

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

**ENERGY DIVISION**

**RESOLUTION E-4817**

**January 19, 2017**

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

Resolution E-4817. 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 2018-2019.

**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 21 of Decision 16-06-029, the Advice Letters contain a non-binding cost estimate of \$27 million dollars across the three IOUs.

By Advice Letters 3466-E (Southern California Edison Company), 4900-E (Pacific Gas and Electric Company), and 2949-E (San Diego Gas & Electric Company), Filed on September 1, 2016.

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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 third 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 submit an Advice Letter filing for all of these elements of the DRAM pilot.

The pilot auction design and standard contract approved via this Resolution is for a third DRAM pilot (DRAM III). There were two primary differences between the first and second DRAM pilots (DRAM I and DRAM II): 1) in DRAM II a Seller could elect to offer deliveries over 12 months, from January to December; 2) DRAM II allowed for local and flexible resource adequacy offers, in addition to system capacity. There are additional differences between DRAM II and DRAM III. In DRAM III 1) Sellers are required to differentiate between a Proxy Demand Resource (PDR) and a Reliability Demand Response Resource (RDRR); 2) scheduling coordinator costs are now to be bid as part of the product capacity costs; 3) an option is available for Sellers to offer a Flexible Capacity Category 1 product; 4) a DRAM Seller may now elect to offer deliveries of a maximum of two years, through December 2019; 5) utilities have enhanced testing requirements to a minimum of one each August (2018 and 2019), if a Full Dispatch has not occurred; and, 6) Sellers must show Demonstrated Capacity if a test or Full Dispatch occurs during a month.

Within fourteen 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.

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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 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.<sup>2</sup> Parties subsequently 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 D.14-12-024.<sup>3</sup> 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 2016 DRAM, and requested the ability to file a second AL for 2017 DRAM. These ALs were approved by the Commission, with modifications, by Resolution E-4728, later modified by Resolution E-4737.

On October 9, 2015, pursuant to Resolutions E-4728 and E-4737, SCE filed AL 3292-E, PG&E filed AL 4719-E, and SDG&E filed AL 2796-E outlining the procurement process they intended to use for 2017 DRAM auction, and including a standard contract. The Commission approved these ALs with modifications in Resolution E-4754 on January 28, 2016. This resolution also stated the Commission’s expectation, also in Resolution E-4728, that the utilities were expected to procure 2017 DRAM capacity resources up to either their

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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>.

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

available Rule 24/32 registrations, or authorized budgets, whichever is reached first.<sup>4</sup>

On June 9, 2016, Commission Decision D.16-06-008 directed PG&E, SCE and SDG&E to achieve a total of 102,000 customer registrations for demand response direct participation in the CAISO market. PG&E was directed to achieve a total of 40,000 customer registrations by March 17, 2017, and authorized \$5.4 million to do so; SDG&E was directed to support a total of 30,000 customer registrations by February 28, 2017 and authorized a budget of \$2.3 million to do so; SCE was directed support a total of 42,000 registrations by March 17, 2017 and authorized a budget of \$1.254 million to do so. D.16-08-008 reiterated guidance provided earlier that customer registrations numbers are not caps, but rather a “number to strive for, within the authorized budget,” and, “the number of customer registrations should be dynamic and never reached.” It therefore authorized the IOUs to file a Tier 1 or Tier 3 Advice Letter to request authorization and, if needed, funding to increase the number of customer registrations prior to filing of the 2018 demand response program application, if this timing was necessary to ensure continued growth in the registrations. The IOUs were also authorized to include the same request in the 2018 DR program application if that timing was sufficient.<sup>5</sup>

Also on June 9, 2016, in Decision D. 16-06-029, the Commission extended the DRAM pilot for a third year, with auctions to be held in 2017 and deliveries in 2018 -2019. The Commission stated that the IOU proposal should recommend a “reasonable next step for the pilot, based on the first two pilots” and should “take into consideration the participation of the first two auctions.”<sup>6</sup> The Commission authorized a DRAM working group to develop a consensus

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<sup>4</sup> 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.” January 28, 2016.

<sup>5</sup> D. 16-06-008, “Decision Addressing Budgets for Day-Ahead, Real-Time and Ancillary Services During the Intermediate Implementation Step of Third-Party Demand Response Direct Participation,” pps 23-25, June 16, 2016.

<sup>6</sup> D. 16-06-029, “Decision Adopting Bridget Funding for 2017 Demand Response Programs and Activities,” p. 33 and 81, June 16, 2016.

proposal and authorized the IOUs to actively collaborate through it with the Office of Ratepayer Advocates (ORA), the Utility Reform Network (TURN), DR Providers, Energy Division (ED) staff and other interested stakeholders.

The Commission indicated that the “minimal requirements shall begin at the current (2017) auction level”<sup>7</sup> and:

- Reiterated that the purpose of the pilot is to investigate whether a competitive procurement mechanism for supply side resources outside of traditional utility programs is viable and to provide experience in the CAISO market;
  - Noted that PG&E had robust responses in 2016-2017 and growth in the number of bids and bidding parties, and that SCE generated a higher megawatt volume of offers and contracts than expected;
  - Authorized a \$27 million budget, double the 2017 budget, available beginning in 2016 to ensure the 2017 auction takes place in time for 2018 deliveries, and allocating \$3 million for SDG&E and \$12 million each for SCE and PG&E;
  - Instructed the IOUs to be “prudent and sensible in selecting and approving bids” and to “ensure that the bids fit portfolio needs and offer the best value to the ratepayers”<sup>8</sup>
  - Instructed the IOUs to file a tier three advice letter requesting adoption of a proposal for a third DRAM pilot no later than September 1, 2016.
- On July 22, 2016, PG&E filed AL 4880-E and SDG&E filed AL 2926-E;

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<sup>7</sup> D. 16-06-029, “Decision Adopting Bridget Funding for 2017 Demand Response Programs and Activities,” p. 38, June 16, 2016.

<sup>8</sup> D. 16-06-029 “Decision Adopting Bridget Funding for 2017 Demand Response Programs and Activities,” p. 40, 89, June 16, 2016.

PG&E requested approval of 14 contracts that PG&E entered into as a result of the 2017 DRAM solicitation and SDG&E requested approval of six contracts. On July 27, 2016, SCE filed AL3442-E requesting approval of contracts resulting from its 2017 DRAM solicitation. On August 25, 2016, Energy Division approved SCE's AL by Disposition letter. On September 29, 2016 in Resolutions E-4802 and E-4803, the Commission approved SDG&E and PG&E's proposed 2017 DRAM power purchase agreements and directed SDG&E and PG&E to procure further DR resources from their original 2017 DRAM shortlists in order to bring them into compliance with Resolution E-4754 and the intent of D.16-06-008. To accomplish this, Resolutions E-4802 and E-4803 required PG&E and SDG&E to procure either up to their budget caps or to a point at which there is a clear price outlier in bids. For a rejection of a clear price outlier, the utilities were required to first discuss with Energy Division before rejecting the bid. The resolutions required SDG&E and PG&E to file new Tier 1 Advice Letters 30 days from their adoption.<sup>9</sup>

## **NOTICE**

Notice of jointly filed Advice Letters 3466-E, 4900-E and 2949-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 3466-E, 4900-E and 2949-E (collectively, "AL 3466-E et al") were protested by five parties.

On September 20, 2016, AL 3466-E et al were timely protested by BMW Group. On September 21, 2016, AL 3466-E et al were timely protested by the California Energy Storage Alliance ("CESA"), The Utility Reform Network ("TURN"), EnerNOC, Inc., Comverge, Inc., CPower and EnergyHub (collectively, the "Joint DR Parties"), and OhmConnect, Inc.

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<sup>9</sup> PG&E filed AL 4946-E in compliance with the resolution and it was approved by Energy Division on November 28, 2016. SDG&E filed AL 3004-E in compliance with the resolution and it was approved by Energy Division on December 14, 2016.

On September 28, 2016, Southern California Edison, filing on behalf of the three IOUs, responded to the protests of BMW Group, CESA, TURN, the Joint DR Parties and OhmConnect.

## 1. Rule 24/32 Registrations

OhmConnect and the Joint DR parties raised concerns aimed at ensuring that 2018-2019 DRAM pilot procurement is not limited by the availability of Rule 24/32 registrations. “OhmConnect is concerned that the Rule 24/32 registrations available under the Intermediate Implementation Step – 40,000 for PG&E, 42,000 for SCE, and 30,000 for SDG&E – will prove inadequate for the 2018-2019 DRAM pilot.” OhmConnect stated that participation in the IOUs DRAM auctions increased significantly from 2016 to 2017, is likely to continue to grow, and therefore it is quite possible that the IOUs will receive competitively-priced 2018-2019 DRAM bids in excess of what can be accommodated under the Intermediate Implementation Step requirements. OhmConnect states that while the IOUs acknowledge in AL 3466-E et al that the Commission had authorized pathways for them to increase customer registrations, the AL did not specify when and how the IOUs would take steps to do so. This is important, says OhmConnect, as the availability of Rule 24/32 registrations was a limiting factor in the 2016 and 2017 DRAM pilots, and because the 2018 DRAM pilot proposes to allow contracts of up to two years.<sup>10</sup>

The Joint DR Parties observe that AL3466-E et al. fails to provide strategies towards increasing customer registrations and in it the IOUs instead note that they “reserve the discretion to use registration space as a consideration in offer selection.”<sup>11</sup> In particular, the Joint DR Parties object to the IOUs’ proposed approach to procurement in AL 3466-E et al., which states:

*“The minimum procurement targets of 10 MW each for SCE and PG&E, and 2 MW for SDG&E, are put in place for the 2018 DRAM pilot. The IOUs are strongly encouraged, but not required, to procure up to the 2018 budget limitation or the available authorized Rule 24 registrations for every month, whichever comes*

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<sup>10</sup> OhmConnect, “Protest of OhmConnect, Inc. to Advice Letter 3466-E et al. (Demand Response Auction Mechanism Pilot for 2018,” September 21, 2016, p. 4.

<sup>11</sup> Southern California Edison (SCE), Pacific Gas & Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E), Advice Letter 3466-E et al., “Demand Response Auction Mechanism Pilot for 2018,” September 1, 2016, p. 11.



*first, subject to consideration of need, cost and what is necessary to ensure that the DRAM pilot generates adequate data for analysis of the DRAM mechanism.”<sup>12</sup>*

The Joint DR Parties observe that this proposal modifies Ordering Paragraph (OP) 11 from Resolution E-4754, which approved the 2017 DRAM, but fails to mention additional guidance provided in the then-draft Resolutions E-4803 and E-4802 (now final, adopted on September 29, 2016), which required SDG&E and PG&E to procure up to their budget limits or until a “clear outlier” was reached. The Commission took this step when it determined that SDG&E and PG&E had not procured up to authorized budgets or registrations in their initial 2017 procurements as directed in Resolution E-4754.<sup>13</sup>

The parties request several forms of relief. OhmConnect requests: (1) that the Commission instruct the IOUs to produce estimates of the number of additional Rule 24/32 registrations they can make available for each month beginning with September 2017; (2) that the IOUs prioritize making additional registrations available in time for delivery during the summer months of 2018; (3) that these monthly estimates be shared with potential bidders in advance of the 2018 DRAM action; (4) that these monthly estimates serve as the applicable limits on available Rule 24/32 registrations for the purposes of 2018 DRAM bid evaluation and selection; and, (5) that bidders be allowed to submit monthly estimates of their Rule 24/32 registration needs so as to scale bid offers to IOU plans to increase registrations during 2018 and 2019.<sup>14</sup>

The Joint DR Parties request that the Commission: (1) require the IOUs to increase customer registrations exponentially to meet the needs of the 2018 DRAM RFO; (2) reject the utilities proposed procurement limits and direct them to procure 2018 DRAM capacity resources up to their budget limits or to a point

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<sup>12</sup> SCE, PG&E, SDG&E, AL 3466-E, et al., “Demand Response Auction Mechanism Pilot for 2018,” September 1, 2016, p. 6.

<sup>13</sup> Resolution E-4802, “Approval with Modifications to SDG&E’s *Demand Response Auction Mechanism Purchase Agreements*,” and E-4803, “Approval with Modifications to PG&E’s *Demand Response Auction Mechanism Purchase Agreements*,” adopted on September, 29, 2016, pps. 17.

