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Decision 24-04-006 April 18, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E) for Approval of its Demand Response Programs, Pilots and Budgets for Program Years 2023-2027.	Application 22-05-002
And Related Matters.	Application 22-05-003 Application 22-05-004

DECISION SUNSETTING THE INVESTOR-OWNED UTILITIES' DEMAND RESPONSE AUCTION MECHANISM PILOT PROGRAMS

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DECISION SUNSETTING THE INVESTOR-OWNED UTILITIES' DEMAND RESPONSE ACTION MECHANISM PILOT PROGRAMS

Summary

This decision sunsets the Demand Response Auction Mechanism pilot programs of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company, by December 31, 2024, or sooner if the funding limits authorized for the pilot programs as set forth in Decision 23-01-006 are reached prior to that date.

The proceedings are closed.

1. Background

1.1. Demand Response Programs

Demand Response (DR) programs encourage reductions, increases, or shifts in electricity consumption by customers in response to economic or reliability signals. Such programs can provide benefits to ratepayers by reducing the need for construction of new generation and the purchase of high-priced energy. DR can also assist with grid stability in times of grid stress.

1.2. Demand Response Auction Mechanism Pilots

California Public Utilities Commission (Commission) Decision (D.) 14-12-024 established the Demand Response Auction Mechanism (DRAM) Pilot program to test the feasibility of a competitive market for procuring supply side DR resources and to elaborate upon a framework for integrating supply side DR resources into the California Independent Systems Operator (CAISO) markets. DRAM is a pay-as-bid solicitation through which the investor-owned utilities solicit and procure supply side DR resources from third-party Demand Response Providers (DRPs) who directly bid the DRAM resources into the CAISO energy markets. Winning DRP bidders receive capacity payments from the Utilities and energy payments from CAISO when their resources get dispatched. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (together, the Utilities) were directed by the Commission to enable DRAM.

Following the 2016-2017 DRAM Pilot program authorization, D.16-06-029 directed the Utilities to extend the DRAM Pilot program through 2018-2019. D.17-10-017 directed the Utilities to conduct an additional 2019 DRAM pilot program. In 2019, the Commission's Energy Division presented an Evaluation Report of the 2016-2018 DRAM Pilot program.[1]

D.19-07-009 directed the DRAM Pilot program to continue from 2020 through 2023. Pursuant to the Energy Division Evaluation Report, that decision ordered several program modifications with the intention of improving the reliability and performance of the DRAM Pilot program. It also established an Energy Division-led annual refinement process with working group meetings for additional improvements, and authorized a second DRAM evaluation for the following years.

D.19-07-009 established that the Commission would reassess DRAM in the 2023-2027 DR application proceeding. That decision stated that the Commission would review the implemented DRAM refinements and the evaluation on the four-year continuation of the pilot to "determine whether the refinements and evaluation results are sufficient to permanently adopt the Auction Mechanism and expand its role."[2] D.19-12-040 directed the adoption of additional

[1] Attachment to January 4, 2019 Administrative Law Judge's Ruling Issuing Evaluation Report of the Demand Response Auction Mechanism Pilot, Noticing January 16, 2019 Workshop, and Denying Motion to Require Audit Reports in the Evaluation Report.

[2] D.19-07-009 at 74.

recommendations, based upon the working group report, to further enhance the DRAM Pilot program's performance and reliability.

On July 5, 2022, the second evaluation report (Nexant Report) was entered into the proceeding record. On March 3, 2023, an updated Nexant Report was entered into the proceeding record.[3] For clarity, all mentions of the Nexant Report in this decision refer to this updated version of the Nexant Report.[4] The Nexant Report's findings, conclusions, and recommendations were subsequently presented and discussed in a stakeholder workshop.

On January 13, 2023, D.23-01-006 directed the DRAM Pilot program to continue through 2024.

In total, the DRAM Pilot program has been in existence for nine years, from 2016 through 2024. Along the way, there were a series of formal reviews and evaluations, a series of workshops and working group meetings, and a series of proposals for program improvements. These reviews and proposals resulted in a series of enhancements intended to improve the reliability and performance of the DRAM Pilot program.

1.3. Procedural History

D.17-12-003 approved the Utilities' 2018-2022 portfolio of DR programs.[5] It also directed the Utilities to file their 2023-2027 DR portfolio applications by November 1, 2021. A September 30, 2021, letter issued by the Commission's Executive Director extended that deadline to May 2, 2022.

On May 2, 2022, PG&E (Application (A.) 22-05-002), SDG&E (A.22-05-003),

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[3] Administrative Law Judge Ruling seeking party comment on Demand Response Auction Mechanism questions and providing updated public version of the Demand Response Auction Mechanism Evaluation Report.

[4] https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M502/K977/502977264.PDF

[5] The Utilities have six permanent and 16 pilot DR programs.

and SCE (A.22-05-004) filed their respective 2023-2027 DR portfolio applications. Included in the applications were Utility reviews of their DRAM Pilot programs. On May 25, 2022, pursuant to Rule 7.4 of the Commission's Rules of Practice and Procedure (Rules), an Administrative Law Judge (ALJ) Ruling consolidated these applications (A.22-05-002 *et al*.).

