April 20, 2015

ADVICE 3208-E
(Southern California Edison Company U 338-E)

ADVICE 4618-E
(Pacific Gas and Electric Company U 39-E)

ADVICE 2729-E
(San Diego Gas & Electric Company U 902-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION


PURPOSE
Through this Advice Letter, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE) seek California Public Utilities Commission (Commission or CPUC) approval of their proposed 2016 Demand Response Auction Mechanism (DRAM) Pilot, consistent with Commission direction in Ordering Paragraph (OP) 5 of Decision (D.) 14-12-024. The advice letter also requests the Commission make certain findings and place certain responsibilities on the Energy Division to enhance the usefulness of the pilot.

This Advice Letter describes the background that informed DRAM program design (section I) and addresses the areas requested in OP 5 including Demand Response Auction Mechanism Pilot Design (Section II), Auction Protocols (Section III), the Standard Contract (Section IV), the set-aside proposals (section V), the evaluation criteria for bids and for the DRAM (section VI), and Non-binding Cost Estimates (section VII). In addition, Safety is addressed in section VIII, and the last section (IX) requests
the Commission make certain findings and place certain responsibilities on the Energy Division to enhance the usefulness of the pilot.

The pro-forma version of the Standard Contract for the DRAM Resource Purchase Agreement for the 2016 pilot is attached.

I. BACKGROUND

The Commission issued an Order Instituting Ratemaking (OIR) 13-09-011,1 “To Enhance the Role of Demand Response in Meeting the State’s Resource Planning Needs and Operational Requirements” and reviewed a Resource Adequacy Capacity Payment Mechanism for Demand Response and Participation of Retail Demand Response in the California Independent System Operator (CAISO) wholesale market.

The Commission then issued D. 14-03-026 in which it introduced a Demand Response Auction Mechanism (DRAM). The April 2, 2014 Joint Assigned Commissioner and Administrative Law Judge Ruling and Revised Scoping Memo2 “Defining Scope and Schedule for Phase Three, Revising Schedule for Phase Two, and Providing Guidance for Testimony and Hearings” issued in this proceeding also included an Appendix B Demand Response Auction Mechanism Proposal.

In December 2014, the Commission issued D. 14-12-0243 Resolving Several Phase Two Issues and Addressing the Motion for Adoption of Settlement Agreement on Phase Three Issues (later revised to be the Joint Proposal of the Joint Sponsoring Parties4) including Demand Response Auction Mechanism, Utility Roles, and Future Procurement with Parties to design and implement a Demand Response Auction Mechanism DRAM Pilot program during 2015-2016. In this decision, Southern California Edison Company, San Diego Gas & Electric Company and Pacific Gas and Electric Company (together, the IOUs) were ordered to file an advice letter for the DRAM, together with a standard contract. The Commission also authorized the IOUs to participate collaboratively with interested stakeholders in the DRAM pilot design working group, whose activities were conducted at the express direction and under continuing supervision of the Commission.5

The DRAM working group, authorized by Ordering Paragraph 6 of D.14-12-024, included the IOUs, Ratepayer Advocates (ORA and TURN), Demand Response providers, Energy Division Staff, and other interested stakeholders. The working group has actively collaborated via in-person meetings, conference calls and electronic communication contributing to the DRAM pilot design and standard contract language presented here. The DRAM pilot has been developed to test: (a) the feasibility of procuring Demand Response Supply Resources for system Resource Adequacy (RA) with third party direct participation in the CAISO markets through an auction

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1 http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M077/K151/77151993.PDF
2 http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M089/K323/89323807.pdf
3 http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M143/K552/143552239.pdf
4 http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M146/K995/146995079.pdf
5 Ordering Paragraph #6 of D.14-12-024.
mechanism, and (b) the ability of winning bidders to integrate their Demand Response (DR) Resources directly into the CAISO market.

The IOUs file this Tier 3 Advice Letter to implement the DRAM pilot pursuant to Ordering Paragraph 5 of D.14-12-024. As clarified by the Commission, and understood by the working group, the proposed design is non-precedential, and should test the viability of the DRAM procurement mechanism. Stakeholders have made mutual concessions on a pilot basis they may not wish to continue in a regular program.

II. DEMAND RESPONSE AUCTION MECHANISM PILOT DESIGN

The DRAM will be a pay-as-bid auction of monthly system Resource Adequacy (RA) associated with a demand response product located in the IOU’s service area that will offer the product directly into the CAISO day-ahead energy market. The IOU will acquire the RA only and will have no claim on revenues the winning bidders may receive from the CAISO energy market.

System Resource Adequacy

For the first Demand Response Auction Mechanism (DRAM), the IOUs will procure System RA from third party Demand Response Aggregators (Sellers) on a monthly basis. The Sellers will participate directly in the CAISO wholesale market within the June to December 2016 delivery period of the contract. The current CPUC DR requirements to qualify for system RA can be found in D.14-06-050 and require the DR resource to offer into the CAISO energy market under the CAISO must-offer obligation for DR.

The RA decision (D.14-06-050) also established a Qualifying Capacity (QC) methodology for Supply Side DR resources. The QC methodology continues to rely on the load impact protocols, but also includes a testing requirement and compliance with the CAISO’s must-offer obligations, and may be modified in the current RA proceeding R.14-10-010. For the first DRAM Pilot, the working group has developed a RA counting proposal, further described in Section IV, which has been proposed for Commission approval within the current RA proceeding.

If the Commission does not adopt the proposed system RA counting methodology, as requested in SCE and SDG&E’s motion filed in R.14-10-10, the contract must be modified to require the seller to meet the Commission-approved System RA QC methodology.

6 The load impact protocols are in the Appendix to D.08-04-050.
7 SCE and SDG&E Motion planned to be filed April 20, 2014 in R.14-10-10. PG&E would follow the same RA treatment as the Commission grants in response to SCE and SDG&E’s Motion.
CAISO Market Participation

Sellers that receive DRAM awards, or Seller’s DRP, must register their resource(s) with the CAISO as a Proxy Demand Resource (PDR). Each PDR resource must be: (1) at least 100 kW; (2) composed of retail customers with the same Load Serving Entity (LSE); and, (3) be within the same CAISO Sub Load Aggregation Point (SLAP).

To participate in the CAISO markets, the Seller must perform, or retain an entity to perform, the Demand Response Provider (DRP) and Scheduling Coordinator (SC) functions, as described in the CAISO Tariff and relevant Business Practice Manual(s) (BPM). Seller, through their DRP and SC, must adhere to current CAISO’s Tariff and Business Practice Manual (BPM) requirements for PDR CAISO market participation.

CAISO Must Offer Obligation

Seller, through its designated SC, shall bid into the CAISO Day-Ahead Market the contracted MW during the Availability Assessment Hours, as required by the CAISO Tariff and Business Practice Manual for DR resources to meet their RA obligation. Outside of those hours, there would be no CAISO bidding requirements unless required by the CAISO tariff or CPUC rules.

Per CAISO’s Fifth Replacement Tariff, published December 1, 2014, section 40.8.1.13, Proxy Demand Resources must be available at least four (4) hours per month in which they are eligible to provide RA Capacity and must be dispatchable for a minimum of thirty (30) minutes per event within each of those months. Per section 40.9.3, the CAISO also establishes Availability Assessment Hours applicable for each month of each RA Compliance Year, to assess the extent to which each RA Resource has met the Availability Standards. The CAISO annually determines the five hour range for the Availability Assessment Hours for each month and shall specify them in its Business Practice Manual.

The CAISO Board of Governors recently approved the Reliability Services Initiative, under which Proxy Demand Resources shall have the following minimum availability requirements starting 2016:

- Able to be dispatched for at least 24 hours per month,
- Able to be dispatched for at least three consecutive days, and
- At least four hours per dispatch

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8 The working group has limited the 2016 DRAM pilot to PDR only due to the wide range of CAISO market integration complexities and uncertainties.
9 The CAISO has recently revised the Must Offer Obligation for PDRs in its Reliability Services Initiative (RSI) – Phase 1. The RSI stakeholder initiative was approved by the CAISO Board of Governors on March 26, 2015. To the extent that the RSI related CAISO Tariff changes are in effect at the time of the DRAM contract delivery, the contracts will be subject to the applicable CAISO Tariff.
Proxy Demand Resources must offer into the CAISO energy markets in the following hours

- 1:00 p.m. – 6:00 p.m., April-October
- 4:00 p.m. – 9:00 p.m., November-March

Other Requirements

The Seller or the Seller’s resource(s) will also need to adhere to the following requirements:

- Each Seller’s DR resource(s) bid into the auction must be within the same Utility Distribution Company (UDC) Service Territory as the IOU holding the auction;
- The number of Seller’s DR resource(s) cannot exceed the limitations D.15-03-042 places on the number of customer service account registrations for each IOU.

The Buyer must provide the Seller with access to timely and accurate, customer-authorized data, under Rule 24/32 processes, to enable the Seller to register the customer’s locations at the CAISO registrations and for the Seller to properly settle any DR activities with the CAISO.

Customer Participation Limitations

Under SCE’s and PG&E’s proposal, Sellers using retail customers served under a Net Energy Metering (NEM) tariff are eligible to participate as part of a Seller’s PDR resource consistent with the Commission approved provisions within that tariff. However, there does not seem to be alignment between the CAISO’s current treatment of NEM related capacity calculations for PDR and their treatment of negative load (i.e. exports to the grid), and the Commission approved demand response programs. In addition, the IOUs believe that current CAISO treatment will sometimes allow customers enrolled in Direct Participation to double collect on a portion of their capacity reductions. For these reasons, PG&E and SCE recommend the CPUC and the CAISO should study this issue to better understand the NEM impacts on PDR resources in this program, to ensure a seamless, consistent treatment of NEM positive and negative loads.

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10 Rule 24 for SCE and PG&E, Rule 32 for SDG&E.
11 Nothing in the DRAM 2016 Pilot or the DRAM contract modifies the NEM customers’ obligations to comply with the Commission-approved tariffs and requirements applicable to NEM service.
12 Examples of the type of information that would be needed for analysis of NEM impacts are (a) number(s) and size(s) of NEM customer(s) included in the Seller’s PDR(s), by month, (b) the exports by the Seller’s NEM customer(s) into the grid for each Dispatch hour for the PDR(s), as defined in the DRAM 2016 contract, and (c) for each hour of Dispatch of the PDR(s), as defined in the DRAM 2016 contract, in which the Seller’s NEM customer(s) is
SDG&E believes this issue should be resolved prior to allowing NEM customers to enroll in the DRAM pilot and proposes to exclude their participation.

Likewise, SDG&E believes the issues of data access regarding fossil fuel emergency back-up generation is problematic and proposes to exclude participation of customers with fossil fuel emergency back-up generation to ensure compliance with Commission policies relative to the use of fossil fuel emergency back-up generation for Resource Adequacy purposes.

The IOUs propose that for the DRAM pilot, the Commission allow the proposed difference in treatment of customers across the IOUs, which may provide for additional lessons learned.

III. AUCTION PROTOCOLS

Pre-Solicitation Elements

*Outreach efforts*

After launch of the solicitation, the IOUs will undertake several activities designed to inform and promote the solicitation to potential bidders. Activities will include:

- Notice to existing DR Program aggregators
- Notice to Demand Response OIR Service List
- Solicitation information on an IOU sponsored platform, and
- DRAM Bidder’s Conference

Specifically, the IOUs will dedicate a portion of their website or similar internet platform to the solicitation, providing a means for interested parties to download the DRAM Request for Offers (RFO) documents and related materials, ask questions, and read posted responses.

On the DRAM RFO launch date, the IOUs will issue a press release and email industry contacts (e.g. Aggregators, previous IOU RFO participants, etc.) across the nation informing them that the RFO had been released and inviting them to participate. The IOUs will also notify all Energy Service Providers and Community Choice Aggregators of the RFO’s launch.

The IOUs will also hold at least one bidder’s conference to summarize the DRAM RFO solicitation. This will provide interested parties an opportunity to learn more about the solicitation, hear presentations, and ask questions.

...not exporting to the grid, the demand response MW provided by the customer(s), the baseline used for the calculation, and whether the baseline is net of NEM generation. This list is not exhaustive, and is only meant to provide an idea of the extensive data needed to analyze NEM interaction with DRAM.
IOUs may coordinate some activities to reduce redundant communications or consolidate efforts for the 2016 DRAM pilot.

**Role and Hiring of Independent Evaluator**

The IOUs plan to engage an Independent Evaluator (IE) to evaluate and report on the solicitation, evaluation, and selection for DRAM Solicitation. A single evaluator will be used if one is on all IOU approved IE lists, is available, and using an IE is approved by the Commission through a Resolution to this Advice letter. The IE can be present at meetings and conference calls between the IOUs and bidders and will have full access to the solicitation management system used in DRAM. The IE will review all answers to questions to and may periodically make presentations to the IOUs, the CPUC and stakeholder groups to ensure that the DRAM solicitation remains open, fair and transparent. The IE will also check for consistency in each IOU’s application of its protocols and evaluation processes across the bidders in its auction. The IE will review all offers and share findings about how the DRAM process worked and what could be improved. The IE will submit a confidential report and a public report on the auction process to be submitted with the contracts for approval by the CPUC.

**Scheduling Coordinator Assistance and Cost Mitigation**

To bid Proxy Demand Resource(s) into the CAISO market, the Sellers will be required to use a CAISO-qualified Scheduling Coordinator (SC) to conduct market and business transactions with the CAISO. While some DRAM participants may have experience contracting with an SC or desire to serve as their own SC, others may face challenges in understanding the complexities of the CAISO market participation requirements and associated SC services. It is also unlikely that existing or new DR aggregation market entrants will have the resources or time to develop SC capabilities in-house and complete CAISO’s SC certification process prior to the commencement of their PDR bidding, unless they are already an SC.

Therefore, two measures have been developed to implement the stipulation of the Joint Proposal for the IOUs to provide optional SC services, with the intention to reduce barriers to entry to DRAM Sellers. First, the IOUs will manage a Request for Information (RFI) prior to the DRAM solicitation to build intelligence on CAISO-certified SC availability and willingness to provide services to DRAM Sellers. This RFI will result in informational packets from potential DRAM SCs focused on the prescribed set of capabilities and services to bid PDR resources on behalf of a Seller. This approach should reduce the barriers to bidding by potential DRAM Sellers by allowing them to focus on a set of SCs willing to provide the new service and to consider SC vendors and their service options early in the process.

Second, the DRAM solicitation will require DRAM bidders to identify and separate their proposed capacity prices from the costs they expect to pay for a prescribed set of SC services. Following the execution and Commission approval of DRAM contracts, the IOUs will reimburse the DRAM Sellers for the prescribed set of SC expenses monthly, specified by the Seller in its bid. These expected SC costs will be included in the evaluation of the price, incentivizing the Sellers to seek cost-effective SC service
providers. The prescribed set of services to interface with the CAISO day-ahead energy market includes:

- Provide capability to bid into the Day Ahead Market
- Provide award information to the Aggregator/Seller
- Provide CAISO settlements to Aggregator/Seller for performance in the market
- Related Grid Management Charges (GMC)
- Fees (including audit) associated with validation of availability (Demonstrated Capacity)
- Certify that the resource is bid at or above the Net Benefits Test (NBT)
- Meter data submission

Combined, these measures will provide the DRAM participants with assistance in procuring SC services, allow the pilot to measure the influence of SC costs, and strike a balance of helping DRAM Sellers, preserving freedom of choice for SC services, and avoiding involving the IOUs in the middle of an agreement between two unaffiliated entities. The costs for both the IE and managing the SC RFI process will be shared by the IOUs on the following basis; SCE – 45%, PG&E – 45%, SDG&E – 10%.

**Solicitation Structure and Oversight**

The IOUs plan to manage the DRAM auction similar to other ongoing solicitations, with comparable platforms being used. These platforms may differ across the utilities, as each IOU has their own or a vendor one already in place. However, the same information will be requested of bidders. The platforms will allow for the management, sharing and tracking of all buyer-seller communication, and record-keeping of data collected in the solicitation. These features are usually built into respective websites that the IOUs, the IE and DRAM bidders could utilize for all solicitation-related document sharing, information dissemination, offer tracking, and offer submission.

The IOUs will follow standard RFO practices for the DRAM solicitation including a bidder’s conference and interactive capabilities to ask and receive responses to questions about the bid materials. Potential DRAM bidders will receive documents including RFO Instructions, the DRAM Agreement (attached to this advice letter), a Non-Disclosure Agreement, and an Offer Sheet. The Offer Sheet will be common to all three IOUs and will ask DRAM bidders to describe experience relevant to the DR product being offered in the DRAM, their offer of capacity and the associated bid price for each month [Capacity Volume (kW) and price ($/kW-month) per month], their expected scheduling coordinator costs, and their potential targets by customer class to enroll customers sufficient to meet their DRAM contract capacity including expected number of Rule 24/32 active service agreements needed to meet contract capacity. The Offer Sheet will also capture information such as the bidder’s status as a Women, Minorities, and Service Disabled Veteran-owned business enterprise (WMDBVE).

The IOUs will place the following conditions on DRAM offers:
- Monthly bid minimum of 100 kW per PDR bid. This is a CAISO PDR requirement for each SLAP.
- Monthly bid maximum of 10 MW per bid for SCE and PG&E, and 2 MW per bid for SDG&E.
- Each bid must contain a minimum of 1 month delivery.
- Maximum of 20 (twenty) bids per bidder per IOU.

The overall winning bids will be limited by:

- Accepted DRAM offers will not exceed the IOU’s maximum number of active service accounts, MW capacity or PDR resources as determined in D.15-03-042. (E.g. total registrations are limited to 14,000 for SCE, 10,000 for PG&E, and 7,000 for SDG&E across all winning bids.)
- The maximum number of PDRs expected is limited to 50 for PG&E
- Funding constraints, as explained in Section VII below.

