February 8, 2016

Erik Jacobson
Director, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, California 94177

Subject: Staff Disposition of: PG&E AL 4772-E – PG&E’s Demand Response Auction Mechanism (DRAM) Phase I Purchase Agreements and Amendments to Aggregator Managed Portfolio Contracts

Dear Mr. Jacobson:

The CPUC Energy Division (ED) approves PG&E AL 4772-E in its entirety. AL 4772-E shall go into effect as of the date of this letter, February 8, 2016.

On January 8, 2016, PG&E timely filed a Tier 1 Advice Letter with signed contracts for the first year of the DRAM pilot, as ordered in, and consistent with the additional information required by, OP 16 of Resolution E-4728. On January 28, 2016, Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) each filed responses to PG&E’s AL 4772-E. Both ORA and TURN expressed support for PG&E’s contract selection and approval of the AL, and neither party raised concerns with the contents of the Advice Letter.

ORA, in response to similar ALs from all three IOUs, recommended that the utilities be required “to meet with Independent Evaluator (IE), Energy Division, ORA and other interested parties to discuss a consistent method for ranking DRAM offers and for calculating benchmarks that are comparable to quantitative assessments of DRAM bids and can be used to guide the Commission in determining the preferred procurement mechanism for DR”. While we do see merit in ORA’s recommendation, this portion of ORA’s response is rejected, as it is outside of the immediate scope of the DRAM pilot. This proposal is best considered in a formal proceeding.

Energy Division has reviewed AL 4772-E and its signed DRAM 1 contracts, bid information, IE report, and the other supplemental information required by Resolution E-4728. We find AL 4772-E to be in compliance with Resolution E-4728. PG&E AL 4772-E is therefore approved in its entirety.
Please contact Rachel McMahon of Energy Division at rachel.mcmahon@cpuc.ca.gov with any questions.

Sincerely,

Edward Randolph
Director, Energy Division

cc: ED Tariff Unit (edtariffunit@cpuc.ca.gov)
Barry R. Wallerstein, South Coast Air Quality Management District (bwallerstein@aqmd.gov)
Lauren Nevitt, South Coast Air Quality Management District (lnevitt@aqmd.gov)
Nora Sheriff, California Large Energy Consumers Association (nes@a-klaw.com)
Sara Steck Myers, Joint DR Parties (ssmyers@att.net)
Mona Tierney-Lloyd, EnerNOC, Inc. (mitierney-lloyd@enernoc.com)
Frank Lacey, Converge (flacey@converge.com)
Jennifer A. Chamberlin, Johnson Controls, Inc. (jennifer.anne.chamberlin@jci.com)
Carlos Lamas-Babbini, CPower (Carlos.LamasBabbini@Cpowercorp.com)
Erika Diamond, EnergyHub (diamond@energyhub.net)
Alison Seel and Matthew Vespa, Sierra Club (matt.vespa@sierraclub.org; alison.seel@sierraclub.org)
Gavin Purchas, Environmental Defense Fund (gpurchas@edf.org)
Pierre Bull, Natural Resources Defense Council (pbull@nrdc.org)
Daniel W. Douglass, Counsel to Nest Labs (douglass@energyattorney.com)
Elizabeth Reid, Olivine, Inc. (breid@olivine.com)
Matt Duesterberg, OhmConnect, Inc. (matt@ohmconnect.com)
Marcel Hawiger, TURN (marcel@turn.org)
Michael Campbell, CPUC, Office of Ratepayer Advocates (michael.campbell@cpuc.ca.gov)
Michael R. Hoover, Southern California Edison Company (michael.hoover@sce.com)
Megan Caulson, San Diego Gas & Electric Company (mcaulson@semprautilities.com)
Service List R.13-09-011
January 8, 2016

Advice 4772-E
(Pacific Gas and Electric Company ID U39 E)

Public Utilities Commission of the State of California

Subject:  PG&E’s Demand Response Auction Mechanism Phase I Purchase Agreements and Amendments to Aggregator Managed Portfolio Contracts

I. Purpose

In compliance with Ordering Paragraph (“OP”) 16 of Resolution E-4728 (“Resolution”), Pacific Gas and Electric Company (“PG&E”) hereby submits this Advice Letter to obtain approval of:

1) Twelve Purchase Agreements (“PAs”) executed between PG&E and six winning bidders resulting from PG&E’s 2016 Demand Response Auction Mechanism (“DRAM”) Request for Offers (“RFO”).

2) Amendments to two of PG&E’s Aggregator Managed Portfolio (“AMP”) contracts in accordance with the “set aside” provisions established by the Resolution.

II. Background

A. DRAM Decision and Implementing Resolutions

On September 13, 2013, the Commission issued Order Instituting Rulemaking (“R.”) 13-09-011 to enhance the role of demand response (“DR”) in meeting the state’s resource planning needs and operations. The Commission addressed the issues covered by the rulemaking in three phases. Generally, Phase Three issues dealt with future DR program design and operations. A majority of the parties reached a compromise on how to resolve Phase Three issues and, on August 4, 2014, filed a motion to obtain Commission approval of their settlement. On December 9, 2014, the Commission issued Decision (“D.”) 14-12-024 (“Decision”) which, among other things, approved the settlement agreement, with modifications, and authorized the DRAM pilot. On December 22, 2014, parties filed the compliance letter required by OP 2 of the Decision. On February 12, 2015, the Commission issued D.15-02-007, which accepted the compliance filing and clarified the status of the parties’ agreement.

The Decision requires Southern California Edison Company, San Diego Gas & Electric Company and PG&E (collectively, the Investor-Owned Companies or “IOUs”) to design and
implement DRAM for 2016 (“2016 DRAM”) and 2017 (“2017 DRAM”). An “open to the public” working group actively collaborated on the DRAM pilot design and standard contract language under the active and on-going supervision of the Commission staff. The DRAM implementation proposal and standard contract for the 2016 DRAM produced by this working group were jointly submitted through a joint IOU advice letter on April 20, 2015 (“Joint IOU Advice Letter.”)\(^1\) This Joint IOU Advice Letter was approved, subject to modification, by Resolution E-4728 on July 23, 2015. PG&E submitted the required CPUC modifications on August 24, 2015, via Supplemental AL 4618-E-A. PG&E subsequently tendered a correction to the Demonstrated Capacity form of the DRAM contract through Supplemental AL 4618-E-B. One of the elements of PG&E’s proposed implementation plan was to be able to file any required AMP contract modifications triggered by the DRAM “set aside” provisions\(^2\) along with the executed DRAM contracts. On September 24, 2015, the Commission approved Supplemental AL 4618-E-A and 4618-E-B.

The DRAM is an IOU auction for monthly system Resource Adequacy (“RA”) associated with a DR product located in the IOU’s service area.\(^3\) At a minimum, PG&E is expected to contract for 10 MW of RA, with a least 20% being attributed to residential customers. Winning DRAM auction participants (“Sellers”) will bid their contracted capacity directly into the CAISO’s day-ahead energy market during the contracted months, which may include the months of June to December 2016. Seller bids into the DRAM auction must qualify for system RA, as established in D.15-06-063, and therefore must meet the CAISO’s must-offer obligation for DR. The IOU will only acquire the RA tags, which represent the RA attributes of demand response, and will have no claim on revenues the Sellers may receive from the CAISO energy market. PG&E will reimburse certain Scheduling Coordinator (“SC”)-related amounts for Sellers. PG&E evaluated offers submitted to the DRAM auction using an offer evaluation template that is common to the IOUs and approved by the Commission.

---

\(^1\) The 2016 DRAM implementation proposal was submitted on April 20, 2015 as a joint IOU advice letter that was designated as SCE Advice 3208-E, PG&E Advice 4618-E, and SDG&E Advice 2729-E.

\(^2\) As established in AL 4618-E.

\(^3\) DRAM contracts constitute a PG&E DR program. DRAM Sellers are required to provide information to PG&E’s DR department, to enable PG&E’s DR department to administer the DRAM contracts, including without limitation, Section 1.6, Demonstrated Capacity, Article 3, Seller’s Obligations, Section 4.2, (h), Joint Proxy Demand Resource, Section 7.2, Additional Seller Representations, Warranties and Covenants, and administration of AutoDR for DRAM customers.
III. 2016 DRAM Pilot Summary

A. Auction Process

1. Auction Overview

On August 11, 2015, prior to the launch of the DRAM RFO, PG&E held a Scheduling Coordinator Request for Information (“RFI”). For outreach, PG&E and the other IOUs attempted to contact the approximately 150 contacts on CAISO’s SC list. The purpose of this RFI was to gather SC information for potential DRAM participants who would need SCs to participate in DRAM.

On September 28, 2015, PG&E issued a press release notifying over 2,800 industry contacts (e.g., aggregators, previous IOU RFO participants, etc.) of the DRAM RFO launch, and followed the timeline in the table below.

<table>
<thead>
<tr>
<th>Date/Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 28, 2015</td>
<td>PG&amp;E issued the DRAM RFO.</td>
</tr>
<tr>
<td>October 6, 2015</td>
<td>PG&amp;E and other IOUs jointly held Bidders’ Webinar for DRAM RFO.</td>
</tr>
<tr>
<td>October 26, 2015</td>
<td>Offers due to the Power Advocate online platform.</td>
</tr>
<tr>
<td>No later than 4:00 P.M. (PPT)</td>
<td>Agreed offers due to the Power Advocate online platform.</td>
</tr>
<tr>
<td>November 30, 2015</td>
<td>PG&amp;E selected offers and notified selected and waitlisted participants.</td>
</tr>
<tr>
<td>December 7, 2015</td>
<td>Deadline for originally selected and waitlisted participants to return signed acceptance letters.</td>
</tr>
<tr>
<td>December 14, 2015</td>
<td>PG&amp;E notified waitlisted participants if they had been selected.</td>
</tr>
<tr>
<td>December 14, 2015</td>
<td>Selected participants submitted a signed contract to PG&amp;E.</td>
</tr>
<tr>
<td>January 8, 2016</td>
<td>PG&amp;E filed executed standard form agreements for Commission approval.</td>
</tr>
</tbody>
</table>

PG&E created a website dedicated to PG&E’s DRAM RFO (www.pge.com/dram), where the following information was posted:

1. A history of the DRAM and relevant CPUC decisions and advice letters;
(2) the solicitation documents, including the DRAM RFO Protocol, form of PA, and Excel offer form;

(3) a packet of information about SC services and estimated costs obtained from a SC RFI that the IOUs held earlier in 2015; and

(4) other relevant information.

On each of the three occasions that new information was posted on the DRAM website, PG&E emailed market notifications to those who registered via the DRAM RFO website for DRAM RFO email notifications. Those who registered to submit DRAM offers via Power Advocate were also added to the market list, if they weren’t already on it.

A joint-IOU Bidders’ Webinar was held to describe the DRAM RFO solicitation on October 6, 2015. This webinar included the following topics:

(1) introduction and overview;

(2) DRAM RFO bid materials;

(3) bid valuation and selection;

(4) a walk-through of each of the IOU’s DRAM RFO websites; and

(5) participation survey and closing.

The Webinar was well-attended. The IOUs provided answers to the 31 questions received during the Webinar on each IOU’s DRAM RFO website.

PG&E created a mailbox dedicated to the DRAM RFO: DRAMRFO@pge.com. PG&E received a number of questions through this mailbox prior to the offer due date. Altogether, the three IOUs received an additional 49 DRAM questions, collaborated on the responses, and posted this information to their respective DRAM RFO websites. The market-sensitive questions received during and after the Bidders’ Webinar are further discussed in Confidential Appendix C, “DRAM Evaluation Metrics.”

PG&E also hosted a Workshop on Receiving Customer Data for Rule 24 and DRAM on December 2, 2015. There were approximately 20 attendees. PG&E subsequently posted the workshop material on its DRAM RFO website.

---

4 The Excel offer form included an electronic signature whereby the Seller agreed to abide by the terms and conditions of the Protocol and to maintain confidentiality regarding their offer.
2. **Offer Overview**

In response to the DRAM RFO, PG&E received 49 offers totaling approximately 50 MW of non-residential demand response and 14 MW of residential demand response for August 2016. The total estimated number of participating service accounts was 22,000. A spreadsheet of all DRAM offers received is provided in Confidential Appendix A, “DRAM Offers Received and Shortlisted,” pursuant to Resolution Ordering Paragraph 16.

3. **Offer Evaluation**

*Identify Non-conforming Offers.* PG&E screened all offers against the following eligibility requirements: minimum monthly quantity of 100 kW, maximum monthly quantity of 10,000 kW, a required offer for August, and a maximum of twenty (20) bids per bidder.

*Quantitative Evaluation.* Conforming offers were ranked based on their weighted average unit cost ($/kW) from lowest to highest. The weighted average unit cost of each offer equaled the total cost for 2016 divided by weighted volume. An offer’s total cost was calculated as the product of the monthly offer volume and offer price plus the SC cost (Table 2). Volume was weighted by monthly RA prices taken from Table 13 of the CPUC’s 2012 Resource Adequacy Report (Table 3). These monthly RA weights were in both the DRAM Offer Form and the DRAM RFO Protocol. The result of the quantitative analysis was a merit-order ranking of all complete and conforming Offers. The formula and monthly capacity weights are provided below.

### Table 2: Quantitative Evaluation Formula

<table>
<thead>
<tr>
<th>Offered Volume (kW)</th>
<th>Weighted Volume (kW)</th>
<th>SC Cost ($000)</th>
<th>Offered Pricing ($/kW-mo)</th>
<th>Total Cost ($000)</th>
<th>Weighted Average Unit Cost ($/kW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>[A]</td>
<td>[B]</td>
<td>[C]</td>
<td>[D]</td>
<td>[E]</td>
<td>[F] = [E/B]</td>
</tr>
</tbody>
</table>

\[ [E] = A \times D + C \]

### Table 3: Monthly Capacity Weights based on Public Resource Adequacy (RA) Prices

<table>
<thead>
<tr>
<th>Month</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan</td>
<td>2.5%</td>
</tr>
<tr>
<td>Feb</td>
<td>1.8%</td>
</tr>
<tr>
<td>Mar</td>
<td>1.7%</td>
</tr>
<tr>
<td>Apr</td>
<td>1.9%</td>
</tr>
<tr>
<td>May</td>
<td>2.7%</td>
</tr>
<tr>
<td>Jun</td>
<td>5.2%</td>
</tr>
<tr>
<td>Jul</td>
<td>24.6%</td>
</tr>
<tr>
<td>Aug</td>
<td>31.2%</td>
</tr>
<tr>
<td>Sept</td>
<td>15.6%</td>
</tr>
<tr>
<td>Oct</td>
<td>4.6%</td>
</tr>
</tbody>
</table>

---

Qualitative Evaluation.

The following Table 4 shows the joint IOU DRAM scoring matrix for qualitative assessment that was provided in both the Joint IOU Advice Letter and RFO protocol.

Table 4: Joint IOU Scoring Matrix for Qualitative Attributes

<table>
<thead>
<tr>
<th>Qualitative Scoring Adder</th>
<th>Score</th>
<th>Weight</th>
<th>Answer</th>
<th>Score x Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criteria</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Have you (the Seller)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>participated in a DR program or DR market anywhere as an aggregator?</td>
<td>Yes / No</td>
<td>0 1 0% 3% 0%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>Will your project require any permits, interconnection agreements, environmental studies, or additional land rights prior to operation?</td>
<td>Yes / No</td>
<td>1 0 0% 3% 0%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>Is there any ongoing investigation or an investigation that has occurred within the last five years with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, environmental, or financial market regarding any DR services you were/are providing?</td>
<td>Yes / No</td>
<td>1 0 0% 3% 0%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>DBE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Do you have, or will obtain before the program begins, DBE status?</td>
<td>Yes / No</td>
<td>0 1 0% 1% 0%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>Project Diversity</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are you going to use enabling technology with at least 90% of your PDR customers?</td>
<td>Yes / No</td>
<td>0 1 0% 5% 0%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>Total Qualitative Score</td>
<td></td>
<td></td>
<td></td>
<td>Sum of Above</td>
</tr>
</tbody>
</table>

4. Offer Selection

Using the evaluation criteria described above, PG&E ranked the offers from lowest to highest weighted average unit cost. PG&E then selected offers with the highest rank to obtain a portfolio meeting the following three DRAM objectives:

(1) Not exceeding the 10,000 service account limit, per AL 4618-E;

(2) Achieving at least 10 MW capacity, per the Resolution; and,

(3) Including at least 20% of total MW comprising residential bids, per the Resolution.
More information on the selection process is contained in Confidential Appendix B, “Valuation Process Summary.”

**B. DRAM Results**

PG&E shortlisted 17.17 August MW, of which at least 20% was residential. A list of the Sellers who received DRAM contracts for June to December 2016 is provided in Table 6, below.

<table>
<thead>
<tr>
<th>Table 5: 2016 DRAM Sellers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chai, Inc.</td>
</tr>
<tr>
<td>Electric Motor Werks, Inc.</td>
</tr>
<tr>
<td>EnergyConnect, Inc.*</td>
</tr>
<tr>
<td>EnergyHub, Inc.</td>
</tr>
<tr>
<td>EnerNOC, Inc.*</td>
</tr>
<tr>
<td>OhmConnect, Inc</td>
</tr>
</tbody>
</table>

* Pursuant to the set-aside provisions approved in the Resolution, PG&E proposes to reduce the megawatt (“MW”) obligations in EnergyConnect’s AMP contract and EnerNOC’s AMP contract for the months that they will be providing MW under their DRAM contracts.

The offer selection process and more information on the Selected Offers’ attributes are found in Confidential Appendix B, “Valuation Process Summary.” For more information on the DRAM results please see Confidential Appendix C, “DRAM Evaluation Metrics.”

**IV. Amendments to Aggregator Managed Program Contracts**

The ability of Sellers with active AMP contracts to participate in DRAM potentially could be affected by existing AMP contract capacity commitments. The Resolution authorized PG&E to file amendments to existing AMP contracts in this Advice Letter in order to “set-aside” otherwise applicable limits on the reduction of AMP capacity commitments, and thus allow more AMP participating customers to migrate to their AMP aggregator’s DRAM portfolio.