<sup>14</sup> OhmConnect, “Protest of OhmConnect to SCE Advice Letter 3466-E et al. (Demand Response Auction Mechanism for 2018),” September 21, 2016, pages 4-5.

at which there is a clear price outlier in bids, as was done in Resolutions E-4803 and E-4802 ; (3) require the IOUs to request authorization – and funds, if needed – as soon as possible in order increase the number of registrations available for the 2018 DRAM RFO; and (4) ensure that the IOUs publish available Rule 24/32 registrations at the time of the 2018 DRAM RFO auction.<sup>15</sup>

The IOUs reply that they are committed to using a Tier 3 Advice Letter process as provided for in D.16-06-008 to support “incremental” registrations and to continue to make more registrations available. They state that additional registrations would need to align with click-through implementation, based on a Tier 3 AL on this topic to be filed on November 1, 2016, and any supplemental ALs. The IOUs state that it is prudent to limit 2018 DRAM pilot procurement based on the number of registrations and Customer Information Service Request Demand Response Provider (CISR-DRP) forms they can reasonably process.<sup>16</sup>

The IOUs accept OhmConnect’s suggestion to produce estimates of the number of additional Rule 24/32 registrations they can make available for the 2018-2019 DRAM. However, they request to make the numbers available simultaneously with the 2018-2019 DRAM RFO rather than in advance, as requested by OhmConnect. They provide the rationale that this is more reasonable and state that the estimated number of additional registrations is dependent on successful implementation and stable deployment of the CAISO’s enabling Demand Response Registration System Enhancements Phase 2 at both the CAISO and the IOUs.<sup>17</sup>

## 2. Procurement Limits

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<sup>15</sup> Comverge, Inc., CPower, EnerNOC, Inc., and EnergyHub (collectively, the “Joint DR Parties”), “Joint Protest of Comverge, CPower, EnerNOC, Inc, and EnergyHub to Advice Letter 3466-E, et al, 2018 DRAM Pilot,” September 21, 2016, p. 4.

<sup>16</sup> Joint IOU Reply to Protests Filed to AL 3566-E, et al. on the Demand Response Auction Mechanism Pilot Pursuant to Decision 16-06-029, September 28, 2016, p. 6.

<sup>17</sup> Joint IOU Reply to Protests Filed to AL 3566-E, et al. on the Demand Response Auction Mechanism Pilot Pursuant to Decision 16-06-029, September 28, 2016, p. 10.

As noted above, the Joint DR Parties object to the IOUs' modification of OP 11 from Resolution E-4754 to be used to guide 2018 DRAM pilot procurement. The Joint DR Parties observe that the then-draft Resolutions E-4803 and E-4802 (now final, adopted on September 29, 2016) confirmed that SDG&E and PG&E are required to meet a "minimum procurement" for DRAM pilots based on whether the utility has met its budget limit or a clear price outlier. They request that the utilities be directed to delete the modified OP 11 from AL 3466-E and instead include language from the Resolutions E-4803 and E-4802 direction, as noted above.<sup>18</sup>

OhmConnect similarly objects to the modified Resolution E-4754 OP 11 language as "not transparent," and "worsening the transparency of the bid selection process relative to the 2017 DRAM pilot." OhmConnect appears to accept the IOUs statement that they are "very supportive" of third party DR procurement and would like to grow the market, while controlling cost. As a substitute to the current language, OhmConnect proposes the following, that: "each IOU award contracts to all conforming bids whose implied \$/kW-year bid prices are less than or equal to the bid with the highest \$/kW-year price awarded a contract in the IOU's 2017 DRAM auction, unless the budget authorized for 2018 is exhausted first." OhmConnect further requests that "in the event that not all 'competitive' bids can be awarded contracts due to budget limitations, the IOUs would give preference to bids with the highest Net Market Values," and recommends continuing for 2018 the 2017 provision that "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."<sup>19</sup>

OhmConnect makes several arguments in support of its proposal: (1) that it ensures cost control because no bid awarded will be more costly than the highest-price bid in 2017; (2) that the fact that the highest-priced bids in 2017 are known only to the IOUs and ED will compel bidders to bid more aggressively

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<sup>18</sup> Comverge, Inc., CPower, EnerNOC, Inc., and EnergyHub (collectively, the "Joint DR Parties"), "Joint Protest of Comverge, CPower, EnerNOC, Inc, and EnergyHub to Advice Letter 3466-E, et al, 2018 DRAM Pilot," September 21, 2016, p. 4.

<sup>19</sup> OhmConnect, "Protest of OhmConnect to SCE Advice Letter 3466-E et al. (Demand Response Auction Mechanism for 2018)," September 21, 2016, pages 2-3.

than previously; (3) that the proposal conforms to the Commission's long-term objectives for the DRAM; and, (4) that it aligns with Commission's "well-established" position that DR, along with energy efficiency, is first in the loading order.<sup>20</sup>

In their reply, the IOUs oppose the Joint DR Parties request to delete the modified language of Resolution E-4754 OP 11 but provide no factual basis for this position. The IOUs also reject OhmConnect's suggestion of using 2017 winning bid prices as a cap for 2018 procurement, stating that: (1) a "clearing price based on a prior RFO would slow the development of competition in the DRAM process... if there is a guarantee of a winning bid, or any indication that the utility is willing to pay up to a particular price," the incentive for sellers to offer their lowest price possible will be reduced and sellers would instead be motivated to submit offers at their highest price accepted in 2017; (2) the 2018 DRAM should not be tied to procuring bids based on offers that were awarded contracts in the 2017 DRAM because these were based on the competitiveness of bids received in 2017, and not on the IOUs capacity needs for 2018, or the competitiveness of bids received in 2018; (3) IOUs are concerned that DRAM bid prices will not come down if each RFO requires the utility to pay up to the price for the last RFO, even if sellers costs come down; (4) the OhmConnect suggestion would put successful 2017 DRAM bidders at a competitive advantage to new market entrants or unsuccessful bidders as only they would know that any price previously accepted would be guaranteed an award in 2018; and, (5) OhmConnect should have raised these suggestions to modify the design and selection criteria for the 2018 DRAM RFO during the DRAM Working Group meetings in which it actively participated.<sup>21</sup>

### **3. Resource Adequacy Rule Changes**

The IOUs state in AL 3466-E et al. that several Commission Resource Adequacy (RA) and CAISO Must-Offer-Obligation rules may change during the

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<sup>20</sup> OhmConnect, "Protest of OhmConnect to SCE Advice Letter 3466-E et al. (Demand Response Auction Mechanism for 2018)," September 21, 2016, pages 2-4

<sup>21</sup> Joint IOU Reply to Protests Filed to AL 3566-E, et al. on the Demand Response Auction Mechanism Pilot Pursuant to Decision 16-06-029, September 28, 2016, p. 6.

timeframe of the 2018-19 DRAM Pilot. These may include changes in the definition of CPUC local RA requirements (notification requirements and sufficient pre-dispatch capability); possible changes to the Availability Assessment Hours by CAISO; changes and implementation details of the CAISO Resource Adequacy Availability Incentive Mechanism (RAAIM); and changes to CAISO's Use Limited Status per Commitment Cost Enhancements initiative. The IOUs note that these possible changes raise uncertainties, and that the IOUs should have guarantees that a qualifying product will be delivered to the CAISO when they procure an RA product.<sup>22</sup>

The Joint DR Parties note their appreciation of the IOUs' inclusion of changes in resource adequacy (RA) in the AL, but protest that the IOUs' proposed contract option to address potential regulatory changes should be modified. The IOUs proposed that sellers be offered the option to terminate or reduce contract capacity upon significant regulatory changes by providing notice on or before August 1<sup>st</sup> of the year prior to delivery year. The Joint DR Parties state that this option allows sellers to protect themselves from downside risk, but at the expense of earning revenue in the DRAM for one or more years and having a program to offer customers.

The Joint Parties state that the IOU approach is at odds with the Commission's goal of fostering increased participation in the DRAM. They request that the Commission direct the modification of the 2018 DRAM Contract or the 2018 DRAM RFO process in one of two ways: (1) direct the IOUs to grandfather the RA rules at the time of the contract for the term of the contract; or, (2) have two one-year auctions instead of one two-year auction. Regarding the first option, the Joint DR Parties state that the Commission has previously allowed for transition periods for IOUs to implement changes in RA rules, for instance the IOUs were previously allowed two years to implement a one-hour change to the RA Availability Assessment Hours. Regarding the second option, the Joint DR Parties state that the risk of rule changes and the possibility of forgoing a year of DRAM revenues reduces the value, in lower administrative

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<sup>22</sup> SCE, PG&E, SDG&E, AL 3466-E, et al., "Demand Response Auction Mechanism Pilot for 2018," September 1, 2016, p. 5.

costs, of entering into longer-term contracts.”<sup>23</sup> No other party protested this issue.

The IOUs replied to the Joint DR Parties that the IOUs don’t have the authority to grandfather rules and neither the IOUs nor the CPUC can waive CAISO penalties if Proxy Demand Response (PDR) resources do not follow then-current RA rules. They also oppose the Joint DR Parties request for two one-year auctions with the argument that this position is an “outlier” that doesn’t represent all DR parties, and that many other companies have expressed a desire for longer length contracts, which is reasonable to test in this pilot. The IOUs request that if the Commission does order two one-year auctions, it also order the budgets for the IOUs to be split in half, to: \$6 million each year for PG&E and SCE, and \$1.5 million each year for SDG&E.<sup>24</sup>

#### **4. Qualitative Criteria—Transparency**

The Joint DR Parties protest that any qualitative criteria applied to evaluate 2018-19 DRAM RFO bids must be transparent, known upon the issuance of the RFO, and reasonable in light of the operational issues of the pilot. They further request that the method by which bids of varying contract length will be evaluated in the 2018-19 DRAM be transparently provided at the launch of the 2018 DRAM RFO.<sup>25</sup>

OhmConnect also protests that the IOUs proposal in AL 3466-E et al. would worsen the transparency of the bid selection process relative to the 2017 DRAM pilot and does not address both the Joint DR Parties and the Commission’s requests for greater transparency in bid selection. They state that the IOUs proposal does not represent a “reasonable next step for the pilot,” and

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<sup>23</sup> Comverge, Inc., CPower, EnerNOC, Inc., and EnergyHub (collectively, the “Joint DR Parties”), “Joint Protest of Comverge, CPower, EnerNOC, Inc, and EnergyHub to Advice Letter 3466-E, et al, 2018 DRAM Pilot,” September 21, 2016, pps. 3-4.

<sup>24</sup> Joint IOU Reply to Protests Filed to AL 3566-E, et al. on the Demand Response Auction Mechanism Pilot Pursuant to Decision 16-06-029, September 28, 2016, pps. 10-11.

<sup>25</sup> Comverge, Inc., CPower, EnerNOC, Inc., and EnergyHub (collectively, the “Joint DR Parties”), “Joint Protest of Comverge, CPower, EnerNOC, Inc, and EnergyHub to Advice Letter 3466-E, et al, 2018 DRAM Pilot,” September 21, 2016, p. 7.

will constrict the market for third-party DR by reducing the transparency of the bid evaluation process and penalizing DRAM “first movers.” OhmConnect requests relief by proposing that, if the Commission determines the proposed qualitative criteria are reasonable, that it direct the IOUs to publically release the statistics on the numbers and proportions of 2016 and 2017 bidders that failed to meet them prior to the 2018 DRAM RFO. They state that this information is important so 2018 DRAM bidders can understand the extent to which bid evaluation might be influenced by qualitative versus quantitative factors. They further request that, going forward, the Commission require the IOUs to publish statistics on the applicability of all approved qualitative criteria pertaining to past performance both before and after each DRAM auction.”<sup>26</sup>

The IOUs reply that they support greater transparency as long as it does not involve releasing confidential bid information that would compromise auction integrity and increase customer costs. They support the Joint DR Parties request to provide transparent information on the qualitative evaluation matrix, to publish this with 2018 DRAM RFO materials, and to include criteria description and numerical values. They also state that they plan to provide information on available Rule 24/32 registrations and MW available under the 2% reliability DR cap adopted under D.10-06-034 at the same time. The IOUs clarify that the solicitation information made public for the DRAM should follow the rules that IOUs use for all other wholesale power procurement activities; that it does not benefit ratepayers to supply confidential information to DRAM auction participants.

The IOUs oppose OhmConnect’s proposal that the IOUs publish statistics on the applicability of qualitative criteria prior to the 2018 DRAM, and prior to and after all DRAM auctions. They state that OhmConnect provides no factual reason for why they need to understand the applicability of the qualitative criteria in order to develop their bids or manage their resources.”<sup>27</sup>

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<sup>26</sup> OhmConnect, “Protest of OhmConnect to SCE Advice Letter 3466-E et al. (Demand Response Auction Mechanism for 2018),” September 21, 2016, pps. 3-6.

<sup>27</sup> Joint IOU Reply to Protests Filed to AL 3566-E, et al. on the Demand Response Auction Mechanism Pilot Pursuant to Decision 16-06-029, September 28, 2016, pps. 9-10.