Solicitation Timeline

The IOUs propose to close the DRAM solicitation prior to the end of 2015, though this depends on when the DRAM Pilot Advice Letter is approved. This timing should allow for subsequent approval of selected agreements and for Sellers to prepare for delivery term start in 2016. IOUs propose the following timeline for the 2016 DRAM RFO:

<table>
<thead>
<tr>
<th>Number of Days*</th>
<th>DRAM RFO Step</th>
</tr>
</thead>
<tbody>
<tr>
<td>T</td>
<td>CPUC Decision on DRAM Pilot Advice Letter</td>
</tr>
<tr>
<td>T+10</td>
<td>File a Tier 1 advice letter with conforming RFO/RFI changes</td>
</tr>
<tr>
<td>T+15</td>
<td>Launch SC RFI</td>
</tr>
<tr>
<td>T+45</td>
<td>Deadline for RFI proposal submissions</td>
</tr>
<tr>
<td>T+55</td>
<td>Launch RFO</td>
</tr>
<tr>
<td>T+85</td>
<td>Deadline for RFO bid submissions</td>
</tr>
<tr>
<td>T+95</td>
<td>IOUs notify non-conforming Bidders (request to “cure”)</td>
</tr>
<tr>
<td>T+115</td>
<td>Bidder “Cure” Period</td>
</tr>
<tr>
<td>T+125</td>
<td>Notice to bidders of selection and send final</td>
</tr>
</tbody>
</table>

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13 Since this is a CAISO requirement for each PDR, and a single bid could consist of multiple PDRs, then the Sellers bid size (kW) would have to be greater than or equal to: (# of PDRs bid) x (100 kW per PDR).
14 Note, a single Seller is not prevented from offering multiple bids that add up to above the indicated totals, as long as the individual bids meet the specified limits.
contract for execution

<table>
<thead>
<tr>
<th>T+165</th>
<th>IOU files Tier 2 advice letter seeking CPUC approval of contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td>T+195</td>
<td>Energy Division gives notice of approval or other action</td>
</tr>
</tbody>
</table>

* If calculated number of days occurs on a weekend or a company holiday, day will fall on the next business day.

**Solicitation Evaluation**

After receiving bids, IOUs will check them for completeness and conformance to RFO instructions. Should any of the bids be deficient in these areas, bidders will be allowed a window to “cure” offers (e.g., complete missing data, correct data errors, or comply with DRAM offer conditions). Offers that fail this step will be removed from consideration.

IOUs will use a combination of quantitative and qualitative factors in selection of winning bids to meet the DRAM procurement targets, as explained later in Evaluation Criteria section.

**Solicitation Closure**

The winning bidders will be notified of their selection and will be sent the final contract for execution. Once the contracts are executed by both the IOU and the Seller(s), they will be submitted to the CPUC for approval. The Independent Evaluator will also submit a report on the solicitation, evaluation, and selection for DRAM solicitation at the time of the Advice Letter filing requesting contract approval.

**Minimum MW Target**

**Minimum MW Procurement Target**

The IOUs MW procurement target for the DRAM, subject to budget limitations and reasonableness of bid prices, is 10 MW each for PG&E and SCE and 2 MW for SDG&E. The total amount of MW procured to meet the target will be determined by the number of MW procured for August, the CAISO system peak month.

**Contract Replacement and Counting**

After a winning DRAM bidder is selected, the parties will execute a contract for the IOU to file as a Tier 2 Advice Letter at the Commission. If between the winning bidder selection and the contract execution, the winning bidder(s) for any reason indicates that it is no longer interested in participation in the DRAM pilot, the IOUs request the latitude of selecting the next best DRAM bidder in their evaluation queue as a replacement. If agreement can be reached with a replacement bidder, the IOU will execute a new DRAM contract and file with the Commission at the same time as other auction winners, if possible (or at a time as close as possible to when the other contracts are filed). Once the IOU files a DRAM contract with the Commission, the contract is counted toward meeting the MW minimum, and will be used to determine whether the minimum had been met for the set-aside provisions. The contract at that point will be subject to the
Termination Provisions within the Contract. Terminated contracts will not be replaced through a replacement DRAM contract.

**Contingencies for Auction Winners**

The following risks have been identified and are dealt with in the contract and the pilot design.

*Replacing Locations within a Resource*

Unlike the current CAISO resource registration process, under the CAISO temporary Demand Response Registration System an Aggregated Location (ALOC) cannot be edited if it is in a currently active registration; instead, a CAISO resource registration must expire or be terminated to allow individual locations to be removed or added to an ALOC. This new requirement and the lack of the ability to set a future termination date, imposes a gap in PDR registrations since the beginning of a “replacement location” must begin after the current location termination date passes. These gaps may range from a few days to 2-4 weeks. A PDR resource will be out of the market, even if only a single location is being removed or added from that resource.

The CAISO is aware of this issue and is working on a solution, however it has not yet committed to a specific date that its solution will be in place. The contract language addresses how the Seller can mitigate some of the impacts arising from this issue.

*Seller Ability to Retain a Scheduling Coordinator*

The IOUs are not requiring that Sellers have a contract with an SC at the time of bid or at the time the contract is signed. Participants in the DRAM Working Group meetings noted that SCs may be unwilling to contract with a Seller unless their credit requirements are met. The utilities, through the SC RFI process will identify SC’s potentially willing to enter into contracts for direct participation with Sellers. The IOUs will also request that the SCs provide a list of terms (including credit) by which they would provide their services to Sellers. This RFI will help the Sellers identify which SCs might bid their DR product into the market. However, there is a risk that the Seller may be unable to retain an SC resulting in a default on the contract. At a minimum, the Seller must have its SC in place 2 months prior to its first bid into the CAISO market.

*Seller Ability to Obtain and Register Customers*

The IOUs are not requiring that Sellers have customers under contract at the time of bid or at the time the contract is signed. There is a risk that the Seller may be unable to attract enough customers to participate in the time frame after the contracts have been approved or may not be able to register customers in time to fulfill Seller’s contractual obligations.

*Allocation Requirements*

On January 1, 2016, under the current Rule 24 Cost Recovery (Decision 15-03-042), the IOUs will begin their initial implementation stage of accommodating up to 14,000 for
SCE, 10,000 for PG&E and 7,000 for SDG&E concurrently active service agreements at the CAISO. Implementation will be managed through using internal automated and/or semi-automated processes. The DRAM activities are limited by this cap. It is unknown whether or not this number of available service agreements will be sufficient to fully accommodate all the DRAM winners.

The Commission has recognized this challenge, and has allowed the IOUs to delay the general, non-DRAM, enrollment as stated in OP 4 of D.15-03-042:

“Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall each implement an automated Initial Implementation Step of third party demand response direct participation no later than January 1, 2016, with enrollments to begin one day after the customers of the winning bidders of the demand response auction mechanism pilot can bid into the California Independent System Operator’s (CAISO) Energy Market…“ (Emphasis added)

This decision improves the chances of success for the DRAM pilot. However, timing uncertainties remain. Since OP 4 focuses on enrollments for direct participation and not the provision of Rule 24/32 related data (CISR-DRP) for enrollment, the IOUs will still begin processing CISR-DRPs in January 2016. However, the IOUs will reject all service agreement location registrations that non-DRAM winners submit to the CAISO, until one day after the customers of the winning DRAM bidders can be bid into the CAISO market. Since the winners of the DRAM auction will not be definitively known until the Commission approves the executed DRAM contracts, the IOUs will approve no service agreement location registrations submitted to the CAISO until the Commission has approved the DRAM contracts.

IV. STANDARD CONTRACT

This section summarizes the key DRAM standard contract provisions for the IOUs’ procurement of the system RA benefits associated with Seller’s PDRs. The DRAM standard contract incorporates elements of the Edison Electric Institute (“EEI”) Master Power Purchase and Sale Agreement between the Parties used in RA contracts, and elements of existing DR contracts. However, some elements are unique to this contract, reflecting the nature of the pilot.

Availability Guarantee for DRAM Product

Establishing DRAM Product availability to meet system RA obligations is a core component of the DRAM Resource Purchase Agreement. DR is a use limited resource with both resource availability and capacity dependent upon the end use customer’s electricity demand. Therefore, the availability guarantee for the DRAM Product to meet both CPUC system RA availability requirements and CAISO Must Offer obligations is detailed in multiple sections.
Contract Quantity, Price and Payment

For the 2016 DRAM pilot, the delivery period will be from June 2016 – December 2016. Seller’s DRAM Product Monthly Quantity (kW) and Contract Price ($/kW-month) can change for each RA Compliance Month that the Seller bids on and as accepted by the buyer.

CPUC RA decision D.14-06-050 established a Qualifying Capacity (QC) methodology for Supply-side DR resources. The established QC methodology continues to rely on the load impact protocols, but also includes a testing requirement and compliance with the CAISO’s must-offer obligations: “To the extent possible, System, Local, and Flexible RA eligibility requirements should remain consistent across all resource types, including storage and supply-side DR. These requirements include the ability to operate for at least four consecutive hours at maximum power output (Pmax_RA), and to do so over three consecutive days. Resources wishing to qualify for System or Local RA must also have the capability to offer into the CAISO markets, either via economic bids or via self-scheduling, under the Must Offer Obligation (MOO) applicable for that resource type.”

The customer demand comprising a DR resource can be seasonally dependent. Aggregated air conditioning (A/C) load in California has been one of the largest DR resources but the capacity associated with the A/C varies based on seasonal, monthly and daily temperature and weather changes. The method for establishing QC using load impact protocols is challenging because of the timeframe associated with initiating the DRAM pilot for 2016 and the RA filing dates. The Month-Ahead filing dates for 2016 RA Compliance have a due date in April, 2016 for the June RA filing month. Finally, the current aggressive timeline for the DRAM pilot is anticipating the Tier 2 advice letter filing with executed DRAM contracts to be filed in January or February 2016, with Commission approval expected in late February 2016 at the earliest, leaving little time for Rule 24/32 customer service account registration, PDR registration and testing. The load impact protocols for estimating June QC based on April testing is challenging for both seasonal estimation precision and aggressive schedule and timing considerations. Therefore, the IOUs have requested that for the 2016 DRAM pilot, the Monthly Quantity (i.e. the contracted quantity) be approved as a proxy for the QC in the RA counting, with an after-the-fact demonstration of capacity.

This request is consistent with D14-06-050, which adopted the QC methodology for Supply-Side DR resources. Specifically, this Decision states that: “QC and EFC determinations shall incorporate historical performance data where possible. To the extent that historical performance data is not available or appropriate, the program design and/or test data may be used.” (Appendix B, p. 1.)

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16 A motion requesting approval to use the Monthly Quantity (i.e. the contract capacity) as the QC in the RA filing for the 2016 DRAM pilot is being filed in the current RA docket, R.14-10-010. Establishing the policies, principles and methodologies for counting RA from supply-side DR would remain in the RA proceedings, consistent with the Commission’s existing practice.
The decision further indicates that DR performance could then be measured based on ex-ante load impact estimates using the load impact protocols, as is already the case for the utilities' current DR programs. However, the load impact protocols' QC calculations timing does not work with the 2016 DRAM Pilot implementation schedule. The IOUs propose to exempt the use of load impact protocols for the 2016 DRAM pilot QC calculation and instead use the winning bidder's Monthly Quantity (i.e. the contract capacity) as the basis for Qualified RA Capacity. The DRAM program design aligns the contract capacity with the MW offered into the CAISO market and the payments for Demonstrated Capacity.

The proposed approach strives to align the PDR \( P_{\text{max}}^{\text{RA}} \) and QC. However, there are operational and timing concerns regarding the current CAISO processes for updating \( P_{\text{max}} \) in the Resource Data Template (RDT) Master File which could penalize the Seller due to CAISO system delays rather than Seller performance. Therefore, for the 2016 DRAM Pilot, the parties propose that initial establishment of QC be based on contract capacity, and Seller performance be evaluated based on “Demonstrated Capacity.” Monthly capacity payments to Seller will be made based on the lesser of Demonstrated Capacity and Monthly Quantity. Demonstrated Capacity will be based on one of the following three Seller options for each showing month\(^{17}\):

1. The results of a capacity demonstration test conducted by the Seller’s SC;
2. The average capacity the PDR offered into the market associated with its Must Offer Obligation; or
3. The results of the PDR's performance in response to a CAISO Dispatch Instruction.

The Seller must provide the Buyer with a single Demonstrated Capacity value for each Showing Month using only one of these methodologies. If options 1 or 3 are selected, and multiple events occur, the Seller has the ability to choose the best option as the Demonstrated Capacity value.

**Liability for Commission Penalties**

For this pilot, the IOUs request that the Commission waive any of its penalties associated with the IOUs' inability to meet their RA requirements which stem from the Sellers inability to provide to the IOU the contracted capacity. If penalties occur, the IOUs request that the IOU should not have liability to the Commission for the DRAM Product performance in relation to designated PDRs meeting CAISO Must Offer Obligations, CPUC RA availability requirements, and the IOUs compliance showing with the Commission. Without this waiver, to the extent the IOUs incur Commission penalties due to the Seller’s failure to perform, the contract provides that the Seller will indemnify the IOU for any such penalties.

The IOUs request that the Commission confirm that the Seller should not have liability for Seller’s failure to register customers into CAISO’s system as a PDR Resource solely

\(^{17}\) Section 1.6 of DRAM contract
stemming from: a) Buyer’s inability to timely provide access to authorized data (Sections 1.5 and 6.2) under applicable Commission rules and tariffs, or b) the Commission’s timing in approving the contracts.

Credit and Collateral

Article 5 of the contract requires Seller to post and maintain collateral with the IOU in the event that a Seller does not have adequate credit ratings. If Seller has no Credit Rating, or if its Credit Rating is below BBB- from S&P and Baa3 from Moody’s, Seller shall provide and maintain collateral in an amount equal to twenty percent (20%) of the estimated Delivered Capacity Payments for all of the remaining months of the Delivery Period including the current month.

Contract Differences across the IOUs

The IOUs, after several weeks of diligent negotiations and discussions, have agreed with the stakeholders on the vast majority of the standard contract provisions associated with the 2016 DRAM. However, in certain areas, IOU consensus was not attainable. These differences are shown in the attached DRAM standard contract. The differences are summarized below:

- Eligibility of NEM customers and customers with fossil fueled emergency backup generation for DRAM pilot (contract section 7.2.b(v)) which also affects the data required (section 3.3.d).
- Procedures for access to financial information if required by the Securities and Exchange Commission (section 5.7)
- Dispute Resolution. The IOU have established Dispute Resolution processes and procedures for their respective contracts which are influenced by the respective IOUs experiences and contract terms. While the IOU dispute resolution processes are very similar, agreeing on an identical approach for this pilot is not feasible given each IOUs background, contract terms and experience. The forms of dispute resolution processes included in the contract are consistent with the processes included in other forms of IOU contracts that the Commission has reviewed and approved.
- Six defined terms in Exhibit A – Definitions which generally relate to specific credit and collateral terms that again are based on the respective IOUs experience, background and prior contract terms.

The IOUs understand and appreciate the contrasts in their respective approaches to implement this pilot and recommend that the Commission approve the contract variations as presented by each IOU. The differences in the IOU DRAM pilot programs are likely to lead to a greater breadth of information upon which to base longer-term decisions.
V. SET-ASIDE REQUIREMENTS

For PG&E and SCE:

PG&E and SCE appreciate the Commission’s concern about preventing a “crowding out” effect for DRAM from existing DR programs. In collaboration with the DRAM working group effort, PG&E and SCE have developed three measures to “set aside” customers for DRAM participation.

Remove Existing Un-Enrollment Limitations from Tariffed DR Programs

It is possible that potential DRAM participants are already enrolled in tariff-based DR programs. PG&E and SCE propose waiving certain tariff and contract provisions for selected programs to allow non-residential customers to un-enroll from the DR tariff and contract (if applicable) for the purpose of participating in DRAM. This will make a significant population of active DR customers available to DRAM aggregators.18

The following table identifies the number of customers that would be available to DRAM because of this set-aside measure:19

<table>
<thead>
<tr>
<th>SCE Program</th>
<th>Customer Class</th>
<th>Enrollment (Service Accounts as of 2/28/2015)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Interruptible Program (BIP)</td>
<td>Large Commercial &amp; Industrial</td>
<td>580</td>
</tr>
<tr>
<td>Agricultural &amp; Pumping Interruptible (API)</td>
<td>Municipal &amp; Agricultural</td>
<td>1,199</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PG&amp;E Program</th>
<th>Customer Class</th>
<th>Enrollment (Service Accounts as of 2/28/2015)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Interruptible Program (BIP)</td>
<td>Large Commercial &amp; Industrial</td>
<td>203</td>
</tr>
<tr>
<td>Capacity Bidding Program (No. of customers as of May 2015 who have been enrolled for less than 12 months)</td>
<td>Large Commercial &amp; Industrial</td>
<td>40</td>
</tr>
</tbody>
</table>

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18 SCE notes that customers on programs without unique un-enrollment limitations will be able to join DRAM without the need for a waiver (subject to the standard requirement of having at least 12 months of enrollment on that program).

19 The number includes both bundled and unbundled customers.
Pursuant to Commission approval of this special waiver proposal, the IOUs will file a Tier 1 Advice Letter with proposed Tariff changes to implement the Commission approved waiver and allow customers to leave the programs identified in the above table that have un-enrollment limitations that are not compatible with the 2016 DRAM pilot, given its short duration. Customers will not be dis-enrolled from their existing DR program unless they take the required actions under the tariff or contract.20

Allow Amendments to AMP Contract Capacity

The aggregators with active AMP contracts with PG&E and/or SCE are high-potential DRAM participants. These aggregators have an existing customer base and experience with third-party demand response. However, the AMP contracts have fixed monthly capacity commitments that only allow adjustments of up to 15%. This significantly limits the ability of these aggregators to move customers to DRAM from their AMP portfolio.