On June 6, 2022, a protest to the consolidated applications was filed by the Public Advocates Office of the California Public Utilities Commission (Cal Advocates). Also on June 6, 2022, responses to the consolidated applications were filed by these entities: Center for Energy Efficiency and Renewable Technologies; California Efficiency + Demand Management Council (the Council); California Energy Storage Alliance; California Large Energy Consumers Association; CPower; Enel X North America, Inc.; Google LLC; Leapfrog Power, Inc. (Leap); Marin Clean Energy; Polaris Energy Services; Small Business Utility Advocates; and, The Vehicle Grid Integration Council (VGIC).[6]

A prehearing conference (PHC) was held on June 16, 2022, to discuss the scope, schedule, and other procedural matters. On July 5, 2022, the Assigned Commissioner's Scoping Memo and Ruling (First Scoping Ruling) was issued, detailing the scope and schedule of this proceeding. The First Scoping Ruling detailed a phased schedule for this proceeding, with DR Phase I focusing on the 2023 DR Bridge Year Funding, DRAM Phase I focusing on DRAM 2024 funding,

[6] These entities were later granted party status: Alliance for Automotive Innovation; The California Independent System Operator (CAISO); City of San Jose; East Bay Community Energy Authority (later identified as Ava Community Energy Authority); Enchanted Rock, LLC; EV Energy Corp.; Gridtractor, Inc.; Industrial Pumping Customers; OhmConnect, Inc.; Peninsula Clean Energy; San Diego Community Power; Sierra Club; Silicon Valley Clean Energy; Sonoma Clean Power Authority; Tesla, Inc.; TeMix Inc.; Uplight, Inc.; Voltus, Inc.; and Weave Grid, Inc.

DR Phase II addressing the Utilities' 2024-2027 DR program proposals, and DRAM Phase II addressing the future of the DRAM Pilot program.

On December 6, 2022, the Commission issued D.22-12-009, resolving DR Phase I concerning the 2023 DR Bridge Year Funding.

On January 13, 2023, the Commission issued D.23-01-006, resolving DRAM Phase I concerning funding for the year 2024. That decision authorized $6,000,000 for PG&E, $6,000,000 for SCE, and $2,000,000 for SDG&E to fund their DRAM Pilot programs in 2024.

On October 25, 2022, a second PHC was held to consider DR Phase II and DRAM Phase II aspects of this proceeding. On December 19, 2022, the Assigned Commissioner issued an Amended Scoping Memo and Ruling setting forth the issues and schedule for DR Phase II and DRAM Phase II (Phase II Scoping Ruling).

On January 27, 2023, the Assigned Commissioner issued a ruling seeking party comments to questions specific to DR Application Phase II and DRAM Phase II issues, and party comments to Energy Division's proposals regarding possible DR and DRAM program changes.[7] On March 2, 2023, a further ruling was issued directing the release of Emergency Load Reduction Program data to inform responses to the January 27, 2023 Ruling.

On December 20, 2023, the Commission issued D.23-12-005, resolving DR Application Phase II issues. Therefore, the sole remaining issue concerning this proceeding is DRAM Phase II.

[7] Assigned Commissioner's Ruling Directing Response to Questions and Energy Division Staff Proposals Related to Application 22-05-002 Phase II Issues and Directing SCE to Submit a Capacity Bidding Program Elect Proposal For Program Years 2024-2027, January 27, 2023.

On August 11, 2023, Cal Advocates, Leap, PG&E, SCE, and SDG&E filed a Joint Motion for submission of evidence regarding DRAM Phase II issues. The Joint Motion was unopposed, and granted by ALJ ruling on August 24, 2023.

On October 2, 2023, Cal Advocates, Leap, PG&E, SCE, SDG&E, and Voltus filed Opening Briefs regarding the DRAM Phase II issues. On November 3, 2023, Cal Advocates, Leap, OhmConnect, PG&E, SCE, SDG&E, and Voltus filed Reply Briefs.

2. Submission Date

This matter was submitted on November 3, 2023, upon the filing of Reply Briefs.

3. DRAM Phase II Issues

The Phase II Scoping Ruling identified the following DRAM Phase II issues:

1. Should the DRAM be adopted as a permanent program?
   a. If so, what modifications and budget should be authorized?
2. Should the DRAM be continued as a pilot?
   a. If so, what evaluation standards, modifications, and budget should be authorized?
3. Should the DRAM be ended?
   a. If the DRAM is ended, what actions, if any, should the Commission take to provide alternative pathways for third parties to participate in DR?
4. If the DRAM is continued, what information related to the solicitation processes and the bidding, dispatch, and delivery of DRAM resources should be considered confidential, and what should be reported publicly and/or confidentially?

4. Jurisdiction

Public Utilities (Publ. Util.) Code Sections 451 and 454 provide broad Commission authority to consider utility applications. Each of the applicants is a public utility operating in California. Therefore, jurisdiction for this proceeding is properly vested in the Commission.

Pub. Util. Code Section 451 reads as follows:

> All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.
> Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.
> All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

Pub. Util. Code Section 454 reads in pertinent part as follows:

> (a) …[A] public utility shall not change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified. Whenever any electrical, gas, heat, telephone, water, or sewer system corporation files an application to change any rate, other than a change reflecting and passing through to customers only new costs to the corporation which do not result in changes in revenue allocation, for the services or commodities furnished by it, the corporation shall furnish to its customers affected by the proposed rate change notice of its application to the commission for approval of the new rate…

> (c) The commission may adopt rules it considers reasonable and proper for each class of public utility providing for the nature of the showing required to be made in support of proposed rate changes, the form and manner of the presentation of the showing, with or without a hearing, and the procedure to be followed in the consideration thereof…

Accordingly, Pub. Util. Code Sections 451 and 454 each apply for purposes of this proceeding. Further, the applications, which comprise the Utilities' response to D.17-12-003's requirement to file their DR portfolios, comply with the Commission's Rules for applications. Therefore, the Commission may proceed to review the merits of the applications.