## 5. Qualitative Criteria— Prior Experience

The IOUs in AL 3466-E et al propose several qualitative criteria to evaluate the prior experience of bidders. These are:

1. Have you willfully terminated or defaulted on a past DRAM PA, or submitted offers that were subject to the non-competitive bid provision?
2. Have you not signed a DRAM PA when extended a shortlist offer, or delivered Supply Plans to the IOUs for DRAM totaling less than 50% of the contracted capacity for any month in 2017? If you don't have a 2017 DRAM PA, have you delivered Supply Plans to the IOUs for DRAM totaling less than 50% of the contracted capacity for both August and September 2016?
3. Have you received a shortlist offer in SDG&E's DRAM 2016 or DRAM 2017?<sup>28</sup>

OhmConnect and the Joint DR Parties protest all of these criteria, arguing that they reduce the transparency of the bid process and penalize the "first movers" who took the greatest risks during 2016 and 2017.

### Prior Experience Criterion #1: Non-competitive Behavior Provision

In particular, OhmConnect protests the first qualitative criterion. OhmConnect notes that the IOUs have not defined the phrase "non-competitive behavior provision." OhmConnect states that it can support penalizing bidders that engaged in "collusion" in past auctions, but cannot support a metric that relies on the subjective identification of "price discovery," as opposed to representing a bidder's "naturally-increasing cost curves." OhmConnect also observes that the IOUs did not specify how or when bidders would be notified that they are subject to the "non-competitive behavior provision," nor offer an appeals process for affected DRAM bidders. This is significant, they state, given that SDG&E and PG&E propose to downrate bidders according to this metric by 30% and 15% respectively. OhmConnect states that the IOU proposal opens the

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<sup>28</sup> Southern California Edison (SCE), Pacific Gas & Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E), Advice Letter 3466-E et al., "Demand Response Auction Mechanism Pilot for 2018," September 1, 2016, p. 9.



door to discretionary decision making and does not support a transparent bid evaluation process.<sup>29</sup> No other Party specifically protested qualitative criterion #1.

As relief, OhmConnect proposes that, if the Commission approves this metric, it should be modified as follows:

*Have you willfully terminated or defaulted on a past DRAM PA, or submitted offers ~~that were subject to the non-competitive bid provision~~ that the Energy Division determined were collusive?*

In response, the IOUs state that OhmConnect has made a factual error in assuming that the IOUs proposed qualitative criterion #1 could be applied without the involvement of Energy Division as OP 21 of Resolution E-4728 already requires this, and an Independent Evaluator (IE) would be involved as well. Thus they state that OhmConnect's proposal should be rejected.<sup>30</sup>

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<sup>29</sup> OhmConnect, "Protest of OhmConnect to SCE Advice Letter 3466-E et al. (Demand Response Auction Mechanism for 2018)," September 21, 2016, p. 6.

<sup>30</sup> Joint IOU Reply to Protests Filed to AL 3566-E, et al. on the Demand Response Auction Mechanism Pilot Pursuant to Decision 16-06-029, September 28, 2016, p. 7.

Prior Experience Criterion #2: Delivery of Less than 50% of Contracted Capacity

The Joint DR Parties and OhmConnect both specifically protest the second qualitative criterion. The Joint DR Parties state that relying on experience in 2016 DRAM is unfair as the parties that participated that year took on risk in joining a program with significant operational uncertainties. The Joint DR Parties note that assessment of bidders against this criterion that did not receive initial 2017 awards would necessarily have to rely on their 2016 performance only. They state that issues that hampered 2016 DRAM – registrations, data sharing, CAISO Demand Response Registration System (DRRS) – will likely be addressed in time for 2017 DRAM delivery, and certainly by 2018 DRAM delivery, to the benefit of new entrants.<sup>31</sup> OhmConnect states that it is unfair to penalize participants in prior DRAM pilots for poor performance during a single month, and that only consistently poor past performance should be penalized.

As relief, OhmConnect proposes that bids in the 2018 DRAM auction only be downrated if the bidder has failed to deliver at least 50% of its awarded capacity during the 2016 and 2017 DRAM pilots as a whole, as measured by the capacity reported on the bidder's monthly supply plans. They propose this specific wording to address this:

*Have you not signed a DRAM PA when extended a shortlist offer, or delivered Supply Plans to the IOUs for DRAM totaling, in aggregate, less than 50% of the contracted capacity for ~~any~~ all contracted months in 2017? If you don't have a 2017 DRAM PA, have you delivered Supply Plans to the IOUs for DRAM totaling, in aggregate, less than 50% of the contracted capacity for both August and September 2016?* (OhmConnect's proposed additions underlined).

OhmConnect also seeks clarification that if this revised metric is adopted for the 2018 DRAM pilot, that the Commission require that it will not apply to any supplemental 2017 DRAM contracts executed with PG&E and SDG&E as a result of Resolutions E-4802 and E-4803, as these resolutions observe that the bids originally submitted "may no longer be available" due to the delay, and thus it

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<sup>31</sup> Comverge, Inc., CPower, EnerNOC, Inc., and EnergyHub (collectively, the "Joint DR Parties"), "Joint Protest of Comverge, CPower, EnerNOC, Inc, and EnergyHub to Advice Letter 3466-E, et al, 2018 DRAM Pilot," September 21, 2016, p. 6.

would be unreasonable to penalize a bidder for not signing a DRAM PA when extended a shortlist offer.<sup>32</sup> The Joint DR Parties propose that the Commission address their concerns by removing the second sentence of the criteria completely, i.e., “If you don’t have a 2017 DRAM PA, have you delivered Supply Plans to the IOUs for the DRAM totaling less than 50% of the contracted capacity for both August and September of 2016?”<sup>33</sup>

The IOU respond to these points by accepting OhmConnect’s proposed modified criterion as acceptable, with an edit to reflect 2017 DRAM timelines. The IOUs also delete OhmConnect’s suggested wording of “in aggregate” but offer no explanation. The IOUs thus propose the following:

*Have you not signed a DRAM PA when extended a shortlist offer, or delivered Supply Plans to the IOUs for DRAM totaling ~~in aggregate~~ less than 50% of the contracted capacity for ~~any~~ all contracted months in 2017 that the IOUs have received Supply Plans for, at the time of offer submittal? If you don’t have a 2017 DRAM PA, have you delivered Supply Plans to the IOUs for DRAM totaling ~~in aggregate~~ less than 50% of the contracted capacity for both August and September 2016?*<sup>34</sup>

The IOUs agree with OhmConnect’s request to remove consideration of prior experience related to additional bids procured as a result of E-4802 and E-4803. They oppose the Joint DR Parties proposal and reject their suggestion that relying on experience during 2016 as “unfair.” The IOUs state that all parties were treated equally and had the same opportunity to perform under the same conditions, and that some parties performed better, thus differentiating

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<sup>32</sup> OhmConnect, “Protest of OhmConnect to SCE Advice Letter 3466-E et al. (Demand Response Auction Mechanism for 2018),” September 21, 2016, p. 7.

<sup>33</sup> Converge, Inc., CPower, EnerNOC, Inc., and EnergyHub (collectively, the “Joint DR Parties”), “Joint Protest of Converge, CPower, EnerNOC, Inc, and EnergyHub to Advice Letter 3466-E, et al, 2018 DRAM Pilot,” September 21, 2016, p. 6.

<sup>34</sup> Joint IOU Reply to Protests Filed to AL 3566-E, et al. on the Demand Response Auction Mechanism Pilot Pursuant to Decision 16-06-029, September 28, 2016, p. 7.

themselves by providing a superior product, which is what qualitative criteria should address.<sup>35</sup>

### Prior Experience Criteria #3: Advantage to New Bidders

OhmConnect also objects to the IOUs' proposed third qualitative criterion, which would apply only to SDG&E. They argue that it is not necessary to provide an advantage to new bidders, as bidder participation increased substantially between DRAM 2016 and 2017 without any special support. Because DRAM 2016 and 2017 DRAM bidders "de-risked" the process, they state, it is "fundamentally unfair" to "first movers" to offer new participants an across-the-board advantage. OhmConnect proposes that if the Commission agrees with SDG&E's intent to provide special consideration to new bidders, that a small percentage of the total MW procured be set aside for this purpose. This is "more fair" to prior DRAM participants and consistent with previous Commission direction on set-asides.<sup>36</sup>

The Joint DR parties state that having multiple qualitative criteria that both evaluate past performance and are in favor of adding new DR players is counterintuitive and cancels out the effects of the criteria. To remedy this, they propose that, if the IOUs retain their proposed qualitative criteria on "prior experience," that they also add criteria to their evaluation matrix to address the evaluation of new entrants.<sup>37</sup>

In response, SDG&E states that they set a "reasonable value" to this question to promote growth in their market, which will be good for SDG&E ratepayers and only slightly affect the relative ranking of first movers. They state that the criterion is necessary based on the particularities of SDG&E's 2016 and

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<sup>35</sup> Joint IOU Reply to Protests Filed to AL 3566-E, et al. on the Demand Response Auction Mechanism Pilot Pursuant to Decision 16-06-029, September 28, 2016, p. 8.

<sup>36</sup> OhmConnect, "Protest of OhmConnect to SCE Advice Letter 3466-E et al. (Demand Response Auction Mechanism for 2018)," September 21, 2016, p. 7.

<sup>37</sup> Comverge, Inc., CPower, EnerNOC, Inc., and EnergyHub (collectively, the "Joint DR Parties"), "Joint Protest of Comverge, CPower, EnerNOC, Inc, and EnergyHub to Advice Letter 3466-E, et al, 2018 DRAM Pilot," September 21, 2016, p. 6.

2017 DRAM experience. The IOUs also object to the Joint DR Parties' proposal that, if qualitative criteria assessing past performance are retained, that the IOUs add criteria to evaluate new entrants. They state that it is not possible to evaluate the performance of new entrants relative to others.<sup>38</sup>

## **6. Dual Participation Rules**

The California Energy Storage Alliance (CESA) protested the application of Rule 24/32 requirements to DRAM participants because they are “unduly restrictive” for customers with energy storage resources. They state that these rules require customers on an existing load-modifying DR tariff to un-enroll from the load-modifying program in order to enroll in the DRAM. CESA states that this represents a “major barrier to robust customer engagement and enrollment in the DRAM” and that such customers should be allowed to remain on their load-modifying DR tariff if accounting conventions can be applied to prevent double-counting or double-payments for DR actions. They request that the Commission update and revise Rule 24/32 tariffs to provide for this.<sup>39</sup>

The IOUs respond by stating that dis-enrollment is required under Rule 24/32 if the customer is enrolled in a utility event-based DR program. The IOUs state that Rules 24/32 were developed between 2012 and 2014 over the course of many workshops and many months and the Advice Letter process is not the appropriate vehicle to revise them — that CESA's proposal is out therefore of scope. The IOUs also state that the assumption that “accounting methods” can prevent inappropriate double payments for a single DR action is unwarranted.<sup>40</sup>

## **7. Making Aggregated DR Dispatch Data Public**

The Utility Reform Network (TURN) protests the IOUs request that the Commission require Energy Division to “aggregate performance data provided

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<sup>38</sup> Joint IOU Reply to Protests Filed to AL 3566-E, et al. on the Demand Response Auction Mechanism Pilot Pursuant to Decision 16-06-029, September 28, 2016, p. 9.

<sup>39</sup> Protest of the California Energy Storage Alliance to Advice Letter 3466-E et al, September 21, 2016, p. 2.

<sup>40</sup> Joint IOU Reply to Protests Filed to AL 3566-E, et al. on the Demand Response Auction Mechanism Pilot Pursuant to Decision 16-06-029, September 28, 2016, p. 3.

by the CAISO and by aggregators and prepare a publically available report providing information on the dispatch of DR resources in CAISO markets that... would allow the Commission to evaluate the benefits of a DRAM.” TURN supports using aggregated data on the dispatch of DR resources in CAISO markets, but recommends that if the Commission adopts the IOU recommendation, that it also require disclosure of the same performance and dispatch data regarding utility supply resource programs in existence during the DRAM operating period. Anything less than this would not allow the Commission to evaluate whether DRAM or alternative resource acquisition methods are preferred for procurement of DR products and services.<sup>41</sup>

The IOUs oppose TURNs suggestion and state that it is unwarranted. They state that all other data necessary to evaluate the DRAM is already available in filed Advice Letters or various utility reports, including their annual Load Impacts Protocols, and as part of the Energy Resource Recovery Account (ERRA) proceedings. They note that the report the IOUs suggested in AL 3466-E will be provided as per OP 11 of the Decision Adopting Guidance for Future Demand Response Portfolios and Modifying Decision 14-12-024 (adopted on October 5, 2016 as D.16-09-056).<sup>42</sup>

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<sup>41</sup> The Utility Reform Network (TURN) Protest to Advice Letter 3466-E et al, September 21, 2016, p. 1.

<sup>42</sup> Joint IOU Reply to Protests Filed to AL 3566-E, et al. on the Demand Response Auction Mechanism Pilot Pursuant to Decision 16-06-029, September 28, 2016, p. 2.

