

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**AGENDA ID: 17389
RESOLUTION E-5004
May 30, 2019**

R E S O L U T I O N

Resolution E-5004: Approves, with modifications, Pacific Gas and Electric Company (PG&E) Advice Letter 5434-E, Southern California Edison (SCE) Advice Letter 3900-E, and San Diego Gas & Electric Company (SDG&E) Advice Letter 3308-E.

PROPOSED OUTCOME:

- This Resolution approves with modifications Pacific Gas and Electric Company (PG&E) AL 5434-E, Southern California Edison (SCE) AL 3900-E, and San Diego Gas & Electric (SDG&E) AL 3308-E requesting approval of a technology-neutral pro forma contract for soliciting distributed energy resources (DERs) for distribution deferral under the Competitive Solicitation Framework.
- Clarifies provisions that apply to all three utilities.
- Resolves and clarifies issues specific to each Utility's Technology Neutral Pro Forma Contract.

SAFETY CONSIDERATIONS: There is no direct impact on safety.

ESTIMATED COST: There is no cost impact.

By PG&E AL 5434-E, SCE AL 3900-E, and SDG&E AL 3308-E filed on November 21, 2018.

SUMMARY

This Resolution approves with modifications Pacific Gas and Electric Company (PG&E) AL 5434-E, Southern California Edison (SCE) AL 3900-E, and San Diego Gas & Electric (SDG&E) AL 3308-E requesting approval for their technology-neutral pro forma contracts (TNPFC) for use in distributed energy

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resources (DERs) solicitation for distribution deferral under the Competitive Solicitation Framework.

This Resolution also resolves many technical and policy issues needed to achieve the principles of Decision (D.) 16-12-036, which states that the solicitation must be technology agnostic.

BACKGROUND

In October 2014, the Commission instituted Rulemaking (R.) 14-10-003 to consider developing and adopting a regulatory framework that provides consistent policy direction for demand-side resource programs. The Assigned Commissioner and Administrative Law Judge issued three scoping memos due to the complexity of the issues in the proceeding, and after conducting several workshops, the Commission in D.15-09-022 expanded the scope to focus on the integration of DERs in a holistic way and conjoin the proceeding with the Distribution Resource Plan (DRP) proceeding (R.14-08-013) in implementation of Assembly Bill (AB) 327 (Perea, 2013).¹

On March 24, 2016, the Commission issued a ruling establishing the Competitive Solicitation Framework working group (working group) tasked with developing a framework to include seven elements to procure DERs to meet distribution grid needs in areas identified in the DRP proceeding. These include:

- a. Defining the services to be bought and sold within the areas identified in the analysis performed in R.14-08-013 (the Distribution Resources Plans proceeding);
- b. Developing methodologies to count services provided and to ensure no duplication with procurement in other proceedings;
- c. Developing solicitation rules or principles;
- d. Developing solicitation oversight needs;
- e. Developing solicitation evaluation method;
- f. *Developing solicitation pro forma contracts*; and
- g. Developing outreach plans to ensure robust participation in the framework.

¹ Public Utilities Code Section 769.

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On August 1, 2016, the working group filed its final report (report) with recommendations for the Competitive Solicitation Framework. On December 22, 2016, the Commission issued D. 16-12-036 adopting the consensus working group's recommendations from the report including the elements of principles valuation, the pro forma contract, and outreach. Specifically, the working group reached consensus on the types of changes necessary to modify existing contracts or term sheets for distribution deferral purposes. The report identified areas in existing contracts that the working group agreed should be revised to accommodate distribution deferral projects to include:

- a. Performance-based payment structure during the distribution deferral period for solar resources;
- b. An increase in the number of pre-operational milestones and consequences for not meeting the milestones;
- c. Development security in the agreement;
- d. Performance assurance in the agreement; and
- e. Accommodations for voltage support product.²

The working group also identified challenges in past solicitations and developed two solutions. The first solution is the use of a transparent, collaborative negotiation process with buyers and sellers at the table. The second solution called for the development of a technology agnostic standard contract. Since such a contract did not exist, D.16-12-036 directed the working group to reconvene once the incentive pilots had been completed to create a proposed standard contract. The same decision also required PG&E, SCE, and SDG&E (herein collectively as Utilities) to hire a consultant with expertise in DER and contracting to observe all steps of the Incentive Pilot and participate and assist in developing the TNPFC. The Utilities selected Sedway Consulting, Inc. (Sedway Consulting) for this role, with the firm's president, Alan Taylor, as the lead consultant.

² Competitive Solicitation Framework Working Group Final Report Filed by Southern California Edison Company (U-338-E), Pacific Gas and Electric Company (U-39-M), San Diego Gas & Electric Company (U-902-E), and Southern California Gas Company (U-904-G), at 46-47.

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D.16-12-036 anticipated that the three utilities would conclude their IDER Request for Offer (RFO) solicitation at the same time, allowing the working group to benefit from insights gained in all three IDER RFOs. Although SCE's and SDG&E's IDER RFOs launched in early January of 2018, PG&E's was delayed due to the project location near the Santa Rosa wildfires in the fall of 2017. However, Energy Division decided to move forward with the original schedule with potential follow-up meetings occurring after PG&E completes its IDER RFO solicitation.

On June 4, 2018, as mandated by D.16-12-036, the working group, now the Technology Neutral Pro Forma Working Group (TNPFWG) consisting of 12 organizations, Sedway Consulting, the California Energy Commission, and the Public Advocates Office, reconvened to develop a TNPFC for use in future DER solicitations. The TNPFWG held eight meetings to discuss contract terms and conditions with input from stakeholders.

As required by D.16-12-036, Sedway Consulting submitted a status report within 90 days or September 4, 2018 of the commencement of the TNPFWG.³ The report provided a summary of TNPFC meetings held from June 4, 2018 through July 19, 2018 including provision changes agreed to between the IOUs and market participants.

On November 21, 2018, PG&E filed AL 5434-E,⁴ SCE filed AL 3900-E,⁵ and SDG&E filed AL 3308-E⁶ requesting approval of their TNPFCs for use in solicitation of DERs for distribution deferral under the Competitive Solicitation Framework.

³ California Integrated Distributed Energy Resource Proceeding Technology Neutral Pro Forma Consultant's Progress Report.

⁴ <https://www.pge.com/tariffs/advice-letters.page>.

⁵ <https://www.sce.com/regulatory/advice-letters/pending>.

⁶ http://regarchive.sdge.com/tm2/ssi/inc_elec_pending.html.

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On November 26, 2018, Energy Division noticed parties with the following two additional questions that parties were requested to include in their replies/protests to the ALs:

1. *Are there elements in the Technology Neutral Pro Forma Contract that should be standardized across all three IOUs? If so, what are they? For each specific element, is there a version (from the three submitted) that you find the most useful as model?*
2. *Should the IOUs work towards developing one TNPF contract for future IDER solicitations? Please explain.*

NOTICE

Notices of PG&E'S AL 5434-E, SCE's AL 3900-E, and SDG&E's AL 3308-E were published in the Commission's Daily Calendar. The Utilities state that copies of their ALs were mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS AND RESPONSES TO PROTESTS

Summary of Protests and Responses to Protests are in the Appendix Section of this resolution. We organized the summary in sections with:

A. Responses to Energy Division's Questions	Page 24
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C. PG&E Specific Provisions	Page 27
D. SDG&E Specific Provisions	Page 28
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F. Other Protested Issues	Page 49

DISCUSSION:

The Commission in D.16-12-036 required the utilities to create a technology-neutral pro forma contract to reinforce the adopted principle of technology neutrality.

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The TNPFCWG, consisting of Commission staff, utilities' representatives, market participants (Sunrun Inc., California Energy Storage Alliance, and the California Efficiency + Demand Management Council), advocacy groups (Public Advocates Office), the California Energy Commission, and Sedway Consulting held eight meetings to address concerns and issues brought up by market participants. These issues included terms and conditions associated with pre-delivery, start of delivery, compensation and other payments and other areas such as representations and warranties, limitations of liability, and indemnification. Market participants were also given the opportunity to opine on the utilities draft TNPFC prior to Commission filing on November 21, 2018.

With input from the TNPFCWG and Sedway Consulting, the Utilities filed their draft TNPFC for Commission approval on November 21, 2018.

With direction from D.16-12-036, it is the Utilities intent to use their approved TNPFC in all future DER Distribution Deferral solicitation.

The Commission reviewed the Utilities' ALs, parties' protests to the ALs, and the Utilities' response to the protests. Our approach to sort through the issues was to distinguish whether protested contract provisions:

- Favored one resource over another, and
- Are currently in the Utilities' pro forma contracts and have resulted in successful contracts.

We discuss the issues by sections. Issues specific to PG&E are included in Section E.

- Section A discusses answers to Energy Divisions questions.
- Section B lists Commonly shared rules/provisions.
- Section C provides discussions on provisions specific to SDG&E's TNPFC.
- Section D provides discussions on provisions specific to SCE's TNPFC.
- Section E lists provisions that are already technology neutral.
- Section F provides a discussion on items that are out of scope.

A. Energy Division Questions:

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1. *Are there elements in the Technology Neutral Pro Forma Contract that should be standardized across all three IOUs? If so, what are they? For each specific element, is there a version (from the three submitted) that you find the most useful as model?*

CESA, Cal Advocates, Sunrun, and the Council support some degree of standardization across the three Utilities' TNPFC.⁷

CESA supports standardization of enabling the multiple-use applications (MUAs), incrementality eligibility, a flexible performance and compensation structure, and balancing of project development security. Cal Advocates supports standardization on the definition of incrementality, the minimum dispatch notice periods, methods for measurement and verification of energy efficiency performance, and the procurement of additional services such as reliability and back tie. Sunrun suggests that as many elements should be standardized as feasible. The Council supports standardization of initial delivery date, critical milestones, dispatch notice, rights to product, submitting list of participating accounts, events of default, and indemnification of seller.