5. Standard for Review

The December 19, 2022, Assigned Commissioner Ruling stated in part as follows:

> We note here that to continue the DRAM the Commission must affirmatively find in this Phase II that the DRAM has been successful in achieving its goals of ensuring cost-effective[8] and reliable demand response resources.[citing D.16-09-056 at 64] In considering this issue, we will consider a number of factors, including those laid out in the DRAM Evaluation Report written by Resource Innovations (formerly known as Nexant) in partnership with Gridwell Consulting (Nexant Report).[citing D.16-09-056 at 65-66.]

The Nexant Report, in accordance with D.16-09-056, investigated six evaluation issues in determining whether the DRAM Pilot was successful:

1. Did DRAM engage new, viable DRPs?
2. Did DRAM engage new customers?
3. Were auction bid prices competitive?

[8] In this decision, the term "cost-effectiveness" is used generically as a synonym for "cost competitiveness" (and is not used as a Commission term of art as may be found in other decisions regarding cost-effectiveness).

4. Were offer prices competitive in wholesale markets?
5. Did DRPs meet their contractual obligations?
6. Were resources reliable when dispatched?[9]

Finally, we note that by its nature, a pilot program would generally sunset at the end of its authorized period if it fails to demonstrate success in achieving its intended goal. As reiterated in D.23-01-006:

> We clarify that the Commission already adopted the six criteria used in the Nexant Report as the objectives that DRAM must meet in order to be deemed successful and moved out of pilot status, and that these criteria were adopted to ensure that DRAM be cost-effective and reliable in line with the goals and principles for all Commission-regulated demand response programs.
>
> However, we find that issues concerning setting a standard for DRAM pilot program cost-effectiveness and reliability beyond the six criteria already adopted by the Commission are out of scope for Phase I of this proceeding. Phase II of this proceeding will further address the analysis for meeting that standard.[10]

6. Discussion and Party Positions

This decision will determine whether to continue DRAM beyond 2024. Specifically, we address whether DRAM should:

1. Be adopted as permanent program, and if so, with what modifications and budget;
2. Continue as a pilot, and if so, with what evaluation standards, modifications, and budget; or
3. Sunset, and if so, what actions, if any, are needed to provide alternative pathways for third parties to participate in DR?

[9] Nexant Report at 2, with analysis and recommendations of these criteria comprising the near-whole of the 170-page report.

[10] D.23-01-006 at 31, citing to D.16-09-056 at 64-66 and Ordering Paragraphs (OPs) 7-8.

We will consider the six criteria set out in the Nexant Report, the standards for review identified in Section 5 of this decision, and parties' testimony and comments in determining the pilot's future.

6.1. Did DRAM Engage New, Viable DRPs?

The Nexant Report states that this criterion is met. The report assessed this criterion on both the newness and the viability of the DRPs. It states: "Yes, two of the nine DRPs that won contracts were new."[11] However, the report noted that in 2016-2019, 10 out of the 16 winning DRPs were new, versus only two out of nine in 2019-2021.[12] The number of DRP bidders and winning DRPs in DRAM auctions has also fallen over time, from 23 in 2019 to 16 in 2021, with SDG&E receiving bids from just three DRPs in 2021.[13] In terms of viability, the report notes that "viability has improved, but integration challenges remain. The market is moderately to highly concentrated."[14] In 2020 and 2021, three DRPs held most of the contracted capacity.[15]

The Council/Leap argued that DRP participation in the auction process is expected to become stable over time as DRPs eventually decide whether or not to participate.[16]

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[11] Nexant Report at 2.

[12] *Id*. at 3.

[13] *Id*. at 57.

[14] *Id*. at 2.

[15] *Id*. at 20.

[16] Exhibit Council/Leap-02 at 6.

PG&E argued that because the Nexant Report's findings confirmed that "the number of bidders and bids in DRAM auctions has fallen over time," it raises concerns over the ongoing viability of DRAM.[17]

SCE also pointed out that there has been a net decline of DRPs winning contracts at SCE.[18] Importantly, both SCE and SDG&E received such limited DRP bidder participation in their solicitations that they found it challenging not to award bids to those DRPs with previously failed contractual obligations.[19]

Cal Advocates noted that megawatts (MWs) offered into the DRAM solicitation in 2024 were significantly lower than in earlier program years, with only 73.05 MWs in bids offered in 2024, compared to over 200 MWs per year from 2018 to 2021.[20] Cal Advocates also noted that not only were MWs offered into the solicitations significantly lower, but that there was also a decrease in contracted MWs.[21]

6.2. Did DRAM Engage New Customers?

The Nexant Report concluded that this criterion is met. However, it also noted that "the proportion of new customers is decreasing in each cycle."[22] In 2019, about 58% of all participants were new to DRAM compared to 2018 enrollment, but in 2020, only 26% of enrolled customers were new to DRAM.[23] Relatedly, it is important to note that, unlike the first DRAM evaluation in which

[17] PG&E DRAM Phase II Opening Brief at 9, citing Nexant Report at 2.

[18] Exhibit SCE-06 at 7.

[19] Exhibit SCE-06 at 7; SDG&E Phase II Opening Brief at 6: "because SDG&E receives so few bids, it is often required to accept these companies, despite their demonstrated failures."

[20] Exhibit Cal Advocates-08 at 1-4.

[21] *Ibid.*

[22] Nexant Report at 2.

[23] *Id.* at 4.