## 8. Provision of Audited Financials

BMW Group of North America, LLC (BMWNA) protested Sections 5.6 and 5.7 of Attachment B, the 2018-2019 DRAM *pro forma* contract. Regarding Section 5.6, BMWNA is concerned that this provision requires one Party to provide “audited consolidated financial statements” at the request of the other Party using financial statements generated from the previous year. BMWNA states that this would be a burden to subsidiary entities that may not already be producing publicly-available, audited financial documents, and that the cost of doing so could exceed the value of some DRAM contracts. They request that the IOUs clarify that the obligation of Section 5.6 can be met by providing publicly-available, audited financial statements for the parent company in the case that a wholly-owned subsidiary is unable to do so.<sup>43</sup>

Regards Section 5.7, BMWNA has two concerns. First, it requests that PG&E clarify its comment that Section 5.7 of Attachment B will apply only to DRAM contracts that exceed two years by asking that PG&E provide a redline version in its response to the protest. BMWNA also states that the broad wording of Section 5.7 appears to give the buyer virtually unlimited ability to request detailed financial information from the buyer, including but not limited to financial statements, quarterly financial reporting, and access to financial records and staff. BMWNA states that this could cost a medium-sized company hundreds of thousands of dollars, and that the potential extension of the audit to staff raises the risk of discouraging participation in the DRAM process. The high cost to utilities of conducting an audit of this type is also a risk to ratepayers, they state. BMWNA argues that the utilities face very little risk from DRAM contract non-performance because IOUs do not face RA penalties in such a case. Given the low financial risk posed to the IOUs by the DRAM contracts, BMWNA asks that the Commission direct the IOUs to eliminate Section 5.7 from the DRAM contract except in cases where the utility demonstrates a clear financial risk. In such cases, BMWNA requests that the Commission direct that the IOUs only apply the provisions to DRAM contracts nominally larger than 10 MW. BMWNA proposes that an alternative could be to provide specific limits on the

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<sup>43</sup> BMW Group of North America, LLC (BMWNA) Protest Letter in response to AL 3466-E et al, September 20, 1996, p. 1.

auditing provision, with stakeholder input to develop sufficiently narrow audit terms.<sup>44</sup>

The IOUs respond to BMWNA's first concern by stating that they have modified Section 5.6(a) of AL 3466-E et al (at p. 138) to state that audited financials would only need to be provided *if they are available*. Second, the IOUs clarify that BMWNA's interpretation is correct, and Section 5.7 would not apply to any 2018 DRAM contracts as these would all be two years or less; they provide a redline of this section as an attachment to the Advice Letter indicating this (at p. 138). The IOUs state that they have included Section 5.7 in order to provide for IOU compliance with Securities and Exchange Commission (SEC) reporting rules for agreements, should that be necessary. The IOUs indicate that this seems unlikely for the 2018-19 DRAM, but argue that BMWNA's request to limit Section 5.7 to contracts that the utility "demonstrates as posing significant financial risk to ratepayers" is not appropriate, because it fails to recognize that the IOUs are subject to the SEC rules which govern the applicability of the requirements.<sup>45</sup>

## **DISCUSSION**

### **Rule 24/32 Registrations**

On June 9, 2016, the Commission in D.16-06-029 authorized the 2018-2019 DRAM pilot procurement and instructed the utilities that this third pilot should be a reasonable next step for the pilots based on the first two pilots. It instructed the utilities to "ensure that the winning bids fit portfolio needs and offer the best value to the ratepayers" and stated that the ongoing purpose of the DRAM pilot is to investigate whether a competitive procurement mechanism for supply side

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<sup>44</sup> BMW Group of North America, LLC (BMWNA) Protest Letter in response to AL 3466-E et al, September 20, 1996, p. 2.

<sup>45</sup> Joint IOU Reply to Protests Filed to AL 3566-E, et al. on the Demand Response Auction Mechanism Pilot Pursuant to Decision 16-06-029, September 28, 2016, p. 4.



resources outside of traditional utility programs is viable and to provide experience in the CAISO market.<sup>46</sup>

Five weeks later, SDG&E and PG&E filed Advice Letters AL 2926-E (SDG&E) and AL 4880-E (PG&E) requesting Commission approval of six and fourteen power purchase agreements resulting from the 2017 DRAM auction respectively. On September 29, 2016, the Commission adopted Resolutions E-4802 and E-4803 approving twenty total contracts for SDG&E and PG&E's 2017 DRAM pilot and ordering both utilities to return to their "short lists" and procure additional DR bids. In these resolutions, the Commission found it reasonable to require the utilities to procure additional DRAM resources for 2017 to bring the utilities into compliance with Resolution E-4754 and the intent of D.16-06-008. The Commission ordered SDG&E and PG&E to procure up to their budget caps or, "to a point at which there is a clear price outlier in bids." For a rejection of a clear price outlier, the Commission ordered the utilities to, "first discuss with the Energy Division before rejecting the bid."<sup>47</sup> The Commission further clarified that ED must "agree" with any such rejection.<sup>48</sup>

This record indicates that when the Commission authorized PG&E, SDG&E, and SCE to undertake 2018 DRAM pilot procurement in D. 16-06-029, it had not yet been made aware that PG&E and SDG&E had not adhered to its earlier direction to procure up to either their approved Rule 24/32 customer registrations or to budget for their 2017 DRAM capacity procurement. The Commission two months later clarified this direction and ordered PG&E and SDG&E to return to their 2017 DRAM shortlists and to procure up to their budget limits or to the point of a clear price outlier.

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<sup>46</sup> D.16-06-029 "Decision Adopting Bridget Funding for 2017 Demand Response Programs and Activities," p. 40, 89, June 16, 2016.

<sup>47</sup> Resolution E-4802, "Approval with Modifications to SDG&E's *Demand Response Auction Mechanism Purchase Agreements*," and E-4803, "Approval with Modifications to PG&E's *Demand Response Auction Mechanism Purchase Agreements*," adopted on September, 29, 2016, pps. 17.

<sup>48</sup> Resolution E-4802, "Approval with Modifications to SDG&E's *Demand Response Auction Mechanism Purchase Agreements*," and E-4803, "Approval with Modifications to PG&E's *Demand Response Auction Mechanism Purchase Agreements*," adopted on September, 29, 2016, pps. 15.

It is reasonable to give this history to underscore the need to provide additional guidance now as to how the Commission expects the IOUs to craft a 2018-2019 DRAM pilot procurement process that: (a) treats the 2017 auction mechanism as comprising the minimal requirements; (b) takes into account participation in the 2016 and 2017 DRAM pilots; (c) ensures that bids fit portfolio needs and offer best value to the ratepayer; and, (d) fulfills the purpose of the DRAM pilot to investigate whether a competitive procurement mechanism for supply side resources outside of traditional utility programs is viable and to provide experience in the CAISO market.<sup>49</sup>

Regarding the first two points, (a) and (b): First, we reiterate our expectation that the IOUs complete the customer direct participation registrations as previously ordered in D. 16-06-008: 40,000 total for PG&E and 42,000 total for SCE by March 2017; and 30,000 for SDG&E by the end of February, 2017.<sup>50</sup>

Second, we clarify that the availability of customer registrations shall not be used to limit 2018-2019 DRAM pilot procurement. As indicated in D. 16-06-008, for each utility, the Rule 24/32 “customer registration number has never been a cap but rather a number to strive for, within the authorized budget” and “the number of customer registrations should be dynamic and never reached.”<sup>51</sup> We wish to avoid the situation that the availability of registrations (rather than the authorized budget, fit to need and value), limit 2018 DRAM pilot procurement, particularly during the hot summer months. It is our view that in order to achieve this, the IOUs must act to aggressively secure additional registrations even while they finalize “Click-Through” processes. We clarify here, then, that the “Click Through” customer registration process for direct

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<sup>49</sup> D. 16-06-029 “Decision Adopting Bridget Funding for 2017 Demand Response Programs and Activities,” p. 40, 89, June 16, 2016.

<sup>50</sup> D. 16-06-008, “Decision Addressing Budgets for Day-Ahead, Real-Time and Ancillary Services During the Intermediate Implementation Step of Third-Party Demand Response Direct Participation,” pps 23-25, June 16, 2016.

<sup>51</sup> D. 16-06-008, “Decision Addressing Budgets for Day-Ahead, Real-Time and Ancillary Services During the Intermediate Implementation Step of Third-Party Demand Response Direct Participation,” pps 21-22, June 16, 2016.

participation authorized in

D. 16-06-008 shall be made available to new customer registrations as soon as possible -- and as approved in the Tier 3 Advice Letter process outlined in D. 16-06-008 -- but that this milestone shall not stall or slow customer registrations for the 2018-2019 DRAM pilot in the meantime.

We also reject the IOUs' request to provide estimates of the additional Rule 24/32 registrations they can make available for 2018-2019 DRAM at the time of the 2018-2019 DRAM RFO rather than in advance of the RFO, as requested by OhmConnect. The only rationale the IOUs provided to justify this request is that the number of additional registrations is highly dependent on launch of the CAISO's Demand Response Registration System Enhancements Phase 2. However, this system went live on November 30, 2016,<sup>52</sup> so this is no longer a constraint. The IOUs did not object to OhmConnect's request to provide monthly estimates of the registrations in their reply comments.

We therefore direct PG&E, SCE and SDG&E to expeditiously file an Advice Letter using the process outlined in D. 16-06-008 to request authorization for an aggressive increase in additional customer registrations in 2018-2019, and additional funding to support this, if necessary. The IOUs should file this AL prior to release of the 2018-2019 DRAM RFO; we suggest a specific date in an updated 2018-2019 DRAM schedule, provided below. The AL should indicate the number of additional registrations beyond those approved in D.16-06-008 that each IOU believes it can complete for each month, and in total, prior to the end of 2019 in order to support the 2018-2019 DRAM pilot. The AL should start this monthly estimate in September 2017 and prioritize making additional customer registrations available for August 2018. As indicated in D. 16-06-008, prior to filing this advice letter, the IOUs shall: 1) notify the Service List of R.13-09-011 (because Application 14-06-001 et al. has closed) that they are doing so; and, 2) hold a meeting with interested parties to R. 13-09-011 to discuss the specifics of the proposed advice letter, prior to filing the advice letter.

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<sup>52</sup> <http://www.caiso.com/Documents/EnablingDemandResponseRegistrationSystemEnhancements-Phase2-ProductionDeploymentToday113016.html>

Subsequently, the IOUs should include estimates of additional Rule 24/32 registrations that they can make available for each month in their 2018-2019 DRAM RFO processes. The 2018 DRAM RFO should state that these monthly estimates are illustrative, that the registrations are dynamic and do not serve to limit bid evaluation and selection, and should explicitly permit bidders to submit monthly estimates of their Rule 24/32 registration needs. It is with this guidance that we clarify expectations for two of the three requirements that we specified earlier: that the 2018-2019 DRAM pilot design treats the 2017 auction mechanism as comprising the minimal requirements, and that it takes into account participation in 2016 and 2017 DRAM pilots. This clarification is comprehensive based on direction provided in D. 16-06-008, D. 16-06-029 and Resolutions E-4803 and E-4802.

We also reject the IOUs' proposed modification of OP 11 from Resolution E-4754 as suitable to meet these two requirements or for ensuring that the 2018 DRAM procurement process meets portfolio need and provides value to ratepayers, as directed in D.16-06-029. The track record of 2017 DRAM suggests that SDG&E and PG&E, at least, did not adhere to explicit Commission guidance to strive to procure up to their budget limit or to authorized registrations. The latitude requested in the IOUs' modified OP 11 is too great. Therefore, the IOUs shall delete the following:

*The IOUs request OP 11 from Resolution E-4754 be rephrased for 2018:  
"The minimum procurement targets of 10 MW each for SCE and PG&E, and 2 MW for SDG&E, are put in place for the 2018 DRAM pilot. The IOUs are strongly encouraged, but not required, to procure up to the 2018 budget limitation or the available authorized Rule 24 registrations for every month, whichever comes first, subject to consideration of need, cost and what is necessary to ensure that the DRAM pilot generates adequate data for analysis of the DRAM mechanism."*<sup>53</sup>

We discuss the third and fourth requirements (c) and (d), above, for the 2018-2019 DRAM pilot in the next section.

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<sup>53</sup> AL 3466-E, et al., at p. 6.

## Procurement Limits

We now take up the third and fourth requirements (c ) and (d) summarized above for the 2018-2019 DRAM pilot, that of ensuring that bids fit portfolio needs and offer best value to the ratepayer and ensuring that the pilot meets its objectives of providing experience in the CAISO market and investigating the viability of the DRAM as a supply side option.<sup>54</sup> We believe that, given the history of the 2017 DRAM pilot as discussed above, the direction provided in Resolutions E-4802 and E-4803 provides the right balance of utility discretion to accomplish these twin objectives, and the Commission's need for timeliness, and certainty in our oversight.