Two Sellers with existing AMP aggregators have expressed interest in using this provision – EnerNOC, Inc. and EnergyConnect, Inc. These demand response providers both elected to reduce certain current monthly AMP contract commitments during the term of their DRAM contracts. The proposed modifications to the AMP contracts are consistent with the AMP contract capacity set-aside rules approved by the Resolution and are described in Confidential Appendix G, “AMP Contract Amendments.”

**V. Request for Commission Approval**

PG&E requests that the Commission approve the 2016 DRAM PAs through a disposition letter issued by the Director of Energy Division within 30 days of the date of this Advice Letter, that is, by February 8, 2016. The disposition letter should find that:
1. Each of the submitted DRAM PAs is approved in its entirety, including payments to be made by PG&E pursuant to each PA, subject to the Commission’s review of PG&E’s administration of the PA by PG&E’s DR group;

2. The solicitation and selection of the DRAM Sellers was consistent with PG&E’s approved DRAM Program Solicitation Protocol, and that the price of delivered RA is reasonable and prudent; and

3. The submitted AMP contract amendments should also be approved in their entirety.

VI. Request for Confidential Treatment

In support of this Advice Letter, PG&E has provided the following confidential information: the executed DRAM PAs, information about the participants and offers submitted in response to PG&E’s DRAM RFO including the evaluation and analysis of the value of such offers, information that more specifically describes the value of the energy procured in terms of the rights and obligations of the parties, and the confidential results of the solicitation.

A Declaration Seeking Confidential Treatment is being submitted along with this Advice Letter, as required by D.08-04-023, OP 8, to demonstrate the confidentiality of material and to invoke the protection of confidential information provided under either the terms of the IOU Matrix, Appendix 1 of D.06-06-066 and Appendix C of D.08-04-023, or General Order 66-C. In addition, declarations from several 2016 DRAM Sellers accompany this Advice Letter to support the request for confidential treatment of their confidential and sensitive business information.

Confidential Attachments:

Confidential Appendix A: DRAM Offers Received and Shortlisted

Confidential Appendix B: Valuation Process Summary

Confidential Appendix C: DRAM Evaluation Metrics

Confidential Appendix D: Independent Evaluator Report (Redacted version included with public filing)

Confidential Appendix F: Executed DRAM Contracts

Confidential Appendix G: AMP Contract Amendments

VII. Protests

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, facsimile or E-mail, no later than January 28, 2016, which is 20 days after the date of this filing. Protests must be submitted to:
Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

The protest shall also be sent to PG&E 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:

Erik Jacobson  
Director, Regulatory Relations  
c/o Megan Lawson  
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

Any person (including individuals, groups, or organizations) may protest or respond to an advice letter (General Order 96-B, Section 7.4). The protest shall contain the following information: specification of the advice letter protested; grounds for the protest; supporting factual information or legal argument; name, telephone number, postal address, and (where appropriate) e-mail address of the protestant; and statement that the protest was sent to the utility no later than the day on which the protest was submitted to the reviewing Industry Division (General Order 96-B, Section 3.11).

VIII. Effective Date

PG&E requests that this Tier 1 advice filing become effective upon date of filing, which is January 8, 2016.

IX. Notice

In accordance with General Order 96-B, Section IV, a copy of this Advice Letter is being sent electronically and via U.S. mail to parties shown on the attached list and the service list for R.13-09-011. Address changes to the General Order 96-B list and electronic approvals should be directed to PGETariffs@pge.com. For changes to any other service list, please contact the
Commission’s Process Office at (415) 703-2021 or at Process_Office@cpuc.ca.gov. Advice letter filings can also be accessed electronically at: http://www.pge.com/tariffs.

/S/
Erik Jacobson
Director – Regulatory Relations

cc: Rachael McMahon – Energy Division
Service List for R.13-09-011
**Limited Access to Confidential Material:**

The portions of this Advice Letter marked Confidential Protected Material are submitted under the confidentiality protection of Section 583 and 454.5(g) of the Public Utilities Code and General Order 66-C. This material is protected from public disclosure because it consists of, among other items, the contracts themselves and price information of a proposed DRAM contract, and competitive solicitation information, which are protected pursuant to D.06-06-066 and D.08-04-023. Separate Declarations seeking Confidential Treatment regarding the Confidential Protected Material are being submitted concurrently to Energy Division.

**Attachments Publicly Filed with the Advice Letter:**

Appendix E: PG&E’s DRAM Standard Contract

**Attachments Filed on a Confidential Basis with the Advice Letter:**

Confidential Appendix A: DRAM Offers Received and Shortlisted
Confidential Appendix B: Valuation Process Summary
Confidential Appendix C: DRAM Evaluation Metrics
Confidential Appendix D: Independent Evaluator Report of Merrimack Energy Group, Inc.
Confidential Appendix F: Executed DRAM Contracts
Confidential Appendix G: AMP Contract Amendments
## CALIFORNIA PUBLIC UTILITIES COMMISSION

### ADVICE LETTER FILING SUMMARY

**ENERGY UTILITY**

<table>
<thead>
<tr>
<th>Company name/CPUC Utility No.</th>
<th>Pacific Gas and Electric Company (ID U39 E)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utility type:</td>
<td>Contact Person: Kingsley Cheng</td>
</tr>
<tr>
<td>☑ ELC</td>
<td>Phone #: (415) 973-5265</td>
</tr>
<tr>
<td>☑ GAS</td>
<td>E-mail: <a href="mailto:k2e0@pge.com">k2e0@pge.com</a> and <a href="mailto:PGETariffs@pge.com">PGETariffs@pge.com</a></td>
</tr>
<tr>
<td>☑ PLC</td>
<td></td>
</tr>
<tr>
<td>☑ HEAT</td>
<td></td>
</tr>
<tr>
<td>☑ WATER</td>
<td></td>
</tr>
</tbody>
</table>

### EXPLANATION OF UTILITY TYPE

<table>
<thead>
<tr>
<th>ELC = Electric</th>
<th>GAS = Gas</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLC = Pipeline</td>
<td>HEAT = Heat</td>
</tr>
<tr>
<td>WATER = Water</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Advice Letter (AL) #:</th>
<th>4772-E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier:</td>
<td>1</td>
</tr>
<tr>
<td>Subject of AL:</td>
<td>PG&amp;E’s Demand Response Auction Mechanism Phase I Purchase Agreements and Amendments to Aggregator Managed Portfolio Contracts</td>
</tr>
<tr>
<td>Keywords (choose from CPUC listing):</td>
<td>Compliance, Agreements, Contracts</td>
</tr>
<tr>
<td>AL filing type:</td>
<td>☑ One-Time</td>
</tr>
<tr>
<td>If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:</td>
<td>E-4728</td>
</tr>
<tr>
<td>Does AL replace a withdrawn or rejected AL?</td>
<td>No</td>
</tr>
<tr>
<td>Summarize differences between the AL and the prior withdrawn or rejected AL:</td>
<td></td>
</tr>
<tr>
<td>Is AL requesting confidential treatment?</td>
<td>Yes. See the attached matrix that identifies all of the confidential information.</td>
</tr>
<tr>
<td>Confidential information will be made available to those who have executed a nondisclosure agreement:</td>
<td>☑ No</td>
</tr>
<tr>
<td>Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information:</td>
<td>Grant Brohard, (415) 973-0106</td>
</tr>
<tr>
<td>Resolution Required?</td>
<td>☑ No</td>
</tr>
<tr>
<td>Requested effective date:</td>
<td>January 8, 2016</td>
</tr>
<tr>
<td>No. of tariff sheets:</td>
<td>N/A</td>
</tr>
<tr>
<td>Estimated system annual revenue effect (%):</td>
<td>N/A</td>
</tr>
<tr>
<td>Estimated system average rate effect (%):</td>
<td>N/A</td>
</tr>
<tr>
<td>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):</td>
<td></td>
</tr>
<tr>
<td>Tariff schedules affected:</td>
<td>N/A</td>
</tr>
<tr>
<td>Service affected and changes proposed:</td>
<td>N/A</td>
</tr>
<tr>
<td>Pending advice letters that revise the same tariff sheets:</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Protests, dispositions, and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

**California Public Utilities Commission**

Energy Division

EDTariffUnit

505 Van Ness Ave., 4th Flr.
San Francisco, CA 94102

E-mail: EDTariffUnit@cpuc.ca.gov

**Pacific Gas and Electric Company**

Attn: Erik Jacobson

Director, Regulatory Relations
c/o Megan Lawson

77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

E-mail: PGETariffs@pge.com
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

PACIFIC GAS AND ELECTRIC COMPANY
DEMAND RESPONSE RULEMAKING (R.13-09-011)

DECLARATION OF GRANT BROHARD
SEEKING CONFIDENTIAL TREATMENT
FOR CERTAIN DATA AND INFORMATION
CONTAINED IN CONFIDENTIAL ATTACHMENTS TO ADVICE LETTER 4772-E

I, Grant Brohard, declare:

1. I am a Manager in the Demand Response Department within the Customer Care Organization at Pacific Gas and Electric Company (PG&E). In this position, my responsibilities include the overall administration of PG&E’s Demand Response (DR) programs, which include the Aggregator Managed Portfolio (AMP), Capacity Bidding Program (CBP), Demand Bidding Program (DBP), Base Interruptible Program (BIP), SmartAC, Optional Binding Mandatory Curtailment Program (OBMC), and Scheduled Load Reduction Program (SLRP). I have overall responsibility for administering the contracts, tariffs, and relationships with the third party aggregators who participate in those programs. I also support PG&E’s DR regulatory and product development efforts. I am responsible for the Demand Response Auction Mechanism (DRAM) Request For Offers (RFO) including analysis of bids, contracting with the winning bidders, and administration of the DRAM contracts. This declaration is based on my personal knowledge of what the demand response aggregators consider to be confidential market information, including the information in the declarations from DRAM Sellers Chai, Inc., EnergyConnect, Inc., EnerNOC, Inc., Electric Motor Werks, Inc., and EnergyHub, Inc., accompanying this declaration, and my understanding of the Commission’s decisions protecting the confidentiality of market-sensitive information.

2. Based on my knowledge and experience, the attached declarations of certain DR aggregators with whom PG&E has executed DRAM contracts and AMP contract amendments pursuant to the DRAM set-aside, and in accordance with Decision (D.) 06-06-066, D.08-04-023
and relevant Commission rules, I make this declaration seeking confidential treatment of certain materials in the DRAM contracts of EnergyConnect, Inc., EnerNOC, Inc., Electric Motor Werks, Inc., EnergyHUB, Inc., OhmConnect, Inc., and Chai, Inc. (Confidential Appendix F), the Third AMP contract amendments for EnergyConnect, Inc. and EnerNOC, Inc. (Confidential Appendix G), and the confidential DRAM materials in Confidential Appendices A, B, C, and D. Attached to this declaration is a matrix identifying the data and information for which PG&E is seeking confidential treatment. The matrix specifies that the material PG&E is seeking to protect constitutes confidential market sensitive data and information covered by the designated provisions of the IOU Matrix, Appendix 1 of D.06-06-066, and General Order 66-C, subsection 2.8. The matrix also specifies why confidential protection is justified. Further, the data and information: (1) is not already public; and (2) cannot be aggregated, redacted, summarized or otherwise protected in a way that allows partial disclosure. By this reference, I am incorporating into this declaration all of the explanatory text in the attached matrix that is pertinent to my declaration.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on January 8, 2016 at San Francisco, California.

[Signature]
Grant J. Brohard
DECLARATION OF EVAN BIRENBAUM
IN SUPPORT OF CONFIDENTIAL TREATMENT FOR
THE CHAI, INC. 2016 DRAM CONTRACTS

I, Evan Birenbaum, declare as follows:

1. I submit this Declaration in support of continuing treatment for CHAI, Inc.’s (CHAI) 2016 DRAM contract with Pacific Gas and Electric Company (PG&E). I have personal knowledge of the matters set forth herein, and could and would competently testify truthfully thereto.

2. I am the COO for CHAI. My business address is 525 S Hewitt St. Los Angeles CA 90013. I have been employed by CHAI since September 2014. My responsibilities in that position include the representation of CHAI before regulatory agencies in California on energy regulatory matters. I run Chai’s marketing, partnership programs, supply chain, and general operations. I five years of experience working at Southern California Edison in regulatory affairs, environmental strategy, and utility operations.

3. CHAI bid into PG&E’s DRAM I auction for 2016, and was awarded DRAM I contracts. In accordance with the DRAM I protocols, CHAI has executed DRAM contracts with PG&E.

4. On information and belief, CHAI states that the CHAI DRAM I contracts will be filed with the PG&E advice letter to request Commission approval of the CHAI DRAM I contracts.
5. The information in the CHAI DRAM I contracts (and the PG&E advice letter) on the monthly kWs, the terms, and the type of product (residential/non-residential), are sensitive, competitive, confidential market information for CHAI.

6. CHAI is actively participating in California’s Demand Response programs with load serving entities in California. Public release of commercially sensitive information such as the number of megawatts or kilowatt hours, product types, term, associated pricing, etc., would be detrimental to CHAI as we engage in market activity to offer aggregated demand response portfolio services to various load serving entities or directly into the CAISO markets. Public access to CHAI’s competitively sensitive market information could adversely impact other commercial negotiations with other existing or potential counterparties, and could de-position CHAI relative to other aggregators who could use CHAI’s sensitive market information to their own advantage.

7. Based on my knowledge and experience, I make this declaration to request the Commission to grant confidential treatment for the CHAI’s DRAM I contracts, until two years after the final extension of the contracts expires.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in __________, ___________ on January ___, 2016.

[Signature]
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Enhance the Role of Demand Response in Meeting the State’s Resource Planning Needs and Operational Requirements

Rulemaking 13-09-011
(Filed: September 19, 2013)

DECLARATION OF VALERY MIFTAKHOV
IN SUPPORT OF CONFIDENTIAL TREATMENT FOR THE ELECTRIC MOTOR WERKS, INC. 2016 DRAM CONTRACTS

I, Valery Miftakhov, declare as follows:

1. I submit this Declaration in support of continuing treatment for ELECTRIC MOTOR WERKS, Inc.’s (Electric Motor Werks) 2016 DRAM contract with Pacific Gas and Electric Company (PG&E). I have personal knowledge of the matters set forth herein, and could and would competently testify truthfully thereto.

2. I am the CEO for Electric Motor Werks. My business address is 846 Brantsen Road, San Carlos, CA. I have been employed by Electric Motor Werks since 2011. My responsibilities in that position include the representation of Electric Motor Werks before regulatory agencies in California on energy regulatory matters. I manage and drive the decisions for the entire company, and have been involved in our engagements with utilities and the CPUC, including the current PEV Submetering Pilot sponsored in part by PG&E.

3. Electric Motor Werks bid into PG&E’s DRAM I auction for 2016, and was awarded DRAM I contract. In accordance with the DRAM I protocols, Electric Motor Werks has executed a DRAM contract with PG&E.

4. On information and believe, Electric Motor Werks states that the Electric Motor Werks DRAM I contract will be filed with the PG&E advice letter to request Commission approval of the Electric Motor Werks DRAM I contract.
5. The information in the Electric Motor Werks DRAM I contract (and the PG&E advice letter) on the monthly kWs, the terms, and the type of product (residential/non-residential), are sensitive, competitive, confidential market information for Electric Motor Werks.

6. Electric Motor Werks is actively participating in California’s Demand Response programs with load serving entities in California. Public release of commercially sensitive information such as the number of megawatts or kilowatt hours, product types, term, associated pricing, etc., would be detrimental to Electric Motor Werks as we engage in market activity to offer aggregated demand response portfolio services to various load serving entities or directly into the CAISO markets. Public access to Electric Motor Werks’ competitively sensitive market information could adversely impact other commercial negotiations with other existing or potential counterparties, and could de-position Electric Motor Werks relative to other aggregators who could use Electric Motor Werks sensitive market information to their own advantage.

7. Based on my knowledge and experience, I make this declaration to request the Commission to grant confidential treatment for the Electric Motor Werks DRAM I contract, until two years after the final extension of the contract expires.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in San Carlos, California on December 30th, 2015.
DECLARATION OF JENNIFER CHAMBERLIN IN SUPPORT OF
CONFIDENTIAL TREATMENT FOR THE ENERGYCONNECT, INC.
2016 DRAM CONTRACT AND THE THIRD AMENDMENT TO THE
AGGREGATOR MANAGED PORTFOLIO CONTRACT BETWEEN
ENERGYCONNECT, INC. AND PACIFIC GAS AND ELECTRIC COMPANY

I, JENNIFER CHAMBERLIN, declare as follows:

1. I submit this Declaration in support of continuing treatment for EnergyConnect Inc.’s (EnergyConnect) 2016 DRAM contract and the Third Amendment to EnergyConnect’s aggregator-managed portfolio (AMP) contract with Pacific Gas and Electric Company (PG&E). I have personal knowledge of the matters set forth herein, and could and would competently testify truthfully thereto.

2. My business address is 901 Campisi Way, Suite 260, Campbell, CA 95008.

3. I am employed by Johnson Controls, in the position of Director of Regulatory Affairs – Integrated Demand Resources. I have held that position since April 2014. My responsibilities in that position include acting as the company’s internal expert on California energy policy, understanding and advocating for rules and regulations at the energy agencies and California Independent System Operator allowing demand response and storage to participate in retail and wholesale energy markets. I represent Johnson Controls and EnergyConnect before the California Public Utilities Commission (CPUC) on matters affecting demand response to reflect Johnson Controls and EnergyConnect’s views on various energy policy issues related to Johnson Controls and EnergyConnect’s demand response resource interests in the State.
4. Johnson Controls, through its wholly owned subsidiary EnergyConnect, is actively participating in California Demand Response programs and contracts with PG&E and other California load serving entities. Public release of commercially sensitive information such as the number of megawatts (or kilowatt hours) of demand response, the type of product (e.g. residential or non-residential), associated capacity and energy pricing, the term for the products in the contract would be detrimental to Johnson Controls/EnergyConnect as we engage in market activity to offer aggregated demand response portfolio services to other load serving entities or directly into the CAISO markets. Detriment would result if others in the market could get the competitively sensitive information in our commercial arrangements, and use it to bias other commercial negotiations, or improve their competitive positions at the expense of Johnson Controls and EnergyConnect.