"new" participants were defined as new to DR, the Nexant Report defined "new" only as new to DRAM, and therefore some "new" customers may have already previously participated in other DR programs.[24]

The Council/Leap argued that the rate of new customers added would likely be expected to decrease due to a slowing in growth of the DR market.[25]

PG&E and SCE argued that customer trends regarding this important requirement indicate that DRAM is moving in the wrong direction over time.[26]

6.3. Were Auction Bid Prices Competitive?

The Nexant Report concluded that this criterion is "mostly" met. It based this determination upon the statewide average level, noting that average DRAM contract prices were lower than the Long Run Avoided Cost of Generation (LRAC) and were more competitive with the LRAC at the end of the evaluation period (2021) than at the beginning (2019).[27] However, this is an expected outcome, given that the Commission-approved bid selection process expressly allows the Utilities to forgo contract awards for any bids that exceed the LRAC, which is established as a benchmark for evaluating DRAM bids.

DRAM also fared less well when compared to other capacity-cost benchmarks. At a statewide average level, DRAM was not competitive with the Capacity Procurement Mechanism price.[28] Also, DRAM was less competitive

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[24] *Ibid*.

[25] Exhibit Council/Leap-02 at 6.

[26] PG&E DRAM Phase II Opening Brief at 8-9; SCE DRAM Phase II Opening Brief at 4-5.

[27] Nexant Report at 2.

[28] *Id*. at 59-66.

than the Resource Adequacy Availability Incentive Mechanism.[29] Finally, DRAM was less competitive than the public Short-Run RA capacity prices.[30]

PG&E highlighted that the Nexant Report found no consistent trend of improvements in average contract prices, and no consistent year-over-year trend in such improvements.[31]

6.4. Were Offer Prices Competitive in Wholesale Markets?

The Nexant Report concluded that this criterion has not been met. The Nexant Report found that "DRAM resources tend to be offered at prices that far exceed that of both the net benefits test and other resource types."[32] It also found that many DRPs submitted bids at or near the CAISO market's price cap.[33]

The Nexant Report noted that while there appeared to be a slight change in DRPs bidding more MW hours at lower prices than in the past, it is challenging to clearly conclude if this is a trend or a result of data quality issues.[34] It also adds that the slight increase in bidding frequency/activity may be in response to the change in stricter contractual obligations adopted by the Commission starting in 2021.[35]

The Nexant Report also concluded that in 2020 and 2021, DRAM bid prices in the wholesale markets were not competitive against peaker plants, energy

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[29] *Ibid*.

[30] *Ibid*.

[31] PG&E DRAM Phase II Opening Brief at 9.

[32] Nexant Report at 6.

[33] *Id*. at 85.

[34] *Id*. at 6.

[35] *Id*. at 96.

storage, or the Utilities' other DR programs.[36] Given these comparisons, SCE, PG&E, and Cal Advocates asserted that DRAM DRPs' bid prices cannot satisfy the Commission's mandate that DRAM be competitively bid.[37] PG&E notably observed that despite the fact that day-ahead bid prices decreased by nine percent from 2020 to 2021, real-time bid prices increased by 45 percent.[38]

Cal Advocates also argued that DRAM sellers' bidding behavior has created an illogical dispatch order where Reliability Demand Response Resources are being dispatched before economic Proxy Demand Resources (PDR) during emergency conditions.[39] It asserted that DRAM resources were not competitive because DRAM providers continued to submit bids at or near the CAISO market's price cap, "result[ing] in emergency last resort resources being used before DRAM resources," which "circumvents the Commission's intention that DR resources perform like other supply side non-emergency resources."[40] In that same vein, and critical to the purpose of DRAM, Cal Advocates also noted that virtually all DRPs' day-ahead bid prices remained high, at or near the price cap, during the extreme September 2022 heatwave, thereby diminishing DRAM's intended purpose.[41]

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[36] *Id.* at 86.

[37] PG&E DRAM Phase II Opening Brief at 10; Exhibit Cal Advocates-03 at 1-3, 1-6; Exhibit SCE-16 at 2.

[38] PG&E DRAM Phase II Opening Brief at 11, citing the Nexant Report at 84.

[39] Exhibit Cal Advocates-03 at 1-6; Cal Advocates Phase II DRAM Opening Brief at 6-7.

[40] Exhibit Cal Advocates-08 at 1-6.

[41] Exhibit Cal Advocates-03, at 1-4 - 1-5.

6.5. Did DRPs Meet Their Contractual Obligations?

The Nexant Report showed mixed results regarding the ability of DRPs to meet their contractual obligation.[42] While Must-Offer Obligation compliance was high, alignment of Supply Plan Qualifying Capacity and Demonstrated Capacity with Contracted Capacity declined year-over-year.[43] Importantly, the Nexant Report also noted that only 30% of the contracts that were evaluated succeeded in fulfilling their 2021 minimum dispatch requirement (set by the Commission starting in 2021).[44]

PG&E noted that DRAM contracted capacity is not consistently delivered, and is in fact declining, observing that demonstrated capacity had fallen from 2019 through 2021.[45]

Cal Advocates noted that based on 2019 tests and dispatches, DRAM PDR sellers are reporting more Supply Plan Capacity than will ultimately be available.[46] Cal Advocates asserted that, based upon 2019 and 2020 DRAM resource invoices and CAISO settlement and bid data, DRAM DRPs are not meeting their contractual capacity obligations and are not reliably providing energy reductions when dispatched.[47] Cal Advocates, citing two consent agreements entered into with the Federal Energy Regulatory Commission, also argued that two DRAM DRPs had submitted bids that they could not fulfill.[48]

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[42] Nexant Report at 2.

[43] *Ibid*.

[44] Nexant Report at 2.

[45] PG&E DRAM Phase II Opening Brief at 12-13.

[46] Exhibit Cal Advocates-02 at 1-6 - 1-7.

[47] *Id*. at 1-7 - 1-12; Exhibit Cal Advocates-03 at 1-8 - 1-9.