PG&E and SCE propose that aggregators with existing AMP contracts for the 2015-2016 periods could modify the capacity commitment of the AMP contract following the execution of a DRAM contract. The following provisions would apply:

- The Seller’s DRAM agreement must be executed and approved by the Commission.
- The Seller must indicate its desire to execute the AMP amendment at least three weeks prior to IOUs filing of the executed DRAM contracts with the Commission. The Seller must indicate the amount of capacity reduction it wants, and the method it is using. PG&E/SCE will notify the Sellers of the filing date upon execution of the DRAM contract.
- For each MW executed in the DRAM contract, the Seller can elect to amend its AMP contract in one of two ways (at Seller’s option):
  - Up to but not exceeding 5% for each MW executed in a DRAM contract,21 or
  - Up to but not exceeding a 1:1 ratio of the MW executed in a DRAM contract.22

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20 The one exception to this statement is non-residential Critical Peak Pricing (CPP), where removal from CPP can happen automatically pursuant to Rule 24/32.

21 For example, an aggregator with an existing AMP contract with a 100 MW August 2015 capacity commitment, and a 3 MW DRAM award for that month, could reduce its monthly commitment by an additional 15%. E.g. starting at 100 MW, they could exercise the 15% (3 MW x 5%) reduction option proposed above, reducing their August obligation to 85 MW.

22 For example, an aggregator with an existing AMP contract with a 10 MW August 2015 capacity commitment, and a 2 MW DRAM award, could reduce its monthly commitment by an additional 2 MW. E.g. starting at 10 MW, they could exercise the existing AMP option for
- This option would be applied in addition to existing AMP contract provisions that allow annual or monthly adjustments to contract capacity. 

- The reduction must correspond with the equivalent month in the AMP contract. For example, 1 MW of capacity in the DRAM contract for August 2016 could only apply to the August 2016 capacity commitment in the AMP contract.

- The total reduction cannot exceed 15% of the then current AMP contract MW for the month.

- The scope of the AMP contract amendment is strictly limited to this DRAM-related capacity reduction. PG&E / SCE will not entertain changes to any other aspects of the AMP contract.

Because the payment bands in the AMP contract ensure that aggregators are only paid after the fact for demonstrated capacity reductions, this proposal would not result in aggregators receiving capacity payments for the original AMP contract capacity values. Amendment of the AMP contracts under the set-aside provision will be filed concurrently with the Aggregator’s executed DRAM contract.

PG&E and SCE note that DRAM would be open to all aggregators, regardless of whether they are active in AMP or the Capacity Bidding Program, and individual customers who may bid into the DRAM auction on their own account.

These set-aside proposals were developed with the intention of meeting Commission requirements while avoiding limitations on customer choice or the growth of existing DR programs. Alternatives mentioned in the DRAM Decision were considered, however many were inconsistent with Commission goals to grow DR or impractical to implement. A set aside based on geography would be a blunt approach that would unfairly limit customer choice because of where those customers happen to be located. A set aside based on end-use load reduction technology would be operationally challenging, as it would require a procedure to identify technologies while screening customer enrollments over the entire portfolio. Furthermore, it is not clear what type of end-use

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23 For example, an aggregator with an existing AMP contract with a 100 MW August 2015 capacity commitment, and a 1 MW DRAM award, could reduce its monthly commitment by an additional 5%. E.g. starting at 100 MW, they could: exercise the existing AMP option for 10% annual reduction (reducing their obligation to 90 MW); then exercise the 5% (1 MW x 5%) reduction option proposed above (reducing their obligation to 85.5 MW), and finally exercise the existing AMP option for 5% monthly reduction (reducing their obligation to 81.2 MW).

24 This reduction limit applies regardless of option used. If in the prior example an aggregator with an existing 100 MW AMP contract had a 4 MW award (instead of 3 MW), they would still be limited to a 15% DRAM-related reduction (4 MW x 5% = 20%, but capped at 15%).

25 CBP nominations vary month-to-month and by winter/summer season, but SCE typically sees about 7 to 10 active aggregators on CBP.
load reduction technology is sufficiently pervasive that forcing it onto DRAM would cause significant enrollments.

PG&E and SCE also considered preventing new aggregator entrants into the Capacity Bidding Program. While PG&E and SCE appreciate SDG&E’s different program limitations, and do not oppose SDG&E using it for their portion of the DRAM pilot, PG&E and SCE did not incorporate it into their proposal for two reasons. First, it is not clear that an aggregator who could successfully participate in CBP could successfully participate in the more complex DRAM requirement for direct participation in the CAISO market, so the limitation may not result in significant DRAM enrollments. Second, there is a timing issue: PG&E and SCE do not wish to freeze aggregator involvement for an entire program for all of 2016 on the hope that new aggregators will be available, knowledgeable, and ready to submit a DRAM bid during a four-week period in 2015. PG&E and SCE believe it is reasonable for the IOUs to follow separate approaches here, and look at this as an opportunity for lessons learned from the Pilot.

For SDG&E:

SDG&E agrees that it is reasonable for the IOUs to follow separate approaches to the set-aside based on different compositions of customers and DR programs; this creates an opportunity for a wider spectrum of lessons to be learned from the Pilot. The SDG&E proposal for a set-aside has three elements:

- Any customer directly participating in a utility DR program as an individual customer may sign-up with an aggregator to participate in SDG&E’s DRAM
- SDG&E would encourage short-listed supply-side DR bidders in its all-source RFO to participate in the DRAM as a lead-in to their utility contract.
- SDG&E would limit participation in the Capacity Bidding Program (CBP), prohibiting new aggregators in the day ahead CBP unless the aggregator bids into SDG&E’s DRAM and either wins a DRAM contract or the solicitation meets the minimum 2 MW procurement, or the winning bids are expected to use all available Rule 32 registrations available. In addition, existing aggregators’ ability to sign up new industrial customers (NAICs 20-34) would be limited unless the aggregator bids into the DRAM and either wins a DRAM contract or the solicitation meets the 2 MW minimum.

Customer Migration to DRAM

Any customer directly participating in a SDG&E DR program as an individual customer (not part of an aggregator portfolio) may sign-up with an aggregator to participate in DRAM, even if they have signed up for a DR program in the 2016 delivery year. The customer would migrate to the aggregator’s DRAM portfolio and would no longer be part of the utility DR program. SDG&E proposes waiving certain tariff and contract provisions for selected programs to allow customers to un-enroll from the DR tariff and contract (if applicable) for the purpose of participating in DRAM.
New Participants from SDG&E All-source RFO

SDG&E has a current all-source RFO in process to obtain local capacity resources. Bids for new capacity, including supply-side DR bids, were submitted January 5, 2015. The supply-side DR bids will be short-listed in June, contracts signed by end of 2015, and approved by CPUC by 1st quarter 2016. Winning DR providers in the All-source RFO would start providing DR services with new incremental resources under their utility contracts beginning between 2018 and 2020 (which was at the option of the bidder). SDG&E would encourage short-listed supply-side DR bidders to participate in the DRAM as a lead-in to their utility contract to the extent they are able.

Bidders in the DRAM that were short-listed in the SDG&E All-source RFO could withdraw bids from 2016 DRAM if they have not signed a utility contract in all-source RFO by the time DRAM contracts are signed. This feature would ensure such DRAM bidders from being forced into DRAM without the underlying long-term contract.

In addition, SDG&E would conduct outreach with all DR bidders in the All-source RFO about the opportunity to participate in the DRAM as another potential source of new supply-side DR capacity.

SDG&E CBP Set-aside

A third source of DRAM bidders would come from new aggregators wishing to participate in the capacity bidding program and aggregators participating in the CBP. SDG&E would prohibit participation of new aggregators in the day ahead CBP, where new is defined as not having participated in CBP at least one year 2012-2015, unless the aggregator bids into the DRAM. If the aggregator bids into DRAM, the aggregator can participate in the CBP if it is a winning bidder, if the minimum DRAM quantity of 2 MW is met in the auction, or the winning bids are expected to use all available Rule 32 registrations available.

Existing aggregators in CBP would also be restricted. They could not enroll new industrial customers (NAICs 20-34) unless the aggregator bids into the DRAM. “New” is defined as not having been enrolled in the CBP program at any time during 2012-2015. If the existing aggregator bids into DRAM, the aggregator can enroll industrial customers if it is a winning bidder, if the minimum DRAM quantity of 2 MW is met in the auction, or the winning bids are expected to use all available Rule 32 registrations available. There would be no restrictions on aggregators signing up agricultural or commercial customers for CBP.

As a further clarification, there would be no restrictions on industrial customers participating directly in CBP. New customers could participate in CBP as individual customers, but not as part of an aggregator portfolio and not as self-aggregators. New industrial customers could participate in CBP as a self-aggregator if they bid into DRAM individually or as part of an aggregator portfolio. SDG&E proposes these restrictions would apply to CBP day-ahead program only for the 2016 DRAM since the DRAM is focused on day-ahead proxy demand resources.
VI. EVALUATION CRITERIA

Bid Evaluation

The bids will be evaluated by each utility separately using the quantitative and qualitative standard evaluation criteria described below.

Quantitative Criteria

The primary quantitative factor will be the Seller’s price bid into the auction, and costs directly attributable to such bid, if accepted, such as debt equivalence. Price considers how an Offer’s pricing for Resource Adequacy from Demand Response compares with other offers to meet the IOU’s procurement target for the DRAM RFO. Price will include both the capacity bid price and the separately stated scheduling coordinator costs and will reflect differences in the quantity provided each month, if applicable. Evaluation of price will consider that each month the DR provided will have a different value to the IOU. The IOUs will use relative value weights for each month, reflecting the different value of RA throughout the year.26 The weighted average bid price will be in $/kW-month.

Qualitative Criteria

Consistent with most other procurement activities, the utilities will also utilize a standard set of qualitative evaluation criteria to assist in the bid selection process.27 The following qualitative evaluation criteria will be used:

Supplier Diversity

Supplier diversity provides procurement opportunities for Women, Minorities, and Service Disabled Veteran-owned business enterprises (WMDBVE). Participants that contribute to the IOU’s supplier diversity goals for procurement may be recognized by the IOU.

DR Product Diversity

To enhance the value of the pilot, the IOU may consider factors that would increase the diversity of winning bids. These factors include:

- Bid composition (a single winning bid may not provide as much useful information as several smaller bids);
- Number of potential customers, capacity and resources needed to supply winning bidders’ bids relative to Rule 24/32 limitations for 2016 (if several winning bids will likely exceed the active customer account registrations available based

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26 The weighs for monthly capacity value and debt equivalence costs may differ by IOU. IOU DR programs such as CBP currently have different capacity values approved by the Commission.

27 The qualitative criteria are standard, however the IOUs may weigh them differently in the evaluation.
on the Bidder plan to provide capacity, it would lead to potential failure of the
DRAM); and

• Impact of the scheduling coordinator costs on the ranking of the bid prices.
Prices without the scheduling coordinator costs may be considered to provide
more diversity of size of winning bids.

Project Viability

To enhance the success of the winning bids, project viability can be considered
including:

• Past performance in utility programs or request for offers;
• Experience with the DR product type being bid into the DRAM to supply System
RA; and
• Size of company relative to expected abilities needed to supply capacity.

Cost Effectiveness

As a pilot, where additional incentives or other costs may be incurred beyond what
would be expected from a permanent program, the 2016 DRAM pilot is not subject to
cost-effectiveness review. However, the IOUs will provide benchmark data on the cost
of capacity to the CPUC as part of its request for approval of the DRAM contracts.

DRAM Evaluation

Demand Response Auction Mechanism Pilot program should test: (a) the feasibility of
procuring Demand Response Supply Resources for Resource Adequacy (RA) with third
party direct participation in the CAISO markets through an auction mechanism, and (b)
the ability of winning bidders to effectively integrate their DR Resources into the CAISO
market. The evaluation will follow this breakdown with the IOU responsible for providing
the Commission information for part (a) and the Aggregator responsible for providing
information for part (b) to the extent information is not available to the CPUC directly
from the CAISO.

The Feasibility of Procuring DR Supply Resources for Resource Adequacy with DRAM

1. Auction Metrics

DRAM is intended to be a competitive procurement mechanism, so the
DRAM metrics should include information on the robustness of the auction.
These statistics will be compiled by each utility, reviewed for accuracy by the IE,
and confidentially submitted to the Commission’s Energy Division as part of the
advice letter requesting approval of proposed DRAM contracts.

• Participation statistics including outreach statistics; the number of
aggregators and large individual customers participating in the DRAM and
their characteristics (e.g., new to California or existing); total number of
MW offered into the DRAM for each month; the distribution of the size of bids;

- Discussion of the competitiveness of the auction;
- Winning Bid Information including number of aggregators and large individual customers winning bids in the DRAM; aggregators broken down into new to California or existing; number of MW of accepted bids for each month; distribution of the size of accepted bids; distribution of the prices of bids inclusive of scheduling coordinators costs; distribution of the prices of bids exclusive of scheduling coordinators costs; and distribution of total costs of winning bids.

- Benchmark data on RA costs will be provided including average cost of RA purchased for August, current CAISO Capacity Procurement Mechanism (CPM) cost, cost of new capacity based on the latest adopted cost effectiveness protocol.

2. Auction Protocols

Lessons learned from the DRAM auction will be compiled by the IOU and will address the following (but are not limited to the following):

- Participants ability to understand how to bid in the auction as demonstrated by the amount and types of questions raised by bidders, and number of conformance check issues;
- Participants’ initial ability to understand or familiarity with the CAISO products, performance requirements and markets through a survey at the bidder’s conference;
- Discussion of the scheduling coordinator costs and its effect on the auction results;
- Limits imposed by the supply-side integration and Rule 24/32 limitations;
- Any issues with the evaluation process, and
- The number of winning bidders unwilling to sign contracts and the reasons.

3. Post-Auction Metrics

These statistics will be compiled by each IOU and confidentially submitted to the Energy Division within 30 days of the end of the Delivery Period.

- Number of resources registered, distribution of registrations per PDR resource;
- Total percentage of MW in the peak month of August shifted from existing DR programs;
• Total MW of RA contracted for each month and total MW of RA supplied for each month based on demonstrated capacity; and

• Information on the make, model, and location of all fossil-fueled emergency back-up generators participating in this pilot, as provided by the Sellers, confidentially under PUC § 583.

The Ability to Effectively Integrate DR Resources into the CAISO market

The DRAM should encourage direct participation in the CAISO market. Information on the participation of the DRAM winners in the CAISO markets is available to the Commission directly from the data provided to it by the CAISO.

VII. Non-binding Cost Estimates

The IOUs note that the ability to shift funds to DRAM is limited by the unspent dollars from existing DR programs authorized by the Commission and shifting limits. Ordering Paragraph 5.d of D.14-12-024 states the following:

基金转移在2015-2016年需求响应批准的桥梁基金预算将由太平洋天然气和电力公司，圣地亚哥天然气及电力公司，和南加州爱迪生公司（简称， Utilities）为单一目的，即为需求响应拍卖市场机制的任何用途提供资金。

Available funds are also limited by competing Commission initiatives that look to utilize these same funds for other purposes (e.g., Back-up generation data collection).

The IOUs propose limiting the overall expense in supporting the 2016 DRAM Pilots. For PG&E and SCE, the proposed DRAM cost cap is $4 Million each, and for SDG&E it is

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The IOUs note that the ability to shift funds to DRAM is limited by the unspent dollars from existing DR programs authorized by the Commission and shifting limits. Ordering Paragraph 5.d of D.14-12-024 states the following:

Fund shifting in the 2015-2016 demand response approved bridge funding budget will be allowed by Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (jointly, the Utilities) for the sole purpose of funding the Demand Response Auction Mechanism pilot with the following caveats: 1) The Utilities shall not eliminate any other approved demand response program in order to fund the pilot without proper authorization from the Commission; and 2) The Utilities shall continue to submit a Tier Two Advice Letter before shifting more than 50 percent of any one program’s funds to the pilot.

Available funds are also limited by competing Commission initiatives that look to utilize these same funds for other purposes (e.g., Back-up generation data collection).

The IOUs propose limiting the overall expense in supporting the 2016 DRAM Pilots. For PG&E and SCE, the proposed DRAM cost cap is $4 Million each, and for SDG&E it is

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Available funds are also limited by competing Commission initiatives that look to utilize these same funds for other purposes (e.g., Back-up generation data collection).

The IOUs propose limiting the overall expense in supporting the 2016 DRAM Pilots. For PG&E and SCE, the proposed DRAM cost cap is $4 Million each, and for SDG&E it is
$1 Million. The overall expense in supporting the 2016 DRAM pilot includes all administrative costs, scheduling coordinator costs, and capacity payments, but includes no costs related to the implementation of the Rule 24/32.

While the Pilot costs, especially the portion due to Seller’s bids and SC costs, is not known at this time, the IOUs provide the above cost caps as the non-binding cost estimates for the 2016 DRAM Pilot.

As stated in the footnote 22 of the Joint Party settlement filed on August 4, 2015, “If sufficient bridge funding is not available to fund incentives for approved DRAM Pilot contracts in 2016, funding for those incentives could be addressed in the advice letters that the utilities would have to file after the winners of the DRAM auction are determined.” If additional funding is not requested by an IOU for the 2016 DRAM pilot, the IOUs will limit spending to the above amounts. Funding for the 2017 DRAM pilot will be addressed in the 2017 DRAM advice letter. The IOUs reserve their rights to request additional funding if and as it becomes needed.

VIII. Safety

Safety is a high priority in all utility activities, both for the Commission and for the IOUs. The IOUs have considered the safety issues related to the DRAM Pilot Program, the Product and the structure of the relationship of the entities involved to determine if the IOUs should impose further safety requirements upon the Seller pursuant to the DRAM Resource Purchase Agreement. The DRAM Resource Purchase Agreement does not include specific safety requirements for Seller’s PDRs. However, the DRAM Resource Purchase Agreement requires the Seller to cause its PDRs, DRPs, and SCs to comply, with all applicable laws, including laws related to permitting and safe operations. The provisions are purposefully general and clarify that the burden of safe operations of the PDRs does not lie with the Buyer.