5. EnergyConnect bid into PG&E’s DRAM I auction for 2016, and was awarded a DRAM I contract. In accordance with the DRAM I protocols, EnergyConnect has executed a DRAM contract with PG&E. EnergyConnect also has an existing AMP contract with PG&E, which was approved in D.13-02-033. EnergyConnect’s AMP contract was amended to reflect changes approved in D.13-04-026 and D.14-02-033. EnergyConnect’s AMP contract was also extended through the 2015-2016 bridge period pursuant to D.14-05-025.

6. Under the DRAM I set-aside provisions approved in Resolution E-4728, DRAM I Sellers that have existing AMP contracts, may reduce their AMP contract monthly commitment levels for months in which they have made commitments in their DRAM I contracts. EnergyConnect has used the DRAM I set-aside provisions to reduce its AMP contract commitment level, pursuant to the formula in the DRAM I set-aside. The reduction in EnergyConnect’s AMP contract is in Amendment Three to the EnergyConnect AMP Contract.

7. On information and belief, EnergyConnect states that the EnergyConnect DRAM I contract and Amendment Three to the EnergyConnect AMP contract will be filed with the PG&E advice letter to request Commission approval of the EnergyConnect DRAM I contract and Amendment Three to the EnergyConnect AMP contract.
8. The information in the EnergyConnect DRAM I contract (and the PG&E advice letter) on the monthly kWs, the terms, the type of product (residential/non-residential), and the percentage reduction to the EnergyConnect AMP contract are sensitive, competitive, confidential market information for EnergyConnect. Similarly, the monthly quantities (MWs) in the Third Amendment to the EnergyConnect AMP contract are sensitive, competitive, confidential market information for Johnson Controls and EnergyConnect.

9. Public access to EnergyConnect's competitively sensitive market information in the EnergyConnect DRAM I contract and the Third Amendment to EnergyConnect's AMP contract could adversely impact other commercial negotiations with potential counterparties, and could de-position Johnson Controls and EnergyConnect relative to other aggregators who could use EnergyConnect’s sensitive market information to their own advantage.

10. Based on my knowledge and experience, I make this declaration to request the Commission to grant confidential treatment for the EnergyConnect DRAM I contract, and Amendment Three to the EnergyConnect AMP contract until two years after the final extension of the contract(s) expires.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Clyde, CA on December 30, 2015.

[Signature]
JENNIFER CHAMBERLIN
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Enhance the Role of Demand Response in Meeting the State’s Resource Planning Needs and Operational Requirements

Rulemaking 13-09-011
(Filed: September 19, 2013)

DECLARATION OF Erika Diamond
IN SUPPORT OF CONFIDENTIAL TREATMENT FOR ENERGYHUB, INC.
2016 DRAM CONTRACT

I, Erika Diamond, declare as follows:

1. I submit this Declaration in support of continuing treatment for ENERGYHUB, Inc.’s (EnergyHub) 2016 DRAM contract with Pacific Gas and Electric Company (PG&E). I have personal knowledge of the matters set forth herein, and could and would competently testify truthfully thereto.

2. I am the VP & GM of Energy Markets for EnergyHub. My business address is 232 3rd Street, C210, Brooklyn, NY 11201. I have been employed by EnergyHub since 2015. My responsibilities in that position include the representation of EnergyHub before regulatory agencies in California on energy regulatory matters. I represent EnergyHub before the California Public Utilities Commission (CPUC) on matters affecting demand response resources in California. I submit comments, testimony, participate in workshops, hearings and all other forms of proceeding to reflect EnergyHub’s views on various energy policy issues related to EnergyHub’s demand response resource interests in the State.

3. EnergyHub bid into PG&E’s DRAM I auction for 2016, and was awarded a DRAM I contract. In accordance with the DRAM I protocols, EnergyHub has executed a DRAM contract with PG&E.
4. On information and believe, EnergyHub states that the EnergyHub DRAM I contract will be filed with the PG&E advice letter to request Commission approval of the EnergyHub DRAM I contract.

5. The information in the EnergyHub DRAM I contracts (and the PG&E advice letter) on the price, monthly kWs, the terms, the type of product (residential/non-residential), delivery period and showing months, SC payment and EnergyHub contact information (including banking information), are sensitive, competitive, confidential market information for EnergyHub.

6. EnergyHub is actively participating in California’s Demand Response programs with PG&E and other California load serving entities. Public release of commercially sensitive information such as the number of megawatts or kilowatt hours, product types, term, associated pricing, etc., would be detrimental to EnergyHub as we engage in market activity to offer aggregated demand response portfolio services to various load serving entities or directly into the CAISO markets. Public access to EnergyHub’s competitively sensitive market information could adversely impact other commercial negotiations with other counterparties, and could deposition EnergyHub relative to other aggregators who could use EnergyHub’s sensitive market information to their own advantage.

7. Based on my knowledge and experience, I make this declaration to request the Commission to grant confidential treatment for the EnergyHub DRAM I contracts, until two years after the final extension of the contracts expires.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


[Signature]
Before the Public Utilities Commission
Of the State of California

Order Instituting Rulemaking to Enhance the Role of Demand Response in Meeting the State’s Resource Planning Needs and Operational Requirements

Rulemaking 13-09-011
(Filed: September 19, 2013)

Declaration of Michael Berdikin Support of Confidential Treatment for the EnerNoc, Inc. 2016 DRAM Contract and the Third Amendment to the Aggregator Managed Portfolio Contract Between EnerNoc, Inc. and Pacific Gas and Electric Company

I, Michael Berdikin, declare as follows:

1. I submit this Declaration in support of continuing treatment for EnerNoc Inc.’s (EnerNOC) 2016 DRAM contract and the Third Amendment to EnerNOC’s aggregator-managed portfolio (AMP) contract with Pacific Gas and Electric Company (PG&E). I have personal knowledge of the matters set forth herein, and could and would competently testify truthfully thereto.

2. I am the Deputy General Counsel for EnerNOC, Inc. I have been employed by EnerNOC since 2008. My responsibilities in this position include managing the day-to-day legal operations of EnerNOC by assisting the general counsel with administrative or legal matters including the planning, organizing and managing of company strategies. I also develop or assist the development of budget recommendations for the organization, and manage outside counsel to represent EnerNOC in important litigation before courts and administrative tribunals. I prepare, review and negotiate company contracts, requests for proposal and other legal documents. I assist in the filing of Securities Exchange Commission regulatory documents, and provide legal guidance for company-wide acquisitions and divestitures.
3. EnerNOC bid into PG&E’s DRAM I auction for 2016, and was awarded a DRAM I contract with PG&E. In accordance with the DRAM I protocols, EnerNOC has executed a DRAM contract with PG&E. EnerNOC also has an existing AMP contract with PG&E, which was approved in D.13-01-024. EnerNOC’s AMP contract was amended to reflect changes approved in D.13-04-026 and D.14-02-033. EnerNOC’s AMP contract was also extended through the 2015-2016 bridge period pursuant to D.14-05-025.

4. Under the DRAM I set-aside provisions approved in Resolution E-4728, DRAM I Sellers that have existing AMP contracts, may reduce their AMP contract monthly commitment levels for month(s) in which they have made commitments in their DRAM I contracts. EnerNOC used the DRAM I set-aside provisions to reduce its AMP contract commitment level, pursuant to the formula in the DRAM I set-aside. The reduction in EnerNOC’s AMP contract is in Amendment Three to the EnerNOC AMP Contract.

5. On information and belief, the EnerNOC DRAM I contract and Amendment Three to the EnerNOC AMP contract will be filed with a PG&E advice letter to request Commission approval of the EnerNOC DRAM I contract and Amendment Three to the EnerNOC AMP contract.

6. The information in the EnerNOC DRAM I contract (and the PG&E advice letter) on the monthly kWs, the terms, including price, the month(s) in which EnerNOC is providing DRAM services, as well as the information contained in the Third Amendment to the EnerNOC AMP contract, including the percentage and MW reduction to the EnerNOC AMP contract are market sensitive, competitive, and confidential market information for EnerNOC.

7. EnerNOC is actively participating in California’s Demand Response programs and with PG&E, other California load serving entities, and has extensive relationships with customers of PG&E. Public release of commercially sensitive information such as the number of watts, product type(s), term, month(s) of service, associated capacity and energy pricing, etc., would be detrimental to EnerNOC as it engages in market activity to offer aggregated demand response portfolio services to various load serving entities, customers, or directly into the CAISO
markets. Public access to EnerNOC’s competitively-sensitive market information could adversely impact other commercial negotiations with potential counterparties, and could deposition EnerNOC relative to other aggregators who could use EnerNOC’s sensitive market information to their own advantage.

8. Due to the nature of the first-of-its-kind DRAM I pilot, EnerNOC’s bidding strategy as used in the DRAM I pilot may mirror strategies used for bids in future DRAM programs. Release of the sensitive information contained in EnerNOC’s bid for the DRAM I pilot could allow EnerNOC’s competitors an insight into EnerNOC’s bidding strategies, thus, granting these competitors an unfair competitive advantage in the bidding process for future DRAM programs, to the severe detriment of EnerNOC. Accordingly, confidential treatment should be afforded specific elements (e.g. watts, product types, term, month(s) of service, associated capacity and energy pricing, etc.) of the DRAM I contract and the third amendment to the AMP contract and thus protected from public disclosure.

9. Contingent on the number of bidders and/or the capacity that has been contracted by PG&E in the DRAM I program, EnerNOC’s participation in the DRAM I program may or may not have a material impact in the DRAM II solicitation for 2017. Therefore, EnerNOC expects that PG&E will treat the information in the DRAM I contract and third amendment to the AMP contract as market sensitive and confidential in accordance with Commission rules on aggregation, recognizing that EnerNOC’s participation in the DRAM I program may not be masked by aggregation principles should EnerNOC’s participation make up a substantial portion of the aggregated data.

10. PG&E will be engaging in future solicitations for resources for DRAM II and for 2017 in the near term. Release of EnerNOC’s commercially sensitive information could be damaging to both EnerNOC and PG&E for these future solicitations. In addition, the release of commercially sensitive information can be damaging to EnerNOC in solicitations conducted by other load serving entities and relative to its competitors who may participate in any of these solicitations.
11. EnerNOC's contract terms, including product type(s), wattage capacity, price (both capacity and energy), and month(s) of service represent trade secret material that is developed internally using EnerNOC's market expertise developed over extensive periods of time, the expertise of its employees, and in-house developed models, software and hardware. Disclosure of EnerNOC's pricing and other sensitive terms could provide competitors with insight into EnerNOC's market strategy, pricing and expertise that could damage its position in the market vis-à-vis competitors or other market participants.

12. Based on my knowledge and experience, I make this declaration to request the Commission to grant confidential treatment for the EnerNOC DRAM I contract, and Amendment Three to the EnerNOC AMP contract, as requested herein, until three years after the final extension of the contract expires.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Boston, Massachusetts on January 6, 2016.

[Signature]

MICHAEL BERDIK
### IDENTIFICATION OF CONFIDENTIAL INFORMATION

<table>
<thead>
<tr>
<th>Redaction Reference</th>
<th>Category from D.06-06-066, Appendix 1, or Separate Confidentiality Order That Data Corresponds To</th>
<th>Justification for Confidential Treatment</th>
<th>Length of Time Data To Be Kept Confidential</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Document: Advice Letter 4772-E</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Confidential Appendix A:</strong> DRAM Offers Received and Shortlisted</td>
<td>D.06-06-066, IOU Matrix, Item VIII) A, Bid information; Item VIII) B) Specific quantitative analysis involved in scoring and evaluation of participating bids.</td>
<td>Appendix A provides a spreadsheet of all of the offers received in response to PG&amp;E’s 2016 DRAM solicitation, ranked by weighted average unit cost. Appendix A also identifies those offers that were selected for the shortlist and contract execution. Specifically, this spreadsheet includes both shortlisted and non-listed offers, their respective monthly quantities, offered price ($/kW-month), residential versus non-residential status, total number of service accounts per offer, weighted average unit cost ($/kW), total contract cost, and proposed RA availability by month. All of the information contained in RFO bids is confidential for three years after winning bidders have been selected, that is, submitted for CPUC approval, except for information specifically identified as public. Only the total number of projects and MW bid by resource type, and evaluation guidelines are presumed to be public. Appendix A does not contain any information that is identified as public. PG&amp;E has treated all of the information within Appendix A as confidential. The confidentiality of DRAM offer information should be protected pursuant to Item VIII of the IOU matrix.</td>
<td>Three years from January 8, 2016</td>
</tr>
<tr>
<td><strong>Confidential Appendix B:</strong> Valuation Process Summary</td>
<td>D.06-06-066, IOU Matrix, Item VIII) A, Bid information; Item VIII) B) Specific quantitative analysis involved in scoring and evaluation of participating bids.</td>
<td>Appendix B provides confidential aspects of the valuation, scoring, and selection process. The discussion in Appendix B identifies discrete offers and PG&amp;E’s analysis of offer characteristics. This information constitutes information recognized as confidential by Item VIII) B. of the IOU Matrix. All of the information contained in RFO bids is confidential for three years after winning bidders have been selected, that is, submitted for CPUC approval, except for information specifically identified as public. Only the total number of projects and MW bid by resource type, and evaluation guidelines are presumed to be public. Appendix B does not contain any information that is identified as public. PG&amp;E has treated all of the information within Appendix B as confidential. The confidentiality</td>
<td>Three years from January 8, 2016</td>
</tr>
</tbody>
</table>
**PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)**

**DEMAND RESPONSE RULEMAKING (R.13-09-011)**

**ADVICE LETTER 4772-E**

January 8, 2016

**IDENTIFICATION OF CONFIDENTIAL INFORMATION**

<table>
<thead>
<tr>
<th>Redaction Reference</th>
<th>Category from D.06-06-066, Appendix 1, or Separate Confidentiality Order That Data Corresponds To</th>
<th>Justification for Confidential Treatment</th>
<th>Length of Time Data To Be Kept Confidential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidential Appendix C: DRAM Evaluation Metrics</td>
<td>D.06-06-066, IOU Matrix, Item VIII) A, Bid information; Item VIII) B) Specific quantitative analysis involved in scoring and evaluation of participating bids.</td>
<td>of DRAM offer information should be protected pursuant to Item VIII of the IOU matrix.</td>
<td>Three years from January 8, 2016</td>
</tr>
</tbody>
</table>

Appendix C provides a quantitative description of the DRAM solicitation in terms of multiple variables, including:

- **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 solicitation, including the total number of offers, the number of MW offered for August 2016, Total Contract Cost ($), and # of Service Accounts bid into the solicitation;**

- **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.**

Information about the effectiveness of the DRAM protocol includes:

- **Participants’ initial ability to understand how to bid in the auction as demonstrated by the amount and types of questions raised by bidders,**
**IDENTIFICATION OF CONFIDENTIAL INFORMATION**

<table>
<thead>
<tr>
<th>Redaction Reference</th>
<th>Category from D.06-06-066, Appendix 1, or Separate Confidentiality Order That Data Corresponds To</th>
<th>Justification for Confidential Treatment</th>
<th>Length of Time Data To Be Kept Confidential</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>number of conformance check issues; (f) Participants’ familiarity with the CAISO products, performance requirements and markets through a survey at the bidder’s conference; (g) Discussion of the scheduling coordinator costs and its effect on the auction results; and (h) Limits imposed by the supply-side integration and Rule 24/32 limitations.</td>
<td>The information about the participant responses to the protocol reveals the level of participation in the RFO, which may induce market participants to engage in behavior resulting in supply shortage or higher prices to PG&amp;E. This confidential information is therefore market sensitive and should not be disclosed. The calculations provided in Appendix C utilize confidential offer information and participant behavior as inputs to determine, essentially, the presence of competition in the DRAM market. Whether there is sufficient competition to protect PG&amp;E’s customers from unreasonable prices is market sensitive information that can be protected as confidential under D.06-06-066. In addition, all of the information contained in RFO bids is confidential for three years after winning bidders have been selected, that is, submitted for CPUC approval, except for information specifically identified as public. Only the total number of projects and MW bid by resource type, and evaluation guidelines are presumed to be public. Appendix C does not contain any information that is identified as public. PG&amp;E has treated all of the information within Appendix C as confidential. The confidentiality of DRAM offer information should be protected pursuant to Item VIII of the IOU matrix.</td>
<td>Three years from January 8, 2016</td>
</tr>
</tbody>
</table>

**Confidential Appendix D: Independent Evaluator Report of Merrimack Energy Group, Inc.**

D.06-06-066, IOU Matrix, Item VIII) A, Bid information; Item VIII) B) Specific

The purpose of the Independent Evaluator (“IE”) Report is to determine on the basis of bid information whether PG&E’s conduct of the DRAM RFO fulfilled Commission requirements. The IE Report relies extensively on confidential information for its analysis and findings, so to provide as much information about the DRAM RFO as possible without divulging market sensitive information, PG&E has redacted confidential bid information and quantitative analysis involved in scoring and
### IDENTIFICATION OF CONFIDENTIAL INFORMATION