The direction in Resolutions E-4802 and E-4803 requires SDG&E and PG&E to procure up to their 2017 DRAM budget caps or to the point at which there is a clear price outlier in bids, whichever comes first.<sup>55</sup> Taking up this direction again here accomplishes four things: First it will ensure that 2018-2019 DRAM bid selection is not delayed as occurred with the 2017 DRAM pilot by any utility's failure to procure reasonable levels of DR capacity as is the intent of the Commission. Second, it will, nonetheless, permit the utilities to impose reasonable boundaries on their 2018-2019 DRAM procurement, beyond which unreasonable, or "outlier" price bids need not be procured. Third, it will ensure that the DRAM pilots collectively provide sufficient information to continue to investigate whether a competitive procurement mechanism for supply side resources outside of traditional utility programs is viable. Fourth, it will ensure broad participation in the CAISO market for a wide range of DRPs without delay.<sup>56</sup>

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<sup>54</sup> D.16-06-029, "Decision Adopting Bridget Funding for 2017 Demand Response Programs and Activities," June 16, 2016.

<sup>55</sup> Resolution E-4802, "Approval with Modifications to SDG&E's *Demand Response Auction Mechanism Purchase Agreements*," and E-4803, "Approval with Modifications to PG&E's *Demand Response Auction Mechanism Purchase Agreements*," adopted on September, 29, 2016, pps. 17.

<sup>56</sup> D.16-06-029, "Decision Adopting Bridget Funding for 2017 Demand Response Programs and Activities," June 16, 2016.

We carefully considered the approach suggested by OhmConnect of requiring each IOU to award contracts to all conforming bids whose implied \$/kW-year bid prices are less than or equal to the bid with the highest \$/kW-year price awarded a contract in the IOU's 2017 DRAM auction, unless the budget authorized for 2018 is exhausted first. However, we decline to approve OhmConnect's approach because we believe that it fails to provide a sufficiently level playing field for all 2018-2019 DRAM bidders. Under OhmConnect's approach, each successful 2017 DRAM bidder is at a significant advantage to all new bidders, as only the successful 2017 DRAM bidders know what bid price of theirs was accepted at that time (although they would not know all successful bid prices). New bidders would not have this information, and would thus be at a significant disadvantage.

Therefore, we adopt the simplest and most reasonable option in order to fulfill requirements of (c) and (d) above for the 2018-2019 DRAM pilot. We clarify that for the 2018 DRAM pilot the IOUs shall procure either up to their authorized budget caps of \$3 million for SDG&E and \$12 million each for SCE and PG&E, or to a point at which there is a clear price outlier in bids, whichever comes first. For rejection of a clear price outlier, the utilities must first discuss with the Energy Division, and Energy Division must agree, before rejecting the bid.<sup>57</sup>

To replace the language deleted above (OP 11 from Resolution E-4754, as modified), the IOUs shall add the following language:

*"The IOUs will aggressively work to ensure that Rule 24/32 registrations do not limit participation in the 2018-19 DRAM. To accomplish this, the IOUs will estimate their 2018-19 DRAM registration requirements and submit a Tier 3 Advice Letter outlining registration needs as soon as feasible, before the launch of the 2018 DRAM RFO. The IOUs will procure 2018-19 DRAM resources up to*

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<sup>57</sup> With this direction we take the same approach as that in Resolutions E-4802 and E-4803, which clarified that the Energy Division must agree with the utility's proposal to reject bids, but that the process to do so would be informal and no formal approval process (i.e. an Advice Letter) would be required. Resolution E-4802, "Approval with Modifications to SDG&E's Demand Response Auction Mechanism Purchase Agreements," and E-4803, "Approval with Modifications to PG&E's Demand Response Auction Mechanism Purchase Agreements," adopted on September, 29, 2016, pps. 14,15.

*their approved budget limits of \$3 million for SDG&E and \$12 million each for SCE and PG&E, or to a point at which there is a clear price outlier in bids, whichever comes first. To reject a bid based on an assessment that it represents a price outlier, the IOUs will first discuss with the Energy Division, and Energy Division must agree, before rejecting the bid."*

Similarly, the IOUs shall delete the following:

*"Resolution E-4728 accepted the provision in the IOU Advice Letters that winning bids are limited by either the budget or the Commission-authorized maximum for Rule 24/32 registrations:*

*'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.'*

*The IOUs reserve the discretion to use registration space as a consideration in offer selection. Similar to budget constraints, the registrations may be used to limit IOU procurement. The IOUs note it is possible that the estimated registrations provided by bidders in the RFO process may exceed available registrations due to uncertainty in the timing and utilization of registrations resulting from the 2016 DRAM pilot and from non-DRAM participation. The IOUs also note that the 2018 DRAM PA preserves the option for Sellers to terminate the agreement at no fault should an insufficient number of registrations be available."*<sup>58</sup>

### **Resource Adequacy Rule Changes**

Regarding possible changes to CPUC RA or CAISO rules during the period of 2018-2019 DRAM delivery, we agree with the IOUs that moving to one-year only auctions is an inadequate solution because a specific purpose of the 2018-2019 DRAM pilot is to test longer delivery periods. However, we do see opportunity to work with the CAISO to consider a transitional period for CAISO rule changes that could be made applicable to the 2018-2019 DRAM contracts. Specifically, we are aware that as part of the CAISO's Commitment Cost Enhancements Phase 3 (CCE3) process to date, the CAISO has implemented a transition period for demand response and storage contracts, and that the same

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<sup>58</sup> AL 3466-E, et al., at p. 11.

may be feasible for any 2018-2019 DRAM contract affected by future CAISO rule changes. We therefore urge the CAISO to consider, in their respective processes, a transition period for 2018-2019 DRAM contracts, and direct Energy Division to participate in those processes. We also urge DRAM participants to actively participate in CAISO processes to promote this option.

Further, we believe that the issue of transitional periods merits consideration in resource adequacy proceedings here at the Commission. While we cannot in this resolution commit to adopting a transitional period for new RA rules for the 2018-2019 DRAM contracts, we will work to ensure the RA proceeding takes up this question at an appropriate moment so that the Commission can consider and decide it at that time. However, since neither the timing nor the outcome of such an RA proceeding process can be known in advance, the default assumption for 2018-2019 DRAM bidders should be that future CAISO and/or Commission RA rules will apply as adopted to capacity deliveries stemming from 2018-2019 DRAM contracts. Therefore, we approve the IOUs' proposal that Sellers be permitted to terminate their contracts at no penalty if rules changes negatively impact their ability to deliver the capacity and energy as indicated. We discuss this issue further in the "Comments" section below.

### **Qualitative Criteria- Transparency**

We agree with the Joint DR Parties that bid selection criteria should be fully transparent and available to all potential bidders at the time of the 2018-2019 DRAM RFO. Towards this end, we direct the IOUs to limit themselves in their 2018-2019 DRAM bid evaluation process to the qualitative criteria approved, and those not explicitly disallowed, in this Resolution. We concur with the Joint DR Parties that information on how the IOUs will evaluate contract length should be transparent and available in a timely fashion. We therefore direct the IOUs to transparently provide information on how bids of varying contract length will be evaluated in the 2018-2019 DRAM pilot at the launch of the RFO.

We do not clearly understand all of the dimensions of OhmConnect's suggestion that the Commission direct the IOUs to publish statistics on the prior



performance of bidders on the proposed qualitative criteria prior to the 2018-2019 DRAM, and prior to and after each DRAM auction, in order that bidders can “understand the extent to which bid evaluation and selection might be influenced by qualitative versus quantitative factors.”<sup>59</sup> We feel that we have insufficient information to take action on this proposal at this time.

### **Qualitative Criteria— Prior Experience**

In general, we believe it is reasonable for the IOUs to apply some criteria to evaluate past bidder performance, as long as these are fair and balanced.

#### Prior Experience Criteria #1: Non-competitive Behavior Provision

We are sympathetic to OhmConnect’s argument that the IOUs have not defined the “non-competitive behavior” provision, in either AL 3466-E or the attached *pro forma* contract. We therefore define “non-competitive behavior” as, “bidding behavior providing clear evidence of market manipulation or collusion,” direct the IOUs to adopt and use this definition, and direct the IOUs to involve Energy Division and the Independent Evaluator (IE) in determining if this has occurred in either the 2016 or 2017 DRAM auctions. We further clarify that Energy Division and the IE must agree with the application of this criterion to any given bidder before it can be applied to downgrade a 2018 DRAM bid.

We agree with the IOUs that, with these modifications, this process provides sufficient protection against abuse of this criterion, and decline to adopt OhmConnect’s proposal that a bidder subject to this criterion be allowed a chance to appeal. However, we see merit in OhmConnect’s proposal to allow bidders to know in advance if this criterion will be applied to their 2018 DRAM bid. We therefore direct the IOUs to work expeditiously upon approval of this Resolution with Energy Division staff and the IE to identify any bidders to which this criterion will be applied and to notify any bidders to whom it is found to apply of this finding at least one week in advance of the 2018 DRAM RFO. We decline to approve OhmConnect’s request of 60 days advance notice in order to not delay launch of the 2018 DRAM auction.

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<sup>59</sup> OhmConnect, “Protest of OhmConnect to SCE Advice Letter 3466-E et al. (Demand Response Auction Mechanism for 2018),” September 21, 2016, p. 6.

Prior Experience Criteria #2: Delivery of Less than 50% of Contracted Capacity

In general, we agree with the IOUs that prior experience with delivery shortfalls is an acceptable qualitative criterion. As the IOUs point out, all bidders faced the same somewhat challenging conditions in the DRAM 2016. Therefore, we find the OhmConnect proposal reasonable, as modified by the IOUs, and direct the IOUs to use the following criteria to assess past performance as related to delivery of capacity as outlined in Supply Plans:

*Have you not signed a DRAM PA when extended a shortlist offer, or delivered Supply Plans to the IOUs for DRAM totaling, in aggregate, less than 50% of the contracted capacity for ~~any~~ all contracted months in 2017 that the IOUs have received Supply Plans for, at the time of offer submittal? If you don't have a 2017 DRAM PA, have you delivered Supply Plans to the IOUs for DRAM totaling, in aggregate, less than 50% of the contracted capacity for both August and September 2016?*

The IOUs accepted OhmConnect's proposal to clarify that this criterion will not be applied to additional bids procured by PG&E and SDG&E as a result of Resolutions E-4802 and E-4803, and we direct the IOUs to clarify this in their supplemental AL.

Prior Experience Criteria #3: Advantage to New Bidders

We are sympathetic to OhmConnect's argument that it is not necessary to include qualitative criterion benefiting new participants. We understand that SDG&E believes that the criterion is necessary due to the particularities of their previous 2016 and 2017 DRAM experience, but SDG&E did not provide factual evidence of this necessity. It is our view, the inclusion of qualitative criteria #1 and #2, as modified above, is sufficient to downgrade the bids of 2016-2017 DRAM participants that demonstrated irregularities in their performance. Further, we believe it is unfair to give new entrants an advantage over previous successful DRAM bidders that did not demonstrate such irregularities and that will therefore not be subject to criteria #1 and #2. Therefore, we direct the IOUs to delete this criterion.

The deletion of qualitative criterion #3 renders unnecessary the Joint DR Parties suggestion that the IOUs add criteria to evaluate new bidders. We agree with the IOUs that it is not clear on what basis any criterion could appropriately assess new bidders, as there is no past performance available. We therefore reject the Joint DR Parties suggestion on this point. We also reject the OhmConnect proposal for a set-aside for new entrants as also unnecessary.

### **Dual Participation Rules**

We are sympathetic to CESA's concerns regarding Rule 24/32 requirements being unduly restrictive for customers with energy storage resources by requiring customers on an existing load-modifying DR tariff to un-enroll from the load-modifying program in order to enroll in the DRAM. However, we also concur with the IOUs that this issue is out of scope of this Resolution. Hence, we take no action on this request herein. There are other Commission processes available to CESA to petition the Commission to consider changing the rule.

### **Making Aggregated DR Dispatch Data Public**

TURN argues that the Commission should also request and review supply resource dispatch data if it requests and reviews aggregated DR dispatch data from the DRAM pilots. We note this suggestion and encourage Energy Division to consider it in their development of an Evaluation Plan and metrics for the 2016 and 2017 DRAM pilots, as ordered in D. 16-09-056.<sup>60</sup>

### **Provision of Audited Financials**

We agree with BMWNA that pro forma contract requirements regarding financial disclosure should not be so onerous as to dissuade bidders from participating in the 2018-19 DRAM. However, we are sympathetic as well to the IOUs statement regarding SEC rules. We have reviewed the changes to Sections 5.6 and 5.7 included by the IOUs in Attachment B to the Advice Letter at page 137 - 138 and find them to acceptably balance these concerns.