[48] Exhibit Cal Advocates-03 Attachment 20 at 2; Exhibit Cal Advocates-03 Attachment 21 at 2.

The two DRPs stipulated to facts that led to violations being assessed against them because they submitted bids that they could not reasonably expect to fulfill due to the bids exceeding the registered meter loads of all their customers, in violation of the CAISO Tariff.[49] Finally, Cal Advocates noted that demonstrated capacity relative to contracted capacity decreased from 65 percent in 2019 to 57 percent in 2021.[50]

SCE noted that the DRAM contract allows the qualifying capacity to be reduced from the contracted capacity. The result is that ahead of monthly RA compliance filing deadlines, Utilities are unsure as to whether what was bid and contracted for will actually appear on their monthly RA supply plans, which increases uncertainty and thereby reduces the grid reliability.[51]

OhmConnect argued that the lowered capacity on month-ahead supply plans was likely due to DRPs using more discretion in submitting supply plans. OhmConnect asserted that the demonstrated capacity for DRPs was an equal or larger proportion of their supply plan capacity in 2021 versus 2020. While it did not dispute the decrease in performance as cited by the Utilities, OhmConnect argued that the decrease in performance was due to the new DRAM design.[52]

6.6. Were Resources Reliable When Dispatched?

The Nexant Report showed mixed results regarding the reliability of dispatched resources. The Nexant Report's key conclusion was that, from the available data, some DRPs seem to be performing well during some events, but

[49] *Id*. at 1-9 – 1-10.

[50] *Id*. at 1-13.

[51] SCE DRAM Phase I Opening Brief at 15.

[52] Exhibit OhmConnect-3 at 4.

then significantly underperformed for the remainder of their contract terms.[53] The Nexant Report also found significant discrepancies between performance results calculated by the DRPs in their quarterly reports, compared to the performance results calculated by Nexant based on Utility meter data and the performance results submitted by the DRPs' Scheduling Coordinators for the purposes of CAISO settlement.[54]

Leap asserted that "average" performance has increased year over year from 51 percent in 2018 to 84 percent in 2021, which is above the 75 percent threshold used for acceptable performance for the Utilities' Capacity Bidding

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[53] Nexant Report at 8.

[54] *Id.* at 8. We also take note of the following from the Nexant Report: "Two years are shown for comparison because there are *[REDACTED]* DRPs that are consistently performing exactly at 100% in 2020 and 2021 that skew the results higher; thus, the overall impact of *[REDACTED]* is likely somewhere between the impact shown in 2019 and 2021." Nexant Report at 143. We have significant concerns regarding the accuracy of various DRP reporting, because the Nexant Report from page 142 to page 158 refer to many instances of inconsistencies in the information the DRPs provided.

The Nexant Report concluded this section as follows:

> Overall, the accuracy and performance of DRAM resources varies greatly by DRP and over time. In most event hours, DRPs overreport their delivered energy. In addition to this, DRPs do not report the same delivered energy values in their quarterly reports as they do when the SC reports the delivered energy to CAISO for settlement. *[REDACTED]* tend to more accurately report their delivered energy and more consistently meet their expected energy. *[REDACTED]* all differ in the accuracy of their baselines and performance of their resources through time.
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> (Nexant Report at 158.)

The Nexant Report also provided the following summation:

> Throughout this project, Nexant had to manage, clean, and work with incomplete, inconsistent, erroneous, and duplicative data. Having to reconcile data across different data sources and datasets led to many inconsistencies in the data. Where possible, the Nexant Team worked internally and with relevant stakeholders to resolve data issues, but some could not be solved within scope.
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> (Nexant Report at 158.)

Programs.[55] But PG&E countered Leap's assertion by citing the Nexant Report's findings that although there may be an increase in "average" performance, the lower-performing DRPs represent a significant portion of the overall dispatched MW hours, and these lower-performing DRPs only performed at a 58 percent level. PG&E argued that significant participation by lower-performing DRPs will only further degrade the performance of DRAM, not improve it.[56]

SCE's testimony cited to the CAISO Department of Market Monitoring 2021 Demand Response Issues and Performance Report, which stated that "[i]n the aggregate, the total third-party demand response fleet shown as RA including DRAM resources, under-performed compared to CAISO dispatch instructions on high load days."[57]

Cal Advocates, SCE, and SDG&E further pointed out that the critical failure of DRAM to actually respond as intended results in a lack of MW availability during the most critical hours and grid conditions, such as during heatwaves, when the need for these resources is highest.[58]

Cal Advocates noted that during the extreme heat event of September 2021, demonstrated capacity dipped to only 36.5 percent.[59]

Leap argued that "DR has proven itself to be a valuable wholesale resource, providing roughly 350 MW during the September 6, 2022 heatwave day."[60] However, PG&E disputed Leap's argument as misleading, noting that

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[55] Exhibit Leap-01 at 7.

[56] PG&E DRAM Phase II Opening Brief at 16, citing the Nexant Report at 138.

[57] Exhibit SCE-07 at 7.

[58] SDG&E DRAM Phase II Opening Brief, at 6; SCE DRAM Phase II Opening Brief, at 6-7; Cal Advocates DRAM Phase II Opening Brief at 10.

[59] Exhibit Cal Advocates-03 at 1-13.