PG&E, SCE, and SDG&E disagree with standardizing terms and conditions in their TNPFCs.⁸ SCE does not believe that some of these proposed standardization terms and conditions benefit the larger DER market and instead only benefit the EE and DR markets. SDG&E explains that each utility has its own commercial contracting approach and standards making it inefficient and impractical to undertake efforts to further standardize the contracts. PG&E believes it is premature to consider standardization of terms across the utilities when DERs for distribution deferral are still in the pilot stages and both the utilities and counterparties have very limited experience negotiating distribution deferral contracts.

We reviewed each contract element proposed for standardization by each party and partially agree with parties' comments. First, incrementality and enabling the multiple-use applications (MUA) provisions are not part of the utilities' TNPFC, and are therefore, not within the scope of the TNPFC. The

⁷ CESA at 8-9, Cal Advocates at 9, Sunrun at 5-6, and the Council at 7-9.

⁸ SCE Response at 5, SDG&E Response at 8, and SCE Response at 6.

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Commission will address incrementality separately in this same proceeding and the MUA in the Energy Storage proceeding (R.15-03-011). Second, the Utilities have different distribution systems and needs and their TNPFCs represent a balance of risks and benefits to DER developers and the utility customers making it more challenging to standardize most TNPFC terms and conditions. These include among others, back-tie, flexible performance, compensation structure and balancing of project development security provisions.

We agree with Cal Advocates that the Utilities should have the flexibility to determine other terms and conditions. The TNPFC is a starting point for negotiations which means that provisions may be altered or re-negotiated mutually between the utility and the seller. As Sunrun states, no utility proposes substantive terms that should be the standard for every contract.

We also agree with Cal Advocates' recommendation that methods for measurement and verification of energy efficiency performance should be standardized across all three Utilities. Discussed in detail under Section B, we require the Utilities' to adopt the same approach to measure and verify EE efficiency performance. We require the Utilities to clarify this approach in their TNPFCs.

2. Should the IOUs work towards developing one TNPFC for future IDER solicitations? Please explain.

As stated above, CESA does not believe it is worthwhile to pursue one TNPFC across all three utilities given the complexity of each of the utility's distribution system and corresponding need.

In their response, SCE argues that the Commission should not require the utilities to pursue one single technology neutral pro forma contract, PG&E does not agree that a singled technology neutral pro forma contract is necessary to accomplish California's distributed energy policy goals. We agree with everyone. Using a single TNPFC for all three utilities eliminates the flexibility each utility has about contracting what it uniquely needs and reduces the utility's ability to undertake new approaches that may be to the best interest of its customers. Therefore, we require each utility to use their own TNPFC approved in this resolution for future DER solicitations.

B. Commonly Shared Rules/Provisions.

1. Measurement and Verification of Energy Efficiency (EE)

Cal Advocates argues that the use of metered approaches to quantifying EE savings should not preclude the use of the “deemed” approach where this meets the operational requirements of the distribution deferral.⁹

SCE acknowledges that the deemed approach is an appropriate measurement and compensation methodology for certain applications of EE. However, SCE explains that the requirements of a distribution deferral program necessitate a metered based analysis because it provides granular load impacts post-installation, and specific to each site. This eliminates any risk that SCE's customers might pay for load reductions that do not materialize.¹⁰ PG&E explains that if the ultimate goal of a TNPFC is to be technology-neutral, then a meter-based measurement approach is necessary.¹¹

We agree with Cal Advocates. While metered based methodologies are preferred approaches for distribution deferral projects using EE, we do not agree that it should be the only approach. Metered based approaches to EE savings measurement are not always appropriate or feasible. For example, metered approaches are not a good tool to estimate savings from normal replacement measures, where a standard practice baseline applies, nor are they feasible in cases where there is no reference for an existing condition baseline (e.g., new construction/capacity expansion/added load). It is also not feasible to implement metered methods where consumption patterns are primarily driven by unpredictable or un-measurable factors, or where there are likely to be substantial non-routine events. In cases where metered based methods are not a good fit, deemed savings values may provide a reasonable alternative for recognizing savings. Deemed savings values represent typical, or average performance of a measure over a customer segment, climate zone, and building type. Deemed estimates may be a useful approach for projects delivering measures to larger numbers of customers/buildings, where performance over the cohort of

⁹ Cal Advocates Protest at 5.

¹⁰ SCE Response at 11-12.

¹¹ PG&E Response at 3.

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participants can be expected to approach the population averages reflected in deemed savings values.

Therefore, when a metered based approach is not an appropriate method in quantifying EE savings, we require each utility to implement the deemed savings approach. We require each utility to clarify how EE savings can be measured and verified using these two approaches in their TNPFC materials.

C. SDG&E Specific

1. Performance Requirements (100% Availability Requirement/Back Tie Services¹²)

Cal Advocates, CESA, Sunrun, and the Council questions the need for back-tie and disagrees with SDG&E's 100% performance requirements.¹³ Cal Advocates argues that this strict requirement will result in the seller's building or supplying more DERs than required which can result to no cost effective bids.¹⁴ CESA state that SDG&E's requirement that "anything short of 100% delivery of contract capacity will lead to events of default creating significant risk to developers that will deter participation in the RFO."¹⁵ Sunrun argues that the imposition of wire-based standards which provide 100% reliability standards will in most cases severely limit eligibility and discriminate against readily available DER solutions.¹⁶

We agree with Cal Advocates, CESA, Sunrun, and the Council. The 100% availability requirement has not been sufficiently justified by SDG&E. We disagree with SDG&E's explanation that the TNPFC is designed to place a level of risk on DER providers that is approximately equivalent to the level of risk that

¹² Reliability (Back-Tie) Services is provided by decreasing net loading on distribution infrastructure through decreasing electrical consumption or increasing generation, in accordance with the Operating Parameters set forth in the TNPFC to reduce thermal loading for local distribution safety and reliability operations (e.g. emergency and planned switching). SDG&E AL 3308-E, Appendix II at 51.

¹³ Cal Advocates at 7, CESA at 4-5, The Council at 3, Sunrun at 4.

¹⁴ Cal Advocates at 7.

¹⁵ CESA at 4-5., The Council at 3.

¹⁶ Sunrun at 4.

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consumers would bear if the deferrable distribution upgrade were built unless SDG&E demonstrates a need for the back-tie service.

In their response to the protests, SDG&E's statement that it "believes the Commission expects DER providers to provide approximately the same level of service reliability that the deferred distribution upgrade would provide" is flawed. We find that SDG&E's expectation is only reasonable if the service reliability is necessary. Therefore, SDG&E's proposal is not appropriate as a standard contract term. We will only allow SDG&E to require such terms if previously justified and accepted by the Commission at the time candidate deferral projects are brought before the Commission.

Therefore, we require SDG&E to remove the 100% availability requirement/back tie services from the TNPF. If SDG&E believes that there is a need for a back-tie service for a specific project, it should add that provision to the project specific contract based on quantitative substantiation of the need for back-tie in the candidate deferral project approval process.

2. Dispatch Requirements

Cal Advocates, CESA, and the Council suggest that SDG&E change its dispatch provisions to a day-ahead dispatch notice.¹⁷ Cal Advocates recommends the Commission require SDG&E to bring their dispatch requirements to day-ahead notification as required in Resolution E-4889.¹⁸ Similarly CESA recommends SDG&E should adopt a day-ahead notification because SDG&E's immediate dispatchability requirement is very market limiting.¹⁹ The Council argues that this requirement precludes the participation of EE and DR resources in solicitation process.²⁰

In their response, SDG&E states that it will endeavor to provide day-ahead in certain scenarios but will still require immediate dispatch capability for emergencies and unforeseen conditions/events.²¹ SDG&E further explains that

¹⁷ Cal Advocates at 4, CESA at 4, and the Council at 2-3.

¹⁸ Cal Advocates at 4.

¹⁹ CESA at 4.

²⁰ The Council at 2-3.

²¹ SDG&E Response at 4-5.

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despite efforts by grid operators to analyze system conditions, there are times when system loading materializes unexpectedly in real time due to events such as customer behavior, emergencies, or weather conditions. Meanwhile, SCE and PG&E did not find immediate dispatch to be necessary as a general provision of their TNPFC. As with their proposed back-tie requirement, SDG&E has not provided justification for the need to require an immediate dispatch provision under all circumstances. We find that this requirement could make it effectively impossible for DER developers to meet the contract provisions under most circumstances.

Similar to our determination on performance requirements, SDG&E must justify the need for the two-hour immediate dispatchability requirement on a case-by case basis, demonstrating that the specific facilities under consideration could not be reconfigured to meet emergency need. This shall occur at the time SDG&E brings candidate deferral projects before the Commission. Otherwise, we require SDG&E to change their dispatch provisions to a day-ahead dispatch in their TNPFC.

3. DER Charging

CESA requests that "restricted periods should be justified and set reasonably to accommodate DERs that have minimal charging to account for idling losses that is being done to ensure full capacity to service the identified distribution need."²² CESA explains that load increase restrictions may be appropriate if demonstrated that load increases in a given location would create grid problems. CESA further states that a "tolerance band" for some minimal load increase in restricted periods is reasonable if it allows for minimal charging to maintain a state of charge at needed capacity for when dispatch is required.

In their response, SDG&E argues that if restricted periods for charging are identified and included in the TNPFC they must be honored in order that grid reliability is not jeopardized.