The IOUs do not believe that additional safety requirements are necessary given that the structure of the DRAM Resource Purchase Agreement along with the relationship between the Sellers, DRPs, and PDRs means that the Sellers act as aggregators of PDRs made up of groupings of customers. Therefore, the IOUs have no direct contractual relationship with the PDRs or customers because the PDRs and customers are not parties to the DRAM Resource Purchase Agreement. In addition, the IOUs do not have operational control, dispatch rights, or the ability direct action on or over the PDR so again the IOUs cannot direct the action of the PDR to affect the safety of the PDRs. The Sellers or their DRPs have those controls and rights. Finally, the product at issue is system Resource Adequacy, a financial product, as opposed to a physical product such as energy. Based on the characteristics of the product and the program structure, along with the IOUs lack of operational control over the resources, the IOUs believe that the imposition of additional DRAM-specific safety procedures and requirements is not needed.
IX. Requests for Findings by the Commission

Information Sharing and Reporting

The Sellers, their DRPs and SCs shall, as requested by the Commission, provide the Energy Division staff with data and information related to the performance and activities conducted in connection with the Sellers’ DRAM contracts. Market sensitive information requested by Commission staff shall be submitted confidentially to the Commission Staff and accompanied by a declaration from the Seller, its DRP or SC, specifying the reason for the claim of confidentiality.


The IOUs request that the Commission find that IOUs will have no responsibility for the annual Load Impact Analysis for the 2016 DRAM pilot contracts. The Sellers will not provide the IOUs with information that would be necessary for the Load Impact Protocol Reports required in D.09-08-027, OP 39 and D.12-04-045, Finding of Fact 54 because it will be confidential. Therefore, the IOUs cannot include the 2016 DRAM pilot results in the Load Impact Reports. For the same reason, the IOUs also request a finding that they will have no responsibility to include DRAM information for the monthly annual Load Impact Analysis reports on interruptible load and demand response required in D.09-08-027, OP 39 and D.12-04-045, Finding of Fact 54 for the 2016 DRAM pilot contracts.

Further, the Sellers have requested an exemption for the 2016 DRAM pilot from the requirement in D.14-06-050, Appendix B, Section 12.1.2, Performance Assessment, pages B-7 to B-8, to provide a Load Impact Analysis under the Load Impact Protocols.

Performance Report

The IOUs request the Commission to require the Energy Division to aggregate the performance data provided by the IOUs, by the CAISO, and by aggregators and prepare a publically available report providing an evaluation of all aspects of the DRAM from which the Commission could evaluate the benefits of a DRAM as a procurement mechanism and evaluate potential DRAM changes. The IOUs and other parties should be allowed to provide formal responses to these reports within 30 days of issuance.

Waiver of CPUC Penalties

Under the contract, the buyer will be indemnified for the DRAM Product performance in relation to designated PDR meeting CPUC RA availability requirements. For this pilot, the IOUs request that the Commission waive all CPUC penalties related to DRAM performance. This waiver will reduce the risks for bidders.
Provision of back-up generator information

Consistent with D.14-12-024, OP 12, the Seller(s) are responsible for providing the Buyer with information on the make, model and location of back-up generators that customers have within Seller’s PDR(s). The purpose is to obtain the information on back-up generators consistent with implementing OP 12, in the Commission Resolution on Advice Letters 4582-E (PG&E), 2700-E (SDG&E), and 3171-E (SCE), which is still pending. The IOUs note that OP 14 requires collection of “hourly usage information for each of the back-up generators owned by non-residential customers that participate in their demand response programs.” OP 14 requires the utilities to map that hourly usage information “against their demand response events and the load reductions provided by the participants...” However, under the DRAM, the utilities will have no demand response events; the dispatch of the Seller’s PDR(s) will be solely by the CAISO. Therefore, there cannot be any mapping of hourly usage information as specified in OP 14, and SCE and PG&E request that the Commission not require them to collect or the Sellers to provide hourly usage information for customers in the Seller’s PDR(s) for the Delivery Period.

Advice letter for 2017 DRAM Pilot

The 2016 DRAM auction results and winners will not be known in time for annual RA filing, which would have been needed by September 2015. Hence, for the 2016 DRAM, the IOUs will only seek monthly system RA in the monthly filings. However for the 2017 DRAM auction, the DRAM auction results and winners must be known by September 2016, so the RA obtained through the second DRAM auction can be reflected in the annual RA filing for system, local, and flexible capacity. To achieve that goal, the IOUs believe they would need to file a second advice letter in 2015 for the 2017 DRAM pilot auction.

D.14-12-024, OP 5 c. required the IOUs to file a Tier 3 advice letter with the DRAM pilot design, set-asides requirements, protocols, standard pro forma contracts, evaluation criteria and non-binding cost estimates by April 1, 2015. This advice letter complies with the required information for the 2016 DRAM pilot. The DRAM working group has only had time to address the first pilot DRAM auction for 2016, and could not turn its attention to the 2017 pilot.

To file the same type of information for the 2017 DRAM pilot, the DRAM working group will need to continue working this spring and summer under the Commission’s direction. The RA commitments for 2017 are due by September 16, 2016. Therefore, for the 2017 DRAM contracts to meet that deadline, the IOUs anticipate the second DRAM auction must occur prior to any resources from the first DRAM auction coming online. To meet the September 2016 RA showing date, the IOUs must file the 2017 DRAM Pilot design Advice Letter by end of September 2015.

---

29 Hold for footnote to incorporate extension of advice letter due date, if granted.
30 The September 2015 date was arrived at by backtracking the tasks necessary in order to put 2017 DRAM Pilot contracts in a 2017 IOU RA Supply Plan. E.g. 9/2015 2017 DRAM
schedule, the IOUs will need, and therefore request, that the Commission authorize the IOUs to file an advice letter for the 2017 DRAM within 60 days of the effective date of the Commission Resolution on this Advice Letter. The Advice Letter will detail the DR products and include proposals to recover the 2017 DRAM costs in rates. In summary, the IOUs request Commission authorization to do the following:

- Continue the DRAM working group process to address implementation of the 2016 DRAM Pilot,
- Continue the DRAM working group process to address issues associated with the 2017 DRAM Pilot, such as including local and flexible RA products and timelines,\(^3\) and
- File the advice letter for the second DRAM Pilot and associated funding within 60 days of the Commission Resolution of this Advice Letter.

**ATTACHMENTS**

This Advice Letter contains Attachment 1: Standard Contract (DRAM RA Purchase Agreement) including attachments to the contract.

This advice filing will not increase any rate or charge, cause the withdrawal of service, or conflict with any other schedule or rule.

**AUTHORIZATION**

This advice letter is filed by the Southern California Edison Company on behalf of, and with the authorization from, Pacific Gas & Electric Company, San Diego Gas & Electric and Southern California Edison Company (the IOUs).

**TIER DESIGNATION**

Pursuant to D.14-10-046 and General Order (GO) 96-B, Energy Industry Rule 5.3, this advice letter is submitted with a Tier 3 designation.

**EFFECTIVE DATE**

This Advice Letter will be effective upon Commission resolution.

---

31 On April 14, 2015, PG&E filed a notice of additional working group meetings in R.13-09-011 which contains a schedule of DRAM working group meetings through June.
NOTICE

Anyone wishing to protest this advice filing may do so by letter via U.S. Mail, facsimile, or electronically, any of which must be received no later than May 11, 2015. Protests should be mailed to:

CPUC Energy Division  
ED Tariff Unit  
505 Van Ness Avenue, 4th Floor  
San Francisco, California 94102  
Facsimile: (415) 703-2200  
E-mail: EDTariffUnit@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004 (same address above).

In addition, protests and all other correspondence regarding this advice letter shall be sent to either via E-mail or U.S. mail (and by facsimile, if possible) at the address shown below on the same date it is mailed or delivered to the Commission:

Russell G. Worden  
Managing Director, State Regulatory Operations  
Southern California Edison Company  
8631 Rush Street  
Rosemead, California 91770  
Facsimile: (626) 302-4829  
E-mail: AdviceTariffManager@sce.com

Michael R. Hoover  
Director, State Regulatory Affairs  
c/o Karyn Gansecki  
Southern California Edison Company  
601 Van Ness Avenue, Suite 2030  
San Francisco, California 94102  
Facsimile: (415) 929-5544  
E-mail: Karyn.Gansecki@sce.com

Meredith Allen  
Senior Director, Regulatory Relations  
Pacific Gas and Electric Company  
77 Beale Street, Mail Code B10C  
P.O. Box 770000  
San Francisco, California 94177  
Facsimile: (415) 973-7226  
E-mail: PGETariffs@pge.com
There are no restrictions on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously.

In accordance with General Rule 4 of GO 96-B, SCE is serving copies of this advice filing to the interested parties shown on the attached GO 96-B and R.13-11-005 service lists. Address change requests to the GO 96-B service list should be directed by electronic mail to AdviceTariffManager@sce.com or at (626) 302-4039. For changes to all other service lists, please contact the Commission’s Process Office at (415) 703-2021 or by electronic mail at Process_Office@cpuc.ca.gov.

Further, in accordance with Public Utilities Code Section 491, notice to the public is hereby given by filing and keeping the advice filing at SCE’s corporate headquarters. To view other SCE advice letters filed with the Commission, log on to SCE’s web site at https://www.sce.com/wps/portal/home/regulatory/advice-letters.

For questions, please contact Gigio Sakota at (626) 302-5927 or by electronic mail at Gigio.Sakota@sce.com

Southern California Edison Company

/s/ Russell G. Worden
Russell G. Worden

RGW:gs:jm
Enclosures
Company name/CPUC Utility No.: Southern California Edison Company (U 338-E)

Utility type: Contact Person: Darrah Morgan
- ELC
- GAS
- PLC
- HEAT
- WATER

Phone #: (626) 302-2086
E-mail: Darrah.Morgan@sce.com
E-mail Disposition Notice to: AdviceTariffManager@sce.com

EXPLANATION OF UTILITY TYPE

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<th>ELC = Electric</th>
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<th>PLC = Pipeline</th>
<th>HEAT = Heat</th>
<th>WATER = Water</th>
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Advice Letter (AL) #: 3208-E Tier Designation: 3

Subject of AL: Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company’s Demand Response Auction Mechanism Pilot Pursuant to Ordering Paragraph 5 of Decision 14-12-024

Keywords (choose from CPUC listing): Compliance

AL filing type: ☑ Annual

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: Decision 14-12-024

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: 

Summarize differences between the AL and the prior withdrawn or rejected AL: 

Confidential treatment requested? ☑ Yes ☐ No

If yes, specification of confidential information:
Confidential information will be made available to appropriate parties who execute a nondisclosure agreement.
Name and contact information to request nondisclosure agreement/access to confidential information:

Resolution Required? ☑ Yes ☐ No

Requested effective date: Upon Commission Resolution

No. of tariff sheets: -0-

Estimated system annual revenue effect (%): 

Estimated system average rate effect (%): 

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed:

Pending advice letters that revise the same tariff sheets: None

1 Discuss in AL if more space is needed.
Protests and all other correspondence regarding this AL are due no later than May 11, 2015, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, California 94102
E-mail: EDTariffUnit@cpuc.ca.gov

Russell G. Worden
Managing Director, State Regulatory Operations
Southern California Edison Company
8631 Rush Street
Rosemead, California 91770
Facsimile: (626) 302-4829
E-mail: AdviceTariffManager@sce.com

Michael R. Hoover
Director, State Regulatory Affairs
c/o Karyn Gansecki
Southern California Edison Company
601 Van Ness Avenue, Suite 2030
San Francisco, California 94102
Facsimile: (415) 929-5544
E-mail: Karyn.Gansecki@sce.com
2015 DRAM RFO PRO FORMA

DEMAND RESPONSE AUCTION MECHANISM RESOURCE PURCHASE AGREEMENT

between

[NAME OF SELLER]

and

[IOU BUYER]
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DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT

BETWEEN

[SELLER] AND [IOU BUYER]

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DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BY AND BETWEEN
[NAME OF SELLER]
[IOU BUYER]

PREAMBLE

This Demand Response Resource Purchase Agreement, together with its exhibits (the “Agreement”) is entered into by and between [IOU Buyer], a California corporation (“Buyer”), and [Aggregator or Demand Response Provider], a [Seller’s business registration] (“Seller”), as of [Date] (“Execution Date”). Buyer and Seller are referred to herein individually as a “Party” and collectively as “Parties.” Unless the context otherwise specifies or requires, capitalized terms in this Agreement have the meanings set forth in Exhibit A.

AGREEMENT

In consideration of the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE 1. TRANSACTION

1.1. Purchase and Sale of the Product

During the Delivery Period, Seller shall sell and deliver, and Buyer shall purchase and receive, the Product in the amount of the Monthly Quantity subject to and in accordance with the terms and conditions of this Agreement.

1.2. Term

The “Term” of this Agreement shall commence upon the Execution Date and shall continue until the expiration of the Delivery Period unless terminated earlier in accordance with the terms and conditions of this Agreement.

1.3. Delivery Period

The “Delivery Period” shall commence on the later of (a) the first day of the first month that begins after sixty (60) days after CPUC Approval, and (b) [Date], and shall continue in full force and effect until [Date] [IOU Comment: The Date should be the last calendar day of the last Showing Month], unless terminated earlier in accordance with the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Delivery Period will not commence until CPUC Approval is obtained or waived by Buyer in its sole discretion.
1.4. Seller’s Designation of the DRAM Resource

(a) On or before the later of (1) the first day of the first month that begins after the date that is sixty (60) days after CPUC Approval, and (2) the date that is sixty (60) days prior to the first Showing Month, Seller shall:

(i) Provide to Buyer the Resource ID(s) for each PDR providing Product pursuant to this Agreement.

(ii) Confirm in writing to Buyer that each PDR identified by Seller pursuant to Section 1.4(a)(i) is comprised solely of Bundled Service Customers or Unbundled Service Customers.

(b) The Parties shall cooperate to implement the requirements of Rule [24/32] to enroll PDR Customers in order for Seller to designate the PDR(s) pursuant Section 1.4(a)(i).

1.5. Monthly Quantity and Contract Price

(a) The Monthly Quantity and Contract Price for each applicable Showing Month is as follows:

<table>
<thead>
<tr>
<th>2016 Showing Month</th>
<th>Monthly Quantity (kW for each day of Showing Month)</th>
<th>Contract Price ($/kW-Month)</th>
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<tr>
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<tr>
<td>December</td>
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(b) In the event that Seller is not able to register the DRAM Resource for part or all of the Monthly Quantity for a Showing Month due solely to (i) the actions or inactions of Buyer or the CAISO, (ii) insufficient Rule [24/32] registrations under Conclusion of Law 10 in D.15-03-042 being available to Seller, or (iii) CPUC
Approval not occurring at least sixty (60) days prior to the first Showing Month, then Seller may, in its sole discretion, by providing Notice to Buyer on or before the date that is sixty (60) days prior to the Showing Month for which Seller is unable to register the DRAM Resource, (iv) reduce the Monthly Quantity for such Showing Month, or (v) terminate this Agreement; provided, Seller shall demonstrate to Buyer’s reasonable satisfaction that Seller made commercially reasonable efforts to register the DRAM Resource for the Monthly Quantity for the applicable Showing Month.

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

1.6. Demonstrated Capacity

(a) Each invoice submitted by Seller to Buyer pursuant to Section 4.2 shall include a statement, in a form substantially similar to Exhibit C, of the amount of the Monthly Quantity for such Showing Month that Seller was capable of delivering (“Demonstrated Capacity”), including, at Seller’s election in its sole discretion either:

(i) The results of a capacity test conducted by the Seller’s SC during the applicable Showing Month. Such test shall consist of at least two (2) continuous hours of load reduction by a PDR in the DRAM Resource. The Demonstrated Capacity with respect to such PDR will equal the maximum hourly load reduction during such test as calculated using the PDR Capacity Baseline.

(ii) The average amount of capacity Seller bid a PDR in the DRAM Resource into the CAISO Day-Ahead Market solely during the hours of the Showing Month in compliance with the MOO.

(iii) The results of a Dispatch of a PDR in the DRAM Resource during the Showing Month, provided that the PDR provided load reduction during all of the hours referenced in the Dispatch Instruction corresponding to the MOO hours from the Day-Ahead Schedule. The Demonstrated Capacity will equal the maximum hourly load reduction during any hour of such Dispatch as calculated using the PDR Capacity Baseline.
(b) Solely for purposes of establishing the Demonstrated Capacity pursuant to this Section 1.6(a), Seller shall use data available through Buyer’s Customer Data Access Systems that has been designated by Buyer as final Revenue Quality Meter Data and such data shall be considered final by the Parties as of the date Seller submits its invoice for the applicable Showing Month to Buyer.

(c) If the DRAM Resource is comprised of more than one PDR, then Seller may establish the portion of the Demonstrated Capacity associated with each such PDR by using any of the methods described in Sections 1.6(a)(i)-(iii), in which case the Demonstrated Capacity will equal the sum of the individual PDR demonstrated capacities.

(d) Following Buyer’s receipt of Seller’s invoice and Notice of Demonstrated Capacity, Buyer may, upon Notice to Seller, require Seller to provide documentation from Seller or Seller’s SC that establishes to Buyer’s reasonable satisfaction the Demonstrated Capacity of a PDR as stated by Seller in its invoice for the applicable Showing Month. In the event that Seller does not provide such documentation within ten (10) Business Days from Buyer’s Notice or such documentation is not reasonably satisfactory to Buyer, then Buyer may require an audit of Seller or Seller’s SC records upon Notice (“Audit Notice”). With respect to an Audit Notice, Seller shall cause its SC to allow Buyer or its designated independent third-party auditor to have access to the records and data necessary to conduct such audit within five (5) Business Days of Seller’s receipt of an Audit Notice; provided, such audit will be limited solely to verification of the data upon which Seller based its claim of the amount of the Demonstrated Capacity. Buyer’s costs, including the costs for any third-party auditor, incurred in connection with the conducting such audit are the sole responsibility of Buyer.