### **Issues Not Raised in Protests**

#### Additional Targets

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<sup>60</sup> D.16-09-056, p. 65.

In Resolution E-4728, the Commission established a 20% set-aside target for residential customers in the DRAM. That set-aside remains applicable for the 2018 DRAM in order to fulfill the requirements of OP5b of D.14-12-024, as described in E-4728:

“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.’”<sup>61</sup>

Resolution E-4728 also requires an independent evaluation of this set-aside; such an evaluation must also be conducted in the 2018 DRAM. As described in E-4728, the independent evaluation must include recommendations for how the set-aside could be improved in the future. If the DRAM is extended beyond 2018, the Commission may in the future consider improvements to the set-aside such as locational targeting based on transmission or distribution considerations, or customer class or attribute targeting (e.g., disadvantaged communities or other specific types of customers).

## **COMMENTS**

The Draft Resolution was mailed on December 15, 2016. Comments were timely filed on January 9, 2017 by OhmConnect Inc.; Converge Inc., CPower, EnerNoc Inc., and EnergyHub Inc (“Joint DR Parties”); and by Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison (“Joint IOUs”).

## **Rule 24/32 Registrations and Procurement Limits**

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<sup>61</sup> Resolution E-4728, adopted July 23, 2015 p. 18.

The Joint IOUs, Ohm Connect and the Joint DR Parties comment that it is unclear if Rule 24 registrations can be used as a procurement limit. The Joint IOUs point out that Ordering Paragraph 3 states that the IOUs shall ensure that “the availability of customer registrations does not limit 2018-2019 DRAM pilot procurement,” whereas Ordering Paragraph 6 states that the estimated monthly Rule 24/32 registrations “will serve as the applicable limits on available Rule 24/32 registrations for the purpose of bid evaluation and selection,” and request further clarification.<sup>62</sup> OhmConnect and the Joint DR Parties concur that clarification is needed and OhmConnect further requests that the Commission “state unambiguously that availability of Rule 24/32 customer registrations is not to limit DRAM III pilot procurement for 2018-2019.”<sup>63</sup>

To accomplish this, OhmConnect offers the following modifications to Ordering Paragraph 6:

“The IOUs shall include in their 2018-2019 DRAM RFO estimates of the additional Rule 24/32 registrations that they plan to make available for each month of the 2018-2019 DRAM pilot. The 2018-2019 DRAM RFO shall ~~state that these monthly estimates will serve as the applicable limits on available Rule 24/32 registrations for the purposes of bid evaluation and selection, and shall explicitly~~ permit bidders to submit monthly estimates of their Rule 24/32 registration needs so that the IOUs may ensure that availability of Rule 24/32 registrations does not limit participation in the DRAM III pilot.”<sup>64</sup>

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<sup>62</sup> Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison, “Comments of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison on Draft Resolution E-4817,” January 9, 2017, p. 2.

<sup>63</sup> OhmConnect, “Comments of OhmConnect, Inc. on CPUC Draft Resolution E-4817 (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 2018-2019,” January 9, 2017, p. 2.

<sup>64</sup> OhmConnect, “Comments of OhmConnect, Inc. on CPUC Draft Resolution E-4817 (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 2018-2019,” January 9, 2017, p. 2.

The Joint DR Parties offer a similar modification to Ordering Paragraph 6:

“The IOUs shall include in their 2018-2019 DRAM RFO estimates of the additional Rule 24/32 registrations that they plan to make available for each month of the 2018-2019 DRAM pilot. However, the 2018 DRAM RFO shall state that these monthly estimates will serve as illustrative, that the registrations are dynamic, and do not serve to limit the applicable limits on available Rule 24/32 registrations for the purposes of bid evaluation and selection, and shall explicitly permit bidders to submit monthly estimates of their Rule 24/32 registration needs.”<sup>65</sup>

We concur with all of the commenting parties that this issue requires clarification. The intent of the draft resolution language was to ensure that limits on available Rule 24/32 registrations do not limit procurement in the DRAM III pilot. To clarify this, we therefore adopt the proposal, above, of the Joint DR Parties to modify Ordering Paragraph 6 and related discussion in the dicta (p. 26).

### **Additional Procurement Guidance**

The Joint IOUs state that Commission direction to delete the sentence, “the IOUs are strongly encouraged, but not required, to procure up to the 2018 budget limitation” in Ordering Paragraph 8 of the draft resolution is in error as it contradicts direction provided in D.16-06-029 in Ordering Paragraph 21 which states that the IOUs are “instructed to ensure that the winning bid fit portfolio needs and offer the best value to the ratepayers.” The Joint IOUs request that the final resolution should add this deleted sentence phrase back into Ordering Paragraph 8 in order to be in compliance with D.16-06-029.<sup>66</sup>

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<sup>65</sup> Comverge Inc., CPower, EnerNoc Inc., and EnergyHub Inc (“Joint DR Parties”), “Draft Resolution E-4817 (IOUs’ 2018-2019 DRAM), Joint Comments of the Joint Parties,” January 9, 2017, p. 2.

<sup>66</sup> Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison, “Comments of Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison on Draft Resolution E-4817,” January 9, 2017, p. 2.

We reject the Joint IOUs suggestion in this area. The draft resolution carefully explains that Commission guidance in D.16-06-029 for the 2018-2019 DRAM pilot included several substantive requirements beyond the one cited by the Joint IOUs. These were to: a) treat the 2017 auction mechanism as comprising the minimal requirements; (b) take into account participation in the 2016 and 2017 DRAM pilots; (c) ensure that bids fit portfolio needs and offer best value to the ratepayer; and, (d) fulfill the purpose of the DRAM pilot to investigate whether a competitive procurement mechanism for supply side resources outside of traditional utility programs is viable and to provide experience in the CAISO market.<sup>67</sup> We also reviewed the procedural history indicating that Pacific Gas & Electric and San Diego Gas & Electric failed to procure what we considered to be sufficient DRAM resources in their initial 2017 DRAM auction results, as previously directed in extensive Commission guidance.<sup>68</sup> Resolutions E-4802 and E-4803 therefore required Pacific Gas & Electric and San Diego Gas & Electric companies to procure additional DRAM II resources from their 2017 auction bids short list, delaying the signing of delivery contracts for these bid winners. We concluded in the draft resolution, therefore that, given this procedural history, providing further clarifying guidance to the IOUs to procure resources in DRAM III up to their budget caps or to the point at which there is a clear price outlier in bids, whichever comes first, is reasonable. This clarified guidance, in our view, ensures that procurement for the 2018-2019 DRAM pilot will not be delayed, will impose reasonable limits and ensure that bids fit portfolio needs and offer best value to the ratepayer by staying within budget or below price outliers, ensure sufficient information to continue to investigate the viability of a competitive procurement mechanism, and allow participation in the CAISO market to continue to grow. Therefore, we do not modify Ordering Paragraph 8 as requested by the Joint IOUs.

### **Resource Adequacy Rule Changes and the Option of a Secondary 2018-2019 DRAM Pilot Auction**

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<sup>67</sup> Page 24 above, and D. 16-06-029 “Decision Adopting Bridget Funding for 2017 Demand Response Programs and Activities,” p. 33, 81-82, June 16, 2016.

<sup>68</sup> Resolution E-4802, “Approval with Modifications to SDG&E’s *Demand Response Auction Mechanism Purchase Agreements*,” and E-4803, “Approval with Modifications to PG&E’s *Demand Response Auction Mechanism Purchase Agreements*,” adopted on September, 29, 2016, pps. 14,15.

The Joint DR Parties and OhmConnect both commented on the draft resolution's proposed method to address possible changes in Commission Resource Adequacy (RA) or CAISO requirements during the period of the 2018-2019 DRAM pilot delivery. Both parties link concerns over possible rule changes to the two year period of the DRAM III auction and the need for DR providers to smoothly transition to a full DRAM program in 2020 — if the DRAM pilot is found to be successful.<sup>69</sup> Because these issues are interrelated, we address both sets of comments here.

The Joint DR Parties state that while they appreciate the IOUs offering an option to cancel DRAM III contracts should Commission or CAISO rule changes render selected bids no longer compliant within the DRAM III delivery period, they state that the draft resolution's proposed solution nonetheless fails to reduce continuing risks and "turbulent business environment" to DR companies and program growth, and is "not a viable option." They therefore propose that the Commission, in this proceeding, request from the RA proceeding, "a decision approving a transition period for any rule changes affecting the DRAM contracts." They further suggest that we modify Ordering Paragraph 14 to indicate that the default assumption for 2018-2019 DRAM deliveries is that they are permitted to meet current, rather, than any new Commission RA and CAISO rules adopted during the delivery period.<sup>70</sup>

We reject these Joint DR Parties' proposals, although we are sympathetic with the concerns. We have directed Commission staff to work with the CAISO to ensure transitional periods for CAISO rules during the DRAM III, and are also committed to raising these issues within our own RA proceeding. But we cannot prejudge or determine at this time the outcome of these discussions, which will occur in formal rulemakings involving additional parties, in a new calendar year.

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<sup>69</sup> D.16-09-0-56 adopted six specific criteria for determining the success of the DRAM, stating that these shall serve as objectives that the DRAM must meet in order to expand its role in the resource adequacy market. "Decision Adopting Guidance for Future Demand Response Portfolios and Modifying Decision 14-12-024," September 29, 2016, p. 66.

<sup>70</sup> Comverge Inc., CPower, EnerNoc Inc., and EnergyHub Inc ("Joint DR Parties"), "Draft Resolution E-4817 (IOUs' 2018-2019 DRAM), Joint Comments of the Joint Parties," January 9, 2017, p. 4 and Appendix A, page 2.



However, we believe that related suggestions by OhmConnect and the Joint DR Parties more effectively mitigate risks to bidders during the DRAM III period from Commission or CAISO rule changes, and discuss these now.

OhmConnect stated that because risks from possible Commission or CAISO rule changes cannot be fully mitigated at this time, in the event such rule changes occur it is quite possible that “many Sellers” would opt to terminate their DRAM contracts. Because of this, they state, the IOUs could find themselves with a “significant unspent,” “residual” budget even though they had initially procured DRAM III contracts up to their approved budget levels or to price outliers as directed. OhmConnect proposes that, should this occur, the Commission could “tentatively authorize a residual DRAM III pilot auction for the spring of 2018 using unspent budget from the initial DRAM III pilot auction.”<sup>71</sup>

We concur that this is a helpful proposal to mitigate risks to Sellers of possible Commission or CAISO rule changes during the DRAM III delivery period. The approach could also help ensure that a potential outcome of Commission or CAISO rule changes – the IOUs unexpectedly in possession of a significant portion of unspent DRAM III budget (in the event that “many” Sellers terminate contracts) – does not undermine our objective that the DRAM III pilot represent a “reasonable next step.”<sup>72</sup>

We therefore adopt OhmConnect’s proposal. We authorize Pacific Gas & Electric, Southern California Edison, and San Diego Gas & Electric to hold a secondary auction if either of the following conditions are met for their company: (1) if three or more Sellers terminate at least one contract prior to the end of the stated contract length if, as a result of Commission or CAISO rule changes, their DR resources would no longer meet Commission or CAISO requirements without penalty; or, (2) if, following Commission or CAISO rule changes that

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<sup>71</sup> OhmConnect, “Comments of OhmConnect, Inc. on CPUC Draft Resolution E-4817 (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 2018-2019,” January 9, 2017, p. 3.

<sup>72</sup> D.16-06-029 at 37.

create the same conditions, Sellers terminate contracts representing a minimum of twenty five percent of the August 2018 or 2019 contracted capacity (MW).

Should either of these conditions be met for an IOU, we direct Commission staff to verify this, to indicate which IOU(s) are affected, and to inform the affected IOU(s) that a DRAM III secondary auction should be held using any unspent DRAM III funds, including those resulting from the contract terminations. Commission staff shall indicate this information in a letter from the Commission Director to the IOUs, copied to Service List R.13-09-011, no later than 14 days after staffs determine that the conditions have been met. The latest mail date for the Commission Director's letter shall be August 15, 2018.

The affected IOU(s) shall then hold an RFO for this secondary DRAM III auction within 30 days of the mail date of the Energy Division letter and shall follow the auction terms approved in this resolution with the sole exception of providing for updated Commission RA and/or CAISO rules.

The affected IOU(s) shall then procure, under this potential secondary auction, up to their remaining unspent DRAM III authorized budgets or to a point at which there is a clear price outlier in bids, whichever comes first. The affected IOUs shall expedite their selection process taking guidance from the non-binding potential secondary auction schedule below. The affected IOU(s) shall file advice letters seeking approval of any new contracts procured through this process.