We partially agree with SDG&E. Defined restricted charging periods are necessary to ensure grid reliability. However, SDG&E's restricted charging periods should depend on the operational needs of the project and peak

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condition on each circuit. Therefore, in addition to the restricted charging periods in SDG&E's TNPFC, we also require that SDG&E demonstrate that DER charging (minimal or otherwise) creates a grid reliability problem such as overloading conditions for each project and circuit. This information should be included in SDG&E's TNPFC for each project.

D. SCE Specific

1. Charging Restrictions

CESA states that charging stations should generally be resolved in the interconnection study process and or account for some de minimis amount of charging during restricted periods. CESA argues that the requirement to limit charge of energy storage only to the paired BTM PV seems unnecessary if SCE is soliciting non-NEM PV-paired storage systems.²³

In their response, SCE states that it recognizes that this restriction may not be necessary for distribution deferral and would be negotiable during a distribution deferral RFO.²⁴ We therefore require SCE to clarify that this provision is negotiable in their TNPFC.

2. Product Optionality

CESA requests clarity that SCE will provide optionality to submit non-RA-qualifying bids into SCE's RFOs.²⁵ Similarly, the Council comments on SCE's rights to product.²⁶

SCE states that its TNPFC contract, based on historical procurement, is acceptable in the market and provides the best opportunity for cost effective distribution deferral procurement. SCE is willing to negotiate a form of agreement, should an offeror wish to restrict the "product" it sells to particular services. We agree with SCE that in such a circumstance, the offeror should take the initial step of providing the contract form that matches the specific service it

²³ CESA at 4-5.

²⁴ SCE Response at 9-10.

²⁵ CESA at 5.

²⁶ The Council at 6.

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wishes to sell and not those it wishes to retain.²⁷ We require SCE clarify this requirement in their TNPFC.

3. Telemetry and Settlement Structures

3.1. Telemetry

CESA states that CAISO telemetry dispatch requirements are not needed for Proxy Demand Resource (PDR) resources. CESA explains that this requirement which may pose a barrier for certain resources to participate in an SCE RFO is not necessary for settlement purposes.²⁸

SCE explains that it is essential that its contracts require DR resources to use CAISO telemetry so that it can dispatch resources when a need arises and monitor its performance in real-time to manage distribution deferral event. However, SCE also understands that it can be challenging for behavioral-based DR to meet telemetry requirements and as a result will work with providers to find mutually agreeable solutions.²⁹ We require SCE clarify this provision in their TNPFC.

3.2. Settlement

CESA and Sunrun also note SCE's settlement language within Section 3.02 of Attachment 1[-3], where metered amounts expressly exclude any electric energy generated by Generating Facility that exceeds the coincident instantaneous energy measured at the Customer(s) Site(s), is unnecessary for sellers that elect to export energy.³⁰

SCE acknowledges the error and plans to change the language in the TNPFC accordingly.³¹

E. Provisions that are already Technology Neutral

²⁷ SCE Response at 10.

²⁸ CESA at 6.

²⁹ SCE Response at 10.

³⁰ CESA at 6, Sunrun at 5.

³¹ SCE Response at 10-11.

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The items listed below have been reviewed during the TNPFCWG meetings. The Commission considered parties' protests regarding issues listed below and find these items to be already technology agnostic, and therefore, we dismiss these protests filed by parties. A summary of these issues can be found in the Protests and Responses to Protests Appendix of this Resolution. These include:

1. Performance Assurance
2. Insurance and Security requirements
3. Seller's Submittal of Recruited and Participating Accounts
4. Indemnification of Seller
5. Compensation for Excess Energy Delivered
6. Exclusive Rights
7. Resource Adequacy Provisions
8. Initial Delivery Date
9. Daily Delay Liquidated Damages to Extend Expected Initial Delivery Date
10. Timeliness of Payment
11. Federal Tax Incentives Price Reduction
12. Changes in Operational Characteristics.
13. Critical Path Development Milestones.
14. Transmission and Interconnection
15. Cyber Security Precautions
16. Seller's Operation and Record Keeping Obligations. (DERs Monitoring)
17. Development Security
18. Administration of Project Security
19. Credit and Collateral Covenants
20. Seller Covenants
21. Customer Service Covenants
22. Events of Default; Termination
23. Limitation on Seller's and Seller's Affiliates' Ability to Make or Agree to Sales from the Project after Certain Terminations of this Agreement.
24. Limitation of Remedies, Liability and Damages
25. Separation of Functions.
26. SCE's Indemnification Obligations/ Seller's Indemnification Obligations
27. Insurance
28. Consolidation of Seller's Financial Statements
29. Critical Milestones and Events of Default

F. Other Issues

The following issues were raised by parties but are not part of the TNPFC.

1. Updates to TNPFC

Cal Advocates proposes that the Commission require the Utilities to submit TNPFC annually through Tier 1 advice letters. Cal Advocates explain that this process will provide stakeholders an opportunity to provide feedback as the distribution deferral solicitation process becomes more refined.³² The Council supports the IOUs making minor updates to the TNPFC as needed but suggests that substantial changes must be approved by the Commission.³³

In their response, SCE states that the Commission should not require the Utilities to seek formal Commission approval to update their TNPFC as these contracts are meant to handle all DER technology types making frequent updates necessary to keep the TNPFC current.³⁴ PG&E states that it is not opposed to refining the TNPFC with stakeholder input however, PG&E is concerned about establishing another administrative burden by requiring an ongoing reporting requirement which can lead to an inefficient process of protests and the need for a yearly Commission resolution.³⁵

We agree that the proforma contract may need updating or changes from time to time. The TNPFC is a new contract process and should be updated as necessary to allow for changes as the distribution deferral market develops. We find it reasonable to require the utilities to submit a Tier 1 Advice Letter seeking approval of any proposed changes to the TNPFC. To help avoid delay in the program, any Advice Letter proposing changes must be submitted 60 days prior to the DIDF solicitation.

2. Incrementality

Cal Advocates state that a clear and consistent definition of incrementality should be included in the Utilities' RFO materials which should be referred to in

³² Cal Advocates at 6.

³³ The Council at 4.

³⁴ SCE Response at 6.

³⁵ PG&E Response at 3-4.

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the terms and conditions included within the TNPFC. CESA states that it disagrees with the utilities' elimination of NEM and SGIP funded projects from eligibility based on the incremental provisions.

SCE states that while it understands the importance of further discussions on incrementality, this is not the venue to make policy changes. SDG&E and PG&E states that protests on incrementality is out of scope for this AL.

We agree. Incrementality is a solicitation eligibility requirement/valuation issue – not an issue to be included in the TNPFC. D.16-12-036 states that it will determine which incrementality methodology to adopt following the evaluation of the IDER incentive pilot. Accordingly, incrementality will be addressed separately in the IDER proceeding, R.14-10-003, or its successor.

3. Compliance with MUA Rules

Cal Advocates recommends that the Commission require that the TNPFC's comply with the Commission's energy storage multi-use application rules.

As directed by D.18-01-003, the utilities already have an obligation to comply with the MUA rules. Any further discussions on the MUA rules are handled in the Energy Storage proceeding (R.15-03-011).

4. Timing of solicitation

Sunrun states that the TNPFC lacks language that address information provided to bidders before or during the bid process. Sunrun recommends the IOUs provide at least two months for solicitation responses.

Sunrun's request is outside of the scope of the TNPFC. Information for DER providers to understand (1) how the evaluation offers will be performed, (2) how eligibility to submit an offer will be established, and (3) the basis for determining that an offer is conforming is part of the RFO documents.

5. Single Counterparty

Cal Advocates, CESA, and Sunrun recommend that SDG&E's approach to contract with a single counterparty be rejected.³⁶ Cal Advocates states that this

³⁶ Cal Advocates at 6-7, CESA at 7, Sunrun at 7.

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approach places an unreasonable level of risk on Sellers, thereby discouraging bidders from participating in distribution deferral opportunities. CESA states that a portfolio approach with multiple DER providers invite greater market participation.

In their Response, SDG&E states that this argument is outside of the scope of the TNPFC. We agree. The single counterparty issue will be discussed separately in this IDER proceeding during the evaluation of the IDER solicitation.

6. Dispute Resolution

Sunrun states that SCE's dispute resolution section requires binding arbitration as opposed to a court action and sets forth procedural rules. In response, SCE states that it believes that its dispute resolution provisions are fair, workable, and financeable in their current form.³⁷

While Sunrun argues against binding arbitration and SCE argues against civil court action, we believe parties to the contract should be able to choose a mutually agreed upon option which can be included in the utilities TNPFC or decided later, should a dispute arise. Should the utilities decide to include this provision in their TNPFCs, we require the Utilities to clarify the options available to parties.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review. Please note that comments are due 20 days from the mailing date of this resolution. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

³⁷ SCE Response at Attachment A.