<table>
<thead>
<tr>
<th>Redaction Reference</th>
<th>Category from D.06-06-066, Appendix 1, or Separate Confidentiality Order That Data Corresponds To</th>
<th>Justification for Confidential Treatment</th>
<th>Length of Time Data To Be Kept Confidential</th>
</tr>
</thead>
<tbody>
<tr>
<td>D.06-06-066, IOU Matrix, Demand Response Programs</td>
<td>quantitative analysis involved in scoring and evaluation of participating bids.</td>
<td>evaluating the bids from the IE Report. A public version of the IE report has been filed with the Advice Letter. PG&amp;E has complied with the requirement to facilitate the public availability of its energy procurement information by masking its confidential data. Accordingly, the confidential version of the IE report should be protected from public disclosure.</td>
<td></td>
</tr>
<tr>
<td>Item VII) B) Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)</td>
<td></td>
<td>Item VII) B) provides that contracts are confidential for three years from the date the contract states deliveries are to begin, or until one year following expiration, whichever comes first. The DRAM Contract delivery terms are June through December 2016, and would remain confidential through December, 2017 under Item VII)B). However, the DRAM contracts should remain confidential for two years from their expiration date, based on information provided by the DRAM counterparties. The DRAM resource is a demand-side aggregation of customer load behavior that did not exist when the IOU Matrix was adopted by D.06-06-066. D.06-06-066, Ordering Paragraph 4, states, “Unless and until we change or repeal General Order (GO) 66-C (or opt to leave it intact upon examination), it shall continue to apply to data not addressed in the Matrix. In the interim, to the extent the Matrix contradicts GO 66-C, the Matrix shall govern.” GO 66-C provides that information encompassed by Section 6252 of the Government Code, such as filed IOU energy procurement information, constitutes a public record that is open to public inspection except for specifically excluded material. It states: 2. EXCLUSIONS Public records not open to public inspection include: (2.8) Information obtained in confidence from other than a business regulated by this Commission where the disclosure would be against the public interest. (E.g.: Evidence Code Sec, 1040.)</td>
<td>The 2016 DRAM Contracts should be confidential through December 2018, i.e., for two years after their expiration pursuant to the DRAM Sellers’ Confidentiality Declarations, but in any event, through at least December 2017.</td>
</tr>
</tbody>
</table>
**PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)**

**DEMAND RESPONSE RULEMAKING (R.13-09-011)**

**ADVICE LETTER 4772-E**

January 8, 2016

**IDENTIFICATION OF CONFIDENTIAL INFORMATION**

<table>
<thead>
<tr>
<th>Redaction Reference</th>
<th>Category from D.06-06-066, Appendix 1, or Separate Confidentiality Order That Data Corresponds To</th>
<th>Justification for Confidential Treatment</th>
<th>Length of Time Data To Be Kept Confidential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidential Appendix G: AMP Contract Modifications</td>
<td>D.06-06-066, IOU Matrix, Demand Response Programs Item VII) B) Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)</td>
<td>GO 66-C notes that the CPUC may prevent the disclosure of public information if the public interest in confidentiality outweighs the need for disclosure. Attached to PG&amp;E’s request for confidential treatment of its DRAM Contracts are declarations of the following DRAM counterparties seeking confidential treatment of their DRAM contracts for two years following their expiration dates: Chai, EnergyConnect, EnerNOC, Electric Motor Werks, and EnergyHUB. Generally, the DRAM counterparties assert that public access to the market sensitive terms within their contracts could adversely impact other commercial negotiations with other counterparties, and could de-position the counterparties relative to other aggregators who could use their sensitive market information to their own advantage. Based upon this information, the DRAM Contracts should remain confidential for a period of two years after their expiration dates. Item VII) B) provides that contracts are confidential for three years from the date the contract states deliveries are to begin, or until one year following expiration, whichever comes first. Typically, because the term of the AMP Contract Modifications expires by December 31, 2016, the confidentiality period would expire on December 31, 2017. However, their confidentiality period must be the same as that of the “Parent” EnerNOC and Energy Connect AMP contracts that they modify, to avoid disclosure of market sensitive information in the Parent AMP Contracts. PG&amp;E provisionally seeks the maximum confidentiality period for the AMP Contract Modifications, or until December 31, 2017, subject to a longer confidentiality period based on the confidentiality of the Parent AMP Contracts. PG&amp;E intends to extend the confidentiality protection of the Parent AMP Contracts by a separate motion in the appropriate proceeding. The need for extended confidentiality is explained in the following paragraphs.</td>
<td>The 2016 AMP Contract Modifications should be confidential until the later of the following: (a) the expiration of the confidentiality period of the AMP Contracts that they modify, (b) two years from the expiration date of the AMP Contract</td>
</tr>
</tbody>
</table>
**PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)**

**DEMAND RESPONSE RULEMAKING (R.13-09-011)**

**ADVICE LETTER 4772-E**

January 8, 2016

**IDENTIFICATION OF CONFIDENTIAL INFORMATION**

<table>
<thead>
<tr>
<th>Redaction Reference</th>
<th>Category from D.06-06-066, Appendix 1, or Separate Confidentiality Order That Data Corresponds To</th>
<th>Justification for Confidential Treatment</th>
<th>Length of Time Data To Be Kept Confidential</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The amendments to the Parent AMP Contracts with should be confidential for the same amount of time as their corresponding DRAM contracts because under the “set-aside” provisions approved by D.14-12-024 and Resolution E-4728, the DRAM contracts with aggregators under the Parent AMP Contracts are premised on the modification of those existing contracts. The confidentiality of AMP Aggregator business information also should continue to be protected under the AMP decision.</td>
<td>Modifications, i.e., December 2018, pursuant to the Confidentiality Declarations of the AMP Aggregators, (c) one year from the date of expiration pursuant to IOU Matrix Item VII)B).</td>
<td></td>
</tr>
</tbody>
</table>
Confidential Appendix A

DRAM Offers Received
Confidential Appendix B

Valuation Process Summary
Confidential Appendix C

Evaluation Metrics
Confidential Appendix D

Independent Evaluator Report

(Redacted Version)
Public Version

Pacific Gas and Electric Company
Demand Response Auction Mechanism (DRAM)
Request for Offers

Final Report of the Independent Evaluator
On the Bid Evaluation and Selection Process

January 8, 2016

Prepared by
Merrimack Energy Group, Inc.
# Table of Contents

I. Introduction .................................................................................................................. 2

II. Description of the Role of the IE ............................................................................ 9

III. Outreach Efforts ....................................................................................................... 12

IV. Description of PG&E’s Bid Evaluation and Selection Process .............................. 13

V. Administration of the Solicitation Process ............................................................... 17

VI. Fairness of the Solicitation Process ......................................................................... 27

VII. Contract Execution Process .................................................................................... 29

VIII. Safeguards and Methodologies Employed ............................................................. 33

IX. Recommendations for Contract Approval .............................................................. 33

X. Conclusions and Recommendations ........................................................................ 34

APPENDICES

Appendix A – PG&E – Offers Received for DRAM RFO

Appendix B – PG&E – Evaluation Results Summary and Shortlist Selection

Appendix C – PG&E – Summary of Contracts Executed
I. Introduction

A. Overview of the Demand Response Auction Mechanism (DRAM) 2016 Pilot Program

On September 28, 2015, Pacific Gas and Electric Company (“PG&E” or “Company”) issued its Request for Offers (“RFO”) seeking to purchase 2016 Resource Adequacy (“RA”) via the Demand Response Auction Mechanism (“DRAM RFO”) Pilot for 2016. This pilot is intended to solicit offers from Participants (“Bidders”) to provide resource adequacy (“RA”) capacity to the three Investor Owned Utilities (“IOUs”) under a standard form non-negotiable purchase agreement (“PA”). This RFO calls for PG&E’s procurement of system-wide RA from winning Bidders (Sellers) who bid Proxy Demand Resources (“PDRs”) in the CAISO wholesale market (“Product”).

PG&E issued this RFO to enhance the role of DR in meeting the state’s resource planning needs and operational requirements in accordance with Decision (“D”) 14-12-024 – Decision Resolving Several Phase Two Issues and Addressing the Motion for Adoption of Settlement Agreement on Phase Three Issues approved on December 4, 2014 issued by the California Public Utilities Commission (“CPUC” or “Commission”). The orders and resolutions of the CPUC are described below in the Procedural History and Regulatory Requirements (Orders and Resolutions) section of this Introduction.

The DRAM is a pay-as-bid auction of monthly system RA for Offerors to participate directly in the California Independent System Operator (CAISO) market comprising customers in PG&E’s service territory. Offerors must bid directly into the CAISO day-ahead energy market and any resulting revenues or liabilities shall solely be that of the Offeror. Capacity offered may vary by month and may be offered during one or more months from June to December 2016. The Offeror will need to become a scheduling coordinator (SC) or retain a SC to participate directly in CAISO markets.

All offers shall meet the minimum eligibility requirements included in PG&E’s DRAM RFO. This RFO calls for PG&E’s procurement of system-wide RA from winning Bidders (Sellers) who bid Proxy Demand Resources (“PDR”) in the CAISO wholesale market. PG&E is seeking to procure 10 MW of Product in this solicitation as measured during the month of August 2016. At least 2 MW of the Product shall be attributed to a Residential Customer Product which is defined in the CPUC Resolution E-4728 as “comprised of at least 90% residential accounts, with the remaining (up to) 10% being made up of small commercial customers.”

The following eligibility requirements are listed in PG&E’s DRAM RFO:

---

1 The DRAM is a two-year pilot program that is designed to enable Demand Response (“DR”) wholesale market participation by providing a competitive means to a capacity contract outside of the IOU DR program.

2 San Diego Gas & Electric Company (“SDG&E”) and Southern California Edison Company (“SCE”) also issued their DRAM RFO’s on the same day as planned.

Merrimack Energy Group, Inc.
The Participant’s offer must demonstrate that the project meets PG&E’s Rule 24 requirement and is subject to PG&E’s Rule 24 initial implementation limitations;

Each Bidder’s DR resource(s) bid into the auction must be a minimum of 100 kW per SubLap. A single offer could consist of multiple PDRs. Each offer must contain a minimum of 1 month of delivery for August 2016;

Service Agreements (locations) contained in Bidder’s PDR must be within PG&E’s service territory;

The Delivery period shall be no earlier than June 2016 and no later than December 2016;

The total number of service accounts comprising all selected Offerors’ DR resources shall not exceed 10,000 as specified in Decision 15-03-042;

Bid acceptance may be subject to PG&E’s budget limitations as specified in CPUC Resolution E-4728;

Offers may be for Residential Customer or Non-residential Customer Products. Residential Customer and Non-residential Customer Product offers must be identified separately in the Bidder’s Offer Form;

A maximum of 20 variations will be accepted per offer. Variations should be submitted via the provided DRAM RFO Offer Form Tab in the Bidder’s Offer Form;

PG&E will only consider Offers that meet the Bidder Submittal Deadline set forth in the DRAM RFO Schedule;

The Bidder must submit its Offer, via the Offer Sheet in the RFO Website, with a Monthly Quantity (Capacity kW) and Contract Price ($/kw) for each applicable showing month (June 2016 – December 2016). If the Bidder does not wish to bid during a particular month, it should include a zero for that month in the Offer Sheet. For each Contract Price for each Showing Month of its Offer, Bidder must designate how much of such Contract Price is attributable to Bidder Scheduling Coordinator (“SC”) costs. The SC costs must be separately identified in the Offer;

PG&E may allow the Bidder to cure any deficiencies contained in its Offer submittal. If such cure is allowed, the deficiency must be cured prior to the deadline set forth in the DRAM RFO Schedule. A Bidder’s cure shall be limited only to those areas or issues which PG&E designates as eligible to be cured;

Participants may not modify the PA submitted as part of their offer package. Participants may submit Offers to sell Product to PG&E using the PA. The PA is non-negotiable and is available on the RFO Website. Accordingly, Offeror shall submit its Product Pricing, as part of its Offer submittal that assumes the costs of Offeror’s adherence to the provisions of the PA.

The RFO documents available to Participants include: (1) the DRAM RFO Protocol; (2) DRAM Purchase Agreement; (3) Attachment A: Offer Form Template; (4) Attachment B: Corporate Structure Questions: (5) Scheduling Coordinator Request for Information Packet; (6) Bidders Conference Presentation; (7) Frequently Asked Questions and Q&As; (8) DRAM Set-Aside requirements; (9) PG&E SubLAP map; and (10) PG&E Zip Code to SubLAP reference.
As outlined in the RFO, offers were due on October 26, 2015.

The RFO also outlines the evaluation criteria to be applied to evaluate and select the shortlisted offers from those submitted, required information from the Bidders, and offer selection. The RFO indicates that all offers will initially be assessed for conformance with the eligibility requirements set out in this RFO.

Pursuant to regulatory requirements of the California Public Utilities Commission, PG&E retained Merrimack Energy Group, Inc. (“Merrimack Energy”) as the Independent Evaluator (“IE”) for this market solicitation. ³

**Procedural History and Regulatory Requirements (Orders and Resolutions)**

On September 19, 2013, the California Public Utilities Commission (CPUC) issued an Order Instituting Rulemaking (OIR) in Decision (D.) 13-09-011 to enhance the role of Demand Response (DR) in meeting the state’s resource planning needs and operational requirements. In this rulemaking proceeding, CPUC Staff proposed that a Demand Response Auction Mechanism (DRAM)⁴ be used to obtain a new resource comprising Demand Response resources which would be aggregated as Proxy Demand Resources (PDRs) by third parties in order to participate directly in the CAISO Day-Ahead Energy Market⁵. Once selected in the DRAM, these third party aggregators would be paid by the DRAM IOU buyers for the Resource Adequacy (RA) attributes of their PDRs with capacity payments bid into the DRAM. CAISO Energy settlements would be retained by the third parties as a part of their compensation stream.

In D. 14-12-024 (December 4, 2014), the CPUC resolved various issues in the evolving phases of the rulemaking⁶, modified an attached Settlement Agreement entered into by the majority of the parties and directed that the DRAM be instituted as a pilot during 2015 and 2016⁷. In D. 14-12-024, Ordering Paragraphs 5 and 6, the utilities were ordered to file an advice letter for the DRAM, together with a standard pro-forma contract and to work collaboratively with stakeholders in the DRAM pilot design working group. In their Tier Three Advice Letter filed on April 20, 2015 (April 20 Advice Letters)⁸,

---

³ Merrimack Energy is currently the only IE on the IE list for all three IOUs. Merrimack Energy was therefore retained by all three IOUs for this assignment.

⁴ The DRAM was formally introduced by the CPUC in D. 14-03-026 (March 27, 2014), described further below.

⁵ Bidding Demand Response into the CAISO market has been a CPUC objective since 2007. Finding of Fact 12, D. 14-12-024.

⁶ The phases of the Rulemaking proceeding were the subject of a series of scoping memoranda and associated orders: October 24, 2013 Ruling and Scoping Memo; D. 14-01-004 (addressing Phase One issues); D. 14-05-025 (addressing Phase One issues and closing Phase One); D. 14-03-026 (addressing Phase Two issues and determining that demand response programs should be bifurcated beginning in 2017 into load modifying resources and supply side resources); and April 2, 2014 Ruling and Revised Scoping Memo (addressing the continuation of Phase Two and the Phase Three scope and schedule).

⁷ D. 14-12-024 Findings of Fact 31-38; Conclusions of Law 14; Ordering Paragraphs 5-6, 10-13 (more general back up generation issues).

⁸ AL 3208-E (Southern California Edison Company); AL 4618-E (Pacific Gas and Electric Company); AL 2729-E (San Diego Gas & Electric Company).
Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) described the DRAM Pilot design as follows:

“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 IOUs will acquire the RA only and will have no claim on revenues the winning bidders may receive from the CAISO energy market.” AL 3208-E, p. 3.

Pursuant to the DRAM RFO Pilot design described in the April 20, 2015 Advice Letter, the following highlights are identified:

- the delivery period for the subject contract was set as June to December 2016;
- the IOUs would follow standard RFO practices for the DRAM solicitation, including a pre-bid conference and the requested use of an Independent Evaluator, and would use a common Offer Sheet which separates the capacity bid prices from the SC costs expected;
- the DR resource must register as a PDR and was required to offer, through a Scheduling Coordinator (SC), the DR resource into the CAISO market during the Must Offer Obligation (MOO) hours;
- the DRAM PDRs, like all PDRs, would be required to meet PDR 2016 minimum availability requirements;
- the DRAM PDRs would be composed of retail customers with the same Load Serving Entity (LSE), located within the same Utility Distribution Company (UDC) as the IOU holding the auction and also within the same CAISO Sub Load Aggregation Point (SLAP);
- the number of the Seller’s DR resource(s) could not exceed the limitations D. 15-03-042 places on the number of customer service account registrations for each IOU;9
- the Monthly bid maximum would be 10 MW for PG&E and SCE and 2 MW for SDG&E;
- the funding for the winning bids in the 2016 DRAM Pilot would generally be limited to $4 million each for PG&E and SCE and to $1 million for SDG&E;
- the IOUs would in general use a DRAM standard contract based on existing RA contracts and providing that the DRAM Product meet both CPUC system RA requirements,10,11 and CAISO MOO requirements;

9 14,000 registrations for SCE; 10,000 registrations for PG&E and 7,000 registrations for SDG&E.
• The IOUs proposed various techniques relating to existing tariffed DR programs in order to make a significant population of active DR customers available for DRAM aggregators; and

• The Evaluation Criteria would have both quantitative and qualitative features.

In Resolution E-4728 (July 27, 2015), the DRAM Pilot as proposed pursuant to D. 14-12-024 and the April 20, 2015 Advice Letters 3208-E, 4618-E and 2729-E, was approved with modifications. Resolution E-4728-E resolved open issues arising from the April 20 Advice Letters as follows12:

• The DRAM is a two-year pilot program that is designed to enable DR wholesale market participation by providing a competitive means to a capacity contract outside of any IOU DR program;

• The minimum target for the 2016 DRAM Pilot is 22 MWs across all three IOUs. No cap for DRAM procurement was detailed in D.14-12-024. AL 3208-E et al states that winning bids are limited by either the budget or the applicable Commission authorized maximum for Rule 24 registrations;

• The CPUC encourages the IOUs to procure viable bids beyond the 22 MW minimum authorization, up to either the applicable Rule 24 registration limit or budget limitation13;

• Bidders would have to demonstrate that they were not relying on fossil-fueled Back-up Generators (BUGs) for the performance of their PDRs;

• While fossil-fueled BUGs are not allowed in the DRAM program, storage is allowed and encouraged;

• The IOUs request for a waiver of RA penalties for any failure of DRAM Sellers to deliver was granted for the limited purpose of the Pilot14;

• DRAM contracts must adhere to RA criteria, as well as CAISO obligations and criteria;

---

10 “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.” D. 14-06-050, Appendix B, p. B-2. In the Advice Letter, due to various complications, the IOUs requested, consistent with D. 14-06-050, language that the contracted Monthly Quantity, with after-the-fact demonstrations be used as a proxy for Qualifying Capacity as otherwise set forth in D. 14-06-050, AL 3208-E, p. 13-14 (Demonstrated Capacity in the DRAM standard contract to be based on one of three Seller options). See also: Resolution E-4728, Finding Paragraph 7, Ordering Paragraph 5, below, and D. 15-06-063 (approving use of contract capacity in 2016 DRAM.)