#### Non-Binding Secondary Auction Schedule

Timeframe	Action	Elapsed time
2017 - 2018	Commission or CAISO rule changes	
2017- 2018	Seller contract terminations	
By August 15, 2018	Commission staff verify secondary auction conditions are met via letter to IOUs	14 days
	Affected IOU(s) Secondary Auction RFO	30 days
	Deadline for RFO submissions	14 days
	IOUs Notify Shortlisted Bidders of selection	21 days
	Deadline for signed contracts from Sellers	10 days
	IOUs file Tier 1 Advice Letter seeking CPUC approval of contracts	15 days

	CPUC contract approval	30 days
	Total	115 days

### **Requiring Expanded Funding for a Two-Year Pilot**

The Joint DR Parties state that the budget approved for the 2018-2019 DRAM insufficiently allows the DRAM III pilot to “expand” on the DRAM I and II pilots. Although D.16-06-029 increased the budget from the DRAM II pilot, they state, it should have also then doubled this increased budget to allow for growth over the two year pilot period of 2018-2019. They further state that “such expansion was the intent of the Commission.” To address this, the Joint DR Parties request that the draft resolution be modified to either: (1) “authorize doubling of the DRAM budgets for each utility to allow for increased procurement across the doubled (two-year) time frame;” or, (2) to “require the utilities to include an additional pilot solicitation during 2019 with a separately authorized budget to allow the DRAM pilot program a chance to grow.”<sup>73</sup>

We do not concur with the Joint DR Parties that our intent in D.16-06-029 was, in fact, to authorize double the budget of \$26 million authorized for the DRAM III pilot (\$12 million each for SCE and PG&E, and \$3 million for SDG&E) in order to “expand” it. Rather, we direct the IOUs to “expand on the experience from the first two auction pilots.” It is beyond the scope of this resolution to double the DRAM III budget approved in D.16-06-029. We therefore reject the first Joint DR Parties proposal.

Regarding the second proposal, as noted above, we feel there is sufficient risk to DRAM Sellers within the DRAM III delivery period from possible Commission or CAISO rule changes to authorize a “secondary” DRAM III auction using remaining DRAM III unspent funds that become available under the conditions specified above. We believe that authorizing a secondary auction under these conditions is warranted, because a very possible outcome of significant contract cancelations – the existence of significant remaining unspent DRAM III authorized budget – is counter to our basic objectives for this pilot.

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<sup>73</sup> Comverge Inc., CPower, EnerNoc Inc., and EnergyHub Inc (“Joint DR Parties”), “Draft Resolution E-4817 (IOUs’ 2018-2019 DRAM), Joint Comments of the Joint Parties,” January 9, 2017, pps. 3-4.

Only under these conditions do we feel that a secondary DRAM III pilot auction during 2018-2019 is warranted and within the scope of the authority of this resolution.

We are sympathetic to the concerns of both the Joint DR Parties and OhmConnect regarding ensuring an appropriate and smooth transition period during 2019 towards the possible launch of a permanent DRAM Program in 2020. Authorizing additional budgets, however, is outside the scope of this resolution. We reject the Joint DR Parties second proposal without preconditions. Should additional funds for such an auction be authorized elsewhere, however, we see no reason why they could not be added to those utilized in the event of one or more IOUs secondary DRAM III auctions as described above.

### **Increasing Rule 24 / 32 Registrations**

The Joint IOUs note that the draft resolution directs the IOUs in Ordering Paragraph 5 to file an Advice Letter by February 7, 2017 to request authorization and additional funding for increasing the number of Rule 24 registrations per the process outlined in D.16-06-006, Ordering Paragraphs 11 – 13. They also note that on January 3, 2017 PG&E filed a Petition for Modification of D.16-06-008, and that this included a request for clarification on funding caps for Rule 24 / 32 registrations and Click Through implementation. The Joint IOUs do not request any further clarification on this topic in this resolution and we therefore take no further action.

### **Protections for DRAM Sellers to Maintain Protections Related to Registrations**

OhmConnect correctly notes that the draft resolution directed the IOUs to delete 1.5(b) in error. Section 1.5(b) of the IOUs pro forma contract protects DRAM Sellers from financial penalties in the event that they are unable to register their resources due to circumstances beyond their control. Such circumstances may include, but are not limited to, insufficient availability of Rule 24 / 32 registrations. We have clarified direction to the IOUs in this resolution to ensure that limits on Rule 24 / 32 registrations do not limit DRAM procurement. But other circumstances beyond the control of DRAM Sellers may occur, rendering Sellers unable to register the DRAM resources. These include but are

not limited to the possible rule changes discussed above. We therefore concur with OhmConnect and delete Ordering Paragraph 10.

### **Use of Qualitative Criteria**

The Joint IOUs request clarification on the use of qualitative criteria in the DRAM III RFO. They state that they interpret guidance in the draft resolution to mean that all of the qualitative criteria not explicitly approved or disallowed in the resolution are considered approved. The IOUs proposed eight qualitative criteria in AL 3466-E, three of which were explicitly approved or disallowed in the draft resolution. We clarify here that the other five criteria contained in AL 3466-E<sup>74</sup> are also approved and modify Ordering Paragraph 18 to indicate this.

### **Refiling of AL-3466-E et al**

The Joint IOUs note that unlike previous Commission resolutions approving the DRAM I and II pilots, this draft resolution required the IOUs to refile Advice Letter 3466-E and reopened a short protest window. They state and we agree that this was indeed in error. By February 2, 2017, the IOUs shall file supplemental advice letters that demonstrate compliance with all of the modifications adopted in this resolution. The protest period for these supplemental advice letters shall be shortened to seven days and the reply period shall be shortened to five days. We modify Ordering Paragraphs 8 and 9 to reflect this correction.

### **Energy Division's Role in Determining Bids to Reject Based on Evidence of Market Manipulation**

The Joint IOUs object to the inclusion in Ordering Paragraph 8 of the draft resolution of the phrase "Energy Division must agree" before any DRAM III pilot bid is rejected based on an assessment that it represents a price outlier. They state that previous resolutions make clear that Energy Division must agree with rejecting bids based on an assessment that they are price outliers or represent

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<sup>74</sup> Southern California Edison (SCE), Pacific Gas & Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E), Advice Letter 3466-E et al., "Demand Response Auction Mechanism Pilot for 2018," September 1, 2016, p. 8.

market manipulation (in Resolutions E-4802 and E-4803), but indicate that the IOUs consider that such agreement would occur through an informal process not a formal, i.e. an Advice Letter, process. The Joint IOUs request that Ordering Paragraph 8 of the draft resolution be modified to state that “Energy Division must provide advice” before rejecting a bid in order to be clear that while Energy Division agreement with rejection of a bid as a price outlier is required, this would occur through an informal not a formal Advice Letter process.

We decline to modify Ordering Paragraph 8 as it is important to be clear that Energy Division must agree before an IOU can reject a bid as a price outlier. However, we do agree that such agreement need not be sought through an advice letter.

### **Correcting the Record on D.16-09-029**

OhmConnect notes that we had a typographical error in our citation of two passages from D.16-09-029 regarding approval of DRAM III pilot. They state that it was the DRAM Working Group authorized by D.16-09-029 that adopted the position that the DRAM III pilot should allow for two year contracts, not D.16-09-029 itself. We therefore modify the time period indicated in Findings 1 and 2, which now refer to approval in D.16-09-029 of a 2018 DRAM rather than a 2018 - 2019 DRAM pilot.

### **Modifications to the Non-Binding Schedule for the 2018-2019 DRAM Pilot**

The Joint IOUs request that we adopt further modifications to the non-binding 2018-2019 DRAM timeline contained in the draft resolution, stating that the proposal should revert back to time periods as proposed in AL 3466-E and that some of the proposed dates would require minor steps not shown in the time frame to be performed on holidays. The Joint IOUs’ proposal results in a delay of the likely Commission approval of the final DRAM III contracts from approximately August 5<sup>th</sup> to August 28<sup>th</sup>. In turn, this delay reduces the time for DRAM III contract winners to submit DRAM contract values for year-ahead DR RA allocation to one month (or less) and the time for submittal of RA Supply Plan filings to two months (or less).

While we are sympathetic to the IOUs requests, through further review it appears that the primary driver of this late phase delay is the lengthening of time earlier in the process for DRAM Sellers to respond to the DRAM III RFO. It appears to us that the Joint IOUs proposed modifications would increase this time period from one month – as proposed in AL 3466-E and in our draft resolution – to six weeks rather than altering timing requirements on the IOU side. Because non-IOU parties did not protest this original IOU proposal of a four week response time to the DRAM RFO (with one party in fact proposing to shortening this timeframe below a month), it is our impression that DRAM Sellers would prefer to have additional time to complete submittal of DRAM DR RA allocation values and RA Supply Plans at the later end of the process than to have a longer time to respond to the IOUs DRAM III RFO earlier on.

We will adopt the IOUs' proposed non-binding 2018-2019 DRAM timeline with some modifications, while attempting to consider holidays as well and to correct two errors in our original proposal. In one case, we had provided a longer timeframe than originally proposed by the IOUs. There was also error in our draft timeline for Commission approval of the IOU AL on customer direct participation and so we eliminated that row (if additional funding is necessary, a Tier III Advice Letter and a Resolution will be required; the draft had only allowed a timeline for approval by disposition). We therefore adopt the non-binding timeline indicated below.

Date	Day of Week	Action
January 19, 2017	Thursday	CPUC Final Resolution approving modified AL
February 2, 2017	Thursday	IOUs file Supplemental AL in compliance with Resolution. Protest period is seven days, and five days for replies.
February 7, 2017	Tuesday	IOUs file AL following procedure outlined in D. 16-06-008 to request authorization for additional customer direct participation registrations necessary to meet anticipated needs for 2018-2019 DRAM, and funding, if needed. Protest period is ten days; five days for replies.
February 16, 2017	Thursday	CPUC Approves Supplemental with Disposition Letter
February 16, 2017	Thursday	Protests due on IOU AL regarding additional customer registrations for 2018-2019
February 20, 1997	Monday	Replies due on protests to IOU AL regarding additional customer registrations for 2018-2019
February 23, 2017	Thursday	IOUs notify bidders of application of Non-Competitive Behavior for 2016-2017 DRAM performance

March 10, 2017	Thursday	Launch 2018 RFO
April 10, 2017	Monday	Deadline for RFO submissions
May 24, 2017	Wednesday	IOUs Notify Shortlisted Bidders of Selection
June 5 2017	Monday	Deadline for signed contracts from Sellers
June 15, 2017	Thursday	Notification of non-shortlisted bidders (SDG&E)
June 30, 2017	Friday	IOUs file Tier 1 Advice Letter seeking CPUC approval of contracts
August 4 2017	Friday	CPUC contract approval
September 2017	N/A	DRAM contract quantity values submitted for year-ahead DR RA allocation
October 2017	N/A	RA Supply Plan filing

### Issues Not Raised in Protests

In our review of the draft Resolution, protests and replies, we noted the absence of a broader discussion of set-aside proposals, an issue we took up in Resolution E-4728. We therefore added a review of this information above.

### **FINDINGS**

1. D. 16-06-029, approved on June 6, 2016, 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 2018 Demand Response Auction Mechanism pilot.
2. D. 16-06-029 stated that the 2018 DRAM should be a reasonable next step for the third year of the DRAM pilot, based on the first two pilots.
3. D. 16-06-008, approved on June 9, 2016 directed PG&E, SCE and SDG&E to achieve a total of 102,000 customer registrations for demand response direct participation in the CAISO market by March 17, 2017.
4. D. 16-06-008 indicated that these registration totals are not caps but numbers to strive for and that customer registration totals should be dynamic and never reached.
5. D. 16-06-008 authorized the utilities to file a Tier 3 Advice Letter to request authorization and funding for additional customer direct participation registrations, or to include such a request in their 2018 Demand Response program application.



6. The IOUs filed Advice Letters for the 2018-2019 DRAM pilot auction, on September 1, 2016.
7. On September 29, 2016, in Resolutions E-4802 and E-4803, the Commission approved SDG&E and PG&E's proposed 2017 DRAM power purchase agreements.
8. Resolutions E-4802 and E-4803 found that SDG&E and PG&E had not adhered to Commission guidance to procure up to their budget limit or to authorized registrations for 2017 DRAM.
9. Resolutions E-4802 and E-4803 found it reasonable to require SDG&E and PG&E to procure additional 2017 DRAM resources to bring them into compliance with earlier DRAM procurement guidance.
10. Resolutions E-4802 and E-4803 ordered SDG&E and PG&E to procure additional 2017 DRAM resources from their short lists up to their budget caps or to a point at which there is a clear price outlier in bids. For a rejection of a clear price outlier, the utilities were required to first discuss with Energy Division.
11. It is reasonable to provide this history to inform additional guidance on Commission expectations for 2018-2019 DRAM pilot procurement processes.
12. It is reasonable to find, given this history, that the latitude requested by the IOUs to determine procurement levels for 2018-2019 DRAM is too great.
13. It is reasonable to clarify direction on procurement from the 2017 DRAM for the 2018-2018 DRAM.
14. The direction in Resolutions E-4802 and E-4803 provides the reasonable balance of utility discretion to procure DRAM resources to fit portfolio needs and offer best value to ratepayers and Commission needs for timeliness and sufficient oversight.
15. The direction provided in Resolutions E-4802 and E-4803 supports Commission objectives of providing experience in the CAISO market and exploring the viability of a competitive procurement mechanism for supply side resources outside of traditional utility programs.