FINDINGS

1. On June 4, 2018, as mandated by D. 16-12-036, PG&E, SCE, and SDG&E (jointly, the Utilities) reconvened the Competitive Solicitation Framework Working Group to begin discussions on the development of a technology-neutral pro forma contract with input from the industry consultant, Sedway Consulting, Inc.
2. On September 4, 2018, as mandated by D.16-12-036, Sedway Consulting provided a status report of the technology-neutral pro forma to the service list.
3. On November 21, 2018, PG&E filed AL 5434-E, SCE filed AL 3900-E, and SDG&E filed AL 3308-E requesting approval of their technology neutral pro forma contracts for use in solicitation of DERs for distribution deferral.
4. On November 26, 2018, Energy Division noticed parties with two additional questions parties were requested to include in their replies/protests to the utilities' ALs.
5. PG&E AL 5434-E, SCE AL 3900-E, and SDG&E AL 3308-E require modifications to their proposals in the filings described herein.
6. The Utilities disagree with standardizing terms and conditions in their technology neutral pro forma contracts.
7. The Utilities do not agree that a single technology neutral pro forma contract is necessary to accomplish California's distributed energy policy goals.
8. SDG&E did not provide sufficient justification for its 100% availability requirement and back-tie services.
9. SDG&E did not provide sufficient justification for the need to require an immediate dispatch provision.
10. SDG&E did not demonstrate that Distributed Energy Resource charging creates a grid reliability problem such as overloading conditions for each project and circuit.
11. Incrementality is a solicitation eligibility requirement/valuation issue and will be addressed separately in this same proceeding.
12. The Utilities are already required to comply with the multi-use application rules as mandated by D.18-01-003.

PG&E'S AL 5434-E, SCE's AL 3900-E, and SDG&E's AL 3308-E

13. SDG&E's single counterparty issue will be addressed separately in this same proceeding during the evaluation of the Integrated Distributed Energy Resources pilot.

THEREFORE, IT IS ORDERED THAT:

1. Pacific Gas & Electric shall file a compliance supplemental advice letter with modifications adopted herein no later than 7 days from the date this resolution is adopted.
2. Southern California Edison shall file a compliance supplemental advice letter with modifications adopted herein no later than 7 days from the date this resolution is adopted.
3. San Diego Gas and Electric shall file a compliance supplemental advice letter with modifications adopted herein no later than 7 days from the date this resolution is adopted.
4. The Utilities shall clarify in their technology neutral pro forma contracts when a metered based or deemed savings approach is used in quantifying Energy Efficiency savings.
5. San Diego Gas and Electric shall remove its 100% availability requirement/back-tie services from its technology neutral pro forma contract.
6. San Diego Gas and Electric shall modify its dispatch availability requirement to a day-ahead dispatch.
7. San Diego Gas and Electric shall include additional information such as overloading conditions for each project and circuit to their DER charging restriction provision.
8. Southern California Edison shall clarify that charging restrictions are negotiable.
9. Southern California Edison shall clarify its Product Optionality requirements.
10. Southern California Edison shall clarify its Telemetry requirements.
11. Southern California Edison shall clarify its Customer Service Covenants.
12. Southern California Edison shall correct its Timeliness of Payment provision so that this will only apply to those projects that elect to be non-exporting.
13. Southern California Edison shall correct its settlement provision so that it does not exclude any electric energy generated by Generating Facility that

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exceeds the coincident instantaneous energy measured for sellers that elect to export energy.

14. The Utilities shall file their technology neutral pro forma contract 60 days prior to the Distribution Investment Deferral Framework solicitation with changes redlined.
15. The Utilities shall clarify the options available to parties under their Dispute Resolution provision.
16. The Utilities shall submit a Tier 1 advice letter seeking approval of any proposed changes to their technology neutral pro forma contract 60 days prior to the Distribution Investment Deferral Framework.

PG&E'S AL 5434-E, SCE's AL 3900-E, and SDG&E's AL 3308-E

This Resolution is effective today.

I certify that the foregoing Resolution was duly introduced, passed, and adopted at a conference of the Public Utilities of the State of California held on May 30, 2019 the following Commissioners voting favorably thereon:

ALICE STEBBINS
Executive Director

Appendix

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The Public Advocates Office (Cal Advocates), Sunrun Inc. (Sunrun), California Energy Storage Alliance (CESA), and the California Efficiency + Demand Management Council (Council) filed protests to PG&E's AL 5434-E, SCE's AL 3900-E, and SDG&E's AL 3308-E on December 11, 2018. The Utilities filed their response to the protests filed on December 18, 2018.

The following summarizes protests and responses filed:

A. Responses to Energy Division Questions:

1. Are there elements in the Technology Neutral Pro Forma Contract that should be standardized across all three IOUs? If so, what are they? For each specific element, is there a version (from the three submitted) that you find the most useful as model?

- CESA "agrees with the IOUs in that it is likely not worthwhile to pursue a single *pro forma* that applies for all three IOUs given the complexity of distribution service products and the different technologies that the IDER RFOs are intended to allow to participate."
- CESA also recognizes that "each IOU may structure the services that they buy differently."³⁸ CESA does support some degree of standardization on key issues including the enabling of multiple-use applications (MUAs), incrementality eligibility, a flexible performance and compensation structure, and balancing of project development security.³⁹
- Cal Advocates supports standardization on "the definition of incrementality, the minimum dispatch notice periods, *methods for measurement and verification of energy efficiency* performance and the procurement of additional services such as reliability and back-tie," but acknowledges the Utilities should have the flexibility to determine other terms and conditions.⁴⁰

³⁸ CESA Response at 8.

³⁹ Ibid.

⁴⁰ Cal Advocates Protest at 9.

PG&E'S AL 5434-E, SCE's AL 3900-E, and SDG&E's AL 3308-E

- Sunrun argues that “[a]s many elements should be standardized as feasible,” and suggests that “IOUs and stakeholders should work towards developing one contract for future IDER solicitations.”⁴¹ However, Sunrun also states that “[n]o utility proposes substantive terms that should be the standard for every contract.”⁴²
- The Council supports standardization on key elements, including initial delivery date, critical milestones, dispatch notice, rights to product, submitting list of participating accounts, events of default, and indemnification of seller.⁴³ The Council also recommends a stakeholder process to develop one joint Utility contract, citing the Demand Response Auction Mechanism (DRAM) as an example of such a contract.⁴⁴

Response:

- SCE disagrees with suggestions to standardize certain provisions in the IOUs' TNPFC. SCE explains that some of the suggestions to standardize policies like incrementality are RFO requirements, not contract provisions, and beyond the scope of the TNPFC.
- SCE also requests the Commission deny the Council's request to standardize several provisions that are primarily beneficial for their members by adopting the provisions that are most favorable to energy efficiency (EE) and demand response (DR) from each Utility's contract. SCE does not believe this proposed standardization to benefit EE and DR reflects the opinion of the larger DER market nor does it promote technology neutrality. SCE also states that the entirety of each Utility's TNPFC represents a balance of risks and benefits to sellers and utility customers.⁴⁵

⁴¹ Sunrun Protest at 5-6.

⁴² *Id.* at 6.

⁴³ *See* Council Response at 4-7.

⁴⁴ *See id.* at 7-8.

⁴⁵ SCE Response at 5.

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- PG&E believes it is premature to be considering standardization and says that Utilities' buy different services for distribution deferral – these services warrant different contract terms.⁴⁶
- SDG&E explains that each utility has their own contract approaches and standards. In addition, SDG&E does not see any compelling reason to standardize any elements of the TNPFC since these contracts are “starting points” for negotiating final contracts with successful DER providers.⁴⁷

2. *Should the IOUs work towards developing one TNPFC for future IDER solicitations? Please explain.*

- CESA agrees with the utilities that it is likely not worthwhile to pursue a single TNPFC.⁴⁸
- Cal Advocates acknowledges that the utilities should have the flexibility to determine many terms and conditions.⁴⁹
- Sunrun states that “[n]o utility proposes substantive terms that should be the standard for every contract.”⁵⁰

Response:

- SCE argues that the Commission should not require the utilities to pursue one single TNPFC and should reject proposals for more standardization among the Utilities' TNPFC. SCE explains that the Utilities will have the opportunity to improve on their TNPFC if given time to learn lessons from future Distribution Investment Deferral Framework (DIDF) RFOs, which will allow the utilities and DER developers to identify provisions that can be improved during the negotiation period.⁵¹
- PG&E does not agree that a single TNPFC across all three utilities is necessary to accomplish California's distributed energy policy goals and argues that a single form contract across utilities can limit them

⁴⁶ PG&E Response at 6.

⁴⁷ SDG&E Response at 8.

⁴⁸ CESA at 8-9.

⁴⁹ Cal Advocates at 9.

⁵⁰ Sunrun at 6.

⁵¹ SCE Response at 4.

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from piloting new approaches, lessen the ability to be flexible in the types of attributes a utility is sourcing to meet its needs, and fail to recognize the different financial and risk positions of each company.⁵²

B. Commonly Shared Rules/Provisions

1. Measurement and Verification of Energy Efficiency (EE)

- Cal Advocates argues that the use of metered approaches to quantifying EE savings should not preclude the use of the “deemed” approach where this meets the operational requirements of the distribution deferral.⁵³

Response:

- SCE acknowledges that the deemed approach is an appropriate measurement and compensation methodology for certain applications of EE. However, the requirements of a distribution deferral program necessitate a methodology that provides more exact load impacts post-installation, and specific to each site. Meter-based analysis is the most appropriate way of providing such granular detail. Additionally, a pay-for-performance framework, with performance defined as metered load reduction, eliminates any risk that SCE's customers might pay for load reductions that do not materialize. SCE maintains its position that meter-based pay-for-performance is the most appropriate measurement and compensation methodology for EE procured for distribution deferral.⁵⁴
- PG&E explains that if the ultimate goal of a technology-neutral pro forma contract is to be technology-neutral, then a meter-based measurement approach is necessary.⁵⁵

C. PG&E Specific

1. Performance Assurance⁵⁶

⁵² PG&E Response at 6.

⁵³ Cal Advocates at 5.

⁵⁴ SCE Response at 11-12.