ARTICLE 2. CPUC APPROVAL

2.1. Obtaining CPUC Approval

Within thirty (30) days after the Execution Date, Buyer shall file with the Commission the appropriate request for CPUC Approval. Seller shall use commercially reasonable efforts to support Buyer in preparing for and obtaining CPUC Approval. Buyer has no obligation to seek rehearing or to appeal a Commission decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

2.2. CPUC Approval Termination Right

(a) Either Party has the right to terminate this Agreement upon Notice, which will be effective five (5) Business Days after such Notice is given, if (i) CPUC Approval has not been obtained or waived by Buyer in its sole discretion within sixty (60) days after Buyer files its request for CPUC Approval and (ii) such Notice of
termination is given on or before the ninetieth (90th) day after Buyer files the request for CPUC Approval.

(b) Failure to obtain CPUC Approval in accordance with this Article 2 will not be deemed to be a failure of Seller to sell or deliver the Product or a failure of Buyer to purchase or receive the Product, and will not be or cause an Event of Default by either Party. No Settlement Amount with respect to this Agreement will be due or owing by either Party, and neither Party shall have any obligation or liability to the other, upon termination of this Agreement due solely to failure to obtain CPUC Approval.

ARTICLE 3. SELLER OBLIGATIONS

3.1. Delivery of Product

(a) No later than ten (10) Business Days before the applicable Buyer’s Compliance Showing deadlines for each Showing Month, Seller shall submit, or shall cause Seller’s SC(s) to submit, Notice to Buyer which includes Seller’s proposed Supply Plan for such Showing Month in a form substantially similar to Exhibit D, or in a form as communicated in writing by Buyer to Seller no later than fifteen (15) Business Days prior to the Compliance Showing.

(b) Seller shall, on a timely basis, submit, or cause its SC to submit, a Supply Plan in accordance with the CAISO Tariff to identify and confirm the Monthly Quantity to be provided to Buyer from the DRAM Resource for each Showing Month.

3.2. Resource Adequacy Benefits

Seller grants, pledges, assigns, and otherwise commits to Buyer the Monthly Quantity and all Resource Adequacy Benefits associated with the DRAM Resource to enable Buyer to meet its RAR. The Parties shall take all commercially reasonable actions, and execute all documents or instruments necessary, to effect the use of the Product for Buyer’s sole benefit.

3.3. Provision of Information

(a) Seller shall promptly provide to the CPUC all information requested by the CPUC relating to this Agreement or the DRAM Pilot Program, which may include confidential and proprietary information reasonably accessible to Seller. Seller may seek confidential treatment by the CPUC of Seller’s confidential information.

(b) Seller shall comply with the requirements for load impact analysis in D.14-06-050, Appendix B, and provide to the CPUC a load impact load impact evaluation consistent with the Load Impact Protocols in D.08-04-050 and data required by D.14-06-050 for load impact reporting.
(c) If a PDR in the DRAM Resource has not been tested or Dispatched between January 1, 2016 and the end of the Delivery Period, then Seller shall cause a test of the PDR in accordance with D.14-06-050, Appendix B, by the end of the Delivery Period and provide the results of such test to Buyer for inclusion in Buyer’s Compliance Showing to the CPUC.

(d) Seller shall provide Notice to Buyer of whether any participating non-residential customers included in the DRAM Resource during the Delivery Period had back-up generation and if so, shall include in such Notice information on the make, model and location of the generator by Customer and location consistent with the Commission direction to the Buyer in OP 12 of D.14-12-024. Additionally, Seller shall provide information regarding the hourly usage for each Customer back-up generator that Buyer needs to comply with Commission requirements under D.14-12-024, Ordering Paragraph (OP) 14, as that OP may be applicable to the Dispatch of Seller’s PDR(s) pursuant to this Agreement.  

{IOU Comment: This provision only applies to SCE & PG&E Agreements.}

3.4. Seller’s Obligations; RA Obligations

(a) Seller shall, and shall cause each of the PDRs in the DRAM Resource and corresponding DRPs and SCs to, comply with all applicable CAISO Tariff provisions, CPUC Decisions and all other Applicable Laws.

(b) Seller shall or shall cause Seller’s DRP to execute Buyer’s Demand Response Provider Service Agreement in accordance with Rule [24/32].

3.5. Indemnities for Failure to Perform.

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

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

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

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

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

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

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

ARTICLE 4. PAYMENT AND BILLING

4.1. Delivered Capacity Payment

Buyer shall make a monthly payment to Seller, after the applicable Showing Month, (“Delivered Capacity Payment”) equal to:

\[ A \times B + C \]

Where:

\[ A = \text{The Contract Price for the applicable Showing Month} \]

\[ B = \text{The lesser of (i) the Demonstrated Capacity for the applicable Showing Month, and (ii) the Monthly Quantity for the applicable Showing Month} \]

\[ C = \text{The monthly SC services payment in the amount of [Dollar Amount Text] dollars ($[Number]}. \]

{IOU Comment: SC services payment amount will be based on Seller’s bid that was selected by the IOU in the RFO.}

4.2. Invoice and Payment Process

(a) As soon as practicable after the end of each Showing Month, Seller will render to Buyer an invoice for the payment obligations, if any, incurred hereunder with respect to such Showing Month.

(b) Buyer will pay Seller all undisputed invoice amounts on or before the later of (i) the twentieth (20th) day of each month, or (ii) the tenth (10th) day after receipt of Seller’s invoice and Demonstrated Capacity or, if such day is not a Business Day, then on the next Business Day.

(c) Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the
Cash Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(d) Buyer may offset against any future payments by any amount(s) that were previously overpaid.

(e) Either Party may, in good faith, dispute the correctness of any invoice, bill, charge, or any adjustment to an invoice, rendered under this Agreement, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, bill, charge, or adjustment to an invoice, was rendered. Disputes are subject to the provisions of Article 10 below. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution.

(f) Buyer may deduct any amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer under this Agreement.

4.3. Allocation of Other CAISO Payments and Costs

As between Buyer and Seller, Seller shall retain any revenues Seller or Seller’s SC may receive from and pay all costs, penalties, charges charged to Seller or Seller’s SC by the CAISO or any other third party in connection with the DRAM Resource, except as expressly provided otherwise in this Agreement.

ARTICLE 5. CREDIT AND COLLATERAL

5.1. Seller’s Credit and Collateral Requirements

(a) If, at any time during the Term after CPUC Approval is obtained or waived by Buyer, Seller does not have a Credit Rating, or if its Credit Rating is below BBB- from S&P and Baa3 from Moody’s, or below BBB- from S&P or Baa3 from Moody’s, if rated by either S&P or Moody’s, but not both, Seller shall provide and maintain collateral with Buyer in an amount equal to twenty percent (20%) of the sum of the estimated Delivered Capacity Payments for all of the remaining months of the Delivery Period including the current month, with such estimated Delivered Capacity Payments being based on the applicable Monthly Quantity values times the applicable Contract Price (“Performance Assurance”).
If Seller’s Credit Rating is at or above BBB- from S&P and Baa3 from Moody’s if rated by both S&P and Moody’s or at or above BBB- from S&P or Baa3 from Moody’s, if rated by either S&P or Moody’s, but not both, Seller shall have no obligation to provide Performance Assurance to Buyer, and Sections 5.2 through 5.5 will not be applicable.

If required pursuant to Section 5.1(b), Seller shall post the Performance Assurance with Buyer within ten (10) Business Days.

### 5.2. Grant of Security Interest/Remedies

To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, the Performance Assurance and all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect Buyer’s first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, if it is the Non-Defaulting Party, may do any one or more of the following: (i) exercise any of the rights and remedies of a Buyer with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. In such an event Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

### 5.3. Reduction and Substitution of Performance Assurance

If the amount of Performance Assurance held by Buyer exceeds the amount required pursuant to Section 5.1, on any Business Day, Seller may give Notice to Buyer requesting a reduction in the amount of Performance Assurance previously provided by Seller for the benefit of Buyer, provided that, (i) after giving effect to the requested reduction in Performance Assurance, no Event of Default or Potential Event of Default with respect to Seller has occurred and is continuing, and (ii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied
payment obligations. A permitted reduction in Performance Assurance may be
effected by the Transfer of Cash to Seller or the reduction of the amount of an
outstanding Letter of Credit previously issued for the benefit of Buyer. Seller
shall have the right to specify the means of effecting the reduction in Performance
Assurance. In all cases, the cost and expense of reducing Performance Assurance
(including, but not limited to, the reasonable costs, expenses, and attorneys’ fees
of Buyer) shall be borne by Seller. Unless otherwise agreed in writing by the
Parties, (iii) if Seller’s reduction demand is made on or before the Notification
Time on a Business Day, then Buyer shall have five (5) Business Days to effect a
permitted reduction in Performance Assurance, and (iv) if Seller’s reduction
demand is made after the Notification Time on a Business Day, then Buyer shall
have six (6) Business Days to effect a permitted reduction in Performance
Assurance, in each case, if such reduction is to be effected by the return of Cash
to Seller. If a permitted reduction in Performance Assurance is to be effected by a
reduction in the amount of an outstanding Letter of Credit previously issued for
the benefit of Buyer, Buyer shall promptly take such action as is reasonably
necessary to effectuate such reduction.

(b) Except when an Event of Default or Potential Event of Default with respect to
Seller shall have occurred and be continuing or an Early Termination Date has
occurred or been designated as a result of an Event of Default with respect to
Seller for which there exist any unsatisfied payment obligations, Seller may
substitute Performance Assurance for other existing Performance Assurance of
equal value upon five (5) Business Days’ Notice (provided such Notice is made
on or before the Notification Time, otherwise the notification period shall be six
(6) Business Days) to Buyer. Upon the Transfer to Buyer of the substitute
Performance Assurance, Buyer shall Transfer the relevant replaced Performance
Assurance to Seller within five (5) Business Days. Notwithstanding anything
herein to the contrary, no such substitution shall be permitted unless (i) the
substitute Performance Assurance is Transferred simultaneously or has been
Transferred to Buyer prior to the release of the Performance Assurance to be
returned to Seller and the security interest in, and general first lien upon, such
substituted Performance Assurance granted pursuant hereto in favor of Buyer
shall have been perfected as required by applicable law and shall constitute a first
priority perfected security interest therein and general first lien thereon, and (ii)
after giving effect to such substitution, the substitute Performance Assurance shall
equal the amount of Performance Assurance being replaced. Each substitution of
Performance Assurance shall constitute a representation and warranty by Seller
that the substituted Performance Assurance shall be subject to and governed by
the terms and conditions of this Article 5, including without limitation the security
interest in, general first lien on and right of offset against, such substituted
Performance Assurance granted pursuant hereto in favor of Buyer pursuant to this
Article 5.

(c) The Transfer of any Performance Assurance by Buyer in accordance with this
Section 5.3 shall be deemed a release by Buyer of its security interest, general
first lien and right of offset granted pursuant to this Article 5 hereof only with
respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Article 5, Seller will, upon request of Buyer, execute a receipt showing the Performance Assurance Transferred to it.

5.4. Administration of Performance Assurance

(a) Cash. Performance Assurance provided in the form of Cash to Buyer shall be subject to the following provisions:

(i) Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to Buyer and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Buyer for which there exist any unsatisfied payment obligations, then Buyer shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of Seller, including any equity or right of redemption by Seller.

(ii) So long as no Event of Default or Potential Event of Default with respect to Seller has occurred and is continuing, and no Early Termination Date for which any unsatisfied payment obligations of Seller exist has occurred or been designated as the result of an Event of Default with respect to Seller, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that Buyer is holding Cash, Buyer will Transfer (or caused to be Transferred) to Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by Buyer), the Interest Amount when Buyer returns the Cash to Seller following the termination or expiration of this Agreement, as applicable and in conformity with Section 9.6. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to Seller or an Early Termination Date as a result of an Event of Default with respect to Seller, Buyer shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of Seller under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(i) Each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank or financial institution that issued an outstanding Letter of Credit has
indicated its intent not to renew such Letter of Credit, provide either a
substitute Letter of Credit or Cash, in each case at least thirty (30) calendar
days prior to the expiration of the outstanding Letter of Credit, and (C) if a
bank or financial institution issuing a Letter of Credit shall fail to honor
Buyer’s properly documented request to draw on an outstanding Letter of
Credit, provide for the benefit of Buyer either a substitute Letter of Credit
that is issued by a bank or financial institution acceptable to Buyer or
Cash, in each case within one (1) Business Day after such refusal.

(ii) As one method of providing Performance Assurance, Seller may increase
the amount of an outstanding Letter of Credit or establish one or more
additional Letters of Credit.

(iii) Upon the occurrence of a Letter of Credit Default, Seller agrees to
Transfer to Buyer either a substitute Letter of Credit or Cash, in each case
on or before the first (1st) Business Day after the occurrence thereof (or
the fifth (5th) Business Day after the occurrence thereof if only clause
(a) [IOU Comment: Additional section reference only applies to PG&E
Agreements] (i) under the definition of Letter of Credit Default applies).

(iv) Upon or at any time after the occurrence and continuation of an Event of
Default or Letter of Credit Default with respect to Seller, or if an Early
Termination Date has occurred or been designated as a result of an Event
of Default with respect to Seller for which there exist any unsatisfied
payment obligations, then Buyer may draw on the entire, undrawn portion
of any outstanding Letter of Credit upon submission to the bank or
financial institution issuing such Letter of Credit of one or more
certificates specifying that such Event of Default, Letter of Credit Default
or Early Termination Date has occurred and is continuing. Cash proceeds
received from drawing upon the Letter of Credit shall be deemed
Performance Assurance as security for Seller’s obligations to Buyer and
Buyer shall have the rights and remedies set forth in Section 5.5 with
respect to such Cash proceeds. Notwithstanding Buyer’s receipt of Cash
proceeds of a drawing under the Letter of Credit, Seller shall remain liable
(A) for any failure to Transfer sufficient Performance Assurance and (B)
for any amounts owing to Buyer and remaining unpaid after the
application of the amounts so drawn by Buyer.

(v) In all cases, the costs and expenses of establishing, renewing, substituting,
canceling, and increasing the amount of a Letter of Credit shall be borne
by Seller.

(c) Care of Performance Assurance. Except as otherwise provided in Section
5.4(a)(i) and beyond the exercise of reasonable care in the custody thereof, Buyer
shall have no duty as to any Performance Assurance in its possession or control or
any income thereon or as to the preservation of rights against prior parties or any
other rights pertaining thereto. Buyer shall be deemed to have exercised
reasonable care in the custody and preservation of the Performance Assurance in its possession if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, except to the extent such loss or damage is the result of Buyer’s willful misconduct or gross negligence. Buyer shall at all times retain possession or control of any Performance Assurance Transferred to it.

5.5. Exercise of Rights against Performance Assurance

(a) If an Event of Default with respect to Seller has occurred and is continuing or an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to Seller, Buyer may exercise any one or more of the rights and remedies provided under this Agreement, or as otherwise available under Applicable Law. Without limiting the foregoing, if at any time an Event of Default with respect to Seller has occurred and is continuing, or an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to Seller, then Buyer may, in its sole discretion, exercise any one or more of the following rights and remedies:

(i) All rights and remedies available to a Buyer under the Uniform Commercial Code and any other applicable jurisdiction and other Applicable Laws with respect to the Performance Assurance held by or for the benefit of Buyer;

(ii) The right to set off any Performance Assurance held by or for the benefit of Buyer against and in satisfaction of any amount payable by Seller in respect of any of its obligations; and

(iii) The right to draw on any outstanding Letter of Credit issued for its benefit.

(b) Buyer shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. Seller shall in all events remain liable to Buyer for any amount payable by Seller in respect of any of its obligations remaining unpaid after any such liquidation, application and set off.

5.6. Financial Information

(a) If requested by a Party, the other Party shall deliver (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year setting forth in each case in comparative form the figures for the previous year for the Party, as the case may be, and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of a quarterly report containing unaudited consolidated financial statements for such fiscal quarter and the portion of the fiscal year
through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, and if the Party files reports with the Securities and Exchange Commission, certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission rules and regulations. If the Party does not file reports with the Securities and Exchange Commission, the reports must be certified by a Chief Financial Officer, Treasurer or any Assistant Treasurer as being fairly stated in all material respects (subject to normal year end audit adjustments); provided, for the purposes of this Section 5.6, if a Party’s financial statements are publicly available electronically on the Securities and Exchange Commission’s website, then this requirement shall be deemed satisfied. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

5.7. Access to Financial Information

The Parties agree that Security and Exchange Commission rules for reporting power purchase agreements may require Buyer to collect and possibly consolidate financial information. If such reporting is required for this Agreement, Buyer is obligated to obtain information from Seller to determine whether or not consolidation is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term of the Agreement:

(a) Complete financial statements and notes to financial statements and

(b) Financial schedules underlying the financial statements, all within fifteen (15) days of the end of each quarter.

(c) Access to records and personnel, so that Buyer's independent auditor can conduct financial audits (in accordance with generally accepted auditing standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002).

Any information provided to Buyer pursuant to this Section 5.6(b) shall be treated confidentially and only disclosed on an aggregate basis with other similar entities for which Buyer has contracts. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties. *{IOU Comment: This provision only applies to PG&E & SDGE Agreements.}*

(a) Buyer shall determine, through consultation with its internal accountants and review with their independent registered public accounting firm, that Buyer is required to consolidate Seller’s financial statements with Buyer’s financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, “Consolidation...
of Variable Interest Entities” (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement (the “Financial Consolidation Requirement”).

(b) If the Financial Consolidation Requirement is applicable, then:

(i) Within twenty (20) days following the end of each calendar year (for each year that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior months’ estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements. The annual financial statements should include quarter-to-date and yearly information. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller’s records. It is permissible for Seller to use accruals and prior month’s estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements. If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(ii) Within fifteen (15) days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the quarterly period. The financial statements should include quarter-to-date and year-to-date information. Buyer shall provide to Seller a checklist before the end of each quarter listing items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller’s records. It is permissible for Seller to use accruals and prior months’ estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

(iii) If Seller regularly prepares its financial data in accordance with GAAP, IFRS, or Successor, the financial information provided to Buyer shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to Buyer shall be prepared in a format consistent with Seller’s regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.