[60] Exhibit Leap-01 at 4.

the public report only demonstrates the amount DRPs have scheduled, and not what was actually delivered.[61] Cal Advocates responded that Leap's argument misrepresents CAISO's findings, and also pointed out that Utility resources are subject to the same baseline rules as DRAM resources, and yet Utility resources performed much better under the same conditions as compared to DRAM resources.[62]

SCE observed that on September 6, 2022, when system-wide demand reached record levels, and day-ahead market prices reached over $1,000 in multiple hourly intervals, the ratio of DRAM dispatched capacity compared to contract capacity was only approximately 23 percent from 6:00 p.m. to 7:00 p.m., a time of peak grid stress.[63]

SDG&E noted that the failure of DRAM performance during the August 2020 major heatwave makes clear that DRAM had a "lack of availability during critical hours."[64] SDG&E asserted that the lack of availability means that SDG&E is unable to rely on DRAM resources in its resource adequacy positions, forcing it to procure additional resources to cover the shortfall, at additional cost to ratepayers.[65]

Regarding performance, the Nexant Report addressed the misalignment of DRAM capacity contract payments with demonstrated performance. Currently, the DRAM pro forma includes performance payment bands that reduce DRP

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[61] PG&E DRAM Phase II Opening Brief at 15.

[62] Cal Advocates Phase II Opening Brief at 14; Exhibit Cal Advocates-08 at 1-2 - 1-3.

[63] Exhibit SCE-15 at 6; Exhibit SCE-16 at 1-2.

[64] Exhibit SDGE-11 at 8.

[65] SDG&E DRAM Phase II Opening Brief at 7.

capacity payments if the DRP fails to meet its contractual obligation.[66] The Nexant Report stated that there does not appear to be an effective incentive in place to ensure consistently high performance from DRAM resources.[67] SCE agreed, arguing that the existence of the present penalty structure and the concomitant lack of performance demonstrates that the consequences for poor performance are insufficient to encourage adequate DRAM performance.[68]

6.7. Summary of Party Positions

In summary, PG&E, SCE, SDG&E, and Cal Advocates support sunsetting the DRAM Pilot, based on the findings in the Nexant Report and their own analysis of DRAM performance. PG&E, SCE, SDG&E, and Cal Advocates express concerns with the performance of DRPs that had successfully received contracts. All four parties point to the Nexant Report findings where DRAM showed mixed results, and question the performance of DRAM relative to all six criteria.

The Utilities stated that the lack of improvement relative to most of the criteria assessed in the Nexant Report is sufficient reason to sunset DRAM, as these criteria were specifically selected by the Commission as the basis for its evaluation. Moreover, Cal Advocates, SDG&E and SCE all point out that DRAM failed on the same three criteria that it had previously failed to satisfy.[69,70]

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[66] Nexant Report at 158-159.

[67] *Ibid*.

[68] Exhibit SCE-15 at 4.

[69] Exhibit Cal Advocates-02 at 2.

[70] Exhibit SDG&E-2C, at 5; SCE Phase II Opening Brief at 2.

SDG&E correctly observed that the Nexant Report was commissioned by the Commission and is neither biased nor intended as advocacy.[71]

Leap is the only party that supports the continuation of DRAM. Although Leap conceded that the Nexant Report found that some criteria were not met, they believe that the progress and improvement shown merits continuing DRAM with some changes.[72] However Cal Advocates counters by noting that even by Leap's own admission, the DRAM pilot has only satisfied three of the six required criteria for DRAM to be adopted as a permanent program.[73]

6.8. Criteria Analysis, Pilot Analysis, and Significance of DRAM Pilot Sunset to DR Resources

We agree with the Nexant Report's well-studied and reasoned conclusions that it could not ***affirmatively find*** that DRAM has successfully met ***all six criteria,*** and that it could not do so particularly in the areas of ***performance and reliability***.

The Nexant Report evaluation criteria are reasonable criteria for reaching this determination.[74] These criteria are not fully met in the affirmative, and in fact are generally unmet, in particular regarding the following elements: price competitiveness, fulfillment of contractual obligations, and reliability in resource dispatch. Further, regarding the Commission's distinct pilot continuation criteria of cost- competitiveness and reliability,[75] which are also subject to evaluation in the Nexant Report, these too are demonstrably unmet in the affirmative.

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[71] SDG&E Phase I Reply Brief at 3-4.

[72] Exhibit Council/Leap-02 at 5-7.

[73] Exhibit Cal Advocates-08 at 1-2.

[74] D.23-01-006 at 31.

[75] D.16-09-056 at 64-66 and OPs 7-8.

In applying the Nexant Report conclusions, along with consideration of party testimony and sound argument, we find that there is insufficient support for continuing DRAM. Additionally, functional examples of DRAM performance are noted in party testimony, that demonstrates that DRAM sellers have historically been unable to meet their contractual obligations. Keeping a pilot as costly as DRAM without evidence of substantial grid reliability benefits and without evidence of cost-competitiveness is not reasonable.

Independent of and in addition to the criteria established specifically for the DRAM Pilot program and which were the express bases for the Nexant Report's independent evaluation, there is a foundational basis for a pilot program seeking to transition to a permanent program to demonstrate cost-competitiveness and reliability. This basis is echoed in this proceeding's Phase II Scoping Memo, in which the Commission emphasized that "to continue the DRAM the Commission must affirmatively find in this Phase II that the DRAM has been successful in achieving its goals of ensuring cost-effective and reliable demand response resources."[76] The Nexant Report found that aside from LRAC, DRAM capacity prices were not competitive with other capacity programs and benchmarks. DRAM energy prices were also often higher than both the net benefits test and other resource types.[77] Regarding reliability, the Nexant Report also concludes that DRAM resource performance was "sub-par."[78]

With regards to potential impacts to DR resource participation, SCE argued that there is no evidence that the DRAM Pilot is necessary for the

[76] Phase II Scoping Ruling at 7.

[77] Nexant Report at 6.