16. It is reasonable to find that requiring each IOUs to award contracts to all conforming bids whose implied \$/kW-year bid prices are less than or equal to the bid with the highest \$/kW-year price awarded a contract in the IOU's 2017 DRAM auction, unless the budget authorized for 2018-2019 is exhausted first, could be unfair to new entrants.
17. It is reasonable that the IOUs provide monthly estimates of the number of Rule 24/32 registrations they can make available for each month for the 2018-2019 DRAM.
18. It is reasonable to anticipate that CPUC Resource Adequacy rules or CAISO Must Offer Obligation requirements or similar rules may change during the period of 2018-2019 DRAM delivery.
19. It is reasonable for the utilities to offer successful 2018-2019 DRAM bidders the option of terminating their DRAM contracts prior to the end of the stated contract length if, as a result of such changes, their DR resources would no longer meet CPUC or CAISO requirements without penalty.
20. It is reasonable that the CAISO may consider a transitional period for the 2018-2019 DRAM contracts with regard to any CAISO rule changes as this has occurred previously.
21. It is reasonable that the Commission's Resource Adequacy proceeding take up the issue of a transitional period for RA rule changes affecting DRAM contracts in the future.
22. It is reasonable to observe that a transitional period for CAISO or Commission RA rules for 2018-2019 DRAM contracts cannot be assured.
23. It is reasonable that Sellers may choose to exercise the option to terminate their DRAM contracts prior to the end of the stated contract length if, as a result of such changes, their DR resources would no longer meet Commission or CAISO requirements without penalty.
24. It is reasonable that if many Sellers exercise this option, the utilities, the resulting unspent budget could be significant.

25. It is reasonable to define “many Sellers” as either / or: (1) three or more Sellers for an individual utility; (2) Sellers for an individual utility canceling contracts representing twenty five percent or more of the utility’s contracted August 2018 or 2019 capacity (MW).
26. To support a transparent bid process, 2018-2019 DRAM bid selection criteria should be available to all potential bidders at the time of the 2018-19 DRAM RFO. Information on how the IOUs will evaluate contract length should be available at the same time.
27. The IOUs have not defined the term “non-competitive behavior” previously in relation to the DRAM pilots.
28. It is reasonable to allow bidders to know well in advance if certain qualitative criteria will be applied to their 2018-2019 DRAM bid.
29. Prior experience of delivery shortfalls from Sellers is an acceptable qualitative criterion.
30. It is not necessary to include qualitative criteria or set asides benefiting new DRAM participants in the 2018-2019 DRAM pilot.
31. Changes to Rule 24/32 are out of scope of this Resolution.
32. It is reasonable to consider supply resource dispatch as well as aggregated DR dispatch data from the DRAM pilots in the evaluation of the 2016 and 2017 DRAM pilots.
33. Pro forma contract requirements regarding financial disclosure should not be so onerous as to dissuade bidders from participating in the 2018-2019 DRAM.
34. It is reasonable to continue the provisions, directions, practices and rules that were adopted for the 2017 DRAM, unless explicitly modified or revised herein.
35. The IOUs proposed a reasonable, non-binding 2018-2019 DRAM timeline, contingent upon assumptions for CPUC timelines that were unable to be met.

**THEREFORE IT IS ORDERED THAT:**

1. The request of SCE, PG&E and SDG&E (collectively, "IOUs") to approve the 2018-2019 DRAM pilot program, as requested in Advice Letter AL 3466-E et al, is approved with modifications as specified herein.
2. The IOUs shall complete the customer direct participation registrations as previously ordered in D.16-06-008 (in A.16-06-001): 40,000 total for PG&E and 42,000 total for SCE by March 2017; and 30,000 for SDG&E by the end of February, 2017.
3. The IOUs shall ensure that the availability of customer registrations does not limit 2018-2019 DRAM pilot procurement — the number of customer registrations should be dynamic.
4. The IOUs shall make the "Click Through" customer registration process available as soon as possible as ordered in D.16-06-008 and shall ensure that this milestone does not slow customer registrations under Rule 24/32.
5. The IOUs shall by February 7, 2017 file an Advice Letter using the process outlined in D.16-06-008 to request authorization and funding, if needed, to aggressively increase customer registrations in 2018-2019. The AL shall indicate the number of additional registrations beyond those approved in D.16-06-008 that each IOU believes it can complete for each month, and in total, prior to the end of 2019 in order to support the 2018-2019 DRAM pilot. The AL shall start this monthly estimate in September 2017 and prioritize making additional customer registrations available for August 2018.
6. The IOUs shall include in their 2018-2019 DRAM RFO estimates of the additional Rule 24/32 registrations that they plan to make available for each month of the 2018-2019 DRAM pilot. However, the 2018 DRAM RFO shall state that these monthly estimates serve as illustrative, that the registrations are dynamic and do not serve to limit bid evaluation and selection, and shall explicitly permit bidders to submit monthly estimates of their Rule 24/32 registration needs.
7. Prior to filing this advice letter, the IOUs shall: notify the Service List of R.13-09-011 that they are doing so; and, hold a meeting with interested parties to R. 13-09-011 to discuss the specifics of the proposed advice letter, prior to filing the advice letter.

8. The IOUs shall delete the following:

*The IOUs request OP 11 from Resolution E-4754 be rephrased for 2018:*

*“The minimum procurement targets of 10 MW each for SCE and PG&E, and 2 MW for SDG&E, are put in place for the 2018 DRAM pilot. The IOUs are strongly encouraged, but not required, to procure up to the 2018 budget limitation or the available authorized Rule 24 registrations for every month, whichever comes first, subject to consideration of need, cost and what is necessary to ensure that the DRAM pilot generates adequate data for analysis of the DRAM mechanism.”*

And replace it with:

*The IOUs will aggressively work to ensure that Rule 24/32 registrations do not limit participation in the 2018-19 DRAM. To accomplish this, the IOUs will estimate their 2018-19 DRAM registration requirements and submit a Tier 3 Advice Letter outlining registration needs as soon as feasible, and well before the launch of the 2018 DRAM RFO. The IOUs will procure 2018-19 DRAM resources up to their approved budget limits of \$3 million for SDG&E and \$12 million each for SCE and PG&E, or to a point at which there is a clear price outlier in bids, whichever comes first. To reject a bid based on an assessment that it represents a price outlier, the IOUs will first discuss with the Energy Division, and Energy Division must agree, before rejecting the bid.*

9. The IOUs shall delete the following:

*“Resolution E-4728 accepted the provision in the IOU Advice Letters that winning bids are limited by either the budget or the Commission-authorized maximum for Rule 24/32 registrations:*

*‘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.’*

*The IOUs reserve the discretion to use registration space as a consideration in offer selection. Similar to budget constraints, the registrations may be used to limit IOU procurement. The IOUs note it is possible that the estimated registrations provided by bidders in the RFO process may exceed available registrations due to uncertainty in the timing and utilization of registrations resulting from the 2016 DRAM pilot and from non-DRAM participation. The IOUs also note that the 2018 DRAM PA*

*preserves the option for Sellers to terminate the agreement at no fault should an insufficient number of registrations be available.”<sup>75</sup>*

10. The IOUs’ proposal regarding treatment of possible changes in CPUC Resource Adequacy rules or CAISO Must Offer Obligations or similar rules during the period of 2018-2019 DRAM delivery is accepted.
11. We authorize Pacific Gas & Electric, Southern California Edison, and San Diego Gas & Electric to hold a secondary auction if either of the following conditions are met for their company: (1) ) if three or more Sellers terminate at least one contract prior to the end of the stated contract length if, as a result of Commission or CAISO rule changes, their DR resources would no longer meet Commission or CAISO requirements without penalty; or, (2) if, following Commission or CAISO rule changes that create the same conditions, Sellers terminate contracts representing a minimum of twenty five percent of the August 2018 or 2019 contracted capacity (MW).
12. Should either of these conditions be met for an IOU, we direct Commission staff to verify this, to indicate which IOU(s) are affected, and to inform the affected IOU(s) that a DRAM III secondary auction should be held using any unspent DRAM III funds, including those resulting from the contract terminations. Commission staff shall indicate this information in a letter from the Commission Director to the IOUs, copied to Service List R.13-09-011, no later than 30 days after staffs determine that the conditions have been met. . The latest mail date for the Commission Director’s letter shall be August 15, 2018.
13. The affected IOU(s) shall then hold an RFO for this secondary DRAM III auction within 45 days of the mail date of the Energy Division letter and shall follow the auction terms approved in this resolution with the sole exception of providing for updated Commission RA and/or CAISO rules.
14. The affected IOU(s) shall then procure, under this potential secondary auction, up to their remaining unspent DRAM III authorized budgets or to a point at which there is a clear price outlier in bids, whichever comes first. The affected IOUs shall expedite their selection process taking guidance from the non-binding secondary auction scheduled adopted herein. The affected

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<sup>75</sup> AL 3466-E, et al., at p. 11.

IOU(s) shall file advice letters seeking Commission approval of any new contracts procured through this process.

15. The Commission should take up the issue of RA rule changes affecting DRAM contracts in the relevant Resource Adequacy proceeding.
16. Energy Division should work diligently with the CAISO to consider transitional periods for CAISO rule changes that could be applied to the 2018-2019 DRAM contracts. DRAM participants are encouraged to participate in CAISO processes towards this end as well.
17. While the Commission will work to consider transitional periods for CAISO and/or CPUC RA rules, the default assumption until that time for 2018-2019 DRAM bidders should be that deliveries stemming from 2018-2019 DRAM are required to meet new CAISO and Commission RA rules as they are adopted.
18. The IOUs shall limit themselves in their 2018 DRAM bid evaluation process to the qualitative criteria approved in this Resolution, and those not explicitly disallowed, and shall transparently provide information on how bids of varying contract length will be evaluated in the 2018 DRAM pilot at the launch of the RFO.
19. For the purposes of the 2018-2019 DRAM pilot, “non-competitive behavior” is defined as, “bidding behavior providing clear evidence of market manipulation or collusion.” The IOUs shall add this definition to Exhibit A Definitions of their pro forma contract.
20. The IOUs shall adopt and use this definition as part of their qualitative criteria to evaluate 2018-2019 DRAM bids, such that their first qualitative criterion shall read as follows:

*Have you willfully terminated or defaulted on a past DRAM PA, or submitted offers that demonstrated bidding behavior providing clear evidence of market manipulation or collusion?*
21. The IOUs shall apply this criterion to specific 2018-2019 DRAM bidders only if Energy Division and the Independent Evaluator agree.
22. The IOUs shall work expeditiously upon approval of this Resolution, with Energy Division staff and the Independent Evaluator, to identify bidders to which the qualitative criterion of non-competitive behavior

will be applied and to notify any bidders to whom it is found to apply of this finding at least one week in advance of the 2018-2019 DRAM RFO.

23. The IOUs shall use the following criterion to assess past performance on delivery of capacity as outlined in Supply Plans. The criterion shall not be applied to additional bids procured by PG&E and SDG&E as a result of Resolutions E-4302 and E-4303:

*Have you not signed a DRAM PA when extended a shortlist offer, or delivered Supply Plans to the IOUs for DRAM totaling, in aggregate, less than 50% of the contracted capacity for ~~any~~ all contracted months in 2017 that the IOUs have received Supply Plans for, at the time of offer submittal? If you don't have a 2017 DRAM PA, have you delivered Supply Plans to the IOUs for DRAM totaling, in aggregate, less than 50% of the contracted capacity for both August and September 2016?*

24. We direct the IOUs to remove the following criterion from its qualitative criteria:

*Have you received a shortlist offer in SDG&E's DRAM 2016 or DRAM 2017?*

25. The IOUs shall update their 2018-2019 DRAM non-binding timeline to that indicated in the section entitled "2018-2019 DRAM Schedule."
26. By February 2, 2017, the IOUs shall file supplemental advice letters that demonstrate compliance with all of the modifications adopted in this resolution. The protest period for these supplemental advice letters shall be shortened to seven days and the reply period shall be shortened to five 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 19, 2017; the following Commissioners voting favorably thereon:

/s/TIMOTHY J. SULLIVAN  
TIMOTHY J. SULLIVAN  
Executive Director

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners