costs, penalties, fines and charges;

provided, in no event will Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines, charges, or costs, or fails to reimburse Buyer for those penalties, fines, charges, or costs, then Buyer may offset those penalties, fines, charges or costs against any amounts it may owe to Seller under this Agreement.

Notwithstanding Seller's obligations in Section 3.5(a), Seller is not required to indemnify or reimburse Buyer for any costs allocated to Buyer by the CAISO for any capacity procured by CAISO pursuant to the Capacity Procurement Mechanism with respect to any Shortfall Capacity.

The new Section 3.5(b) would both obligate Sellers to indemnify IOUs for CPM related costs, whereas Section 3.5 of the 2016 pro forma contract explicitly exempted Sellers from such responsibility, and also removes the requirement that the Seller must meet CPUC RA requirements per the RA guide. Further, we understand that standard pro forma RA confirmations for all three IOUs do not include a blanket indemnification clause in the absence of any provisions allowing the Seller opportunity to cure deficiencies.

Sellers must meet CPUC RA requirements, and the IOUs have not demonstrated any analysis that now justifies the modifications to this provision that now make the Sellers responsible for CPM cost. While it is true that local RA requirements currently differ between the CPUC and CAISO, the fact is that activation of CPM was also a risk under the 2016 DRAM, and would exist even if the current conflict in local RA requirements did not exist. This section should be brought into alignment with Section 3.5 of the 2016 DRAM pro forma contract.

The IOUs are directed to replace Section 3.5 of the pro forma contract proposed in AL 3292 et al, with the language from the DRAM pro forma contract approved in Resolution E-4728 and staff disposition letter, in its entirety.

Finally, the IOUs propose to include the ability for DRAM resources providing local RA to respond in 20 minutes, to the qualitative criteria. This request is denied, consistent with the reasons stated earlier in this section.

Set Aside Provisions

We concur with the Joint DR Parties that the provision for AMP contract amendments should be carried forward to the 2017 DRAM in case the Commission decides to extend the AMP program. In fact, with Ordering Paragraph 12 of Resolution E-4728, the Commission directed the expected bounds for the 2017 DRAM:

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.

These bounds did not include any expectation of the continuation, or not, of existing programs in 2017 or beyond. We note that no DR programs, including and in addition to AMP, have been funded beyond the close of 2016. To be clear, this provision is allowed the 2017 DRAM as a backstop mechanism in case the AMP program is extended beyond its current sunset of year end 2016. In doing so, however, in no way does this Resolution prejudge the future of the AMP or any other DR program in, and beyond, the 2017 transition year.

Bidder Confidentiality Provisions

The Joint DR Parties do not offer any information or justification for making their proposed modification now. These parties, we note, were actively involved in the development of both the 2016 DRAM pro forma agreement and the 2017 DRAM pro forma agreement that is before us in AL 3292 et al. While we are sensitive to contract provisions or rules that are unworkable, it is not clear from the Joint DR Parties' protest specifically why this provision in PG&E's and SDG&E's agreements is unworkable and why it should be changed. Thus, this aspect of the Joint DR Parties' protest is rejected.

Issues Not Addressed in Protests

The remainder of this discussion focuses on resolution of one issue embedded within AL 3292-E et al.

Non-Binding Cost Estimates and Budget Authorization

In AL 3292 et al, the IOUs provide new non-binding cost estimates for the 2017 pilot year, as follows: \$6 million each for PG&E and SCE, and \$1.5 million for SDG&E, for a total of \$13.5 million. The IOUs also claim that “(T)he 2017 DRAM cannot be funded by the 2015-2016 bridge funding authorization because, by definition, the authorized period does not extend into 2017,” and further state that they “...plan to include a DRAM funding request in the 2017 transition year filing.”²⁴ We clarify here that, per Ordering Paragraph 5b, and corresponding discussion elsewhere within D.14-12-024, the Commission’s expectation, and indeed its direction to the IOUs, is to shift existing authorized funding for the 2015 and 2016 bridge years for purposes of funding both years of the DRAM pilot.