[78] *Id.* at 8.

continued participation of DR resources.[79] SDG&E opposed a policy carve-out for DRAM that required it to procure DR resources that are not needed, that have not been consistently reliable compared to other resources, and that may be more expensive than other resources.[80]

Cal Advocates stated that eliminating the DRAM Pilot will create a more efficient marketplace for sellers by allowing the Utilities to send accurate signals about actual resource needs.[81] Cal Advocates also noted that DRPs may continue to participate in DR, and DRPs are not solely dependent on DRAM to sell their products.[82]

SCE does not expect negative impacts to system reliability, since demonstrated capacity from DRAM sellers falls short of the qualifying capacity shown in its supply plans.[83] SCE also does not expect that the capacity will disappear, but will instead transition DRAM resources to other opportunities and mechanisms to participate, such as the Capacity Bidding Program (CBP), Resource Adequacy Request for Offer solicitations, and the California Energy Commission's (CEC) Demand Side Grid Support (DSGS) Program.[84]

PG&E agreed that DRAM resources would switch to CBP, since both programs utilize PDRs, meaning that there would be no loss of capacity.[85] PG&E

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[79] SCE DRAM Phase II Opening Brief at 7-9.

[80] SDG&E Phase II Opening Brief at 3-4.

[81] Cal Advocates Phase II DRAM Opening Brief at 16.

[82] Exhibit Cal Advocates-03 at 2-3.

[83] Exhibit SCE-16 at 7.

[84] *Ibid*.

[85] Exhibit PG&E-6 at 4.

also noted that both CPower and Leap have already participated in Utility DR RA solicitations or have contracted with CCAs.[86]

Therefore, we agree that the DRAM Pilot should sunset. Given the sunset of DRAM, we consider whether any actions should be taken to provide alternative pathways for third parties to participate in DR. In review of the recent D.23-12-005 decision regarding DR Phase II, we find that there are a number of identifiable and existing pathways that enable third-party DRP participation in DR. This decision will not reiterate the details but will refer to the DR pathways identified in D.23-12-005, such as SCE's CBP Elect program, PG&E's CBP Elect program, and SDG&E's CBP programs. In addition, there are pathways found in the Utilities' and CCAs' RA solicitations, and the CEC's DSGS program. We determine that there is no harm to sunsetting the DRAM Pilot program given the broad portfolio of DR programs.

The Commission's decision to sunset DRAM should not be interpreted as a relinquishment of support for DR as a whole, third-party providers, or market-integrated DR. Despite its overall lack of success, DRAM has provided significant valuable insights into the supply-side DR framework, its opportunities, and its challenges. Nearly a decade later, we find ourselves in a very different DR environment. Today's landscape of dynamic pricing and demand flexibility calls for new and enhanced approaches to DR. The Commission will continue exploring pathways for continued progress in harnessing California's DR potential.

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[86] *Ibid*.

7. Conclusion

The DRAM Pilot program shall sunset by December 31, 2024, or sooner if the funding limits authorized for the pilot programs as set forth in D.23-01-006 are reached prior to that date.[87] This proceeding is closed.

8. Outstanding Motions

This decision affirms all rulings made by the ALJ in A.22-05-002, *et al*. Motions for confidential filing are granted. All other outstanding motions are denied.[88]

9. Comments on Proposed Decision

The proposed decision of the ALJs in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. On March 21, 2024, Opening Comments were timely filed by Cal Advocates, Leap, PG&E, SCE, and SDG&E. On March 26, 2024, Reply Comments were timely filed by Cal Advocates, Leap, PG&E, and SCE.

The Utilities' Opening Comments were of a generally similar nature: they requested to have the opportunity to wind down the administration of their

[87] As D.23-01-006 only authorized the Utilities to recover up to their respective approved DRAM Pilot program amounts for 2024, and also directed the filing of True-Up Advice Letters regarding an accounting of pilot program monies, there should be no risk of a Utility over-recovery in the event that not all D.23-01-006-authorized amounts were expended.

[88] In this lengthy proceeding, certain Rulings have been made regarding evidence, briefings, and confidentiality, as are found in the proceeding Docket. This decision confirms those Rulings. All other proceeding Motions not expressly granted at hereby deemed denied, except for Cal Advocates' October 2, 2023, Motion for leave to file under seal its Phase II DRAM. Confidential Opening Brief, regarding which its identified protected materials in its unredacted Confidential version will remain under seal and will not be made accessible or disclosed to anyone other than the Commission staff unless pursuant to further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge, the Law and Motion Judge, the Chief ALJ, or an Assistant Chief ALJ, or as ordered by a court of competent jurisdiction.

respective DRAM Pilot programs in 2025 and to perform their respective DRAM true-up accountings in 2026. As specific examples, SCE proposed in part the modification of its respective Ordering Paragraph (OP) to "process remaining invoices and pay any final authorized expenses related to the DRAM pilot in through 2025," and PG&E proposed in part the modification of its respective OP such that it adds "accounting for 2024 DRAM in its 2026 Annual Electric True-Up advice letter submission," (a process common to each of the Utilities).[89] No Reply Comments opposed such proposed OP modifications. We find it reasonable to allow the Utilities time to wind down the administration of their DRAM Pilot programs to enable processing of remaining invoices and pay final authorized expenses, functional for the orderly administration of the DRAM Pilot programs, and helpful both to the Utilities and to the Commission in providing a uniform method for tracking the final accounting for the DRAM Pilots. Therefore, each of the Utilities' respective OPs have been modified accordingly.[90]

In its Opening Comments, Cal Advocates sought a semantic change in the Finding of Fact section regarding the Nexant Report, which could be understood to be more absolute regarding the Nexant Report's conclusions.[91] In its Opening Comment, Leap sought a series of small semantic changes in the Findings of Fact

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[89] Pursuant to Resolution E-5127, each Utility processes its year-end true-ups to enable implementation of necessary revenue requirement changes through an Annual Electric True-Up Advice Letter submission.