⁵⁵ PG&E Response, p. 3

PG&E'S AL 5434-E, SCE's AL 3900-E, and SDG&E's AL 3308-E

- The Council states that PG&E's performance assurance in the form of a Project Development Security and a Delivery Term Security is onerous for small and medium sized DER providers. The Council recommends the Commission require PG&E to review the performance assurance required by PG&E because the performance assurance PG&E requires from DER of \$40/kW of Contract Capacity is very high.⁵⁷

Response:

- PG&E states that the performance assurance amounts in the TNPFC of \$40/kw are consistent with what they are currently using in energy storage contracts, and lower than what was used in previous years. PG&E explains that performance assurance is needed to ensure that Sellers are committed to coming online in a timely manner, and to delivering throughout the contract term.
- PG&E agrees with the Council's restatement of PG&E's rationale for requiring performance assurances, and in response PG&E emphasizes that the consequences for failure to deliver distribution reliability would have distribution reliability at risk, and there is no readily available option to backstop for the failed delivery.⁵⁸

D. SDG&E Specific

1. Single Contract Provision

- Cal Advocates, CESA, and Sunrun recommend that SDG&E's approach to contract with a single counterparty (rather than allow for multiple) be rejected.⁵⁹

⁵⁶ "Performance Assurance" means collateral provided by Seller to Buyer to secure Seller's obligations under the Agreement and includes Project Development Security and Delivery Term Security. Buyer only accepts two forms of collateral to satisfy the Performance Assurance obligations" (a) cash via wire transfer in immediately available funds, or (b) a Letter of Credit, PG&E AL 5434-E, Appendix 1 at 1-9.

⁵⁷ The Council at 2.

⁵⁸ PG&E Response at 1.

⁵⁹ Cal Advocates at 6-7, CESA at 6, Sunrun at 5.

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Response:

- SDG&E states that this argument is outside the scope of the TNPFC.⁶⁰

2. Performance Requirements

- Cal Advocates, CESA, Sunrun and the Council argue that SDG&E's 100% performance requirements⁶¹ are non-conducive to achieving cost effective bids.⁶²

Response:

- SDG&E explains that the TNPFC contract is designed to place a level of risk on DER providers that is approximately equivalent to the level of risk that consumers would bear if the deferrable distribution upgrade were built.
- SDG&E further states that its TNPFC contract's terms and conditions were written such that if the services provided by the DER provider were of a lower quality than the services provided by the deferrable distribution upgrade, there would be an inherent transfer of risk from the DER provider to the consumer.⁶³

3. Dispatch Requirements

- Cal Advocates and CESA suggest that SDG&E change its immediate dispatch provision to a day-ahead dispatch notice.⁶⁴

Response:

⁶⁰ SDG&E Response at 7.

⁶¹ SDG&E's TNPFC requires the project to initially test its capability to provide distribution capacity deferral services in an amount equal to 100% or more of the contracted capacity. SDG&E's TNPFC requires the project to provide distribution capacity services up to 100% of the contracted capacity in any year and shall compensate the project only when the project achieves 100% of the required minimum performance. It is anticipated that the project will be developed such that it will be able to perform at or above a level necessary to provide this level of performance, and it is anticipated that the DER provider's offer in a competitive solicitation will factor in this requirement. SDG&E AL 3308-E, at 5.

⁶² Cal Advocates at 4, CESA at 4, Sunrun at 4.

⁶³ SDG&E at 4-5.

⁶⁴ Cal Advocates at 4, CESA at 4, and Sunrun at 4.

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- SDG&E will endeavor to provide day-ahead in certain scenarios but will still require immediate dispatch capability for emergencies and unforeseen conditions/events.⁶⁵

4. Back-tie Services⁶⁶

- Cal Advocates questions SDG&E's need for back-tie.⁶⁷

Response:

- SDG&E states that the need for back-tie services will be determined on a case-by-case basis in the Grid Needs Assessment and Distribution Deferral Opportunities Report (DDOR) and identified in the RFO solicitation documents. Also true for voltage support and resiliency (microgrid), SDG&E's contract structure allows for procurement of these services, depending on the distribution system need and deferral opportunity.⁶⁸

5. Insurance and Security requirements⁶⁹

- CESA recommends that security be denominated in \$/MW as securities should be proportional to the capacity being proposed by the developer.⁷⁰

⁶⁵ SDG&E Response at 4-5.

⁶⁶ Back-tie service (a.k.a. "tie capacity) is an industry-wide engineering best practice of incorporating thermal capacity and tie switches between radial circuits in order to maintain continuity of service in the event of planned or unplanned outages. This practice is fundamental to the design and reliable operation of SDG&E's electric distribution systems and radial circuit designs. It provides switching capability to avoid or mitigate the impact of outages to customers during planned (e.g. maintenance) and unplanned (e.g. emergencies) events. SDG&E has incorporated tie capacity into its distribution system design for decades, including while addressing a peak thermal need or as a standalone tie capacity project. SDG&E AL 3308-E at Attachment G at 1-2.

⁶⁷ Cal Advocates at 7.

⁶⁸ SDG&E Response at 3-4.

⁶⁹ Required insurance coverage will be determined based on the distribution deferral capacity services to be procured and will be specified at the time a solicitation is released. SDG&E AL 3308-E at 7.

⁷⁰ CESA at 7.

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- Sunrun states that insurance requirements should be based on the size of the project.⁷¹

Response:

- SDG&E explains that there is no need to unitize insurance and security requirements on a per MW basis because it plans on only contracting with a single DER provider and each offer submitted in the DIDF RFO will be for the full amount of the identified MW need.⁷²

6. Charging Restrictions

- CESA requests “restricted periods should be justified and set reasonably to accommodate DERs that have minimal charging to account for idling losses that is being done to ensure full capacity to service the identified distribution need.”⁷³

Response:

- SDG&E states that if restricted periods for charging are identified and included in the TNPF contract they must be honored in order that grid reliability is not jeopardized. SDG&E further states that it does matter if a distribution facility overload resulting from charging during a restricted period is 1 MBA or 0.01 MVA, outcomes could result in removal of the distribution facility from service and a corresponding loss of connected overload.⁷⁴

E. SCE Specific

1. Charging Restrictions

- CESA states that charging stations should generally be resolved in the interconnection study process and/or account for some *de minimis* amount of charging during restricted periods. CESA argues that the requirement to limit charge of energy storage only to the paired with behind the meter photovoltaic (BTM PV) seems unnecessary of SCE is

⁷¹ Sunrun at 4.

⁷² SDG&E Response at 5.

⁷³ CESA at 6.

⁷⁴ SDG&E Response at

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soliciting non- Net Energy Metering (NEM) PV-paired storage systems.⁷⁵

Response:

- SCE recognizes that this restriction may not be necessary for distribution deferral and would be negotiable during a distribution deferral RFO.⁷⁶

2. Product Optionality

- CESA requests clarity that SCE will provide optionality to submit non-RA-qualifying bids into SCE's RFOs.⁷⁷
- The Council requests that SCE provide DER providers with the option of having SCE acquire all project-related benefits or only those benefits needed to meet the distribution need which would encourage more participation of DER providers in SCE's RFO. ⁷⁸

Response:

- SCE states that its TNPFPC, based on historical procurement, is acceptable in the market and provides the best opportunity for cost effective distribution deferral procurement. SCE is willing to negotiate a form of agreement, should an offeror wish to restrict the "product" it sells to particular services. However, SCE requests that in such circumstance, the offeror should take the initial step of providing the contract form that matches the specific service it wishes to sell and not those it wishes to retain.⁷⁹

3. Telemetry and Settlement Structures

3.1. Telemetry

⁷⁵ CESA at 4-5.

⁷⁶ SCE Response at 9-10.

⁷⁷ CESA at 5.

⁷⁸ The Council at 6.

⁷⁹ SCE Response at 10.

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- CESA states that SCE's requirement that DR resources use CAISO telemetry is not useful for settlement purposes and may pose a barrier for certain resources to participate in an SCE RFO.⁸⁰

Response:

- SCE agrees with CESA's understanding that SCE needs to have visibility into distribution resources which is why SCE's contracts require DR resources to use CAISO telemetry so that SCE can dispatch resources when a dispatch need arises and monitor their performance in real time to manage a distribution deferral event. However, SCE also understands that it can be challenging for behavioral-based DR to meet telemetry requirements. Therefore, SCE will work with providers of these resources to find mutually agreeable solutions.⁸¹

3.2 Settlement

- CESA and Sunrun also note SCE's settlement language within Section 3.02 of Attachment 1[-3], where metered amounts expressly exclude any electric energy generated by Generating Facility that exceeds the coincident instantaneous energy measured at the Customer(s) Site(s), is unnecessary for sellers that elect to export energy.⁸²

Response:

- SCE appreciates the commenters pointing out this error and plans to change the language in the TNPF accordingly.⁸³

4. Critical Milestones and Events of Default

- The Council states that both PG&E and SCE allow DER providers to miss at least one milestone without triggering an Event of Default. However, the Council prefers PG&E's approach of missing up to two milestones compared to SCE's one as it provides more flexibility to EE and DR providers in their customer recruitment activities.⁸⁴

⁸⁰ CESA at 6.

⁸¹ SCE Response at 10.

⁸² CESA at 6, Sunrun at 5.

⁸³ SCE Response at 10-11.

⁸⁴ Council at 5-6.

Response:

- SCE states that the Council's suggestion of allowing a DER provider to miss two milestones as opposed to one milestone adoption would pose significant risk to SCE's customers. However, SCE is amenable to negotiating appropriate, project specific milestones to match DER specific projects.⁸⁵

5. Seller's Submittal of Recruited and Participating Accounts

- The Council suggests that the Commission require SCE to review its timeline to allow DR providers the flexibility of adding new accounts closer to the month when they are going to be part of the project.⁸⁶ The Council explains that both PG&E and SDG&E require the Seller to provide the site/customer list for a Delivery month no less than 15 days prior to the beginning of such month, whereas SCE required the list be delivered 75 days before the beginning of the operating month.⁸⁷

Response:

- SCE states that the timeline is appropriate for SCE to not only complete an internal assessment of the validity of customer accounts, but also complete processes the CAISO may require for appropriate registration. SCE has contracted for DR resources with this requirement in the past, and based on this experience, believes its timeline is commercially acceptable to the market.⁸⁸

6. Indemnification of Seller

- The Council states that SCE's Indemnification obligations are fair and balanced whereas PG&E and SDG&E does not indemnify the Seller and recommends that the same be used in all three pro forma contracts.⁸⁹

Response:

⁸⁵ SCE Response at 11.

⁸⁶ Council at 2-3.

⁸⁷ Ibid.

⁸⁸ SCE Response at 11.

⁸⁹ The Council at 7.

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- PG&E and SDG&E did not provide any response.

7. Compensation for Excess Energy Delivered

- Sunrun states that it believes SCE should compensate a seller for delivering excess amounts above 100% or 115% of the Expected Deferral Savings and Expected Energy Savings, as applicable.⁹⁰

Response:

- SCE strongly opposes this request as it would provide sellers a free option to overproduce at the expense of SCE's customers. In procuring for a distribution deferral need, SCE will select a portfolio of resources to best meet this need. If sellers are given a free option to overproduce, SCE will have no certainty in its portfolio costs. SCE understands that there is some variability in the production of a solar resource, and thus provides a 15% buffer to allow some overproduction from those resources when there is no battery installed. However, in order to control costs to customers, SCE states that it cannot be forced to procure additional overproduction from all resources as a free option to the seller. If the seller elects to overproduce, they can look to other market mechanisms to offtake any excess attributes.⁹¹

8. Exclusive Rights

- Sunrun states that SCE included a clause⁹² that makes the DER developer liable for SCE's own liability in the instance of product failure when it has

⁹⁰ Sunrun at 5.

⁹¹ SCE Response at 12-13.

⁹² Sunrun points to section 1.05(c) (c) which provides:

If SCE re-sells all or a portion of the Product or any associated rights acquired under this Agreement ('Resold Product'), Seller agrees to (and, if applicable, agrees to cause the Project's SC to):

- (i) Follow SCE's instructions and the CAISO Tariff with respect to providing such Resold Product to subsequent purchasers of such Resold Product.
- (ii) Take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product. Seller acknowledges and agrees that if SCE incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Project's SC to comply with the terms of this Agreement, and Seller would have had liability to SCE under this Agreement for such failure had SCE not sold

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resold the product. This provision should be struck given that the project is being provided to meet a utility need.⁹³

Response:

- SCE states that Sunrun misunderstands the definition of "Product" in their contract. The Product consists of a group of services. SCE might well keep the portion of the Product used for distribution deferral purposes while selling a portion of the product that is used for RA or other purposes.⁹⁴

9. Resource Adequacy Provisions

- Sunrun states that under SCE's Resource Adequacy provision⁹⁵, payments to the developer do not change even if Capacity Attributes related to Flexible RAR results in an increase or decrease in the amount of Capacity Attributes related to Flexible RAR. While that provides certainty, it is not clear that the terms are just and reasonable because if the project meets the requirements for increased capacity, the developer should be paid accordingly.⁹⁶

Response:

- SCE explains that Sunrun advocates for receiving a windfall in payments if a change Resource Adequacy results in a Project obtaining increased Flexible RAR Capacity Attributes. It is not clear if Sunrun also advocates for a reciprocal change to allow SCE customers to receive a windfall if a change results in a Project obtaining decreased Flexible RAR Capacity

the Resold Product, then Seller shall be liable to SCE under this Agreement, including pursuant to this Section 1.05, for the amounts for which it would have been liable to SCE had such Resold Product not been sold.

⁹³ Sunrun Attachment A at 1.

⁹⁴ SCE Response at Attachment A.

⁹⁵ Sunrun points to section "1.06(f)(ii) which provides:

If any change by the CAISO, CPUC or other Governmental Authority occurs that defines new or re-defines existing:

Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Project related to Flexible RAR, results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder there will be no change in payments made pursuant to this Agreement.

⁹⁶ Sunrun Attachment A at 1.

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Attributes. Because it is already reciprocal, SCE believes this provision is fair. It also protects SCE's customers by providing better certainty..⁹⁷

10. Initial Delivery Date

- Sunrun states that SCE's Initial Delivery Date clause⁹⁸ requires a Developer to pay to SCE the full amount of the Excess Network Upgrade costs before initial delivery date even if there is a good faith dispute on this. The terms in this section are not just or reasonable because it is the utility need that causes the costs in the first instance, and the utility should be paid for network upgrades.⁹⁹

Response:

- SCE views Sunrun's comments as unnecessary because its dispute resolution procedures already address what occurs in case of a dispute. SCE should not unnecessarily confuse these provisions by including them elsewhere in the document.¹⁰⁰

11. Daily Delay Liquidated Damages to Extend Expected Initial Delivery Date

- Sunrun states that SCE includes a provision that Daily Delay Liquidated Damages are owed if the Expected Initial Delivery Date is Extended by Seller. The amount is 2 percent of the Development Security per day. Sunrun states that this is unduly harsh, and not based on any actual damages.¹⁰¹

Response:

⁹⁷ SCE Response at Attachment A.

⁹⁸ Sunrun points to Section 2.04(a)(iv) Initial Delivery Date, which provides:

(a) The "Initial Delivery Date" shall be no earlier than the Expected Initial Delivery Date and shall be the first day of the first month after all of the conditions listed in this Section 2.04(a) and in Section 2.04 of Attachment 1 have been satisfied for the Project:

(iv) Seller has paid to SCE the full amount of the Excess Network Upgrade Costs, if applicable;

⁹⁹ Sunrun Attachment A at 1.

¹⁰⁰ SCE Response at Attachment A.

¹⁰¹ Sunrun Attachment A at 1.

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- SCE states that by their very nature, Daily Delay Liquidated Damages are used when it would be difficult or impossible to estimate what the actual damages would be. SCE has consistently required a Daily Delay Liquidated Damage of 2 percent of the Development Security per day in reliability solicitations because it is crucial for Projects to get online to solve the reliability need. To change this requirement would create undue confusion and contract administration issues because a Seller and SCE would be required to negotiate what damages are appropriate when a Seller comes to SCE seeking the ability to delay the Initial Delivery Date.¹⁰²

12. Timeliness of Payment¹⁰³

- Sunrun states that under this settlement structure, behind the meter resources are capacity limited as the payment structure excludes export capacity above a customer's instantaneous demand.¹⁰⁴

Response:

- SCE agrees that the restriction pointed out by Sunrun should be optional and only apply to those Projects that elect to be Non-Exporting as set forth in Section 1.02(d)(iii) of Attachment 1[-3]. SCE will make the correction.¹⁰⁵

13. Federal Tax Incentives Price Reduction

- Sunrun states that the federal tax incentive changes impacting the project that confer an economic or monetary benefit realized by any person from the lender to the parent to seller must be passed on to SCE. The percentages in the table seem off, and it is not clear how they were derived. If a change in the tax law, for whatever reason, confers a benefit to

¹⁰² SCE Response at Attachment A.

¹⁰³ Payments under the Timeliness of Payment clause will be made no later than the applicable Payment Date for each invoice by ACH or similar method, or by mutually agreeable methods, to the account designated by the Party to which payment is owed. Any payment made after such Payment Date shall include an Interest Payment. SCE AL 3900-E at 11.

¹⁰⁴ Sunrun Attachment A at 1.

¹⁰⁵ SCE Response at Attachment A.

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a developer, that entity should receive the benefits. Sunrun question why should the utility receive a benefit not conferred upon it by Congress?¹⁰⁶

Response:

- SCE's federal tax incentive language is intended to prevent Seller from getting a windfall at the expense of SCE's customers. SCE believes that its customers, through the contract and the interconnection agreement, are providing Sellers with the ability and motivation to build a new Project. Further, this is a commercially reasonable term that has existed in a large number of contracts that SCE has executed.¹⁰⁷

14. Changes in Operational Characteristics¹⁰⁸

- Sunrun states that SCE's requirement under changes in operational characteristics that seller provides SCE notice within 5 business days of changes in "Seller's financing including the sources of equity investments and debt financing" is a bit much and too vague, and it really should be changed to be more directly related to financing for the Project at issue.¹⁰⁹

Response:

- SCE states that Sunrun's comments are vague and ambiguous. To the extent a particular Project has different needs, SCE will negotiate this term to provide greater certainty and address a Seller's concerns.¹¹⁰

15. Critical Path Development Milestones

- Sunrun states that under this provision critical path development milestone are fixed by SCE which has a fair amount of discretion. Cure

¹⁰⁶ Sunrun Attachment A at 1.

¹⁰⁷ SCE Response at Attachment A.

¹⁰⁸ Sunrun points to Section 4.03(b)(ii) which provides:

"b) Seller shall provide Notice to SCE within five (5) Business Days after a change in the status of any of the following:

(ii) Seller's financing, including the sources of equity investments and debt financings."

¹⁰⁹ Sunrun Attachment A at 1.

¹¹⁰ SCE Response at Attachment A.

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periods¹¹¹ should be negotiable based upon the project. Negotiability should be the standard here. It should also be clear there is no violation when SCE is responsible for a developer not meeting the milestone.¹¹²

Response:

- SCE has a history of negotiating critical path development milestones to ensure that they meet specific needs of the Project. SCE plans to continue to negotiate these critical path development milestones while also recognizing that they are important to ensure that Seller is on track and will successfully be able to meet the distribution deferral need.¹¹³

16. Transmission and Interconnection

- Sunrun states that this provision unjustly makes developers responsible for all costs related to interconnection even though the project is to meet a utility need. If the utility was building the project, it would be responsible for costs. "Wires providers" do not pay interconnection costs. Here the utility causes the costs and its customers benefit from the upgrades. The utility should therefore be responsible for them.¹¹⁴

Response:

- SCE views this provision as in line with the interconnection agreement and standard for all projects. SCE explains that Sunrun's reasoning is unclear and its suggestion is out of scope of this advice letter seeking approval of SCE's TNPF contract as it would change the cost responsibility in the interconnection agreement.¹¹⁵

17. Cyber Security Precautions

- Sunrun states that this section allows the utility to impose additional security requirements on the developer. Security of utility facilities has become a serious issue, but the amount of discretion given SCE allows the

¹¹¹ A period provided by the utility for parties to remedy a failure after a party fails to perform any term or condition of the contract.

¹¹² Sunrun Attachment A at 2.

¹¹³ SCE Response at Attachment A.

¹¹⁴ Sunrun Attachment A at 2.

¹¹⁵ SCE Response at Attachment A.

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utility to drive up costs and discourage the project. While security requirements are to be "reasonable" SCE gets to determine what is reasonable, and it could ask for arbitrarily expensive measures.¹¹⁶

Response:

- SCE affirms that cybersecurity is critically important to that utility as it seeks to protect its critical infrastructure assets. It is important that SCE's long-term contracts are nimble enough to allow continued cybersecurity protections over the life of a potentially 20-year contract. As such, SCE needs the ability to require **reasonable** cybersecurity protections be put in place.¹¹⁷

18. Seller's Operation and Record Keeping Obligations. (DERs Monitoring)

- Sunrun states that new DER monitoring expenses can be foisted on developer if they increase due to CAISO or CPUC decisions. Sunrun argues that monitoring costs should be a utility expense since it is a utility need, but the contract shifts the risk to developers. If CAISO tariffs change due to SCE events, and require upgraded monitoring, developers don't get paid under the utility contract. Sunrun wouldn't have any idea of the costs which could significantly change the economics of a project.¹¹⁸

Response:

- SCE understands that new DER monitoring expenses are unknown and a risk for developers. However, SCE argues that Sunrun seeks to shift this risk to SCE's customers. SCE also does not know what these costs are and it is not clear why Sunrun thinks that these risks should be shifted to SCE's customers. Developers are in the business of developing and installing monitoring and metering technology at the best possible cost to the developers. SCE does not have this same experience and views this as a risk and cost that is better able to be borne by a developer.¹¹⁹

19. Development Security

¹¹⁶ Sunrun Attachment A at 2.

¹¹⁷ SCE Response at Attachment A.

¹¹⁸ Sunrun Attachment A at 2.

¹¹⁹ SCE Response at Attachment A.

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- Sunrun states that this contract provision requires the posting of a development security and performance security. Developers should have to post one security and then reduce it and change it when commercially operational. All securities should be returned within 10 days when eligibility accrues.
- Sunrun states that utilities should be required to post and a payment security after commercial operation is achieved. Why is the presumption that the utility will always pay on time? ¹²⁰

Response:

- SCE states that Sunrun's comments are ambiguous. SCE's TNPFC allows for one security (Development Security) to be reduced and changed at commercial operation (Performance Assurance). Sunrun also suggests that a utility should be required to post payment security; however, there is a vast difference in the standing of a developer and SCE. SCE will sign the contract in its capacity as a major California utility whereas developers often sign the contract as a special purpose entity created only for the purpose of entering into the contract. As such, it is especially important that the special purpose entity have security to secure its performance. Further, payments under the contract are already secured because procurement costs for power and capacity are passed through to customers through various balancing accounts. Posting of payment security by the utility will only increase costs to customers without providing any additional security to developers.¹²¹

20. Administration of Project Security

- Sunrun states that this provision allows for comingling of developer cash performance payments with general utility funds. Cash should be held in a separate account. This is not utility money.¹²²

Response:

¹²⁰ Sunrun Attachment A at 2.

¹²¹ SCE Response at Attachment A.

¹²² Sunrun Attachment A at 2.

PG&E'S AL 5434-E, SCE's AL 3900-E, and SDG&E's AL 3308-E

- SCE states when they enter into a contract SCE assumes that repayment of the Project Security is secure. However, SCE signs many contracts and with the expansion of deferral resources will sign even more in the future. The requirement to keep each contract payment security in a separate account is administratively burdensome and provides no benefits to Seller.¹²³

21. Credit and Collateral Covenants

- Sunrun states that these terms relate to credit covenants by seller and that they intrude on the business operations of Seller. Sunrun encourages the use of special purpose entities for projects which is pretty typical, but the terms are quite directive. Entities might not know they are technically in default and might unknowingly violate this provision.¹²⁴

Response:

- SCE explained that the TNPF is structured in such a way to allow the Seller to elect to create a special purpose entity. However, to the extent it elects to create a special purpose entity, the TNPF contract requires the Seller to meet certain obligations to protect the Project's development. To the extent that the Seller requires some additional clarification, SCE has negotiated these provisions. Regardless, it is imperative that Sellers understand the contracts that they enter into in order to ensure that they do not unknowingly violate a term of the contract.¹²⁵

22. Seller Covenants¹²⁶

- Sunrun states that this covenant precludes its assignment. That seems onerous if the assignee can meet the terms of the contract, and is unjust since under the proposed contract language, the project is saleable by the utility even though the project is designed to meet a specific utility need.¹²⁷

¹²³ SCE Response at Attachment A.

¹²⁴ Sunrun Attachment A at 2.

¹²⁵ SCE Response at Attachment A.

¹²⁶ "Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the term." SCE AL 3900-E at 37.

¹²⁷ Sunrun Attachment A at 2.

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Response:

- SCE uses its approved valuation methodology to enter into a contract with a counterparty that meets the needs of a solicitation. As such, SCE explains that it cannot allow Seller to assign the contract to whoever it pleases. However, SCE's TNPFC has provisions which allow the Seller to assign the contract with a consent to assignment from SCE (Section 14.04). SCE regularly agrees to assignments in order to allow a Project to be sold. Further, Sunrun misunderstands the fact that SCE may resell a portion of the Product, but this does not allow SCE to resell the Project without the Seller's consent (as specifically barred by Section 14.04(a)).¹²⁸

23. Customer Service Covenants

- Sunrun states that Subsection (b) allows SCE at its sole discretion to assist in marketing any project to SCE customers. This is apparently the case even for behind the meter projects? SCE should not have this discretion. It should be up to the developer because it is the developer's project, not SCE's project.¹²⁹

Response:

- SCE acknowledges that Sunrun correctly points out an error in their TNPFC. SCE explains that the intent of this provision is to require the Seller to submit any marketing materials that reference an SCE program in order to protect SCE's brand and customers, as is standard practice. Additionally, SCE wants to make it clear that it has the discretion, but is not required, to assist in a Seller's marketing. This, however, should be after a Seller requests SCE's assistance, rather than a unilateral right to elect to assist. As such, SCE will correct this error.¹³⁰

24. Events of Default; Termination

- Sunrun states that the events of default section is one sided and does not contain reciprocal provisions applicable to the utility. What if, for example, SCE does not provide the required information related to interconnection, or unreasonably refuses to interconnect? That sort of scenario has

¹²⁸ SCE Response at Attachment A.

¹²⁹ Sunrun Attachment A at 3.

¹³⁰ SCE Response at Attachment A.

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unfortunately been not uncommon and is not addressed in the contract. The definition of "Forward Settlement Amount" is implicated but is not defined as to clearly include the costs of infrastructure supplied by the developer. Sunrun explains that costs can be substantial for the developer, and developers we need to be sure they are covered if the utility defaults. Sunrun states that the utilities should be required to add clear specific language that requires them to cover all developer costs in the event of a utility default.¹³¹

Response:

- SCE explains that its energy procurement and transmission & distribution teams are ethically separated by the FERC Standards of Conduct. As such, SCE keeps its power purchase agreements and interconnection agreements separate with separate events of default. To the extent that the Seller has any remedies under the interconnection agreement, SCE suggests that a Seller seek those. However, SCE must continue to rely on the ethical walls that FERC creates. SCE is willing to negotiate the Forward Settlement Amount as necessary for Project-specific reasons.¹³²

25. Limitation on Seller's and Seller's Affiliates' Ability to Make or Agree to Sales from the Project after Certain Terminations of this Agreement

- Sunrun states that this section precludes developer sale of the product in the event of a termination of the contract. If there is a default, and termination of the contract, then that should be it. If the project is operational, the Seller may sell to any buyer of the product. Sunrun argues that there should be no prohibition on resale.¹³³

Response:

- SCE explains that the two-year right of first refusal on sales of the Product does not apply to all contract terminations—only contract terminations by SCE based on a Seller default prior to the Initial Delivery Date, by the Seller based on a Force Majeure event in which Seller is the claiming party, or by the Seller based on failure to obtain CPUC approval by a specified

¹³¹ Sunrun Attachment A at 3.

¹³² SCE Response at Attachment A.

¹³³ Sunrun Attachment A at 3.

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date. SCE believes that these provisions help to preserve the value of the contract for its customers by providing a disincentive for a Seller to invoke those provisions, in a rising market, to terminate its agreement and seek a more favorable contract.¹³⁴

26. Limitation of Remedies, Liability and Damages

- Sunrun states that this language limits what can be claimed as damages. Under this clause, for example, there can be no lost profit damages. This is too restrictive given contract terms that preclude developer selling the project to a third party, and that the developer has likely incurred significant costs. Sunrun states that Section 10.06 should be modified to allow for sales. This allows a developer to sell the project to another entity, but that in turn would depend on the project.¹³⁵

Response:

- SCE explains that this language is standard and is intended to memorialize the parties' intent to be bound by the agreed-upon contract damages (set forth in detail in Section 10.04) and indemnification provisions (set forth in Section 11.01). The limitation on liability language protects the Seller as well as SCE, because it restricts the ability of both parties to seek "consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages" outside those expressly provided in the contract.¹³⁶

27. Separation of Functions¹³⁷

- Sunrun states that this section limits SCE's liability for its failure to perform under the contract, including with regard to interconnection, and

¹³⁴ SCE Response at Attachment A.

¹³⁵ Sunrun Attachment A at 3.

¹³⁶ SCE Response at Attachment A.

¹³⁷ "(c) Seller's non-performance of any provision of this Agreement shall not be excused to any greater extent due to any action or inaction of SCE in its capacity as an owner or provider of electrical interconnection, transmission, or distribution service or equipment than it would be if the non-performance were due to any action or inaction of a person other than SCE." SCE AL 3900-E at

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it is not clear. It needs to be made clear that if SCE does not perform under the contract and as a result, the seller cannot perform, the seller is not liable for failure to perform.¹³⁸

Response:

- SCE explains that its transmission/interconnection/ distribution function is structurally separate from SCE's energy procurement function. This separation is required by the FERC Standards of Conduct. The seller must make its own arrangements for transmission, interconnection, or distribution services with that group. The seller should not be in a better position to claim excuses for delays under an energy resource sale agreement, simply because its service provider is SCE, than it would be had it sought service from a different service provider.¹³⁹

28. Dispute Resolution

- Sunrun states that this section requires binding arbitration as opposed to a court action and sets forth procedural rules. This should be a negotiated provision. Some parties prefer a more formal venue than arbitration for resolving legal disputes, because they believe they give up rights during arbitration.¹⁴⁰

Response:

- SCE explains that while some parties might prefer litigation to arbitration, it is equally true that many parties prefer arbitration to litigation. SCE believes that its dispute resolution provisions are fair, workable, and financeable in their current form.¹⁴¹

29. SCE's Indemnification Obligations/ Seller's Indemnification Obligations

- Sunrun states that these sections contain indemnification provisions in the event there is litigation regarding the project. They contend the provisions should be amended to be reciprocal.¹⁴²

¹³⁸ Sunrun Attachment A at 3.

¹³⁹ SCE Response at Attachment A.

¹⁴⁰ Sunrun Attachment A at 3.

¹⁴¹ SCE Response at Attachment A.

¹⁴² Sunrun Attachment A at 3.

Response:

- SCE states these provisions are already reciprocal, to the extent appropriate. The specific indemnified obligations are different because SCE and the Seller have different obligations under the agreement. Section 13.01 lists SCE's indemnification obligations. Section 13.02 lists the Seller's indemnification obligations.¹⁴³

30. Insurance

- Sunrun states that this section contains requirements for the developer to maintain insurance, and they are one size fits all, and therefore run counter to a technology neutral contract. Insurance requirements should not be the same for different sized projects.¹⁴⁴

Response:

- SCE states that its insurance provisions have been acceptable to many developers historically. SCE explains that it has taken the size of the Project into account in a number of different insurance contexts including Pollution Liability and Umbrella/Excess Liability Insurance. However, SCE's other insurance requirements are minimal and do not require the policies to be based on size.¹⁴⁵

31. Consolidation of Seller's Financial Statements

- Sunrun states that this section allows SCE to determine, using its in-house accountants, whether it needs to collect the Seller's unaudited financial data, which SCE can send in its own auditors and treat the data as confidential. Sunrun believes this process to be too intrusive and should be amended so that both parties must agree that it is appropriate to collect the Seller's data.¹⁴⁶

Response:

¹⁴³ SCE Response at Attachment A.

¹⁴⁴ Sunrun Attachment A at 3.

¹⁴⁵ SCE Response at Attachment A.

¹⁴⁶ Sunrun Attachment A at 3.

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- SCE views this provision as essential in order to maintain compliance with laws and Generally Accepted Accounting Principles. SCE explains that it is an unlikely event that SCE is required to consolidate the Seller's financial statements with its own. Costs to the Seller are limited as SCE's auditors will be those that perform such required audits.¹⁴⁷

F. Other Protested Issues

1. Updates to TNPFC

- Cal Advocates proposes that the Commission require the IOUs to submit TNPFC contracts annually through Tier 1 advice letters. Cal Advocates explain that this process will provide stakeholders an opportunity to provide feedback as the distribution deferral solicitation process becomes more refined.¹⁴⁸
- The Council supports the IOUs making minor updates to the TNPFC contracts as needed but suggests that substantial changes must be approved by the Commission.¹⁴⁹

Response:

- SCE states that the Commission should not require the IOUs to seek formal Commission approval to update their TNPFC contracts. SCE explains that the TNPFC contract is meant to handle all DER technology types, unlike other procurement activities that may be focused on a specific technology type (e.g., renewables or energy storage). As such, more frequent updates will most likely be necessary to keep the TNPFC contract current since it covers more resources. The regulatory process must remain flexible to accommodate these changes.¹⁵⁰
- SCE further states that allowing the constant evolution of the TNPFC contracts is crucial because procuring DERs for distribution deferral is still new, and contract terms are likely to change frequently as the market develops. Distribution deferral resources are an important part of California's energy future and TNPFC contract changes to support the

¹⁴⁷ SCE Response a Attachment A.

¹⁴⁸ Cal Advocates at 6.

¹⁴⁹ Council at 4.

¹⁵⁰ SCE Response at Attachment A.

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growing market should not have to wait for an annual approval process. That would risk the contract becoming stale and not being able to meet IOU and developer needs.¹⁵¹

- PG&E states that it is not opposed to refining the TNPFC with stakeholder input however, PG&E is concerned about establishing another administrative burden by requiring an ongoing reporting requirement which can lead to an inefficient process of protests and the need for a yearly Commission resolution.¹⁵²

2. Incrementality

- CESA states that it disagrees with SCE's explicit elimination of all NEM systems from eligibility based on provisions around the "Double Incentive" in SCE's IDER RFO.¹⁵³
- CESA states that it disagrees with SDG&E's statement that it will not view NEM or Self-Generation Incentive Program (SGIP) funded projects as being incremental and thus, ineligible in the IDER RFO.¹⁵⁴
- Cal Advocates state that the Utilities have not taken a consistent position with respect to defining incrementality within the TNPFC. Cal Advocates explains that a clear and consistent definition of incrementality should be included within the IOU's RFO materials as part of the IDER competitive solicitation process, which should be referred to in the terms and conditions included within the TNPFC contracts.¹⁵⁵

Response:

- SCE states that while it understands the importance of further discussions on incrementality. This is not the venue to make policy changes.¹⁵⁶
- SDG&E states the protests received to their approach on incrementality is premature and out of scope for this AL.¹⁵⁷

¹⁵¹ Ibid.

¹⁵² PG&E Response at pp. 3-4.

¹⁵³ CESA at 7.

¹⁵⁴ CESA at 7.

¹⁵⁵ Cal Advocates at 3.

¹⁵⁶ SCE Response at 6.

PG&E'S AL 5434-E, SCE's AL 3900-E, and SDG&E's AL 3308-E

- PG&E agrees with Cal Advocates regarding establishing a clear and consistent definition of incrementality however, disagrees that incrementality is included in the TNPFC.¹⁵⁸

3. Compliance with MUA Rules

- Cal Advocates recommends that the Commission require that the TNPFC's comply with Commission's energy storage multi-use application rules.¹⁵⁹

Response:

- SCE states that the IOUs, as directed by D.18-01-003, already have the obligation to comply with the MUA rules.¹⁶⁰

4. Timing of solicitation

- Sunrun states that there is no language that addresses the provision of information to bidders before or during the bid process. Sunrun recommends that IOUs provide at least two months for solicitation responses.¹⁶¹

Response:

- SDG&E states that Sunrun's request is outside of the scope of the TNPFC contract. However, SDG&E agrees that at the time of the DIDF RFO, IOUs need to provide information necessary for DER providers to understand (1) how the evaluation of offers will be performed, (2) how eligibility to submit an offer will be established, and (3) the basis for determining that an offer is conforming.¹⁶²

5. Single Counterparty

¹⁵⁷ SDG&E Response at 7.

¹⁵⁸ PG&E Response at 2-3.

¹⁵⁹ Cal Advocates at 5.

¹⁶⁰ SCE Response at 9.

¹⁶¹ Sunrun at 2.

¹⁶² SDG&E Response at 7.

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- Sunrun states that SDG&E's proposal to limit responses to a single counterparty should be rejected because the best solution might be a portfolio of projects.¹⁶³
- Cal Advocates states that this requirement places an unreasonable level of risk on Sellers and will deter interest in bidding for distribution deferral.¹⁶⁴
- CESA states that the single counterparty requirement is not necessary and should be eliminated.¹⁶⁵

Response

- SDG&E states that the single-contract provision is outside of the scope of the TNPFC.¹⁶⁶

¹⁶³ Sunrun at 5.

¹⁶⁴ Cal Advocates at 6.

¹⁶⁵ CESA at 6.

¹⁶⁶ SDG&E Response at 7.