In D.14-12-024, the Commission explicitly approved the use of 2015-2016 bridge funding for use in the pilot:

“To cover the costs of the DRAM pilot, the Settling Parties request that funding from the 2015-2016 bridge funding be authorized and that the fund shifting rules be lifted for the purposes of funding the DRAM pilot.”²⁵

“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.”²⁶

Thus, the non-binding cost estimates of \$6 million each for PG&E and SCE, and \$1.5 million for SDG&E are approved, and the IOUs directed to reserve those

²⁴ Ibid, page 12.

²⁵ D.14-12-024, pages 12-13.

²⁶ Ibid, Ordering Paragraph 5d, page 86.

funds within their existing authorized 2015-2016 program year budgets. The IOUs' request to expend those funds in 2017 for purposes of funding the DRAM, is also approved. The IOUs are further directed to remove Section 1.5(c) from the proposed DRAM pro forma contract, which reads as follows:

In the event that the CPUC does not grant to Buyer the amount of funding for the DRAM II Pilot Program as requested by Buyer in its 2017 demand response bridge funding proposal as part of DR OIR R.13-09-011, on or before the date that is forty-five (45) days prior to the first Showing Month for a type of Product, then Buyer may terminate this Agreement upon Notice to Seller.

COMMENTS

The Draft Resolution was mailed on December 17, 2015. Comments were timely filed on January 6, 2016 by OhmConnect Inc.; Comverge Inc., CPower, EnerNoc Inc., EnergyHub Inc., and Johnson Controls Inc. ("Joint DR Parties"); San Diego Gas and Electric Company and Southern California Edison.

Back up Generation in Conjunction with DRAM Contracts

The Joint DR Parties comment that DRAM sellers should be held to the policy on backup generation and storage that is in effect at the time the DRAM 2 request for offer is held, rather than at the time of contract signing. The latter approach was proposed in the draft of this Resolution. This modification is requested because the parties believe, in essence, that allowing a change to program rules to occur late in the RFO and contracting process creates too much regulatory risk and could create delays in contracting if bids must be revised in order to incorporate the new policy. The Joint DR Parties recommend that Section 7.2 of the pro forma contract be further amended to read:

"If the Commission approves a policy and/or requirement dictating an approach for regulating the usage of generation or storage during DR events on or before the date on which **the RFO is issued, this contract is signed by the parties,** then that policy and/or requirement shall apply,

~~and this to contracts signed pursuant to that RFO shall be modified as directed by the Commission or its staff.”²⁷~~

While we appreciate the concerns of the Joint DR Parties, this provision and associated contract amendment will remain in this Resolution as originally proposed. We are primarily concerned with any difference in rules between programs in 2017 and beyond, as such differences would create both confusion in the market place and inconsistent rules between resources providing the same service.

Bidder Confidentiality Provisions

The Joint DR Parties reiterate the recommendation made in their protest that each IOU be required to execute a standardized NDA with bidders to protect sensitive information during the bidding and bid selection process. The Joint DR Parties note that “...there is no language that has been approved by the Commission that discusses the confidential treatment of bids or exchanges of information or communications between buyers and sellers before contract execution.”²⁸

In evaluating this recommendation, we examined the practices of several other procurement programs, and Commission staff spoke with the IOUs directly. To our knowledge, no standard NDA exists for any Commission approved procurement program, and we are not convinced that such a document must be produced for this pilot program. Each utility holds bid information confidential, consistent with the requirements of D.06-06-066, Appendix 1. If bidders have concerns, we have no concern if they choose to “...ensure that every communication and document is marked confidential and commercially

²⁷ Draft Resolution E-4754 (2017 DRAM II Pilot), Joint Comments of the Joint DR Parties, filed January 6, 2016, page 3.

²⁸ Draft Resolution E-4754 (2017 DRAM II Pilot), Joint Comments of the Joint DR Parties, filed January 6, 2016, page 5.

sensitive...”²⁹, as the Joint DR Parties suggest, in order to increase their comfort level. We decline to require that the IOUs develop a standardized NDA as recommended by the Joint DR Parties.

Non-Binding Cost Estimates and Budget Authorization

SDG&E explains that its cost recovery mechanism does not collect costs from ratepayers until the funds are spent, and thus any unspent funds have also not been collected from ratepayers. To recognize this, SDG&E requests two modifications to Ordering Paragraphs 9 and 10 of this Resolution, as follows:

9. The IOUs’ request to expend 2015-2016 bridge year funds in 2017 for purposes of funding the DRAM, is approved. SDG&E does not collect funds until they are spent and, therefore, will have no collected and unspent funds to roll forward to 2017. Thus, SDG&E is authorized to fund DRAM in 2017 in an amount equal to the portion of its 2015-2016 budget that is allocated to the 2017 DRAM.

10. The IOUS shall ~~remove~~modify Section 1.5(c) from the proposed DRAM pro forma contract, ~~which reads~~ as follows:

In the event that ~~the CPUC does not grant to Buyer~~ the amount of funding for the DRAM II Pilot Program as requested by Buyer is not available in its 2017 demand response bridge funding proposal as part of DR OIR R.13-09-011, on or before the date that is forty-five (45) days prior to the first Showing Month for a type of Product, then Buyer may terminate this Agreement upon Notice to Seller.³⁰

We reject the modifications to Ordering Paragraph 10, as they are inconsistent with the direction elsewhere in this Resolution for the funding of DRAM 2. We

²⁹ Ibid, page 6.

³⁰ Comments of San Diego Gas and Electric Company on Draft Resolution E-4754, filed January 6, 2016, page 2.

see no reason why SDG&E's cost recovery mechanism should exempt the utility from funding the \$1.5 million total that the utility itself estimates it needs to fund DRAM 2, in AL 3292 et al.

We adopt the following modifications to Ordering Paragraph 9 to clarify that SDG&E is authorized to both collect and spend the total \$1.5 million estimated for DRAM 2, in 2017.

9. The IOUs' request to expend 2015-2016 bridge year funds in 2017 for purposes of funding the DRAM, is approved. SDG&E does not collect funds until they are spent. Thus, SDG&E is authorized to fund DRAM in 2017 in an amount equal to the utility's cost estimate of \$1.5 million. SDG&E is authorized to allocate those funds from its 2015-2016 budget.

Bid Selection Process

SCE advocates for IOUs to retain the ability to manage DRAM procurement once minimum procurement targets are reached, at their own discretion. Specifically, SCE asks for the Commission to make clear in this Resolution that the IOUs are not mandated to procure viable bids up to either the Rule 24 registration limitation or budget estimate, whichever is reached first.

On the other side, OhmConnect advocates for the Commission clarifying its direction to each IOU that they are required, rather than encouraged as in E-4728, to procure viable DRAM bids up to either its Rule 24 registration limitation or the budget estimate.

It is notable the manner in which each IOU interpreted the Commission's direction in E-4728 in this regard. Both PG&E and SCE conducted their DRAM procurement consistent with the Commission's expectation, per the report of each utility that its Rule 24 registration limitation was nearly exhausted³¹.

³¹ In its Notice to Potentially Exceeding Rule 24 Registration Target, on December 8, 2015, PG&E reported that it expected to exceed 10,000 registration accounts. Further, for the first round of DRAM, "PG&E's primary constraint was the cap on service accounts." – PG&E AL 4772-E, Appendix D, Independent Evaluator

SDG&E, on the other hand, chose to limit its procurement to just more than half of its 7,000 authorized Rule 32 registrations, at 3,752.³²

We are disappointed that SDG&E did not procure up to the maximum limits despite our encouragement that they do so. For the limited purpose of this pilot alone, we clarify herein that 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. We recognize that it is likely impossible to reach either the budget or registration limit exactly, and so we reiterate our strong encouragement that the IOUs to procure as close to these limitations as possible.

Beyond this pilot, however, we do see merit in SCE's recommendation that the procurement target be managed in a different manner in order to procure the most cost efficient DR resources for ratepayers and reserve this discussion for a later point in time. We note that, for this second year of the pilot period, the IOUs retain the discretion to reject bids that are clear outliers or where there is evidence of market manipulation, subject to review by the CPUC Energy Division.

Budget

OhmConnect asks the Commission to direct the IOUs to make public how much of their authorized DRAM budget will be allocated to administrative costs, Scheduling Coordinator costs and capacity payments. OhmConnect also asks that the IOUs be directed to obtain funds from any administrative cost overruns with fund-shifting from other DR program budgets.³³ We believe this to be a reasonable request, and require the IOUs to file their estimated budget

Report, page 29. SCE responded to an Energy Division data response on January 8, 2016, regarding SCE AL 3340-E, that SCE is close to the 14,000 target.

³² SDG&E AL 2843-E, page 3.

³³ Comments of OhmConnect, Inc. on Draft Resolution Approving with Modifications Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company's Demand Response Auction Mechanism Pilot for 2017, filed January 6, 2016, page 3.

allocations for capacity payments, administrative costs and scheduling coordinator costs, in the Supplemental Advice Letter directed by Ordering Paragraph 14 of this Resolution. The IOUs are directed to represent these estimates in dollars.

OhmConnect also recommends that the Commission require the IOUs to roll over unspent funds from the first DRAM auction to augment the budgets for the second DRAM auction. We deny this request, as the allocation of funds for each auction is from the same funding allocation, and we wish to preserve DR program funds for other programs through the close of this year. Further, we believe the \$13.5 million estimated for this pilot program is reasonable and sufficient.

Bid Aggregation

SDG&E raises a new issue in its comments. In essence, SDG&E requests that the following finding be added to this Resolution to enable IOUs to aggregate winning bids from winning bidders into one contract with an average price:

18. It is reasonable to allow the IOUs to aggregate multiple winning bids for the same product into a single contract with a single weighted average price.

This is rejected for the purposes of this pilot because there was ample opportunity to raise this provision in Working Group meetings in preparation for filing AL 3292 et al. The topic was not raised and thus the impact not debated. To raise it in comments to this Resolution is too late for a provision that may impact the bidding and selection process. That said, we are open to entertaining this aspect of DRAM rules for any future solicitations beyond the pilot period.

Flexible RA

OhmConnect makes recommendations specific to the timing and process that the Commission should follow in approving the IOUs' budgets for real time and ancillary services. Those recommendations are rejected, as the appropriate forum for making them is in Application (A.) 14-06-001, and not in response to this Resolution. However, we are sympathetic to OhmConnect's concern that a

DRAM Seller that is awarded a contract to provide flexible capacity may be unable to deliver that capacity if the CPUC has not yet approved the IOUs budgets for real time and ancillary services, or if the IOUs have not yet enabled the functionality before deliveries under the DRAM 2 contract are meant to commence. Thus, we believe it is reasonable to amend the pro forma contract to exempt Sellers from any associated obligations or penalties.

New subsection (c) is added to Section 1.5 of the pro forma contract as follows:

(c) In the event that the CPUC does not approve Buyer's request for funding to support real time and ancillary services capability and the Buyer has not yet enabled real time or ancillary services functionality, by the time that the DRAM Resource is offered into the CAISO market, on or after January 1, 2017 per the terms of this agreement, Buyer shall provide notice to Seller and Seller shall be exempt from both any obligation to provide flexible capacity and any associated penalties. Once Buyer has enabled real time or ancillary services functionality and Sellers are able to provide flexible capacity to the CAISO market, this section shall have no further effect.

(d) Seller's exercise of its rights under Section 1.5(b) with respect to a particular Product Monthly Quantity for a particular type of Product or ~~Buyer's~~ Seller's exercise of its rights under Section 1.5(c) will not be deemed to be a failure of Seller's obligation to sell or deliver the Product or a failure of Buyer's obligation to purchase or receive the Product, and will not be or cause an Event of Default by either Party. Neither Party shall have any further obligation or liability to the other and no Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to Seller's exercise of its right pursuant to Sections 1.5(b) (y) or ~~Seller's~~ Buyer's exercise of its rights pursuant to Section 1.5(c), except in the case of Seller's exercise of its rights pursuant to Section 1.5(b) (y) only in which case Buyer shall be liable to Seller for expenses, actually incurred by Seller as of the date of such termination, for SC services with respect to the DRAM Resource and this Agreement, in an amount not to exceed the sum of the monthly SC service payments during the months of the Delivery Term.

Continuation of IOU Collaboration and Working Group

In AL 3292-E et al, the IOUs request that the Commission authorize IOU collaboration and working group activities should either be necessary in order to complete any additional work, such as the filing of Supplemental ALs in response to this Resolution.³⁴ Given that this Resolution does require the filing of Supplemental ALs to AL 3292 et al, the IOUs are also authorized to collaborate with each other and resume working group activities as and if necessary. Should the resumption of working group meetings be necessary, the IOUs shall continue to adhere to the notification requirements set by Administrative Law Judge Hymes at the January 12, 2015 Prehearing Conference in R.13-09-011.

We take this opportunity to provide further clarification in this area. The IOUs continue to be able to collaborate as necessary, consistent with the manner in which they did so for the first DRAM auction. We add the following Finding of Fact to this Resolution to clarify that all practices, including and in addition to IOU collaboration, are continued from the first DRAM auction to the second:

It is reasonable to continue the provisions, directions, practices and rules that were adopted for the 2016 DRAM for the 2017 DRAM, unless explicitly modified or revised herein.

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. Resolution E-4728 approved the IOUs' ability to file two separate Advice Letters for each year of the DRAM, as well as the proposed auction design, protocols, set-asides, standard pro forma contract,

³⁴ AL 3292 et al, page 14.

evaluation criteria and non-binding cost estimates for the first year of the DRAM.

3. It is reasonable to require DRAM Buyers and Sellers to comply with a policy on the use of generation or storage in conjunction with DRAM events that is different than that adopted in Resolution E-4728, should that policy be adopted by the Commission before the date on which DRAM contracts are signed.
4. It is reasonable to continue the provisions, directions, practices and rules that were adopted for the 2016 DRAM for the 2017 DRAM, unless explicitly modified or revised herein.
5. The QC and EFC methodology and policy adopted for DR resources in D.14-06-050, allows for the use of program design to establish initial QC and EFC if the historical data is not available or appropriate.
6. In the context of the DRAM, we continue to interpret program design to refer to contracted capacity.
7. For the DRAM, it is reasonable to both allow for the use of contract capacity to establish initial QC and EFC for DRAM resources for which historical data do not exist, and to exempt DRAM Sellers from performing a load impact analysis for such resources.
8. The CAISO has proposed an amendment to its Reliability Business Practice Manual (BPM), which would require PDR and RDRR resources to be dispatchable within 20 minutes of notification in order to count for local RA.
9. The CPUC has not adopted a requirement for dispatch time for resources that count toward local RA obligations.
10. A Resolution authorizing a pilot program is an inappropriate venue in which to resolve any difference in regulatory requirements between agencies.
11. The newly proposed DRAM contract contains a new provision which explicitly requires Sellers to indemnify Buyers if the CAISO invokes the Capacity Procurement Mechanism. The DRAM contract approved in Resolution E-4728 contained a provision that explicitly stated the opposite.

12. Staff has reviewed the pro forma RA confirmations of all three IOUs, and found that such explicit indemnification provisions do not exist. Staff further found that RA resources are explicitly given the opportunity to cure for shortfalls in capacity delivery, whereas this ability exists nowhere in the DRAM pro forma contract.
13. It is reasonable to require the treatment of possible capacity backstop procurement similarly between both years of DRAM pilot solicitations.
14. No IOU DR programs have been funded beyond the close of 2016.
15. No information has been given to justify modification to confidentiality provisions now.
16. Ordering Paragraph 5b of D.14-12-024 allows for the funding of the 2017 DRAM from 2015-6 program year budget.
17. It is consistent with the intent and direction of D.14-12-024 to allow IOUs to expend program funds from the 2015-6 program year budget to fund the DRAM in 2017.
18. It is reasonable and appropriate to exempt Sellers from any obligation, including penalties, to provide flexible capacity to the CAISO market if the CPUC does not timely approve IOUs' budget requests for real time and ancillary services functionality, and the IOUs have not yet enabled the associated functionality by the time the delivery period commences.
19. It is reasonable to require the IOUs to disclose the estimated dollar amount, in each IOU's respective DRAM budget, allocated to administrative costs, scheduling coordinator costs, and capacity payments.
20. It is reasonable to carry forward the minimum procurement targets and clarify limits on procurement from the 2016 DRAM to the 2017 DRAM.
21. It is reasonable to allow IOUs to resume working group meetings, as and if necessary, subject to the notice requirements set forth by Administrative Law Judge Hymes at the January 12, 2015 Prehearing Conference in R.13-09-011.

THEREFORE IT IS ORDERED THAT:

1. The request of SCE, PG&E and SDG&E (collectively, "IOUs") to approve the second year of the DRAM pilot program, as requested in Advice Letter AL 3292-E et al, is approved with modifications as specified herein.
2. The IOUs shall modify Section 7.2(b)(v) of the pro forma contract, as follows:

During each month of the Delivery Period, if any participating Customers in the DRAM Resource have Back-up Generation, Seller shall ensure that such Back-up Generation is not used during a Dispatch by any PDR or RDRR providing Product to Buyer during such month. Seller shall use at least one of the following options to demonstrate that participating Customers did not use Back-up Generation during a Dispatch of a PDR or RDRR providing Product to Buyer: (w) provide an attestation with each invoice that no participating Customer in the PDR or RDRR providing Product in the invoiced month used Back-up Generation during a Dispatch; (x) prohibit participating Customers from having Back-up Generation in its DRAM Resource; (y) monitor metering on the participating Customer's DRAM Resource to ensure that no Back-up Generation was used during a Dispatch of a PDR or RDRR providing Product to Buyer; and (z) require, in its agreement with its participating Customers, that no Back-up Generation may be used during a Dispatch of a PDR or RDRR providing Product to Buyer. If the Commission approves a policy and/or requirement dictating an approach for regulating the usage of generation or storage during DR events on or before the date on which this contract is signed by the parties, then that policy and/or requirement shall apply, and this contract shall be modified as directed by the Commission or its staff.

3. Contract capacity may be used to establish initial QC and EFC for DRAM resources for which historical data are not available, consistent with D.14-06-050.
4. The IOUs shall modify Section 3.3(c) in the pro forma contract, as follows:

Seller shall comply with the requirements for load impact analysis in D.14-06-050, Appendix B, and provide to the CPUC a load impact evaluation consistent with the Load Impact Protocols in D. 08-04-050

and data required by D.14-06-050. This section is applicable only for DRAM resources for which historical data are available. If historical data are not available, Seller is not required to perform a load impact analysis.

5. The IOUs shall modify Section 3.4(a), as follows:

Seller shall, and shall cause each of the PDRs or RDRRs in the DRAM Resource and corresponding DRPs and SCs to, comply with all applicable CAISO Tariff provisions, CPUC Decisions and all other Applicable Laws, including the Bidding of the DRAM Resource into the applicable CAISO Markets during the Availability Assessment Hours as required by the CAISO Tariff. ~~In the event that these requirements conflict or the CAISO or CPUC do not provide a corresponding requirement to the other Governmental Bodies, Seller shall comply with the most stringent requirement of the Governmental Bodies.~~

6. The IOUs shall replace Section 3.5 of the proposed pro forma contract, with Section 3.5 of the DRAM pro forma contract approved in Resolution E-4728 and subsequent disposition letter, to read as follows:

3.5. Indemnities for Failure to Perform.

Seller agrees to indemnify, defend and hold harmless Buyer from any costs, penalties, fines or charges assessed against Buyer by the CPUC or the CAISO, resulting from Seller's failure to do, or cause to be done, any of the following:

(a) Provide any portion of the Monthly Quantity for any portion of the Delivery Period, except to the extent (i) such failure is solely the result of a failure by Buyer to perform any of its obligations pursuant to Section 6.2, or (ii) Seller reduces a Monthly Quantity in compliance with Section 1.5(b);

(b) Submit timely and accurate Supply Plans that identify Buyer's right to the Monthly Quantity for each Showing Month;

(c) Comply with the requirements in Section 3.2 to enable Buyer to meet its RAR; or

(d) Meet CPUC Resource Adequacy requirements per CPUC 2016 Final RA Guide.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize any such costs, penalties, fines and charges; *provided*, in no event will Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines, charges, or costs, or fails to reimburse Buyer for those penalties, fines, charges, or costs, then Buyer may offset those penalties, fines, charges or costs against any amounts it may owe to Seller under this Agreement.

Notwithstanding Seller's obligations in Section 3.5(a), Seller is not required to indemnify or reimburse Buyer for any costs allocated to Buyer by the CAISO for any capacity procured by CAISO pursuant to the Capacity Procurement Mechanism with respect to any Shortfall Capacity.

7. The IOUs shall carry forward AMP contract set-aside proposal for 2017, in case the CPUC decides to continue the AMP program in 2017.
8. The IOUs' non-binding cost estimates of \$6 million each for PG&E and SCE and \$1.5 million for SDG&E, for a total of \$13.5 million, are approved.
9. The IOUs' request to expend 2015-2016 bridge year funds in 2017 for purposes of funding the DRAM, is approved. SDG&E does not collect funds until they are spent. Thus, SDG&E is authorized to fund DRAM in 2017 in an amount equal to the utility's cost estimate of \$1.5 million. SDG&E is authorized to allocate those funds from its 2015-2016 budget.
10. The IOUs shall modify Section 1.5 of the proposed DRAM pro forma contract, as follows:

~~(c) In the event that the CPUC does not grant to Buyer the amount of funding for the DRAM II Pilot Program as requested by Buyer in its 2017 demand response bridge funding proposal as part of DR OIR R.13-09-011, on or before the date that is forty five (45) days prior to the first Showing Month for a type of Product, then Buyer may terminate this Agreement upon Notice to Seller.~~

(c) In the event that the CPUC does not approve Buyer's request for funding to support real time and ancillary services capability and the Buyer has not yet enabled real time or ancillary services functionality, by the time that the DRAM Resource is offered into the CAISO market, on or after January 1, 2017 per the terms of this agreement, Buyer shall provide notice to Seller and Seller shall be exempt from both any obligation to provide flexible capacity and any associated penalties. Once Buyer has enabled real time or ancillary services functionality and Sellers are able to provide flexible capacity to the CAISO market, this section shall have no further effect.

(d) Seller's exercise of its rights under Section 1.5(b) with respect to a particular Product Monthly Quantity for a particular type of Product or ~~Buyer's~~ Seller's exercise of its rights under Section 1.5(c) will not be deemed to be a failure of Seller's obligation to sell or deliver the Product or a failure of Buyer's obligation to purchase or receive the Product, and will not be or cause an Event of Default by either Party. Neither Party shall have any further obligation or liability to the other and no Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to Seller's exercise of its right pursuant to Sections 1.5(b) (y) or ~~Seller's~~ Buyer's exercise of its rights pursuant to Section 1.5(c), except in the case of Seller's exercise of its rights pursuant to Section 1.5(b) (y) only in which case Buyer shall be liable to Seller for expenses, actually incurred by Seller as of the date of such termination, for SC services with respect to the DRAM Resource and this Agreement, in an amount not to exceed the sum of the monthly SC service payments during the months of the Delivery Term.

11. 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.
12. It is reasonable to require the IOUs to disclose the estimated dollar amount, in each IOU's respective DRAM budget, allocated to administrative costs, scheduling coordinator costs, and capacity payments.
13. Unless explicitly modified or revised herein, the provisions, directions and rules that were adopted for the 2016 DRAM RFO shall apply for the 2017 DRAM RFO.
14. The IOUs shall make all revisions to the pro forma contract and auction design prescribed by this Resolution, and budget allocation estimates, in a Supplemental Advice Letter(s) to AL 3292 et al, filed no later than 10 days from the Commission vote on this Resolution and shall go into effect on the date of Energy Division approval. The protest period for the Supplemental AL(s) is reduced to 10 days.

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 January 28, 2016 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

Resolution E-4754

January 28, 2016

SCE AL 3292-E, PG&E AL 4719-E, SDG&E AL 2796-E/RCL

CARLA J. PETERMAN
LIANE M. RANDOLPH
Commissioners