11 In AL 3208-E, p. 14, the IOUs requested a waiver of CPUC RA penalties imposed on the IOUs but arising from the DRAM Sellers’ inability to provide the contracted capacity.

12 The contents of the Tier 1 Advice Letter accompanying the executed DRAM contracts and a Supplemental Advice Letter filed 30 days after the Resolution were also set forth in Resolution E-4728, Ordering Paragraphs 16 and 22.

13 Resolution E-4728, Ordering Paragraph 14.

14 Resolution E-4728, Ordering Paragraph 6.
• DRAM customers would not need to be known in advance of contract execution and certain provisions proposed to allow existing DR customers to migrate to DRAM were approved;
• Net Metering Customers would be allowed to participate in the DRAM program;
• A set-aside (without any cost cap\textsuperscript{15}) was approved equal to 20\% of the total MWs procured\textsuperscript{16} for each IOU for residential customers (defined as aggregations of at least 90\% residential customers). The purpose of the set-aside is to attract new market players to the DRAM, and test the participation of residential aggregations in the DRAM mechanism. In other words, if the IOUs collectively procure 50 MWs worth of DRAM bids, then 10 MWs should be reserved for the residential set-aside;
• The IOUs are directed to each inform the CPUC Energy Division immediately if there are bids that it wishes to reject that are either clear outliers or where there is evidence of market manipulation, present those bids and explain the reasons for rejection in advance of actually rejecting the bids;
• AL 3208-E states that cost-effectiveness evaluation does not apply to pilots. However, for purposes of fully analyzing the costs and benefits of the program, the IOUs are also required to file a benchmark capacity calculation using the relevant version of the cost effectiveness protocols approved by the Commission at the time of filing the signed DRAM pilot contracts. The IOUs are also required to file benchmark calculations of the capacity value of the IOUs comparable DR programs;
• In D.14-12-024, the DRAM working group was directed to develop transparent standard evaluation criteria. AL 3208-E et al proposes a quantitative criterion, which includes bid price, weighted by month of delivery and scheduling coordinator costs, and a list of standard qualitative criteria which may be weighted, and therefore applied differently at each IOUs discretion;
• The IOUs are directed to develop a clear scoring matrix for each criterion, in a table format, with a numeric score to be assigned to each variable that will be applied equally across the IOUs. This matrix must include all criteria that will be used in scoring DRAM bids, and must be made available to bidders, incorporated into bid documents and explained at DRAM Bidders conference(s);
• The DRAM Contract provision (§3.3) requiring Seller performance and other data requested by the CPUC was allowed as modified; the provision (§5.7) requiring financial information for possible balance sheet consolidation was approved as modified by mutual agreement; and the provision (§3.3(b)) requiring load impact analysis was ordered to be removed\textsuperscript{17};
• Winning bids would be limited as a practical matter to either the budget authorized in D. 14-12-024 or the applicable Rule 24/32 maximum registrations;
• The request of the IOUs to select the next best DRAM bid if a short-listed bid discontinues participation in the DRAM auction is accepted;

\textsuperscript{15} Resolution E-4728, Finding Paragraph 29.
\textsuperscript{16} Resolution E-4728, Finding Paragraph 30.
\textsuperscript{17} Resolution E-4728, Finding Paragraph 7, Ordering Paragraph 5.
In addition to signed DRAM contracts, the IOUs are required to file all bids received for the DRAM pilot;
• The Resolution requires that the IE Report include both (1) an assessment of the effectiveness of the set-aside in attracting aggregations of residential customers and (2) recommendations for how the set-aside can be improved to better attract residential aggregations in subsequent rounds of the DRAM;

As set forth in Resolution E-4728, Ordering Paragraph 22, Supplemental Advice Letters were filed by all three IOUs after the Resolution\textsuperscript{18} and were approved September 24, 2015 by the CPUC Energy Division (ED)\textsuperscript{19}.

**DRAM Schedule**

In accordance with the applicable orders, resolutions and Advice Letters, each of the IOUs, including PG&E, adopted the following simultaneous\textsuperscript{20} schedule:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue Scheduling Coordinator RFI</td>
<td>8/11/15</td>
</tr>
<tr>
<td>RFI Packages submitted</td>
<td>9/10/15</td>
</tr>
<tr>
<td>Launch DRAM RFO</td>
<td>9/28/15</td>
</tr>
<tr>
<td>Pre-Bid Joint IOU Conference</td>
<td>10/06/15</td>
</tr>
<tr>
<td>DRAM RFO Offer package due</td>
<td>10/26/15</td>
</tr>
<tr>
<td>IOUs Notifies non-conforming Offerors</td>
<td>10/30/15</td>
</tr>
<tr>
<td>(request to “cure”)</td>
<td></td>
</tr>
<tr>
<td>Offeror “Cure” period concludes</td>
<td>11/6/15</td>
</tr>
<tr>
<td>PG&amp;E Notifies Offerors of selection and</td>
<td>11/30/15</td>
</tr>
<tr>
<td>sends final contract for execution</td>
<td></td>
</tr>
<tr>
<td>IOU files Tier 1 advice letter seeking</td>
<td>1/8/16</td>
</tr>
<tr>
<td>CPUC approval of Contracts</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{18} PG&E AL 4618-E-A and 4618-E-B; SDG&E AL 2729-E-A; and SCE AL 3208-E-A (DRAM Resolution Compliance Supplements).
\textsuperscript{19} The ED clarified in the September 24, 2015 Letter certain questions regarding the continuing eligibility of DR participants in DRAM who are existing IOU DR program participants.
\textsuperscript{20} Individual IOU dates in November and December, 2015 for implementing contract selection and presentations were expected to, and did in fact, vary.
Issues Addressed in this Report

This report addresses Merrimack Energy’s assessment and conclusions regarding the following issues identified in the Commission’s CPUC Independent Evaluator Report Template:

1. Describe the role of the IE throughout the solicitation and negotiation process.

2. How did the IOU conduct outreach to bidders, and was the solicitation robust?

3. Describe PG&E’s bid evaluation methodology. Evaluate the strengths and weaknesses of the methodology.

4. Evaluate the administration of the solicitation process including the fairness of the IOU’s bidding and selection process (i.e. quantitative and qualitative methodology used to evaluate bids, consistency of evaluation methods with criteria specified in bid documents, etc.).

5. Describe any applicable project-specific negotiations. Highlight any areas of concern including unique terms and conditions.

6. If applicable, describe safeguards and methodologies employed by the IOU to compare affiliate bids or Utility-Owned Generation (“UOG”) ownership proposals. If a utility selected a bid from an affiliate or a bid that would result in utility asset ownership, explain and analyze whether the IOU’s selection of such bid(s) was appropriate.

7. Based on the complete bid process, is (are) the IOU contract(s) the best overall offer(s) received by the IOU?

8. Is the contract a reasonable way of achieving the need identified in the RFP?

9. Based on your analysis of the RFP bids, the bid process, and the overall market, does the contract merit Commission approval?

All these issues are addressed in this report, generally in the order included in the CPUC Independent Evaluator Report Template.

II. Description of the Role of the IE throughout the Solicitation

In compliance with the above requirements, the California Investor-owned utilities (“IOU”), including PG&E, retained Merrimack Energy to serve as Independent Evaluator
for PG&E’s Demand Response Auction Mechanism Request for Offers Merrimack Energy was retained to provide an independent evaluation of the appropriateness of PG&E’s proposed evaluation methodology and selection process for product offers and to provide PG&E, PG&E’s Procurement Review Group (“PRG”), and the Energy Division with periodic presentations, findings and other reports as requested. The objective of the role of the IE is to ensure that the solicitation process is undertaken in a fair, consistent, unbiased and objective manner and that the best offers are selected and acquired consistent with the solicitation requirements.

This role generally involves an assessment of the solicitation documents, detailed review and assessment of the evaluation process, the results of the quantitative and qualitative (non-price) analysis, selection of the short list or preferred product options, and monitoring and assessment of contract negotiations. For this solicitation, Merrimack Energy was retained from the beginning of the process through contract execution.

**Regulatory Requirements for the Independent Evaluator**

The requirements for participation by an Independent Evaluator (IE) in utility solicitations are outlined in decisions D.04-12-048 (Findings of Fact 94-95, Ordering Paragraph 28), D.06-05-039 (Finding of Fact 20, Conclusion of Law 3, Ordering Paragraph 8) of the California Public Utilities Commission (Commission or CPUC) and D.09-06-050.

The role of IE’s in California IOU procurement processes has evolved over the past ten years. In Decision 04-12-048 (December 16, 2004), the CPUC required the use of an IE by investor-owned utilities (IOUs) in resource solicitations where there are affiliate, IOU-built or turnkey bidders. The CPUC generally endorsed the guidelines issued by the Federal Energy Regulatory Commission (FERC) for independent evaluation where an affiliate of the purchaser is a bidder in a competitive solicitation, but stated that the role of the IE would not be to make binding decisions on behalf of the utilities or administer the entire process. Instead, the IE would be consulted by the IOU, along with the Procurement Review Group (“PRG”) on the design, administration, and evaluation aspects of the Request for Proposals (“RFP”). The Decision identifies the technical expertise and experience of the IE with regard to industry contracts, quantitative evaluation methodologies, power market derivatives, and other aspects of power project development. From a process standpoint, the IOU could contract directly with the IE, in consultation with its PRG, but the IE would coordinate with the Energy Division.

In the Advice Letter filed by the three investor-owned utilities (“IOUs”) on April 20, 2015, the IOUs indicated they planned to engage an Independent Evaluator (“IE”) to evaluate and report on the solicitation, evaluation, and selection for the DRAM Solicitation. A single evaluator will be used if one is on all IOU approved IE lists, if 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.

---

21 Decision 04-12-048 at 129-37. The FERC guidelines are set forth in Ameren Energy Generating Company, 108 FERC ¶ 61,081 (June 29, 2004).
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 IOUs application of its protocols and evaluation processes across 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.

Resolution E-4728: Approval with Modifications to the Joint Utility Proposal for a Demand Response Auction Mechanism Pilot Pursuant to Ordering Paragraph 5 of Decision 14-12-024, issued by the CPUC on July 27, 2015 approved the IOUs request to employ an IE. In addition to the elements proposed in AL 3208-E et al, the IE’s final report shall include:

- An assessment of the effectiveness of the IOUs efforts in soliciting and attracting new DR participants, and recommendations for how to better attract new DR participants to the California market in subsequent rounds of the DRAM, and
- The effectiveness of the residential set-aside and recommendation for how to better attract residential customers to the California market in subsequent rounds of the DRAM.

This report is filed consistent with the above requirements and is consistent with the requirements outlined in the CPUC’s Short Form IE Report Template.

**Description of IE Oversight Activities**

The IE was involved in a number of activities and completed several specific tasks in performing its oversight role in connection with development of this initial DRAM RFO pilot program, PG&E’s evaluation methodology, and evaluation and selection process. The activities of the IE during the process are described below:

- Reviewed and commented on the Request for Information (RFI) for Scheduling Coordinators and suggested outreach processes;
- Prepared a list of potential DR market participants from other power markets such as PJM, ERCOT and Ontario, Canada for outreach activities associated with the DRAM RFO;
- Reviewed and commented on the Draft DRAM RFO documents for each IOU;
- Participated in PRG meetings prior to and during the solicitation process for each utility;
- Participated in regularly scheduled twice weekly conference calls with the DRAM team;
- Reviewed and discussed PG&E’s bid evaluation methodology;
- Participated in the Pre-Bid Conference and provided comments on the presentation;
- Reviewed and commented on the Company’s responses to bidder’s questions;
• Reviewed and summarized the offers received to ensure the Company and IE identified and assessed the same list of offers;
• Reviewed the conformance assessment undertaken by each IOU;
• Reviewed and assessed PG&E’s evaluation of the offers received for purposes of selecting the offers that would be included in the final shortlist. Participated in several conference calls with PG&E’s project manager and project staff to discuss the status of the bids and any revisions to the shortlist;
• Prepared the IE report for inclusion with the utility Advice Letter filings seeking approval for the contracts executed;

This report provides an assessment and review of PG&E’s DRAM RFO procurement process from development of the RFO through execution of the final contracts. The role of the IE is also discussed as it pertains to specific activities as identified in Section V of this report.

### III. How did PG&E Conduct Outreach to Bidders and Was the Solicitation Robust

**Describe the IOU Outreach to Potential Bidders**

Outreach activities are important to the success of a competitive solicitation process. For this initial DRAM RFO pilot, the IOUs developed and implemented two such outreach efforts: one for the Scheduling Coordinator (“SC”) Request for Information (“RFI”), and the other for the DRAM RFO solicitation. For the SC RFI, the IOU team attempted to contact all the companies and contacts on the SC list maintained by CAISO. The list comprised approximately 153 contacts, some of which included an email address and/or phone number and others which did not include any contact information. Nevertheless, based on discussions with the IE, the IOU team did attempt to contact all names on the list and were successful in reaching the majority of the contacts listed.

For the DRAM RFO, the IOUs outreach efforts targeted approximately 2,900 contacts from companies involved in DR and other programs for its distribution list for this RFO. This includes companies who have participated in utility programs in California as well as companies involved in DR programs in other markets in the US and Canada. The IE also identified a number of DR program participants from other ISOs or markets and provided the contact list to the IOUs project team involved in the outreach activities.

In addition, each utility also issued a news release announcing the launch of the DRAM RFO pilot. The IOU’s outreach activities resulted in a robust response in terms of the number of respondents and the quantity and quality of the proposals received.

PG&E also established a web page on the Company website for distribution of information to prospective Respondents. The web page contained all the pertinent

---

22 The list of potential candidates was based on a compilation of the lists for all three IOUs.
solicitation documents, a list of questions from potential Respondents and answers provided by the utilities related to the solicitation, Pre-Bid Web Conference Presentation, Commission Decisions, Advice Letters, PG&E’s Rule 24, PowerAdvocate Instructions, DBE Program information, Schedule of the DRAM solicitation, and PG&E’s Service Territory Map.

The IE found the website easy to access and easy to download information.

Identify the Principles Used to Determine Adequate Robustness of the Solicitation

There are several principles generally applied to determine whether the robustness of the solicitation was adequate. These include:

- Did the amount of capacity bid for the product sought allow for a competitive process?
- Were offers submitted for all products requested?
- Was there a competitive number of Respondents for all products?
- Did the utility adequately market the solicitation?

Was the Solicitation Adequately Robust

PG&E initially received forty-nine offers on October 26, 2015 from counterparties. Of the offerors competing in the process, provided residential offers provided non-residential offers. Overall, there was a total of 63.74 MW submitted for August, 2016, comprised of 14.14 MW of residential DR and 49.6 MW of non-residential DR. The total number of Registrations was 22,362, significantly above PG&E’s cap of 10,000. The total cost of all 49 eligible offers received was established for PG&E.

The IE concludes that PG&E’s outreach activities were more than adequate and led to a reasonably robust market response based on the competitive number of respondents and options submitted. Respondents submitted RA offer that included all months in the contract terms (i.e. June – December, 2016) as well as a mix of residential and non-residential customer classes.

IV. Description of PG&E’s Proposal Evaluation Methodology

This section of the report provides an overall description of PG&E’s evaluation methodology and criteria for DRAM resources. PG&E developed an internal evaluation methodology designed to assess DRAM offers to meet requirements for the seven-month period of June to December 2016 based on the set of constraints identified in the RFO and the requirements outlined in the CPUC Resolution. As will be discussed in this

---

23 provided both residential and non-residential offers. The provided either residential only offers or non-residential only offers.
section, PG&E used a simplified and transparent\textsuperscript{24} evaluation methodology for this solicitation, which included quantitative factors.\textsuperscript{25}

PG&E starts by screening Offers against the Eligibility Requirements identified in the RFO for conformance purposes. Conforming offers will then go through the analysis described later in this section to evaluate and rank the offers received. PG&E indicated in the RFO that residential and non-residential offers will be evaluated separately since PG&E will endeavor to contract a minimum of 2 MW of residential demand response via this RFO. Offers will be shortlisted based upon the limitations identified in the DRAM Decisions, Resolutions and advice letters unless offers are rejected as price outliers or in cases where there is clear evidence of market manipulation. PG&E's solicitation is seeking to procure DR resources under the following identified constraints:

- A minimum of 10 MW;
- 20% of which (2 MW) must be from residential Offers;\textsuperscript{26}
- Contracts, in aggregate, up to the funding or registration limits.\textsuperscript{27}

If errors are discovered during the evaluation process, the potential shortlist status of the offer may be affected. Offerors will not under any circumstance be allowed to change pricing. It is the responsibility and duty of the Offeror to accept full risk for pricing and developing their project. Based on the schedule, there is proposed to be a 10-day cure period from October 27\textsuperscript{th} to November 6\textsuperscript{th}.

From a quantitative evaluation perspective, PG&E considers the following factors:
- Residential or General Offer;
- Number of registrations;
- Capacity price ($/kw-month);
- SC costs ($ per month);

PG&E will evaluate all offers on an identical basis relative to the monthly Resource Adequacy weights determined by the CPUC (CPUC 2012 Resource Adequacy Report, page 27) as included in the RFO document and Offer Form. For each month, the total cost (quantity offered multiplied by the price offered ($/kW-mon) plus scheduling coordinator costs) will be divided by the weighted volume for each month. The weighted monthly costs based on relative RA value is designed to incentivize Sellers to bid into months that have the most need.

\textsuperscript{24}PG&E’s Offer Sheets contained the monthly weights and calculations to derive total costs for each offer. As a result, Bidders would know exactly their total cost and weighted average cost upon submission of each offer.
\textsuperscript{25} While PG&E (and SCE) included qualitative factors in their evaluation matrix, both companies included 0 for the weights for each qualitative factor.
\textsuperscript{26} “Residential Offer” is a DRAM resource composed of at least 90% residential customers and no more than 10% small commercial customers based on registrations by rate.
\textsuperscript{27} For this RFO, the funding limit is $4 million and the customer registration limit is 10,000.
Qualitative factors based on the DRAM decision and benefits are included in PG&E’s RFO document but with weights equal to 0% for all qualitative factors. The qualitative evaluation matrix included in the RFO contains five questions. Each question requires a “yes” or “no” response. The questions are:

- Have you participated in a DR program or DR market anywhere as an aggregator;
- Do you have or will obtain before the program begins, DBE status;
- Are you going to use enabling technology with at least 90% of your PDR customers?
- Will your project require any permits, interconnection agreements, environmental studies, or additional land rights prior to operation;
- Is there any ongoing investigation or an investigation that has occurred within the last five years with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, environmental, or financial market regarding any DR services you were/are providing?

Offers will be shortlisted based on the quantitative merit-order ranking of all complete and conforming offers on the basis of weighted average unit price (i.e. $/kW), with consideration of the limitations associated with this pilot program (10 MW minimum, funding limit, registration limit, etc.).

As noted above, 20% (2 MW) of the DRAM product to be procured by PG&E is reserved for residential customers. If PG&E does not receive sufficient Offers to attain 20% of the total DRAM capacity, PG&E will be required to procure the residential Offers it receives, despite the shortfall, and procure Offers from other customer classes.

An Offer Selection committee for the Demand Response Auction Mechanism RFO was designed to oversee the implementation of the methodology and rule on any issues of clarification of the evaluation protocol and process. The Offer Selection committee will consider case-by-case any Offers that present any exceptional issues in applying the above methodology and may address those issues by altering the ranking of any individual Offer. Offers that are clear outliers or show evidence of market manipulation will need to be brought to the attention of the independent evaluator and the CPUC Energy Division.

The IE reviewed PG&E’s evaluation methodology and participated in calls with PG&E’s project manager to review and discuss the results of the analysis. In addition, the IE also summarized and ranked the offers received as a check relative to PG&E’s assessment of the offers received to ensure that the best offers were reasonably considered based on the constraints and requirements imposed.

**Framework and Principles for Evaluating PG&E’s Bid Evaluation Methodology**

This section of the report addresses the principles and framework underlying Merrimack Energy’s review of PG&E’s methodology for the DRAM RFO offer evaluation and selection. Key areas of inquiry by the IE and the underlying principles used by the IE to evaluate the methodology and results include the following:
 Were the procurement targets, products solicited, principles and objectives clearly defined in the RFO documents?

- Is the bid evaluation based on the criteria specified in the bid documents?
- Do the bid documents clearly define the type and characteristics of products desired and what information the bidder should provide to ensure that the utility can conduct its evaluation?
- Does the methodology identify how qualitative and quantitative measures were considered and were they consistent with an overall metric?
- Does the price evaluation methodology allow for consistent evaluation of offers of different sizes and in-service dates?

**Evaluation Criteria and Methodology**

PG&E developed the DRAM RFO which adequately defines at a high level the products required, the basis for the solicitation, the principles and objectives of PG&E, the evaluation criteria, quantitative and qualitative evaluation factors, and the information required from the Participants. The DRAM RFO documents also provide the Offer Forms which the Participants should complete as part of their offer. As described in the RFO as a first step all incoming proposals were initially assessed for conformance with the basic submittal and eligibility requirements identified in the DRAM RFO. Subsequent to the conformance review, PG&E undertook a quantitative assessment of the Offers. As stated in the RFO, PG&E ranked the offers based on the weighted average bid price in $/kW.

PG&E reviewed the methodology with the IE in advance of receipt of offers. The methodology was consistent and reasonable given the type of product sought. Any issues associated with a consistent evaluation of different project sizes, or offer months, were not relevant for this solicitation which sought only Demand Response RA products for the June to December, 2016 period. Respondents were aware of the importance of August in meeting DRAM targets as well as the value of summer month RA capacity relative to other months based on the transparency of the monthly Resource Adequacy weights.

Although the DRAM RFO identified specific qualitative factors, PG&E essentially did not consider qualitative factors in the evaluation since the weights for all qualitative factors were 0%.

**Strengths and Weaknesses of PG&E’s Evaluation Methodology for DRAM RFO**

This section of the report provides an assessment of the strengths and weaknesses of PG&E’s evaluation and selection methodology.

Our experience has indicated that utilities use a variety of methodologies and criteria to evaluate resources based on the specific products requested and other factors. We will draw upon this experience to address PG&E’s methodology relative to the product solicited.
The following are the strengths identified by the IE with regard to the evaluation methodology:

- The methodology is fairly straightforward, is easy to implement, and can be reviewed and audited easily;
- The methodology is very transparent since the weights are clearly identified and the Offer Forms effectively calculate the total costs and weighted average price for the Bidder which incentivizes the Bidder to provide product in those periods with highest value;
- The methodology does reflect the importance of summer capacity costs and volumes offered;
- The methodology is consistently applied for both residential and non-residential customers.

The weaknesses of the methodology include the following:

- The methodology does not include qualitative weights at this point;
- PG&E indicated in its RFO document that residential and non-residential offers will be evaluated separately. However, based on the offers submitted, this distinction was not necessary and PG&E did not actually implement this approach.

In conclusion, the IE is of the opinion that the methodology used by PG&E for evaluating DRAM RFO offers is reasonable for this type of product. The methodology provides a systematic way of evaluating and ranking a range of offers considered with the objective of meeting spending, MW and customer reservation targets to develop a final short list based on the constraints identified and offers submitted. There does not appear to be a need to evaluate residential and non-residential offers separately based on the experience of this RFO.

V. Administration of the DRAM Solicitation Process

In performing its oversight role, the IE participated in and undertook a number of activities in connection with the DRAM solicitation including providing comments on the RFO documents, participating in twice weekly conference calls with the IOU’s project team prior to receipt of offers, discussing the bid evaluation and selection process and development of the evaluation matrix, rationale for any constraints or objectives underlying the evaluation and selection, organizing and summarizing the bids received, reviewing and commenting on the evaluation and selection process and results at each step of the evaluation and selection process, and participating in meetings with the PRG. The key project activities are listed in this section of the report in conjunction with the activities of the IE.

Project Team Meetings

Merrimack Energy began participating in the twice-weekly meetings of the IOU DRAM team in early August, 2015. The meetings took place from early August through the
receipt of offers. Some of the agenda items discussed during the meetings were the bid evaluation methodology and evaluation matrix which the utilities were required to implement, Purchase Agreement issues and completion of the PA, development of the Scheduling Coordinator Request for Information (“RFI”), preparation of potential bidders lists, press release to announce the issuance of the DRAM RFOs, development of the Pre-Bid (Bidders Conference) materials and presentation, and responses to questions submitted during and after the Pre-Bid Conference.

A representative of Merrimack Energy participated in the majority of the project team calls and either provided comments or responded to questions and comments raised by team members regarding fairness or other issues related to the IE’s role in the solicitation process.

**Preparation and Issuance of the Scheduling Coordinator Request for Information**

The IE reviewed and commented on a draft of the Scheduling Coordinator RFI and provided input into the suggested outreach activities for informing potential Scheduling Coordinators about the requirements of the DRAM RFO. The utilities started with the list of Scheduling Coordinators contained on the CAISO website. The list included 153 potential contacts. The problem was that a number of the contracts listed only a name and company but did not provide any contact information. The IE recommended that the utilities attempt to contact all the names on the list if possible to ensure a wide net for informing SC’s of the DRAM RFO requirements. The IOUs did attempt to contact all names listed on the Scheduling Coordinator list and were successful in contacting the majority of the list. The RFI was issued on August 11, 2015.\(^\text{28}\) Five Scheduling Coordinators provided responses to the RFI. The DRAM team then compiled the information submitted by the Scheduling Coordinators, prepared a document with the information provided organized in a consistent format, and eventually posted the SC information on the DRAM RFO website for each utility for information purposes for any DR providers interested in securing the services of an SC for purposes of bidding energy from the project into the CAISO market.

**Procurement Review Group (PRG) Meeting of August 3, 2015**

PG&E provided an initial discussion of the DRAM process to the PRG on August 3, 2015.

\(^\text{28}\) The RFI included three sections: (1) General Information/Instructions; (2) Distributed Generation Solicitation Requirements, and (3) RFI Solicitation and Proposal E-SC Proposal Submittal Process.
PRG Meeting – September 3, 2015

PG&E held its second PRG meeting on the DRAM solicitation on September 3, 2015.

Preparation/Launch of the DRAM RFO

The IE provided comments to PG&E on both the DRAM protocol as well as the Offer forms prior to launch on September 28, 2015. The IE and PG&E’s DRAM team also had discussions on the bid evaluation methodology proposed by PG&E prior to the launch.

The RFO was issued on September 28, 2015 as planned. PG&E posted its’ Demand Response Auction Mechanism (DRAM) Request for Offers. The DRAM RFO and related documents were posted to PG&E’s DRAM RFO web page. The DRAM RFO website included the following documents:

- DRAM RFO Document;
- Attachment A: Offer Sheet Template
  - Bidder Information
  - DRAM RFO Offer Form
Pre-Bid (Bidders) Web Conference

The IOUs held a Pre-Bid Conference at SCE’s offices on October 6, 2015 for interested Respondents to provide an overall perspective on the solicitation process including the products sought, eligibility requirements, bid evaluation and selection methodology and process, requirements of the Respondents, process schedule, and steps in the process. Respondents had the opportunity to ask any follow-up questions, and the IOUs, including PG&E, posted the responses the day after the Pre-Bid conference. Merrimack Energy participated in project team calls leading up to development of the Pre-Bid Conference presentation and provided comments and suggestions during the discussions focused on development of the Pre-Bid Conference materials. Merrimack Energy provided input to the IOUs prior to the Pre-Bid Conference regarding the role of the IE.

Discussion of Bid Evaluation Methodology

The evaluation scoring matrix and methodology to be applied by the IOUs was a topic of discussions at a few of the initial project team meetings. A major point of difference was the treatment of qualitative criteria. While the utilities generally agreed on the matrix for scoring and evaluation, there were differences regarding the qualitative criteria and weights. In this regard, the utilities agreed upon a solution whereby the project viability scoring matrix and weights proposed by SDG&E would be adopted, but only SDG&E included actual weights or values in the matrix for purposes of conducting the evaluation. The other two IOUs adopted the matrix but applied 0 values for all qualitative criteria.

29 In AL 3208-E et al, the IOUs propose to use a combination of quantitative and qualitative factors in selection of winning bids to meet the DRAM procurement targets. The Advice Letter proposed a quantitative criterion, which includes bid price, weighted by month of delivery and scheduling coordinator costs, and a list of standard qualitative criteria which may be weighed, and therefore, applied differently at each IOUs discretion. According to Resolution E-4728, “while the list of both qualitative and quantitative criteria listed in AL 3208-E et al includes important elements, because the qualitative criteria can be applied uniquely by each IOU, these criteria are neither standard nor transparent. Thus, the IOUs are directed to develop a clear scoring matrix for each criterion, in a table format, with a numeric score to be assigned to each variable that will be applied equally across the IOUs. This matrix must include all criteria that will be used in scoring DRAM bids, and must be made available to bidders, incorporated into bid documents and explained at DRAM bidders’ conference(s). The IOUs are required to jointly file this matrix as part of the Tier 1 compliance filing ordered in OP 19B of this Resolution.” (Resolution E-4728, p. 26)
Another issue raised by the IOUs was the methodology and transparency of the weighted bid price score. The parties agreed that the Weighted Bid Price will be calculated per DRAM AL, and would include the total bid cost (Capacity Bid Price and Scheduling Coordinator Bid Cost), weighted by relative monthly RA values, divided by Bid MW quantity. The IOUs (with the exception of PG&E) preferred to keep the RA monthly weightings confidential but decided to seek confirmation from the Energy Division whether the RA value monthly weightings can remain confidential and whether the qualitative matrix satisfies the Resolution requirements. The IOUs were informed by the Energy Division that RA value monthly weightings can remain confidential and the qualitative tables with 0% weights is consistent with the direction of the Resolution.

The IE and members of PG&E’s project team held a brief discussion on the bid evaluation methodology proposed by PG&E prior to receipt of offers. The IE agreed with PG&E’s approach, description of the methodology, and application example contained in the Offer Sheet Template, recognizing that the IOUs were not required to necessarily follow the same exact evaluation and selection methodology.

Questions and Answers

The IOUs posted three sets of Questions and Answers on their website. The Q&A set posted, date posted and number of Q&As, are listed in the following table.

<table>
<thead>
<tr>
<th>Q&amp;A Set Posted</th>
<th>Date Posted</th>
<th>Number of Q&amp;As</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidders Conference Q&amp;A</td>
<td>October 16, 2015</td>
<td>31</td>
</tr>
<tr>
<td>General Q&amp;A Set 1</td>
<td>October 16, 2015</td>
<td>19</td>
</tr>
<tr>
<td>General Q&amp;A Set 2</td>
<td>October 21, 2015</td>
<td>15</td>
</tr>
<tr>
<td>General Q&amp;A Set 3</td>
<td>October 23, 2015</td>
<td>15</td>
</tr>
</tbody>
</table>

The IOUs compiled the questions received by each utility, distributed the questions to each utility representative, prepared initial responses to the questions, and distributed the draft responses for comment. The team also met for the weekly team calls and discussed the responses to questions. The responses to the questions generally reflected the combined input of team members and consensus regarding a consistent response, if possible. The IE participated in weekly meetings, made comments as necessary and opined on issues which emerged regarding fairness issues associated with responses to potential bidders seeking immediate input. Overall, the IE felt the IOUs were responsive and thorough with regard to the responses to bidders and provided valuable information to assist bidders with regard to responses to the RFO. Although the original schedule called for completion of the Q&As on October 20, 2015, the IOUs extended the response date to October 23, 2015 to accommodate late question submittals.

Receipt of Offers
Offers were received as scheduled on October 26, 2015. For PG&E, Offers were submitted to the PowerAdvocate Platform established for the solicitation. A total of Participants or counterparties submitted offers. In all, 49 offers were originally submitted, including multiple offers by several Participants, some of which proved to not be mutually exclusive.

Based on the initial offers received (and before confirming if all offers were mutually exclusive), the 49 offers received represented approximately 22,362 accounts, 63.74 MW in August, 354.8 MW total for all months, and million in total costs. Respondents offered a mix of residential and non-residential customer accounts.

A total of 14.14 MW of residential offers were submitted, which represented 22% of the MW offered. As a result, there was slightly more than sufficient residential customer capacity offered to meet the 20% residential requirement.

The IE downloaded the proposals from the PowerAdvocate Platform, and reviewed the offers along with PG&E’s project team. The IE prepared its own summary of the offers received including high level summary information of the offers and quantities and pricing for each product. The IE and PG&E’s number of offers, quantities and pricing for each offer, weighted MW and Scheduling Coordinator costs matched exactly. There was a slight difference in total cost that appears to be based on rounding differences.

Appendix A provides the IE’s list of the offers received, including the Participants, the customer class offered, number of accounts, monthly capacity and pricing offered, scheduling costs and total costs for each offer.

**Conformance of Offers/Cure Period**

The DRAM RFO schedule allowed approximately 10 days to identify any conformance issues and to allow bidders to cure any non-conformance issues associated with their offers. According to the schedule, the cure period was scheduled to begin on October 26, 2015 and end on November 6, 2015.

Offers submitted by one Participant was subject to review and reassessment.
**Offer Ranking and Selection**

After accounting for issues raised in the clarification assessment, PG&E proceeded to complete its review and assessment and merit-order rank offers based on its evaluation methodology. PG&E indicated it would perform a quantitative assessment of each conforming offer and subsequently rank those Offers based on each Offer’s weighted average unit cost. The evaluation methodology consisted of the following steps:

1. Calculate the sum of the total bid cost for each offer as the product of the monthly capacity offered times the monthly offer price;
2. Add the total Scheduling Coordinator costs for each offer;
3. Divide the sum of the total cost for each offer by the weighted total volume, where the weighted total volume equals the sum of monthly volume offered times the weight for that month. The monthly RA weights (as determined by the CPUC) to determine the weighted volume that will be used in this evaluation are provided in the table below:

<table>
<thead>
<tr>
<th>Month</th>
<th>Weight (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>2.5%</td>
</tr>
<tr>
<td>February</td>
<td>1.8%</td>
</tr>
<tr>
<td>March</td>
<td>1.7%</td>
</tr>
<tr>
<td>April</td>
<td>1.9%</td>
</tr>
<tr>
<td>May</td>
<td>2.7%</td>
</tr>
<tr>
<td>June</td>
<td>5.2%</td>
</tr>
<tr>
<td>July</td>
<td>24.6%</td>
</tr>
<tr>
<td>August</td>
<td>31.2%</td>
</tr>
<tr>
<td>September</td>
<td>15.6%</td>
</tr>
<tr>
<td>October</td>
<td>4.6%</td>
</tr>
<tr>
<td>November</td>
<td>4.0%</td>
</tr>
<tr>
<td>December</td>
<td>4.2%</td>
</tr>
</tbody>
</table>

4. Calculate the Weighted Average Unit Cost ($/kW) for each offer as Total Cost divided by weighted quantity;
5. Rank order the offers from lowest to highest (in terms of Weighted average unit cost - $/kW) for all eligible offers;
6. Evaluate several scenarios with different eligible offers to assess the level of total MWs, Total Residential MW and %, Total Cost for the scenario, and Total Service Accounts;
7. Calculate the Average Cost per kW for August as a comparison metric;
8. Select a preferred scenario or portfolio of offers.

**PRG Meeting/Shortlist Selection**
PG&E presented its recommended shortlist to the PRG at its November 17, 2015 meeting.

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Merrimack Energy Group, Inc.
For its recommended shortlist, PG&E selected 12 offers which included the following statistics:

- 
- 
- 
- 
-
Contract Execution

The final steps in the DRAM RFO process involved shortlist notification and contract execution. The IOUs were expected to contact the counterparties by the end of November to inform them of the status regarding shortlisting. PG&E notified the counterparties of their offers selected for the shortlist on November 30, 2015. In the email notice, PG&E provided four documents to those counterparties which were shortlisted. These included:

- 2015 DRAM RFO Proforma PA with offer information completed;
- Exhibit B – Letter of Credit
- Letter to Bidder regarding acceptance of the offer or waitlist of the offer
- Two-page document providing information on the steps to obtain customer information for participation in the DRAM RFO

All offers that were not shortlisted by PG&E were classified as waitlisted. PG&E informed the waitlisted offers that they would be notified on December 14, 2015 if any offer had been removed from the shortlist. For those offers shortlisted, PG&E requested that the counterparty sign the letter and submit the document back PG&E by December 7, 2015 if the counterparty agrees to not commit any of the product offered in this solicitation to any other party. PG&E also notified the counterparty that a signed Purchase Agreement was due by December 14, 2015. PG&E also provided the Performance Assurance requirements for the offer and indicated it was due 10 days after execution date of the PA. The letter also provided information about the Letter of Credit requirements and notified the counterparty of a PG&E workshop to be held on December 2, 2015 to discuss customer data for Rule 24 and DRAM.

Although the contract was a standard contract with no revisions allowed, there were a few clean-up items that were addressed prior to execution of the final contracts. The clean-up items involved primarily changes to existing agreements.
Appendix C provides the revised portfolio with RA. As a result, PG&E will procure 17.17 MW of RA for August, with a total cost of $\_\_\_\_ million. Of this total, 23% or nearly 4 MW is comprised of residential MWs, which exceeds the target of 20%.

VI. Fairness of PG&E’s Offer Evaluation and Selection Process

Principles Used to Determine Fairness of Process

In evaluating PG&E’s performance in implementing its initial DRAM RFO pilot program, Merrimack Energy has applied a number of principles and factors, which incorporate those suggested by the Commission’s Energy Division as well as additional principles that Merrimack Energy has used in its oversight of other competitive bidding processes. These include:

- Were bidder questions answered fairly and consistently and the answers made available to all?
- Did the bid evaluation team maintain consistent scoring and evaluation among and across projects, including different offer metrics and price structures?
- Did the evaluation methodology result in a fair and equitable evaluation and selection process?
• Was the evaluation and selection process consistent with the requirements outlined in the CPUC Resolution with regard to the DRAM RFO pilot?

• Were the requirements listed in the DRAM RFO applied in the same manner to all proposals?

• Was there evidence of any undue bias regarding the evaluation and selection of different offers that cannot be reasonably explained?

• Were the offers given equal credibility in the economic evaluation?

• Did PG&E ask for “clarifications” that provided the bidder an advantage over others?

• Were all cost factors treated in an equitable and consistent manner?

• Did PG&E consistently apply the requirements, procedures and criteria of the evaluation process as identified in the RFO documents to different bids and types of projects?

• Was the evaluation and selection process based on complete information about each proposal and a thorough investigation by PG&E’s project team?

Merrimack Energy has the following observations about the process based on our role as IE:

• Overall, we viewed the evaluation, ranking and selection process by PG&E as being reasonable, consistent, and fair to all respondents and consistent with the pre-specified evaluation protocols and criteria identified in PG&E’s DRAM RFO documents. As described in this report PG&E indicated that it intended to rank offers based on quantitative factors and did so as indicated for offer evaluation and merit-order ranking purposes. PG&E’s process was very transparent to Participants with regard to the quantitative evaluation process which allowed Participants to optimize their offers relative to PG&E’s requirements;

• PG&E’s evaluation and selection process resulted in PG&E meeting the requirements of the Commission Resolution overall. PG&E’s evaluation and selection process resulted in the following outcomes:
  o PG&E contracted for 17.17 MW of RA capacity for August, above its 10 MW initial target;
  o Approximately 23.1% of all August capacity was met by Residential accounts, significantly above the 20% threshold;
  o PG&E’s expenditures [redacted] its authorized budget cap of $4 million;
o PG&E’s primary constraint was the cap on service accounts. It maintained its cap of 10,000 service accounts for this solicitation.

- Based on our assessment of the evaluation process relative to the above criteria, it is our opinion that all respondents had access to the same amount and quality of information at the same time via PG&E’s web page. PG&E maintained a web page dedicated to the solicitation and posted all documents and Questions and Answers on the web page. We also observed no difference in the treatment of participants regarding clarification questions for respondents, correspondence and communications with participants, and follow-up contacts. PG&E (in conjunction with the other IOUs) also conducted a Pre-Bid Conference call which allowed all potential bidders to ask clarifying questions about the DRAM RFO and related requirements;

- PG&E and the other IOUs were diligent in answering questions submitted by potential Bidders and were thorough and complete in their responses. The answers were posted on the websites of the three IOUs;

- PG&E did seek clarification from Bidders if necessary to ensure there were no misunderstandings regarding the offers submitted. However, the IE is not aware of any cases where one or more Bidders were advantaged over others based on the clarification process;

- The PRG were actively involved in the initial DRAM RFO process via PG&E’s presentations and updates at PRG meetings during the period August through December 2015 timeframe to discuss the RFO documents and requirements, the offer evaluation and selection protocols, the results of the solicitation, the basis for short list selection and final negotiations and contract execution;

- Our assessment is that PG&E’s evaluation of the offers and its decisions on offer ranking and selection were fair, reasonable and consistent. PG&E exhibited considerable care and diligence in the evaluation process, informed the IE at each step, and sought input from the IE consistently throughout the process;

VII. Contract Execution Process

The DRAM Purchase Agreement (“DRAM PA”) is a standard contract which 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. Since the DRAM PA was intended to be executed without negotiations or changes, Respondents were not allowed to provide a redline mark-up.
In the following Exhibit 2, the key provisions of the contract are summarized.

### Exhibit 2: Key Contract Provisions

<table>
<thead>
<tr>
<th>Provision</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Form of Agreement</strong></td>
<td>Demand Response Resource Purchase Agreement (PA): incorporates elements of the Edison Electric Institute (“EEI”) Master Power Purchase and Sale Agreement between the Parties used in Resource Adequacy (RA) contracts, and elements of existing Demand Response (DR) contracts.</td>
</tr>
<tr>
<td><strong>§1.1 Purchase and Sale of Product</strong> (includes Residential or non-Residential Customer Product options by Seller choice in §1.1(b); See also: §3.2 Resource Adequacy Benefits obligations of Seller.)</td>
<td>Product is defined as system RA Benefits and delivery and sale obligation is for Monthly Quantity at the Contract Price set forth in §1.5 (DRAM Product Monthly Quantity (kW) and Contract Price ($/kW-month) can change for each RA Compliance Month that the Seller bids on and as accepted by the Buyer.)</td>
</tr>
<tr>
<td><strong>§1.3 Delivery Period</strong></td>
<td>Cannot commence without CPUC Approval and at least a 60-day delay; possible 2016 Showing Months include June through December.</td>
</tr>
<tr>
<td><strong>§1.4 Seller’s Designation of DRAM Resource</strong></td>
<td>Prior to each Showing Month, Seller provides Resource IDs for each PDR providing Product and Parties cooperate to implement Rule 24 to enroll and register PDR Customers.</td>
</tr>
<tr>
<td><strong>§1.5 Monthly Quantity and Contract Price</strong></td>
<td>DRAM Product Monthly Quantity (kW) and Contract Price ($/kW-month) can change for each RA Showing Month that the Seller bids on and as accepted by the Buyer; If 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 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, Seller has rights to reduce Monthly Quantity or terminate the PA, without fault (§1.5(b), (c))</td>
</tr>
<tr>
<td>§1.6 Demonstrated Capacity</td>
<td>Monthly capacity payments to Seller will be made based on the lesser of Demonstrated Capacity and Monthly Quantity (see §4.1) where “Demonstrated Capacity” will be based on one of the following three Seller options for each Showing Month: (i) The results of a capacity demonstration test conducted by the Seller’s SC; (ii) The average capacity Seller bid the PDR(s) into the market associated with Seller’s Must Offer Obligation (MOO); or (iii) The results of the PDR’s performance in response to a CAISO Dispatch Instruction. Buyer has rights to require documentation and an audit of Seller records to assure satisfaction of Demonstrated Capacity (§1.6(f)).</td>
</tr>
<tr>
<td>§2.1 Obtaining CPUC Approval; §2.2 CPUC Approval Termination Right</td>
<td>Buyer has duty to file for approval within 30 days of Execution. Seller and Buyer have no fault termination rights if approval is not obtained within 60 days of filing.</td>
</tr>
<tr>
<td>§3.1 Delivery of Product</td>
<td>Seller must submit Supply Plan for each Showing Month (form in Exhibit D) 10 Business Days before Compliance Showing deadlines and further submit Supply Plan conforming to CAISO Tariff.</td>
</tr>
<tr>
<td>§3.3(a) and (b) CPUC Information and Minimum Testing</td>
<td>Seller must provide to the CPUC all information requested by the CPUC relating to Seller’s obligations and performance pursuant to 2016 DRAM Pilot Program; Seller must cause a test by end of Delivery Period if no dispatch or test otherwise occurs within Delivery Period.</td>
</tr>
<tr>
<td>§3.4 Seller’s Obligations; RA Obligations</td>
<td>Blanket provisions require compliance with all applicable CAISO Tariff provisions, defined CPUC Decisions and other Applicable Laws and provide for indemnification of Buyer for costs and penalties imposed by CPUC or by CAISO for significant failures to provide Monthly Quantity and other RA Benefits and related requirements.</td>
</tr>
<tr>
<td>Article 4: Payment and Billing</td>
<td>The article details the payment algorithm, including recovery of SC services as estimated in bid; sets forth the invoicing and payment process; and provides that Seller retains CAISO revenues and pays CAISO costs, penalties and charges.</td>
</tr>
<tr>
<td>Article 5: Credit and Collateral</td>
<td>If Seller has no Credit Rating or does not have adequate credit ratings, Seller shall maintain certain defined types (cash or Letter of Credit) of collateral (Performance</td>
</tr>
<tr>
<td><strong>§6.1 Limitation of Liability of Buyer</strong></td>
<td>Buyer has no obligation to PDR Customers and others and Seller indemnifies Buyer in this regard.</td>
</tr>
<tr>
<td><strong>§6.2 Buyer Provision of Information</strong></td>
<td>Buyer has obligation to provide use and meter data consistent with Rule 24 and CISR-DRP form adopted by the CPUC and is liable for charges from CAISO or CPUC incurred by Seller due solely to Buyer’s failure.</td>
</tr>
<tr>
<td><strong>§6.3 Changes in Law</strong></td>
<td>Changes which make terms of the PA incapable of performance trigger a right to request good faith negotiation of required changes in the PA; and result in a no fault right to terminate if the negotiations do not succeed.</td>
</tr>
<tr>
<td><strong>§6.6 Non-Residential Customers in Buyer Auto Demand Response Program (unique to SDG&amp;E)</strong></td>
<td>If a Seller will use Non-Residential Customers in Buyer Auto Demand Response Program, a yet-to-be drafted Attachment E will be applicable. None of the 2016 DRAM PAs contain Attachment E.</td>
</tr>
<tr>
<td><strong>§7.2 Additional Seller Representations</strong></td>
<td>Seller has specific covenants regarding the exclusive nature of the RA Benefits from the Monthly Quantity, the non-use of Back-up Generation (BUG), and how Joint PDRs should be used.</td>
</tr>
<tr>
<td><strong>Article 9: Events of Default; Termination</strong></td>
<td>In addition to conventional defaults, a Seller may be guilty of a cross-default under its borrowing agreements (§9.1(b)(iii)).</td>
</tr>
</tbody>
</table>

Assurance) 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.

Buyer shall have a security interest in the Performance Assurance and the substitution, administration and exercise of rights against, the Performance Assurance are described in detail.

§5.7 requires access to financial information of Seller on a timely basis if Buyer determines it is required to collect and consolidate financial information under applicable SEC rules.

§5.8 waives Uniform Commercial Code provisions regarding financial assurances.
<table>
<thead>
<tr>
<th>Article 10: Dispute Resolution</th>
<th>Conventional Early Termination rights and the duty to make a Termination Payment are provided for.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 11: Indemnification</td>
<td>Seller has broad indemnification obligations with respect to its failures, including liability for consequential damages incurred by a third-party.</td>
</tr>
</tbody>
</table>

As noted, PG&E executed a total of 12 PAs with counterparties. The executed PAs are provided as part of the Advice Letter filing.

### VIII. Safeguards and Methodologies Employed

PG&E’s DRAM RFO contains a detailed section on Confidentiality as well as on Participant’s Waiver of Claims and Limitations of Remedies and Participants Representations and Warranties that define the confidentiality requirements between PG&E and the Participant. In addition, the Confidentiality section identifies that PG&E may disclose confidential information to comply with law or regulations. PG&E also identifies whom it contemplates would likely have access to confidential information. No affiliate proposals were submitted.

### IX. Recommendation For Contract Approval

The CPUC IE Report Template requires that the IE address the question, “Based on your analysis of the proposals received and available, the bid process, and the overall market does the contract merit Commission approval? Explain.” The resulting contracts from this solicitation include 12 Purchase Agreements with Demand Response Providers. The agreements resulted from a competitive solicitation process that generated a reasonably robust level of competition for the Demand Response RA products subject to the solicitation. As discussed in the previous sections, the solicitation was conducted consistent with the utility’s protocols and was required to meet the provisions identified in the CPUC Resolution.

Since the contracts were essentially standard contracts, there was no formal contract negotiation process with any Respondent. Instead, the process of completing and executing contracts generally involved clean-up items such as the name of the counterparty, contact information, verification of pricing, contract volumes and delivery periods, agreement on the level of credit required, and any issues associated with existing contracts that could be transitioned to a DRAM RFO contract.
The contracts executed were generally selected in rank order and serve to meet the DRAM RFO pilot program requirements as contained in the CPUC Resolution with regard to the MW target, spending limit, customer account cap and residential capacity thresholds. PG&E’s selection and contracting process met all these requirements with regard to the level of procurement and were consistent with CPUC requirements. The 12 contracts executed were reasonably selected and executed, and merit approval.

As a result, the IE concludes that the resulting contracts are reasonable and appropriate.

X. Conclusions and Recommendations

The results of the DRAM RFO solicitation process for 2016 RA meet the goals and objectives of PG&E. First, the response of the market was reasonable with a competitive number of offers and reasonably competitive prices. Second, the Company was able to meet its initial program MW targets as required, at a reasonable and appropriate cost given the options available. PG&E did procure above its 10 MW target.

Third, the IE found that the IOUs were aggressive and inclusive in marketing the DRAM RFO pilot, contacting nearly 3,000 potential contacts. Fourth, one of the issues raised in the Resolution was the concern of a potential lack of participation by residential customers. However, the market response illustrated a significant response from residential customers which resulted in PG&E selecting over the 20% residential threshold for both its shortlist and final contracts.

Whether this result is based on the residential set-aside or not, the result is encouraging for inclusion of residential accounts in Demand Response RFO offers. 33

For the reasons stated herein, Merrimack Energy concludes that the short listing decisions by PG&E in this initial DRAM RFO pilot were generally reasonable and based on the requirements and evaluation criteria set forth in the RFO documents. PG&E followed its established protocols and methodology in evaluating and selecting offers for DRAM RFO RA capacity requirements. The 12 contracts under review are for DRAM Purchase Agreements with six counterparties. We believe the PAs are reasonable, are in the best interests of customers, and should be approved.