(c) If the Financial Consolidation Requirement is applicable, then promptly upon Notice from Buyer, Seller shall allow Buyer’s independent registered public accounting firm such access to Seller’s records and personnel, as reasonably
required so that Buyer’s independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing shall be borne by Buyer. If Buyer’s independent registered public accounting firm during or as a result of the audits permitted in this Section 5.7(c) determines a material weakness or significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller’s internal controls over financial reporting, then within ninety (90) days of Seller’s receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; provided, Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller’s true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.

(d) Buyer shall treat Seller’s financial statements and other financial information provided under the terms of this Section 5.76 in strict confidence and, accordingly:

(i) Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying Buyer’s or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company’s financial condition or to obtain credit ratings;

(ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer’s or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer’s or any Buyer parent company financial statement and to those persons who are entitled to receive confidential information as identified in Article 13; and

(iii) Buyer shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 5.7, (2) use such information solely for purposes of conducting the audits described in this Section 5.7, and (3) disclose any information received only to personnel responsible for conducting the audits.

(e) If the Financial Consolidation Requirement is applicable, then, within two (2) Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.
5.8. Uniform Commercial Code Waiver

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including, those provisions set forth in Article 5 and Article 9, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article 4 and Article 9; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

ARTICLE 6. SPECIAL TERMS AND CONDITIONS

6.1. Limitation of Liability

Buyer has no obligations to any person or entity that is, or may participate as, a PDR Customer, DRP (if Seller is not a DRP), or Seller’s SC and Seller shall indemnify Buyer against any claim made by any such PDR Customer, the DRP (if Seller is not a DRP), or Seller’s SC with respect to its participation in or with the PDR or DRAM Resource, as applicable.
6.2. **Buyer Provision of Information**

Buyer shall, to the extent available and permitted by Applicable Law, including Rule [24/32], provide specific information consistent with the CISR-DRP form adopted by the CPUC in D.13-12-029 and Resolution E-4630 including, but not limited to, usage, and/or meter data of a Customer to Seller, if Seller provides to Buyer written authorization from such Customer to release such information. Such written authorization must be provided in a form reasonably acceptable to Buyer. Buyer shall be liable for penalties or charges incurred by Seller from either the CAISO or the CPUC resulting solely from Buyer’s failure to provide timely, accurate data to Seller in accordance with this Section 6.2.

6.3. **Changes in Applicable Laws**

(a) If a change in Applicable Laws renders this Agreement or any material terms herein incapable of being performed or administered, then either Party, on Notice, may request the other Party to enter into good faith negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed or administered, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Execution Date. The Parties acknowledge that such changes may require the approval of the CPUC before becoming effective.

(b) If the Parties have been unable to reach agreement within thirty (30) days after receipt of such Notice, then either Party may terminate this Agreement by providing Notice. A Party’s exercises its rights under this Section 6.3 will not be deemed to be a failure of Seller to sell or deliver the Product or a failure of Buyer to purchase or receive the Product, and will not be or cause an Event of Default by either Party. Neither Party shall have any further obligation or liability to the other and no Settlement Amount with respect to this Agreement will be due or owing by either Party upon termination of this Agreement due solely to a Party’s exercise of its right pursuant to this Section 6.3.

6.4. **WMDVBE Reporting**

No later than twenty (20) days after each semi-annual period ending on June 30th or December 31st, Seller shall provide to Buyer a report listing all certified WMDBEs (which can be found at www.Thesupplierclearinghouse.com), that supplied goods or services to Seller during such period in connection with the Agreement and the aggregate amount paid to WMDVEs during such portion of the Delivery Period in connection with this Agreement. Notwithstanding Article 13, Buyer has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 6.4. Seller shall make reasonable efforts to accommodate requests by the CPUC (or by Buyer in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 6.4.

6.5. **Governmental Charges**

Seller shall pay on request and indemnify Buyer against any taxes (including without
limitation, any applicable transfer taxes and stamp, registration or other documentary
taxes), assessments, or charges that may become payable by reason of the security
interests, general first lien and right of offset granted under this Agreement or the
execution, delivery, performance or enforcement of this Agreement, as well as any
penalties with respect thereto.

ARTICLE 7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1. Representations and Warranties of Both Parties

On the Execution Date, each Party represents and warrants to the other Party that:

(a) It is duly organized, validly existing and in good standing under the laws of the
jurisdiction of its formation;

(b) Except for CPUC Approval in the case of Buyer, it has or will timely acquire all
regulatory authorizations necessary for it to legally perform its obligations under
this Agreement;

(c) The execution, delivery and performance of this Agreement are within its powers,
have been duly authorized by all necessary action and do not violate any of the
terms and conditions in its governing documents, any contracts to which it is a
party or any law, rule, regulation, order or the like applicable to it;

(d) This Agreement constitutes its legally valid and binding obligation, enforceable
against it in accordance with its terms;

(e) It is not Bankrupt and there are not proceedings pending or being contemplated by
it or, to its knowledge, threatened against it which would result in it being or
become Bankrupt;

(f) There is not pending or, to its knowledge, threatened against it, any legal
proceedings that could materially adversely affect its ability to perform its
obligations under this Agreement;

(g) It (i) is acting for its own account, (ii) has made its own independent decision to
enter into this Agreement and as to whether this Agreement is appropriate or
proper for it based upon its own judgment, (iii) is not relying upon the advice or
recommendations of the other Party in so doing, and (iv) is capable of assessing
the merits of and understanding, and understands and accepts, the terms,
conditions, and risks of this Agreement; and

(h) It has entered into this Agreement in connection with the conduct of its business
and it has the capability or ability to make available or take delivery of, as
applicable, the Product under this Agreement in accordance with the terms of this
Agreement.
7.2. Additional Seller Representations, Warranties and Covenants

(a) On the Execution Date, Seller represents and warrants to Buyer that Seller has not used, granted, pledged, assigned, or otherwise committed any of the Monthly Quantity to meet the System Resource Adequacy, or confer Resource Adequacy Benefits upon, any entity other than Buyer during the Delivery Period.

(b) Seller covenants that throughout the Delivery Period:

(i) Seller will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;

(ii) Seller has been authorized by each Customer, to act as an aggregator on behalf of such Customer to participate as a PDR in the DRAM Resource, if Seller is not also a Customer;

(iii) The DRP has been authorized by each Customer to act on behalf of such Customer to participate as a PDR for the DRAM Resource, if Seller is not the DRP; and

(iv) Seller will not use, grant, pledge, assign, or otherwise commit any Monthly Quantity to meet the RAR of, or confer Resource Adequacy Benefits upon, any entity other than Buyer during the Delivery Period.

(v) Seller will not allow any participating customers included in the DRAM Resource during the Delivery Period to have fossil-fueled emergency back-up generation or net energy metering.

{IOU Comment: This provision only applies to SDG&E Agreements.}

ARTICLE 8. NOTICES

8.1. Notices

Notices, requests, statements or payments from one Party to the other Party shall be made to the addresses and persons specified in Section 8.2. All Notices, requests, statements or payments from one Party to the other Party shall be made in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, e-mail or facsimile. Notice from one Party to the other Party by facsimile (where confirmation of successful transmission is received) shall be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day). Notice from one Party to the other Party by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice from one Party to the other Party by telephone shall be deemed to have been received at the time the call is received. Party may change its contact information by providing Notice of the same in
accordance herewith.

8.2. **Contact Information**

For Buyer:

<table>
<thead>
<tr>
<th>Billing Representative</th>
<th>Contract Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>[Name]</td>
</tr>
<tr>
<td>Phone</td>
<td>Phone</td>
</tr>
<tr>
<td>Facsimile</td>
<td>Facsimile</td>
</tr>
</tbody>
</table>

Supply Plan Contact

| Name                   |
| Phone                  |
| Facsimile              |

Settlements

[Name]

| Phone                  |
| Facsimile              |

Other Buyer Contact Information

<table>
<thead>
<tr>
<th>Wire Transfer</th>
<th>Credit and Collections</th>
</tr>
</thead>
<tbody>
<tr>
<td>BNK</td>
<td>Attn</td>
</tr>
<tr>
<td>ABA</td>
<td>Phone</td>
</tr>
<tr>
<td>ACCT</td>
<td>Facsimile</td>
</tr>
</tbody>
</table>

Notices of Event of Default or Potential Event of Default to:

| Name                   |
| Phone                  |
| Facsimile              |

For Seller:

<table>
<thead>
<tr>
<th>Billing Representative</th>
<th>Contract Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>[Name]</td>
</tr>
<tr>
<td>Phone</td>
<td>Phone</td>
</tr>
<tr>
<td>Facsimile</td>
<td>Facsimile</td>
</tr>
</tbody>
</table>

Supply Plan Contact

| Name                   |

[Name]
ARTICLE 9. EVENTS OF DEFAULT; TERMINATION

9.1. Events of Default

An “Event of Default” shall mean, with respect to a Party (“Defaulting Party”), the occurrence of any of the following:

(a) With respect to either Party:

(i) The failure to make, when due, any payment required to be made to the other Party pursuant to this Agreement, if such failure is not remedied within three (3) Business Days after written Notice of such failure is given by the Non-Defaulting Party;

(ii) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature;

(iii) The failure to perform any material covenant, obligation, term or condition of this Agreement (except to the extent constituting a separate Event of Default), where such breach is not remedied within five (5) Business Days of Notice of such breach by the Non-Defaulting Party;

(iv) Such Party becomes Bankrupt; or
(v) A Merger Event occurs with respect to such Party.

(b) With respect to Seller:

(i) The failure of Seller to satisfy the collateral requirements set forth in Article 5;

(ii) During the Term, Seller makes any material misrepresentation or omission in any report required to be made or furnished by Seller, the Seller’s DRP or the Seller’s SC pursuant to this Agreement;

(iii) During the Delivery Period, Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, to any party other than Buyer without Buyer’s written consent; or

(iv) During the Term, the occurrence and continuation of a default, event of default or other similar condition or event (however described) in respect of Seller under one or more agreements or instruments relating to indebtedness for borrowed money (whether present or future, contingent or otherwise), which results in such indebtedness for borrowed money (whether present or future, contingent or otherwise) becoming, or becoming capable at such time of being declared, immediately due and payable under such agreements or instruments, before it would otherwise have been due and payable, or a default by Seller in making one or more payments on the due date thereof in an aggregate amount of not less than [To be determined] under such agreements or instruments (after giving effect to any applicable notice requirement or grace period).

9.2. Early Termination

If an Event of Default shall have occurred, the Party taking the default (the “Non-Defaulting Party”) has the right:

(a) To designate by Notice, which will be effective five (5) Business Days after the Notice is given, a day, no later than twenty (20) calendar days after the Notice is effective, for the early termination of this Agreement (an “Early Termination Date”);

(b) Withhold any payments due to the Defaulting Party under this Agreement;

(c) Suspend performance of this Agreement, but excluding Seller’s obligation to post and maintain Performance Assurance in accordance with Article 5; and

(d) To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.
9.3. Termination Payment

(a) As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the amount of the Termination Payment. The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment including the Settlement Amount, together with appropriate supporting documentation.

(b) If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within two (2) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Non-Defaulting Party shall pay such amount to the Defaulting Party within thirty (30) days after the Notice is provided.

(c) If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Any disputes as to the calculation of the Termination Payment which the Parties are unable to resolve may be submitted to dispute resolution as provided in Article 10.

9.4. Reserved

9.5. Suspension of Performance

Notwithstanding any other provision of this Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon Notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

9.6. Rights and Obligations Surviving Termination or Expiration

The rights and obligations that are intended to survive a termination or expiration of this Agreement are all of those rights and obligations that this Agreement expressly provides shall survive any such termination or expiration and those that arise from a Party’s covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time before or as a result of the termination or expiration of this Agreement, including:

(a) A Party’s obligation to provide information, including but not limited to Sections 3.3, 5.7, 6.2 and 6.4.

(b) A Party’s obligations with respect to invoices and payments pursuant to this Agreement;
(c) The obligation of Seller to maintain Performance Assurance as set forth in Section 5.1;
(d) The obligation of Buyer to return any Performance Assurance under Section 5.3;
(e) The right to pursue remedies as set forth in Sections 9.2(d) and 10.04;
(f) The obligations with respect to a Termination Payment as set forth in Section 9.3;
(g) The dispute resolution provisions of Article 10;
(h) The indemnity obligations expressly set forth in this Agreement;
(i) The limitation of liabilities as set forth in Sections 3.5, 6.1 and Article 12; and

ARTICLE 10.      DISPUTE RESOLUTION

10.1. Dispute Resolution

Other than requests for provisional relief under Section 10.4, any and all Disputes which the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, must first be submitted to mediation under the procedures described in Section 10.2 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 10.3 below.

The Parties waive any right to a jury and agree that there will be no interlocutory appellate relief (such as writs) available. Any Dispute resolution process pursuant to this Article 9 shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the Dispute, without regard to the date such facts are discovered; provided, if the facts giving rise to the Dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered. If the Dispute resolution process pursuant to Article 10 with respect to a Dispute is not commenced within such one (1) year time period, such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

10.2. Mediation

Either Party may initiate mediation by providing Notice to the other Party of a written request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator ("Mediator") from the panel of neutrals from Judicial Arbitration and Mediation Services, Inc. ("JAMS"), its successor, or any other mutually acceptable non-JAMS Mediator, and in scheduling the
time and place of the mediation.

Such selection and scheduling will be completed within forty-five (45) days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one hundred twenty (120) days from the date of Notice of the request for mediation.

The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party’s individual attorneys’ fees and costs related to the Party’s participation in the mediation, which fees and costs will be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator’s agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; provided, evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

10.3. Arbitration

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Article 7 of a demand for binding arbitration before a single, neutral arbitrator (the “Arbitrator”) within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 10.2, above. If Notice of arbitration is not provided by either Party within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 10.2 above, the Dispute resolution process shall be deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days after Notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than one hundred eighty (180) days from the date of Notice of the demand.

If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6.

To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be
another member of the JAMS panel of neutrals or such other panel of neutrals from which
the Parties have agreed to select the Mediator.

Upon Notice of a Party’s demand for binding arbitration, such Dispute submitted to
arbitration, including the determination of the scope or applicability of this agreement to
arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance
with the laws of the State of California, without regard to principles of conflicts of laws.

Except as provided for herein, the arbitration will be conducted by the Arbitrator in
accordance with the rules and procedures for arbitration of complex business disputes for
the organization with which the Arbitrator is associated.

Absent the existence of such rules and procedures, the arbitration will be conducted in
accordance with the California Arbitration Act, California Code of Civil Procedure Section
1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil
Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration,
and unless the Parties agree to a different arrangement, the place of the arbitration will be
in Los Angeles County, California.

Also notwithstanding the rules and procedures that would otherwise apply to the
arbitration, and unless the Parties agree to a different arrangement, discovery will be
limited as follows:

(a) Before discovery commences, the Parties shall exchange an initial disclosure of
all documents and percipient witnesses which they intend to rely upon or use at
any arbitration proceeding (except for documents and witnesses to be used solely
for impeachment);

(b) The initial disclosure will occur within thirty (30) days after the initial conference
with the Arbitrator or at such time as the Arbitrator may order;

(c) Discovery may commence at any time after the Parties’ initial disclosure;

(d) The Parties will not be permitted to propound any interrogatories or requests for
admissions;

(e) Discovery will be limited to twenty-five (25) document requests (with no
subparts), three (3) lay witness depositions, and three (3) expert witness
depositions (unless the Arbitrator holds otherwise following a showing by the
Party seeking the additional documents or depositions that the documents or
depositions are critical for a fair resolution of the Dispute or that a Party has
improperly withheld documents);

(f) Each Party is allowed a maximum of three (3) expert witnesses, excluding
rebuttal experts;
Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;

Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;

Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and

Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article 11, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of the Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Article 13.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party’s individual attorneys’ fees and costs related to the Party’s participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

Until such award is made, however, the Parties will share equally in paying the costs of the arbitration.

At the conclusion of the arbitration hearing, the Arbitrator shall prepare in writing and provide to each Party a decision setting forth factual findings, legal analysis, and the reasons on which the Arbitrator’s decision is based. The Arbitrator shall also have the authority to resolve claims or issues in advance of the arbitration hearing that would be appropriate for a California superior court judge to resolve in advance of trial. The Arbitrator shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered by a California superior court. The Arbitrator’s decision may be vacated or corrected on appeal to a California court of competent jurisdiction for such error. Unless otherwise agreed to by the Parties, all proceedings before the Arbitrator shall be reported and transcribed by a certified court reporter, with each Party bearing one-half of the court reporter’s fees.

10.1 Dispute Resolution. Mindful of the high costs of litigation, not only in dollars but time and energy as well, the Parties intend to and do hereby establish a final and binding out-
of-court dispute resolution procedure to be followed in the event any controversy should arise out of or concerning the performance of the Agreement. Accordingly, it is agreed as follows:

(a) Negotiation.

(1) Except for disputes arising with respect to a Termination Payment, the Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party’s Contract Representative, as identified on the Cover Sheet hereof, or such other person designated in writing as a representative of the Party ("Manager"). Either Manager may request a meeting (in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Party’s receipt such request, at a mutually agreed time and place. If the matter is not resolved within 15 Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies, who shall have authority to settle the dispute ("Executive(s)""). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(2) Within 5 Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date, which date shall not be greater than 30 calendar days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary to exchange the relevant information and to attempt to resolve the dispute.

(3) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

(4) If the matter is not resolved within 45 calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to subpart (a) above, refuses or will not meet within 10 Business Days, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 10.1(b).

(5) If a dispute exists with respect to the Termination Payment, and such dispute cannot be resolved by good faith negotiation of the Parties within 10 Business Days of the Non-Defaulting Party’s receipt of the detailed basis for the explanation of the dispute then either Party may refer the matter directly to Arbitration, as set forth in Section 10.1(c) below.
(b) **Mediation.** If the dispute (other than a dispute regarding the Termination Payment) cannot be resolved by negotiation as set forth in Section 10(a) above, then either Party may initiate mediation, the first-step of a two-step dispute resolution process, which JAMS, Inc., or its successor entity, a judicial arbitration and mediation service (“JAMS”). As the first step, the Parties agree to mediate any controversy before a commercial mediator from the JAMS panel, pursuant to JAMS’s then-applicable commercial mediation rules, in San Francisco, California. Either Party may initiate such a mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, or as extended by mutual agreement of the Parties, the mediation does not result in resolution of the dispute, then the Parties shall resolve such controversy through Arbitration by one retired judge or justice from the JAMS panel, which Arbitration shall take place in San Francisco, California, and which the arbitrator shall administer by and in accordance with JAMS’s Commercial Arbitration Rules (“Arbitration”). If the Parties cannot mutually agree on the Arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an Arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

(c) **Arbitration.**

(1) At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(2) The arbitrator, once chosen, shall consider any transaction tapes or any other evidence which the arbitrator deems necessary, as presented by each Party. In deciding the award, the provisions of this Agreement will be
binding on the arbitrator. The arbitrator will deliver his or her decision in writing within 30 days after the conclusion of the arbitration hearing. The arbitrator shall specify the basis for his or her decision, the basis for the damages award and a breakdown of the damages awarded, and the basis of any other remedy. Except as provided in the Federal Arbitration Act, the decision of the arbitrator will be binding on and non-appealable by the Parties. Each Party agrees that any arbitration award against it may be enforced in any court of competent jurisdiction and that any Party may authorize any such court to enter judgment on the arbitrator’s decision.

(3) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages.

(4) Any expenses incurred in connection with hiring the arbitrators and performing the Arbitration shall be shared and paid equally between the Parties. Each Party shall bear and pay its own expenses incurred by each in connection with the Arbitration, unless otherwise included in a solution chosen by the Arbitration panel. In the event either Party must file a court action to enforce an arbitration award under this Article, the prevailing Party shall be entitled to recover its court costs and reasonable attorney fees.

(5) In the event the Parties choose to litigate any matter hereunder, the Parties hereby waive the right to jury trial.

(6) Except as may be required by Applicable Law, the existence, contents or results of any Arbitration hereunder may not be disclosed by a Party or the arbitrator without the prior written consent of both Parties.

10.4. Provisional Relief

The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Article 13 in any court of competent jurisdiction, notwithstanding the obligation to submit all other Disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to this Article 10. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party’s right to seek other remedies.
for the breach of the provisions specified above in accordance with Article 10, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for the breach of the provision, or if the Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

ARTICLE 11. INDEMNIFICATION

11.1. Seller’s Indemnification Obligations

(a) In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 11.1, Seller releases, and shall indemnify, defend and hold harmless Buyer, and Buyer’s directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys’ fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third-party), arising out of or in connection with:

(i) any breach made by Seller of its representations, warranties and covenants in Article 7;

(ii) Seller’s failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Article 3;

(iii) any violation of Applicable Law arising out of or in connection with Seller’s performance of, or failure to perform this Agreement;

(iv) injury or death to persons, including Buyer employees, and physical damage to property, including Buyer property, where the damage arises out of, is related to, or is in connection with, Seller’s obligations or performance under this Agreement.

This indemnity applies notwithstanding Buyer’s active or passive negligence; provided, Buyer will not be indemnified for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

11.2. Indemnification Claims

All claims for indemnification by Buyer will be asserted and resolved as follows:
If a claim or demand for which Buyer may claim indemnity is asserted against or sought to be collected from Seller by a third party, Buyer shall as promptly as practicable give Notice to Seller; provided, failure to provide this Notice will relieve Seller only to the extent that the failure actually prejudices Seller.

(a) Seller will have the right to control the defense and settlement of any claims in a manner not adverse to Buyer but cannot admit any liability or enter into any settlement without Buyer’s approval.

(b) Buyer may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; provided, if counsel is employed due to a conflict of interest or because Seller does not assume control of the defense, Seller will bear the expense of this counsel.

ARTICLE 12. LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES

EXCEPT AS SET FORTH HEREIN WITH RESPECT TO THE PRODUCT, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

SUBJECT TO SECTION 9.3, IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF ARTICLE 11 (INDEMNITY), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE
CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

NOTHING IN THIS ARTICLE PREVENTS, OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY PERFORMANCE ASSURANCE.

ARTICLE 13. CONFIDENTIALITY

13.1. Confidentiality Obligation

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party’s or the Party’s Affiliates’ officers, directors, employees, lenders, counsel, accountants, advisors, or Rating Agencies, who have a need to know such information and have agreed to keep such terms confidential) except (a) in order to comply with any Applicable Law, summons, subpoena, exchange rule, or accounting disclosure rule or standard, or to make any showing required by any applicable Governmental Body other than as set forth in Sections 13.1(e) and (f); (b) to the extent necessary for the enforcement of this Agreement; (c) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party in making such disclosure; (d) to the extent such information is or becomes generally available to the public prior to such disclosure by a Party; (e) when required to be released in connection with any regulatory proceeding (provided that the releasing Party makes reasonable efforts to obtain confidential treatment of the information being released); (f) with respect to Buyer, as may be furnished to its duly authorized Governmental Bodies, including without limitation the Commission and all divisions thereof, to Buyer’s Procurement Review Group, a group of participants including members of the Commission and other governmental agencies and consumer groups established by the Commission in Commission decisions 02-08-071 and 03-06-071, and to Buyer’s Cost Allocation Mechanism Group established by the CPUC in D.07-12-052, or (g) Seller may disclose the transfer of the Monthly Quantity under this Agreement to its SC in order for such SC to timely submit accurate Supply Plans. The existence of this Agreement is not subject to this confidentiality obligation; provided, neither Party shall make any public announcement relating to this Agreement unless required pursuant to subsection (a) or (e) of the foregoing sentence of this Article 13.
13.2. **Obligation to Notify**

In connection with discovery requests or orders pertaining confidential information in connection with this Agreement as referenced in Section 13.1(a) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to:

(a) Notify the other Party before disclosing the Confidential Information; and  
(b) Prevent or limit such disclosure.  

After using such reasonable efforts, the Disclosing Party will not be:

(c) Prohibited from complying with a Disclosure Order; or  
(d) Liable to the other Party for monetary or other damages incurred in connection with the disclosure of the Confidential Information.

13.3. **Remedies; Survival**

The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. With respect to information provided in connection with this Agreement, this obligation shall survive for a period of three (3) years following the expiration or termination of this Agreement.  

**ARTICLE 14. FORCE MAJEURE**

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.  

**ARTICLE 15. MISCELLANEOUS**

15.1. **General**

(a) This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
The term “including,” when used in this Agreement, shall be by way of example only and shall not be considered in any way to be in limitation.

The headings used herein are for convenience and reference purposes only.

Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.

Whenever this Agreement specifically refers to any Applicable Law, tariff, government department or agency, or Rating Agency, the Parties hereby agree that the reference also refers to any successor to such law, tariff or organization.

Nothing in this Agreement relieves either Party from, or modifies, any obligation or requirement that exists in any Applicable Law, tariff, rule, or regulation.

The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the Bankruptcy Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the Bankruptcy Code.

15.2. Governing Law and Venue

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

15.3. Amendment

This Agreement can only be amended by a writing signed by both Parties.

15.4. Assignment

Neither Party shall assign this Agreement or its rights hereunder, as the case may be, without the prior written consent of the other Party, which consent may not be unreasonably withheld; provided, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof or thereof, as the case may be, in connection with any financing or other financial arrangements to any person or entity whose creditworthiness is equal to or higher than that of such Party, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate’s creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or
entity succeeding to all or substantially all of the assets of such Party and whose
creditworthiness is equal to or higher than that of such Party; provided, in each such case,
any such assignee shall agree in writing to be bound by the terms and conditions hereof
and so long as the transferring Party delivers such tax and enforceability assurance as the
non-transferring Party may reasonably request.

15.5. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of, the Parties and their
respective successors and assigns. This Agreement is not intended to confer any rights or
remedies upon any other persons other than the Parties.

15.6. Waiver

None of the provisions of this Agreement shall be considered waived by either Party unless
the Party against whom such waiver is claimed gives the waiver in writing. The failure of
either Party to insist in any one instance upon strict performance of any the provisions of
this Agreement or to take advantage of any of its rights hereunder shall not be construed
as a waiver of any such provisions or the relinquishments of such rights for the future but
the same shall continue and remain in full force and effect. Waiver by either Party of any
default of the other Party shall not be deemed a waiver of any other default.

15.7. No Agency

Except as otherwise provided explicitly herein, in performing their respective obligations
under this Agreement, neither Party is acting, or is authorized to act, as the other Party’s
agent.

15.8. No Third-Party Beneficiaries

This Agreement shall not impart any rights enforceable by any third party (other than a
permitted successor or assignee bound by this Agreement).

15.9. Entire Agreement

This Agreement, when fully executed, constitutes the entire agreement by and between the
Parties as to the subject matter hereof, and supersedes all prior understandings, agreements
or representations by or between the Parties, written or oral, to the extent they have related
in any way to the subject matter hereof. Each Party represents that, in entering into this
Agreement, it has not relied upon any promise, inducement, representation, warranty,
agreement or other statement not set forth in this Agreement.

15.10. Severability

If any term, section, provision or other part of this Agreement, or the application of any
term, section, provision or other part of this Agreement, is held to be invalid, illegal or void
by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions
or other parts of this Agreement shall not be affected thereby but shall remain in force and
effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.

15.11. Multiple Originals

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any of the signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

15.12. Mobile Sierra

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting sua sponte shall be the “public interest” standard of review set forth in United States Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

15.13. Performance Under this Agreement

Each Party and its representatives shall maintain records and supporting documentation relating to this Agreement, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws.

[Remainder of Page Intentionally Left Blank]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Execution Date.

[SELLER]

By: __________________________
Name: _________________________
Title: __________________________
Date: __________________________

By: __________________________
Name: _________________________
Title: __________________________
Date: __________________________
EXHIBIT A

DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with that Party. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

{IOU Comment: This definition only applies to SCE & SDG&E Agreements.}

“Affiliate” means with respect to a Party, any entity which directly or indirectly controls, is controlled by, or is under a common control with that Party. For purposes of this definition, “control” (including, with correlative meaning, the terms “controlling”, “controlled by” and “under common control with”), shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies through the ownership of voting securities, by agreement or otherwise.

{IOU Comment: This definition only applies to PG&E Agreements.}

“Agreement” has the meaning in the Preamble.

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Body that apply to either or both of the Parties, the DRP, the PDR or the terms of this Agreement.

“Arbitrator” has the meaning set forth in Article 10.

“Audit Notice” has the meaning set forth in Section 1.6(b).

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.


“Bundled Service Customer” means a customer of Buyer as a utility distribution company who takes bundled services from Buyer as a utility distribution company including having all its power requirements purchased by Buyer.
“Business Day” means a day that is not a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday immediately following the U.S. Thanksgiving holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

“Buyer” has the meaning set forth in the preamble.

“CAISO” means the California Independent System Operator or any successor entity performing the same functions.

“CAISO Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.

“Capacity Procurement Mechanism” has the meaning set forth in the CAISO Tariff.

“Cash” means U.S. Dollars held by or on behalf of Buyer as Performance Assurance hereunder.

“Cash Interest Rate” means the Federal Funds Effective Rate - the rate for that day opposite the caption “Federal Funds (Effective)” as set forth in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

{IOU Comment: This definition only applies to SCE & SDG&E Agreements.}

“Cash Interest Rate” means the Federal Funds Effective Rate - the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.

{IOU Comment: This definition only applies to PG&E Agreements.}

“Claiming Party” has the meaning set forth in Article 14.

“Commission” or “CPUC” means the California Public Utilities Commission, and all divisions thereof, or any successor thereto.

“Compliance Showings” means the (i) RAR compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Body having jurisdiction.

“Contract Price” means the price specified in the table in Section 1.5 for each Showing Month.

“CPM Capacity” has the meaning set forth in the Tariff.

“CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full and in the form presented on terms and conditions
acceptable to both Parties, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (ii) does not contain conditions or modifications unacceptable to both Parties; and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure preferred resources under Commission Decision 13-02-015.

“CPUC Decisions” means Commission Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-03-026, 14-06-050, 14-12-024, 15-02-007 and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC. [IOUs to confirm this is all of them.]

“CPUC Filing Guide” is the 2015 annual document issued by the Commission which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the Commission’s resource adequacy program.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by the Ratings Agencies. {IOU Comment: This definition only applies to SCE & SDG&E Agreements.}

“Credit Rating” means, with respect to any entity, (a) the rating then assigned to such entity’s unsecured senior long-term debt obligations (not supported by third party credit enhancements), or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody’s. If the entity is rated by both S&P and Moody’s and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody’s, but not both, then the available rating shall determine the Credit Rating. {IOU Comment: This definition only applies to PG&E Agreements.}

“Customer” means a person or entity that is either a: (i) Bundled Service Customer; (ii) community choice aggregation customer or direct access customer who would otherwise be eligible to be a Bundled Service Customer; or (iii) Unbundled Service Customer.

“Customer Data Access Systems” has the meaning described in CPUC Decision 13-09-025.

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“Defaulting Party” has the meaning set forth in Section 9.1.

“Delivered Capacity Payment” has the meaning described in and is calculated pursuant to Section 4.1.
“Delivery Period” has the meaning set forth in Section 1.3.

“Demand Response Provider” or “DRP” has the meaning in the CAISO Tariff.

“Demonstrated Capacity” has the meaning set forth in Section 1.6(a).

“Dispatch” means the act of reducing all or a portion of the electrical consumption of the PDR pursuant to a Dispatch Instruction.

“Dispatch Instruction” has the meaning in the CAISO Tariff.

“Dispute” means any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party’s performance or failure of performance under this Agreement.

“DRAM Pilot Program” means the initial program during 2015-2016 for the Product as described in CPUC D.14-03-026 and D.14-12-024.

“DRAM Resource” means the PDR(s) that Seller identifies pursuant to Section 1.4 that will provide Product to Buyer.

“Early Termination Date” has the meaning set forth in Section 9.2(a).

“Event of Default” has the meaning set forth in Section 9.1.

“Execution Date” has the meaning set forth in the preamble.

“FERC” means the Federal Energy Regulatory Commission, or any division thereof.

“Financial Consolidation Requirement” has the meaning set forth in Section 5.7(a).

{IOU Comment: This definition only applies to SCE Agreements.}

“Fitch” means Fitch Ratings Ltd. or its successor.

{IOU Comment: This definition only applies to SCE & SDG&E Agreements.}

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; (iv) Seller’s ability to sell the Product at a greater price; (v) a failure of performance of any other entity that is not a Party, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event; or (vi) breakage or malfunction of equipment, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event.
“GAAP” means United States generally accepted accounting principles as in effect from time to time, consistently applied.

{IOU Comment: This definition only applies to SCE Agreements.}

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“IFRS” means the International Financial Reporting Standards.

{IOU Comment: This definition only applies to SCE Agreements.}

“Interest Amount” means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (i) the amount of Cash held by such Party on that day; multiplied by (ii) the Cash Interest Rate for that day, divided by (iii) 360.

“Interest Period” means the period from (and including) the last Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Business Day on which Cash was Transferred to such Party) to (but excluding) the Business Day on which the current Interest Amount is to be Transferred.

“JAMS” has the meaning set forth in Article 10.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit, substantially in the form of Exhibit B and acceptable to Buyer, provided by Seller from an issuer acceptable to Buyer that is either a U.S. financial institution or a U.S. commercial bank or a U.S. branch of a foreign bank with such financial institution or the bank (i) having a Credit Rating of at least (a) Credit Ratings of at least "A-" by S&P, “A-” by Fitch and "A3" by Moody's, if such entity is rated by the Ratings Agencies; (b) if such entity is rated by only two of the three Ratings Agencies, a Credit Rating from two of the three Ratings Agencies of at least "A-" by S&P, if such entity is rated by S&P, “A-” by Fitch, if such entity is rated by Fitch, and "A3" by Moody's, if such entity is rated by Moody’s; or (c) a Credit Rating of at least "A-" by S&P or "A3" by Moody’s, or “A-” by Fitch if such entity is rated by only one Ratings Agency; and (ii) having shareholder equity (determined in accordance with generally accepted accounting principles) of at least $1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS). Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

{IOU Comment: This definition only applies to SCE & SDG&E Agreements.}

“Letter of Credit” means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Schedule 1 attached hereto; provided that, the issuer must be a Qualified Institution.

{IOU Comment: This definition only applies to PG&E Agreements.}

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (A) "A-" by S&P, “A-” by Fitch, and "A3" by Moody’s, if such issuer is rated by the...
Ratings Agencies, (B)“A-” by S&P, “A-“ by Fitch or “A3” by Moody’s if such issuer is rated by only two of the Ratings Agencies, or (C) “A-“ by S&P, “A-“ by Fitch, or "A3" by Moody’s, if such issuer is rated by only one Ratings Agency; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the Term of the Agreement, in any such case without replacement; or (v) the issuer of such Letter of Credit shall become Bankrupt; provided, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

{IOU Comment: This definition only applies to SCE & SDG&E Agreements.}

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) “A”, with a stable outlook designation from S&P and A3, with a stable outlook designation from Moody’s, if such issuer is rated by both S&P and Moody’s, (ii) “A-“ by S&P with a stable outlook designation, if such issuer is rated only by S&P, or (iii) "A3" by Moody’s with a stable outlook designation, if such issuer is rated only by Moody’s; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.  

{IOU Comment: This definition only applies to PG&E Agreements.}

“LSE” means load-serving entity.

“Mediator” has the meaning set forth in Section 10.2.