[90] The Utilities also proposed small edits for increased accuracy and readability, some of which have been incorporated.

[91] Cal Advocates also sought a small wording change in the Proposed Decision, but its purported requested change -- from the Proposed Decision's asserted description of the Nexant Report as a "mixed bag" to something more absolute -- will be disregarded, as the Proposed Decision never used the term "mixed bag."

section regarding the Nexant Report, which could be understood to be a looser set of descriptions of the Nexant Report's conclusions. Leap also sought a series of small semantic changes in the Conclusions of Law section, which could be understood to be a looser set of descriptions of the failings of the DRAM Pilot programs. In their Reply Comments, Cal Advocates, PG&E, and SCE disagreed with Leap's proposed changes, arguing that the descriptions found in the Proposed Decision's Findings of Fact section and in the Conclusions of Law section are accurate respective summaries of the Nexant Report and of the failings of the DRAM Pilot programs. After review, we make no changes to the Findings of Fact or the Conclusions of Law sections, as the depictions stated in each section are sufficiently accurate, and the proposed changes were, in effect, non-substantive rephrasing that would not result in any meaningful change to the Proposed Decision's findings, conclusions, or outcome.

10. Assignment of Proceeding

John Reynolds is the assigned Commissioner and Jason Jungreis and Garrett Toy are the assigned ALJs.

Findings of Fact

1. The DRAM Pilot program was created to encourage new customer participation in the DR market and to further test integration of supply-side DR resources.

2. The DRAM Pilot program was authorized in D.23-01-006 to extend through 2024.

3. The DRAM Pilot program has existed for nine years, from 2016 through 2024.

4. For 2024, D.23-01-006 authorized $6,000,000 for PG&E, $6,000,000 for SCE, and $2,000,000 for SDG&E to fund their DRAM Pilot programs.

5. The DRAM Pilot program is part of the suite of DR programs in the PG&E, SCE, and SDG&E DR portfolios.

6. PG&E, SCE, and SDG&E each filed applications seeking to sunset the DRAM Pilot program at the end of 2023.

7. The Nexant Report, authorized by the Commission and overseen by the Commission's Energy Division, evaluated the 2019-2021 DRAM Pilot program and examined six criteria established in D.19-07-009.

8. D.23-01-006 determined that the DRAM Pilot program should either be made permanent, continue, or sunset based upon the analysis of the Nexant Report's evaluation of the six criteria where the DRAM Pilot program must affirmatively meet the six criteria to be continued.

9. The Nexant Report found that at most, only three of the six criteria were met.

10. The Nexant Report found that the DRAM Pilot program failed to demonstrate reliability.

11. The Nexant Report found that the DRAM Pilot program failed to demonstrate cost-competitiveness.

12. The Utilities require time to wind down the administration of their DRAM Pilot programs to enable processing of remaining invoices and pay final authorized expenses.

Conclusions of Law

1. A pilot program should sunset if it fails to demonstrate cost-competitiveness and reliability success in the criteria set by the Commission.

2. The DRAM Pilot program failed to demonstrate reliability and should sunset at the end of 2024.

3. The DRAM Pilot program failed to demonstrate cost-competitiveness and should sunset at the end of 2024.

4. The DRAM Pilot program failed to affirmatively meet the six criteria set forth by the Commission and assessed in the Nexant Report and should sunset at the end of 2024.

5. It is reasonable to allow the Utilities additional time to process remaining invoices and pay final authorized expenses related to the DRAM pilot program through 2025, and to perform any final true-up accounting for DRAM through its 2026 Annual Electric True-Up Advice Letter submission.

O R D E R

IT IS ORDERED that:

1. The Demand Response Auction Mechanism (DRAM) pilot program of Pacific Gas and Electric Company (PG&E) shall sunset by December 31, 2024, or sooner if the funding limit authorized for that pilot as set forth in Decision 23-01-006 is reached prior to that date. PG&E is authorized to administratively process remaining invoices and pay final authorized expenses related to the DRAM pilot program through 2025, and to perform any final true-up accounting for DRAM through its 2026 Annual Electric True-Up Advice Letter submission.

2. The Demand Response Auction Mechanism (DRAM) pilot program of Southern California Edison Company (SCE) shall sunset by December 31, 2024, or sooner if the funding limit authorized for that pilot as set forth in Decision 23-01-006 is reached prior to that date. SCE is authorized to administratively process remaining invoices and pay final authorized expenses related to the DRAM pilot program through 2025, and to perform any final

true-up accounting for DRAM through its 2026 Annual Electric True-Up Advice Letter submission.

3. The Demand Response Auction Mechanism (DRAM) pilot program of San Diego Gas & Electric Company (SDG&E) shall sunset by December 31, 2024, or sooner if the funding limit authorized for that pilot as set forth in Decision 23-01-006 is reached prior to that date. SDG&E is authorized to administratively process remaining invoices and pay final authorized expenses related to the DRAM pilot program through 2025, and to perform any final true-up accounting for DRAM through its 2026 Annual Electric True-Up Advice Letter submission.

4. Applications (A.) 22-05-002, A.22-05-003, and A.22-05-004 are closed.

This order is effective today.

Dated April 18, 2024, at Sacramento, California.

ALICE REYNOLDS
President
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

Commissioner Matthew Baker recused himself from this agenda item and was not part of the quorum in its consideration.