33Merrimack Energy has issued a survey to over 135 contacts including contacts from companies that did participate in the DRAM RFO, those that registered but did not submit an offer, other active market participants, and industry players in other markets to assess their view on whether the residential set-aside had an impact on their involvement or not in the RFO. Merrimack Energy also structured the survey to attempt to receive feedback overall on the lessons learned with regard to the initial DRAM pilot RFO. The results of the surveys, conclusions, and lessons learned for the program overall will be presented in a separate document.
Appendix E

PG&E’s DRAM Standard Contract
2015 DRAM RFO PRO FORMA

DEMAND RESPONSE AUCTION MECHANISM RESOURCE PURCHASE AGREEMENT

between

[NAME OF SELLER]

and

PACIFIC GAS AND ELECTRIC COMPANY
EMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BETWEEN
[SELLER] AND PACIFIC GAS AND ELECTRIC COMPANY

Table Of Contents (Continued)

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2</td>
<td>Grant of Security Interest/Remedies</td>
<td>10</td>
</tr>
<tr>
<td>5.3</td>
<td>Reduction and Substitution of Performance Assurance</td>
<td>10</td>
</tr>
<tr>
<td>5.4</td>
<td>Administration of Performance Assurance</td>
<td>12</td>
</tr>
<tr>
<td>5.5</td>
<td>Exercise of Rights against Performance Assurance</td>
<td>14</td>
</tr>
<tr>
<td>5.6</td>
<td>Financial Information</td>
<td>14</td>
</tr>
<tr>
<td>5.7</td>
<td>Access to Financial Information</td>
<td>15</td>
</tr>
<tr>
<td>5.8</td>
<td>Uniform Commercial Code Waiver</td>
<td>15</td>
</tr>
<tr>
<td>6.1</td>
<td>Limitation of Liability</td>
<td>16</td>
</tr>
<tr>
<td>6.2</td>
<td>Buyer Provision of Information</td>
<td>16</td>
</tr>
<tr>
<td>6.3</td>
<td>Changes in Applicable Laws</td>
<td>16</td>
</tr>
<tr>
<td>6.4</td>
<td>WMDVBE Reporting</td>
<td>17</td>
</tr>
<tr>
<td>6.5</td>
<td>Governmental Charges</td>
<td>17</td>
</tr>
<tr>
<td>7.1</td>
<td>Representations and Warranties of Both Parties</td>
<td>17</td>
</tr>
<tr>
<td>7.2</td>
<td>Additional Seller Representations, Warranties and Covenants</td>
<td>18</td>
</tr>
<tr>
<td>8.1</td>
<td>Notices</td>
<td>19</td>
</tr>
<tr>
<td>8.2</td>
<td>Contact Information</td>
<td>20</td>
</tr>
<tr>
<td>9.1</td>
<td>Events of Default</td>
<td>21</td>
</tr>
<tr>
<td>9.2</td>
<td>Early Termination</td>
<td>22</td>
</tr>
<tr>
<td>9.3</td>
<td>Termination Payment</td>
<td>23</td>
</tr>
<tr>
<td>9.4</td>
<td>Reserved</td>
<td>23</td>
</tr>
</tbody>
</table>
EMAND RESPONSE RESOURCE PURCHASE AGREEMENT  
BETWEEN  
[SSELLER] AND PACIFIC GAS AND ELECTRIC COMPANY 

Table Of Contents (Continued)

9.5. Suspension of Performance ........................................................................................................23
9.6. Rights and Obligations Surviving Termination or Expiration ................................................. 23

ARTICLE 10. DISPUTE RESOLUTION ................................................................................................. 24
10.1. Dispute Resolution .................................................................................................................... 24
10.2. Provisional Relief ...................................................................................................................... 27

ARTICLE 11. INDEMNIFICATION ................................................................................................. 27
11.1. Seller’s Indemnification Obligations .......................................................................................... 27
11.2. Indemnification Claims ............................................................................................................ 28

ARTICLE 12. LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES ....................................... 28

ARTICLE 13. CONFIDENTIALITY .................................................................................................... 30
13.1. Confidentiality Obligation ........................................................................................................ 30
13.2. Obligation to Notify .................................................................................................................. 30
13.3. Remedies; Survival .................................................................................................................... 31

ARTICLE 14. FORCE MAJEURE .................................................................................................. 31

ARTICLE 15. MISCELLANEOUS .................................................................................................... 31
15.1. General .................................................................................................................................... 31
15.2. Governing Law and Venue ....................................................................................................... 32
15.3. Amendment .............................................................................................................................. 32
15.4. Assignment .............................................................................................................................. 32
15.5. Successors and Assigns ............................................................................................................ 32
15.6. Waiver ..................................................................................................................................... 32
15.7. No Agency ............................................................................................................................... 33
15.8. No Third-Party Beneficiaries ................................................................................................. 33
15.9. Entire Agreement ..................................................................................................................... 33

-iii-
Table Of Contents (Continued)

15.10. Severability ........................................................................................................33
15.11. Multiple Originals ...............................................................................................33
15.12. Mobile Sierra ......................................................................................................34
15.13. Performance Under this Agreement .....................................................................34
DEMAND RESPONSE RESOURCE PURCHASE AGREEMENT
BY AND BETWEEN
[NAME OF SELLER] and
PACIFIC GAS AND ELECTRIC COMPANY

PREAMBLE

This Demand Response Resource Purchase Agreement, together with its exhibits (the “Agreement”) is entered into by and between Pacific Gas and Electric Company, a California corporation ("Buyer" or “PG&E”), 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

(a) 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.

(b) The Product is:

_____ a Residential Customer Product

_____ not a Residential Customer Product

[ Seller to choose only one option for this Agreement]

If Seller has chosen to deliver Product that is not Residential Customer Product as defined in this Agreement, its PDR(s) may nevertheless include Residential PDR Customers and Small Commercial PDR Customers.
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] {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.

{Dates will be based on Seller’s bid that was selected by PG&E in the RFO. Currently that would be no earlier than June, 2016 and no later than December, 2016.}

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, and on a monthly basis thereafter no less than sixty (60) days prior to the applicable Showing Month if any of the information below changes, 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.

(iii) If any of the PDRs providing Product pursuant to this Agreement is a Joint PDR, Seller shall confirm in writing to Buyer (x) the amount of the capacity of such Joint PDR that will be used to show Demonstrated Capacity under this Agreement and (y) the total capacity of such Joint PDR.

(b) The Parties shall cooperate to implement the requirements of Rule 24 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>
</tr>
</thead>
<tbody>
<tr>
<td>June</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August</td>
<td></td>
<td></td>
</tr>
<tr>
<td>September</td>
<td></td>
<td></td>
</tr>
<tr>
<td>October</td>
<td></td>
<td></td>
</tr>
<tr>
<td>November</td>
<td></td>
<td></td>
</tr>
<tr>
<td>December</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(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 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) or (v), 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; or

(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) If any PDR in the DRAM Resource is a Joint PDR, Seller’s invoice shall indicate (x) the amount of the capacity of such Joint PDR used to show Demonstrated Capacity for such month and (y) the total capacity of such Joint PDR during such month.

(e) If the Product Seller delivers under this Agreement is a Residential Customer Product, Seller shall confirm in writing to Buyer the number of Residential Customer SAID accounts and the number of Small Commercial SAID accounts in each PDR.

(f) 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 or Joint 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. If the Product designated in Section 1.1(b) is a Residential Customer Product, then, in addition to the documentation specified above, Buyer may, in its Audit Notice, require Seller or Seller’s SC to provide additional documentation that establishes to Buyer’s reasonable satisfaction that the Product is Residential Customer Product as stated by Seller in its invoice for the applicable Showing Month. 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) Within a reasonable period of time, or such time prescribed by the CPUC, Seller shall provide to the CPUC all information requested by the CPUC relating to Seller’s obligations and performance pursuant to this Agreement and the 2016 DRAM Pilot Program to which this Agreement relates. In responding to any information request from the CPUC, the Seller may designate information for confidential treatment consistent with CAISO and/or Commission rule, tariff or decision. Any such confidential information provided by Seller to the CPUC shall be held in confidence by the CPUC and excluded from public inspection or disclosure, unless inspection or disclosure is otherwise required by Applicable Laws.

(b) 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.

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.

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:

\[(A \times B \times D) + C\]

Where:

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

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

[SC services payment amount will be based on Seller’s bid that was selected by PG&E in the RFO.]

D = 1.0 if Seller has chosen (i) not to deliver Residential Customer Product in Section 1.1(b) or (ii) to deliver Residential Customer Product in Section 1.1(b) and the Product delivered meets the definition of Residential Customer Product, or 0.90 if the Product delivered does not meet the definition of Residential Customer Product.

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.
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.

With respect to any Joint PDR, if Seller and any third party both submit claims to Buyer for payment with respect to such Joint PDR which, when added together, exceed the total capacity of the Joint PDR, Buyer shall not be obligated to make payment to Seller in respect of such Joint PDR until Seller reconciles the error with such third party and Seller re-submits the corrected invoice to Buyer.

With respect to a Joint PDR, if such Joint PDR’s Demonstrated Capacity for any Showing Month is less than such Joint PDR’s assigned NQC (as set forth in Exhibit C), Seller shall have the right to demonstrate to Buyer the Joint PDR’s actual performance, and shall be compensated in accordance with Section 1.6. In the event Buyer finds Seller’s demonstration inconclusive, the Joint PDR’s total capacity shall be allocated pro-rata among the parties with rights to a portion of such Joint PDR’s capacity based on the information required to be provided in Section 1.6(d), and Seller’s compensation shall be calculated using its percentage allocation of such PDR’s capacity accordingly.

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, if rated by both S&P and 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”).

(b) 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.

(c) If required pursuant to Section 5.1(a), Seller shall post the Performance Assurance with Buyer within ten (10) Business Days of the Execution Date.

5.2. Grant of Security Interest/Remedies

(a) 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

(a) 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)(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, which may include accruals and prior month estimates with true-ups to actual activity;

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

(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 5.7 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.

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:
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

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, 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 WMDVBEs 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; Seller will comply with the CPUC’s requirements for Resource Adequacy
Benefits for demand response as set forth in the CPUC Decisions including, without limitation, minimum availability criteria for demand response resources, and the requirements of the CAISO with respect to providing Resource Adequacy Benefits.

(v) During each month of the Delivery Period, if any participating Customers in the DRAM Resource have Back-up Generation, Seller shall ensure that such Back-up Generation is not used during a Dispatch by any PDR providing Product to Buyer during such month. Seller shall use at least one of the following options to demonstrate that participating Customers did not use Back-up Generation during a Dispatch of a PDR providing Product to Buyer: (w) provide an attestation with each invoice that no participating Customer in the PDR providing Product in the invoiced month used Back-up Generation during a Dispatch; (x) prohibit participating Customers from having Back-up Generation in its DRAM Resource; (y) monitor metering on the participating Customer’s DRAM Resource to ensure that no Back-up Generation was used during a Dispatch of a PDR providing Product to Buyer; and (z) require, in its agreement with its participating Customers, that no Back-up Generation may be used during a Dispatch of a PDR providing Product to Buyer.

(vi) If any PDR is a Joint PDR Seller shall ensure that: (x) the use of the Joint PDR does not result in Buyer making payment in respect of Demonstrated Capacity in excess of the total capacity of the Joint PDR, whether to Seller or any other party, regardless of whether payment is made under this Agreement, another agreement in the DRAM Pilot Program, any other demand resource agreement or program, or any combination thereof; (y) the use of the Joint PDR does not result in Buyer making payment more than once in respect of capacity relating to a particular customer registered in the Joint PDR, regardless of whether payment is made under this Agreement, another agreement in the DRAM Pilot Program, any other demand resource agreement or program, or any combination thereof; and (z) Seller has the right to access and provide to Buyer the records and data regarding any PDR Customer that is not designated by Seller under Section 1.6(d) as part of the amount to be used to show Demonstrated Capacity under this Agreement to permit Buyer to audit such Joint PDR under Section 1.6(f) to the same extent Buyer may audit PDRs that are not Joint PDRs.

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:
The Parties acknowledge and agree that those persons set forth in this Section 8.2 are designated by each Party as their respective authorized representatives to act on their behalf for the purposes described therein.

**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 a Party disputes the other Party’s calculation of the Termination Payment, in whole or in part, the disputing Party shall, within two (2) Business Days of receipt of the Party’s calculation of the Termination Payment, provide to the other 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 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.

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.

10.2. 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 or any payment disputes resulting from the use of a Joint PDR;

(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.

(b) 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.

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

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

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

(f) 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.
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Execution Date.

PACIFIC GAS AND ELECTRIC COMPANY [SELLER]

By: ____________________________ By: ____________________________
Name: __________________________ Name: __________________________
Title: __________________________ Title: __________________________
Date: __________________________ 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 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.

“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).

“Back-up Generation” means fossil-fueled back-up generation owned or used by a Customer including but not limited to the following: (i) distributed generation technologies using diesel, natural gas, gasoline, propane or liquefied petroleum gas, whether or not in a combined heat and power configuration. Back-up Generation does not include energy storage systems; provided such energy storage systems meet the greenhouse gas emission factor thresholds in effect from time to time under the CPUC’s Self-Generation Incentive Program.

“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 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.

“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, 06-06-031, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 09-12-053, 10-06-036, 10-12-038, 11-06-022, 11-10-003, 12-06-025, 13-02-006, 13-04-013, 13-06-024, 14-03-026, 14-06-050, 14-12-024, 15-02-007, 15-06-063, 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.

“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, (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.

“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.

“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.

“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.

“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.

“Joint PDR” means a PDR which includes PDR Customers registered by the Seller (or its DRP) and other customers registered by another aggregator (or its DRP) who are not considered part of the PDR for purposes of meeting Seller’s obligations under this Agreement.
“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.

“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.

“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 Service Account Identification 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.

“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.

“Residential Customer” means a PDR Customer whose dwelling is single-family units, multi-family units, mobile homes, or other similar living establishments.
“Residential Customer Product” means Product that is comprised solely of Residential Customers and Small Commercial Customers; provided that the percentage of Residential Customers in the PDR(s) constituting the DRAM Resource is equal to or greater than ninety percent (90%). Where multiple PDRs, or portions thereof, are used to meet Seller’s Demonstrated Capacity obligations, the percentage requirements apply in the aggregate, based on the total number of PDR Customer service accounts in the DRAM Resource used to show Demonstrated Capacity.

“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” or “Service Account Identification” 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.

“Small Commercial Customer” means a PDR Customer which: (1) has a maximum billing demand of 20 kW, or less, per meter during the most recent 12 month period, or (2) has an annual usage of 40,000 kWh, or less, during the most recent 12 month period.

“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 and 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

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: [insert issue date]

Beneficiary: [Insert name of Beneficiary]  
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 Demand Response Auction Mechanism Resource Purchase Agreement] or its assignee to Beneficiary under or in connection with the [Insert identification of the Demand Response Auction Mechanism Resource Purchase Agreement] between the Beneficiary and [Insert name of Beneficiary’s counterparty under the Demand Response Auction Mechanism 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 Demand Response Auction Mechanism 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 Demand Response Auction Mechanism Resource Purchase Agreement] or its assignee is required to transfer to the Beneficiary under the terms of the [Insert identification of the Demand Response Auction Mechanism Resource Purchase Agreement] between [Insert name of Beneficiary’s counterparty under the Demand Response Auction Mechanism 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

### Form of Notice of Demonstrated Capacity

**Demand Response Auction Mechanism (DREAM)**

**Showing Month:**

**Seller Contact Name:**

**Seller Contact Phone:**

**Total "Monthly Quantity" (MW):**

**Total "Demonstrated Capacity" (MW):**

**Residential Product (Yes/No):**

Therefore in Deliverable Capacity Payment Schedules, "B" = "3.00 MW" and "C" = "0.00 MW"

### Table: Notice of Demonstrated Capacity

<table>
<thead>
<tr>
<th>PCR Resource Name</th>
<th>CAISO Resource ID</th>
<th>Assigned NGC (MW)</th>
<th><strong>Demonstrated Capacity (MW)</strong></th>
<th>Joint PCR Adjustment</th>
<th>Residential Product Delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Capacity Test: Maximum hours load reduction during capacity test conducted by seller &amp; IC using showing lociton</td>
<td>Must Other Obligation (MOO): Average capacity amount Seller bid into CAISO during showing months</td>
<td>Dispatch Results: Maximum hours load reduction resulting from Dispatch during showing periods</td>
</tr>
</tbody>
</table>

### Notes:

**Demonstrated Capacity:**

1. Each capacity test must be at least two (2) consecutive hours long.
3. Must be eligible for the CAISO Dispatch Incentive Program.

### Instructions:

1. All eligible non-CO-located MOO.
2. MF Claimed is a portion of "B" Demonstrated.

**Percent Residential Accounts:**

The information provided in this Notice of Demonstrated Capacity is required by Section 1.6 of the DREAM Resource Purchase Agreement with "assetIDG" name.
### EXHIBIT D

#### Form of Notice of Showing Month Supply Plan

Sample Counterparty Monthly Supply Plan Template

<table>
<thead>
<tr>
<th>Contact Information</th>
<th>Supply Plan Information for Resources under DRAM Purchase Agreement to [Insert IOU name]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Person</td>
<td></td>
</tr>
<tr>
<td>Phone Number</td>
<td></td>
</tr>
<tr>
<td>Email</td>
<td></td>
</tr>
<tr>
<td>SCID of Seller</td>
<td></td>
</tr>
<tr>
<td>Resource ID in CAISO Master File</td>
<td></td>
</tr>
<tr>
<td>RA Capacity (MW 00.00 No Rounding)</td>
<td></td>
</tr>
<tr>
<td>RA Capacity Used for Contract</td>
<td></td>
</tr>
<tr>
<td>RA Capacity Effective Start Date (mm/dd/yyyy hh:mm:ss)</td>
<td></td>
</tr>
<tr>
<td>RA Capacity Effective End Date (mm/dd/yyyy hh:mm:ss)</td>
<td></td>
</tr>
<tr>
<td>SCID of Load Serving Entity</td>
<td></td>
</tr>
</tbody>
</table>

The information provided by Seller in this monthly Supply Plan template is required by Section 1.4 of the DRAM Resource Purchase Agreement with Buyer.
Confidential Appendix F

Executed DRAM Contracts
Confidential Appendix G

AMP Contract Amendments
AT&T
Albion Power Company
Alcantar & Kahl LLP
Anderson & Poole
Atlas ReFuel
BART
Barkovich & Yap, Inc.
Bartle Wells Associates
Braun Blaising McLaughlin & Smith, P.C.
Braun Blaising McLaughlin, P.C.
CENERGY POWER
CPUC
California Cotton Ginners & Growers Assn
California Energy Commission
California Public Utilities Commission
California State Association of Counties
Calpine
Casner, Steve
Center for Biological Diversity
City of Palo Alto
City of San Jose
Clean Power
Coast Economic Consulting
Commercial Energy
Cool Earth Solar, Inc.
County of Tehama - Department of Public Works
Crossborder Energy
Davis Wright Tremaine LLP
Day Carter Murphy
Defense Energy Support Center
Dept of General Services
Division of Ratepayer Advocates
Don Pickett & Associates, Inc.
Douglass & Liddell
Downey & Brand
Ellison Schneider & Harris LLP
G. A. Krause & Assoc.
GenOn Energy Inc.
GenOn Energy, Inc.
Goodin, MacBride, Squeri, Schlotz & Ritchie
Green Power Institute
Hanna & Morton
International Power Technology
Intestate Gas Services, Inc.
Kelly Group
Ken Bohn Consulting
Leviton Manufacturing Co., Inc.
Linde
Los Angeles County Integrated Waste Management Task Force
Los Angeles Dept of Water & Power
MRW & Associates
Manatt Phelps Phillips
Marin Energy Authority
McKenna Long & Aldridge LLP
McKenzie & Associates
Modesto Irrigation District
Morgan Stanley
NLine Energy, Inc.
NRG Solar
Nexant, Inc.
ORA
Office of Ratepayer Advocates
OnGrid Solar
Pacific Gas and Electric Company
Praxair
Regulatory & Cogeneration Service, Inc.
SCD Energy Solutions
SCE
SDG&E and SoCalGas
SPURR
San Francisco Water Power and Sewer
Seattle City Light
Sempra Energy (SoCal Gas)
Sempra Utilities
SoCalGas
Southern California Edison Company
Spark Energy
Sun Light & Power
Sunshine Design
Tecogen, Inc.
Tiger Natural Gas, Inc.
TransCanada
Troutman Sanders LLP
Utility Cost Management
Utility Power Solutions
Utility Specialists
Verizon
Water and Energy Consulting
Wellhead Electric Company
Western Manufactured Housing Communities Association (WMA)
YEP Energy