“Merger Event” means, with respect to a Party, that such Party consolidates or amalgamates with, merges into or with, or transfers substantially all its assets to another entity and (i) the resulting entity fails to assume all the obligations of such Party hereunder, or (ii) the resulting entity’s creditworthiness is materially weaker than that of such Party immediately prior to such action. The creditworthiness of the resulting entity shall not be deemed to be ‘materially weaker’ so long as the resulting entity maintains a Credit Rating of at least that of the applicable Party, as the case may be, immediately prior to the consolidation, merger or transfer.

“Monthly Quantity” means the amount of Product set forth in the table in Section 1.5 that Seller has agreed to provide to Buyer from the DRAM Resource for each day of the respective Showing Months.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.
“Must-Offer Obligation” or “MOO” means Seller’s obligation to Bid or cause Seller’s SC to Bid the DRAM Resource into the CAISO Day-Ahead Market in accordance with the CAISO Tariff.

“Notification Time” means the 10:00 a.m. Pacific Prevailing Time on a Business Day.

“Non-Defaulting Party” has the meaning set forth in Section 9.2.

“Notice” means notices, requests, statements or payments provided in accordance with Article 8.

“PDR Capacity Baseline” means the CAISO baseline applicable to the PDR(s) in the DRAM Resource as specified in the CAISO Tariff.

“PDR Customer” is a Bundled Service Customer and/or Unbundled Service Customer account at the SAID level that is included in the DRAM Resource.

“Performance Assurance” has the meaning set forth in Section 5.1(a). Performance Assurance must be in the form of Cash or Letter of Credit. Any Cash received and held by Buyer after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash.

“Potential Event of Default” means an event which, with Notice or passage of time or both, would constitute an Event of Default.

“Procurement Review Group” has the meaning set forth in Article 13.

“Product” means system Resource Adequacy Benefits associated with the PDR(s) designated by Seller pursuant to Section 1.4, as such attributes may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR. “Product” shall not include:

(i) resource adequacy attributes or other locational attributes associated with the DRAM Resource related to a local RAR;

(ii) flexible capacity resource adequacy attributes associated with the DRAM Resource; or

(iii) any right of Buyer to the energy or ancillary services from the DRAM Resource.

“Proxy Demand Resource” or “PDR” has the meaning in the CAISO Tariff.

“Qualified Institution” means either a U.S. commercial bank, or a U.S. branch of a foreign bank acceptable to Buyer in its sole discretion; and in each case such bank must have a Credit Rating of at least: (a) “A-, with a stable designation” from S&P and “A3, with a stable designation” from Moody’s, if such bank is rated by both S&P and Moody’s; or (b) “A-, with a stable designation” from S&P or “A3, with a stable designation” from Moody’s, if such bank is rated by either S&P or Moody’s, but not both, even if such bank was rated by both S&P and Moody’s as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those Ratings Agencies.

{IOU Comment: This definition only applies to PG&E Agreements.}
“RAR” means the resource adequacy requirements established for LSEs by the Commission pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Body having jurisdiction, or successor program requirements.

“Ratings Agency” means any of S&P, Moody’s, and Fitch (collectively the ‘Ratings Agencies’).

“Resource Adequacy Benefits” has the meaning in the CPUC Decisions.

“Resource ID” has the meaning in the CAISO Tariff.

“Revenue Quality Meter Data” means Interval Meter Data that has been validated, edited, and estimated in accordance with the Direct Access Standards for Metering and Meter Data as described in Rule 22.


“S&P” means Standard & Poor’s Financial Services LLC, or its successor.

“SAID” means a Buyer specific identifier for tracking energy service deliveries for a specific load through one or more meters at a customer premises or location as described in Rule 1.

“Scheduling Coordinator” or “SC” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth in the preamble.

“Settlement Amount” means the sum of the estimated Delivered Capacity Payments for all of the remaining months of the Delivery Period, including the current month, as of the Early Termination Date, with such estimated Delivered Capacity Payments being based on the applicable Monthly Quantity values times the applicable Contract Price.

“Shortfall Capacity” means the amount of capacity with respect to the Monthly Quantity for any portion of a Showing Month which was shown by Buyer in its Compliance Showing that CAISO determines requires outage replacement in accordance with Section 40.7 of the CAISO Tariff.

“Showing Month” shall be each day of each calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the CPUC Decisions and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and CPUC Decisions in effect as of the Execution Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Successor” means any successor accounting practices to GAAP or IFRS.

{IOU Comment: This definition only applies to SCE Agreements.}

“Supply Plan” has the meaning set forth in the CAISO Tariff.
“Term” has the meaning set forth in Section 1.2.

“Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, which shall include the Settlement Amount, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date. If Buyer is the Non-Defaulting Party and reasonably expect to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body, then Buyer may estimate the of those penalties or fines and include them in the Termination Payment amount. If the Seller is the Non-Defaulting Party, then Seller may include in the Termination Payment amount the expenses, actually incurred by Seller and not previously paid by Buyer as of the Early Termination Date for SC services with respect to the DRAM Resource and this Agreement, in an amount not to exceed the sum of the monthly SC service payments during the months of the Delivery Term.

“Transfer” means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto: (i) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the recipient; (ii) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient.

“Unbundled Service Customer” means a retail customer of the Buyer acting as a utility distribution company, who takes receives its electrical power requirements from a different Load Serving Entity that is not the Buyer, pursuant to CPUC Rule 22 Direct Access or Rule 23 Community Choice Service.

“WMDVBE” means women, minority, and disabled veteran business enterprise, as more particularly set forth in CPUC General Order 156.
EXHIBIT B

Form of Letter of Credit

[For SCE and SDG&E]

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Southern California Edison Company
2244 Walnut Grove Avenue
Risk Control GO#1, Quad 1D
Rosemead, CA 91770

Ladies and Gentlemen:

Nontransferable Standby Letter of Credit (“Letter of Credit”) in favor of Southern California Edison Company, a California corporation (the “Beneficiary”), for the account of ____________________, a ____________ corporation (the “Applicant”), for the amount of XXX AND XX/100 Dollars ($_______________) (the “Available Amount”), effective immediately and expiring at 5:00 p.m., California time, on ____________ (the “Expiration Date”).

This Letter of Credit shall be of no further force or effect upon the close of business on the Expiration Date or, if such day is not a Business Day (as hereinafter defined), on the next Business Day.

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation in compliance on or before 5:00 p.m. California time, on or before the Expiration Date of the following:

1. The original or a photocopy of this Letter of Credit and all amendments; and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any full or partial drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at ______________ or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary’s drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Issuer

________________________________________

(Name)

Title:________________________________________
ATTACHMENT A

TO [ISSUING BANK NAME]

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. ____________________

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number ________________________________

The undersigned ____________________________, an authorized representative of Southern California Edison Company (the “Beneficiary”), hereby certifies to [Issuing Bank Name] (the “Bank”), and ______________________ (the “Applicant”), with reference to Irrevocable Nontransferable Standby Letter of Credit No. {______________}, dated ________________, (the “Letter of Credit”), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to $______________, for the following reason(s) [check applicable provision]:

   [   ] A. An Event of Default, as defined in that certain Demand Response Resource Purchase Agreement between Applicant and Beneficiary, dated as of [Date of Execution] (the “Agreement”) with respect to the Applicant has occurred and is continuing.

   [   ] B. A Letter of Credit Default (as defined in the Agreement) has occurred and is continuing
[ ] C. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.

[ ] D. The Letter of Credit will expire in fewer than twenty (20) Business Days (as defined in the Agreement) from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

[ ] E. The Bank or Applicant has heretofore provided written notice to the Beneficiary of the Bank’s or Applicant’s intent not to renew the Letter of Credit following the present Expiration Date thereof, and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the notice of non-renewal.

[ ] F. The Beneficiary has not been paid any or all of the Applicant’s payment obligations now due and payable under the Agreement.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.$ _____________), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

_______________________________________________________________________
_______________________________________________________________________
_______________________________________________________________________

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of ____________, ____.

Beneficiary:  SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name:

Title:
STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: [insert issue date]

Beneficiary: [Insert name of Applicant and address]

Applicant: [Insert name of Applicant and address]

Attention:

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of [Insert name of Applicant] (“Applicant”), we hereby issue in favor of [Insert name of Beneficiary] (the “Beneficiary”) our irrevocable standby letter of credit No. [Insert number of letter of credit] ("Letter of Credit"). For the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. $ [Insert amount in figures followed by (amount in words)] (“Letter of Credit Amount”). This Letter of Credit is available with [Insert name of bank, and the city and state in which it is located] by sight payment, at our offices located at the address stated below, effective immediately. This Letter of Credit will expire at our close of business on [Insert expiry date] (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Annex A hereto, referencing this Letter of Credit No. [Insert number] and stating the amount of the demand; and

2. One of the following dated statements signed by an authorized representative or officer of Beneficiary:

   A. “[Insert name of Beneficiary] (the “Beneficiary”) is entitled to draw the amount of [Spell out the amount followed by (US$xxxxxxx.xx)], under Letter of Credit No. [Insert number] owed by [Insert name of Beneficiary’s counterparty under the DRAM Resource Purchase Agreement] or its assignee to Beneficiary under or in connection with the [Insert identification of the DRAM Resource Purchase Agreement] Agreement between the Beneficiary and [Insert name of Beneficiary’s counterparty under the DRAM Resource Purchase Agreement] or its assignee”

   B. “Letter of Credit No. [Insert number] will expire in thirty (30) days or less and [Insert name of Beneficiary’s counterparty under the DRAM Resource Purchase Agreement] or its assignee has not provided replacement Performance Assurance acceptable to [Insert name of Beneficiary] (the Beneficiary”), and the amount of [Spell out the amount followed by (US$xxxxxxx.xx)] of the accompanying sight draft does not exceed the amount of Performance Assurance that [Insert name of Beneficiary’s counterparty under the DRAM Resource Purchase Agreement] or its assignee is required to transfer to the Beneficiary under the terms of the [Insert identification of the DRAM Resource Purchase Agreement] Agreement between [Insert
name of Beneficiary’s counterparty under the DRAM Resource Purchase Agreement] and the Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount.

We engage with you that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored upon presentation, if presented on or before the Expiry Date (or after the Expiry Date as provided below regarding events of Force Majeure), at [Insert bank’s address for drawings].

All demands for payment shall be made by presentation of copies or original documents, or by facsimile transmission of documents to [Insert fax number or numbers], Attention: [Insert name of bank’s receiving department]. If a demand is made by facsimile transmission, the originals or copies of documents must follow by overnight mail, and you may contact us at [Insert phone number(s)] to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce (ICC) Publication No. 600 (the “UCP 600”); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at [insert number and any other necessary details].

Very truly yours,

[insert name of issuing bank]

By: ____________________________
Authorized Signature

Name: ____________________________ [print or type name]

Title: ____________________________
Annex A  SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: $________________________  DATE: _______________________

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF [insert name of Beneficiary] THE AMOUNT OF U.S.$________(______________ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: __________________________
NAME AND TITLE
### EXHIBIT C - Notice of Demonstrated Capacity

**Demand Response Auction Mechanism (DRAM)**

**Showing Month:**
- Seller: ____________________________
- Seller Contact Name: ____________________________
- Seller Contact Phone: ____________________________

**Total Monthly Capacity** (kW):
- Total: ____________________________
- Demonstrated Capacity (kW): 0.0 kW

Therefore: "0" in Delivered Capacity Payment formula = 0.0 kW

---

#### Form of Notice of Demonstrated Capacity

**Demonstrated Capacity** (kW)

- It is Seller's sole discretion as to which Demonstrated Capacity method is used for each PDR.

<table>
<thead>
<tr>
<th>PDRs in theDRAM Resource</th>
<th>CAISO Resource ID</th>
<th>Assigned NDC (kW)</th>
<th>Raw Demonstrated Capacity</th>
<th>Must Offer Obligation (NOO)</th>
<th>Dispatch Results</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Raw Demonstrated Capacity</td>
<td>Raw Demonstrated Capacity</td>
<td>Raw Demonstrated Capacity</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>0.0 kW</td>
<td>0.6 kW</td>
<td>0.0 kW</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>0.0 kW</td>
<td>0.6 kW</td>
<td>0.0 kW</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>0.0 kW</td>
<td>0.6 kW</td>
<td>0.0 kW</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>0.0 kW</td>
<td>0.6 kW</td>
<td>0.0 kW</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>0.0 kW</td>
<td>0.6 kW</td>
<td>0.0 kW</td>
</tr>
</tbody>
</table>

**Demonstrated Capacity equals:**

0.0 kW

---

**IMPORTANT NOTES:**

- "Monthly Quantity" is from the quantity & pricing Table in Section 1.5(a)
- 1) Each capacity test must be at least two (2) consecutive hours long
- 1) Must be bid into the Day-Ahead Market
- 1) An eligible Dispatch requires that the PDR provided load reduction in all applicable hours of the CAISO Dispatch instructions.
- 2) Should be calculated using the PDR Capacity Baseline
- 2) Only include bids submitted in compliance with the MOO hours
- 2) Should be calculated using the PDR Capacity Baseline

The information provided by Seller in this Notice of Demonstrated Capacity is required by Section 1.4 of the DRAM Resources Purchase Agreement with [insert OU name].
## EXHIBIT D

Form of Notice of Showing Month Supply Plan

<table>
<thead>
<tr>
<th>Contact Person</th>
<th>Contact Information</th>
<th>Supply Plan Information for Resources Under 8082U Purchases Agreement (insert ID name)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Supply Plan Name</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Capacity Plan Name</td>
</tr>
<tr>
<td></td>
<td></td>
<td>RA Capacity Effective Start Date (mm/dd/yyyy)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>RA Capacity Effective End Date (mm/dd/yyyy)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>SCID of Selling Entity</td>
</tr>
<tr>
<td></td>
<td></td>
<td>SCID of Load Service Entity</td>
</tr>
<tr>
<td></td>
<td></td>
<td>SCID of Serving Entity</td>
</tr>
</tbody>
</table>

Sample Counterparty Supply Plan Template
<table>
<thead>
<tr>
<th>Entity</th>
<th>Law Firm or Consultant</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>AT&amp;T</td>
<td>Douglass &amp; Liddell</td>
<td>Office of Ratepayer Advocates</td>
</tr>
<tr>
<td>Albion Power Company</td>
<td>Downey &amp; Brand</td>
<td>OnGrid Solar</td>
</tr>
<tr>
<td>Alcantar &amp; Kahl LLP</td>
<td>Ellison Schneider &amp; Harris LLP</td>
<td>Pacific Gas and Electric Company</td>
</tr>
<tr>
<td>Anderson &amp; Poole</td>
<td>G. A. Krause &amp; Assoc.</td>
<td>Praxair</td>
</tr>
<tr>
<td>Barkovich &amp; Yap, Inc.</td>
<td>GenOn Energy, Inc.</td>
<td>SCD Energy Solutions</td>
</tr>
<tr>
<td>Bartlett Wells Associates</td>
<td>Goodin, MacBride, Squeri, Schlotz &amp; Ritchie</td>
<td>SCE</td>
</tr>
<tr>
<td>Braun Blasing McLaughlin, P.C.</td>
<td>Green Power Institute</td>
<td>SDG&amp;E and SoCalGas</td>
</tr>
<tr>
<td>CENERGY POWER</td>
<td>Hanna &amp; Morton</td>
<td>SPURR</td>
</tr>
<tr>
<td>California Cotton Ginners &amp; Growers Assn</td>
<td>In House Energy</td>
<td>Seattle City Light</td>
</tr>
<tr>
<td>California Energy Commission</td>
<td>International Power Technology</td>
<td>Sempra Energy (Socal Gas)</td>
</tr>
<tr>
<td>California Public Utilities Commission</td>
<td>Intestate Gas Services, Inc.</td>
<td>Sempra Utilities</td>
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<tr>
<td>California State Association of Counties</td>
<td>K&amp;L Gates LLP</td>
<td>SoCalGas</td>
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<tr>
<td>Calpine</td>
<td>Kelly Group</td>
<td>Southern California Edison Company</td>
</tr>
<tr>
<td>Casner, Steve</td>
<td>Leviton Manufacturing Co., Inc.</td>
<td>Spark Energy</td>
</tr>
<tr>
<td>Center for Biological Diversity</td>
<td>Linde</td>
<td>Sun Light &amp; Power</td>
</tr>
<tr>
<td>City of Palo Alto</td>
<td>Los Angeles County Integrated Waste Management Task Force</td>
<td>Sunshine Design</td>
</tr>
<tr>
<td>City of San Jose</td>
<td>Los Angeles Dept of Water &amp; Power</td>
<td>Tecogen, Inc.</td>
</tr>
<tr>
<td>Clean Power</td>
<td>MRW &amp; Associates</td>
<td>Tiger Natural Gas, Inc.</td>
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<tr>
<td>Coast Economic Consulting</td>
<td>Manatt Phelps Phillips</td>
<td>TransCanada</td>
</tr>
<tr>
<td>Commercial Energy</td>
<td>Marin Energy Authority</td>
<td>Utility Cost Management</td>
</tr>
<tr>
<td>Cool Earth Solar, Inc.</td>
<td>McKenna Long &amp; Aldridge LLP</td>
<td>Utility Power Solutions</td>
</tr>
<tr>
<td>County of Tehama - Department of Public Works</td>
<td>McKenzie &amp; Associates</td>
<td>Utility Specialists</td>
</tr>
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<td>Crossborder Energy</td>
<td>Modesto Irrigation District</td>
<td>Verizon</td>
</tr>
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<td>Davis Wright Tremaine LLP</td>
<td>Morgan Stanley</td>
<td>Water and Energy Consulting</td>
</tr>
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<td>Day Carter Murphy</td>
<td>NLine Energy, Inc.</td>
<td>Wellhead Electric Company</td>
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<td>Defense Energy Support Center</td>
<td>NRG Solar</td>
<td>Western Manufactured Housing</td>
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<tr>
<td>Dept of General Services</td>
<td>Nexant, Inc.</td>
<td>Communities Association (WMA)</td>
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<tr>
<td>Division of Ratepayer Advocates</td>
<td>Occidental Energy Marketing, Inc.</td>
<td>YEP Energy</td>
</tr>
</tbody>
</table>