Resolution E-4838. Approval with modifications of the Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company’s prohibited resources restrictions for Supply Side Demand Response programs and pilots; and, approval with modifications of DRAM III auction design, protocols, standard pro forma contract, evaluation criteria and non-binding cost estimates as directed in Resolution E-4817.

PROPOSED OUTCOME:
- This Resolution approves, with modifications, prohibited resource requirements as proposed by Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) to apply to all affected Demand Response (DR) Programs, including the Capacity Bidding Program (CBP), Base Interruptible Program (BIP), and Agricultural and Pumping Program- Interruptible (AP-I), and pilots, including the third utility Demand Response Auction Mechanism Pilot (DRAM III).
- Adopts tariff and contract language for affected DR programs and pilots, applicable starting January 31, 2018, and fund shifting to implement the new prohibitions.

SAFETY CONSIDERATIONS:
- There is no impact on safety.

ESTIMATED COST:
- D.16-09-056 authorized fund shifting to cover the costs of implementing the prohibition as necessary. SDG&E requests a shift of $934,498 in funds from the 2017 Demand Response Approved
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PG&E, SCE, SDG&E AL 3466-E-A, et. al. and AL 4991-E-A, et. al./CF1

Program Budget for implementation. PG&E and SCE did not request fund shifting authority.

- No additional costs are proposed for DRAM as these were previously allocated in the Utilities’ Demand Response administrative budget.


SUMMARY

This Resolution approves, with modifications, the prohibited resources restrictions proposed by Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company (“Utilities”) to apply to certain DR programs and pilots, including the third Demand Response Auction Mechanism Pilot (“DRAM III”). Specifically, this Resolution approves tariff and contract language for all affected DR programs and pilots, applicable starting January 1, 2018, and fund shifting to implement the prohibitions.

This Resolution consolidates Advice Letters (AL) SCE AL 3466-E-A, PG&E AL 4900-E-A, and SDG&E AL 2949-E-A (“AL 3466-E-A. et. al.”), filed on February 2, 2017, as well as Advice Letters PG&E AL 4991-E-A, filed on January 13, 2017, and SCE AL 3542-E and SDG&E AL 3031-E (“AL 4991-E-A et al.”), filed on January 3, 2017 (collectively, “the Advice Letters”). We take this step to ensure consistent review and approval of the Utilities’ prohibited resources tariff and contract language changes across all affected DR programs and pilots.

These Advice Letters collectively summarize Utility tariff and contract language changes to implement Commission direction on prohibited
resources applicable to Utility DR programs and pilots as outlined in D.16-09-056.\(^1\) However, AL 4991-E-A et al. addresses only the issue of prohibited resources as outlined in D.16-09-056, and requests fund shifting to implement the prohibitions. AL 3466-E-A et al. was filed in response to Resolution E-4817 and addresses both prohibited resources requirements and Utility compliance with the full set of DRAM III requirements outlined in that resolution. Resolution E-4817 neither considered nor addressed prohibited resource requirements pertaining to the DRAM III.

The Utilities did not outline consistent language and tariff changes to implement the DR prohibited resources requirements in their Advice Letters. Therefore, we approve individual and general modifications to the Advice Letters in order to ensure consistent and full application of the DR prohibited resources requirements as outlined in D.16-09-056.

We approve with modifications AL 3466-E-A et al. in order to strengthen the prohibited resources contract requirements and enforcement activities applicable to DRAM III. We approve with modifications AL 4991-E-A et al. in order to ensure consistent application and communication of the prohibition requirements across all Utilities and affected programs. For both sets of Advice Letters we require the following modifications, that Utilities:

1) Clarify language to state that prohibited resources shall not be used to reduce load during DR events;

2) Allow customer use of default adjustment values (DAV) in cases where prohibited resources must be used for safety as well as operational and health reasons during DR events;

3) Require the inclusion in non-residential contracts of a three-part attestation that includes a declaration of whether or not a customer has a prohibited resource on site;

\(^1\) D. 16-09-056 Ordering Paragraphs 2 – 4 at pgs. 28- 42.
4) Allow customers for whom conditions have changed to adjust their DAV over the course of a year, under certain conditions;

5) Indicate that customers that do not accept the prohibition (residential) or that do not provide an attestation in the required timeframe (non-residential) will be removed from the program, with an opportunity to re-enroll once they do so;

6) Indicate that non-compliance is defined as the failure to abide by the prohibition (residential customer) or to have violated the terms of its attestation (non-residential customer), and that the consequences of a single instance of non-compliance shall be removal from all affected DR programs for a period of one year; the consequences for two or more such instances shall be removal from all affected DR programs for a period of three years;

7) Indicate that, for non-residential customers, violating the terms of an attestation occurs when: (a) a customer attested to the “no-use” provision but is verified to have used a prohibited resource to reduce load during a DR event; or, (b) a customer intentionally submits an invalid nameplate capacity value for the prohibited resource(s);

8) Specify required due dates for non-residential attestations and DAVs;

9) Authorize a framework for third-party aggregator collection and submittal of attestations for non-residential customers and DAVs to be applied to monthly capacity invoices, and allow a process to further develop an agreed-upon implementation approach;

10) Indicate that third-party aggregators, and Utilities in their roles as DR Providers and Scheduling Coordinators, are responsible for removing customers from their portfolio if they have not agreed to the prohibition or provided a DAV and de-rating their portfolio accordingly;

11) Indicate that third-party aggregators that do not remove non-compliant customers from their portfolio shall be notified of a potential event of default, curable within 30 days;
12) Require all DR providers, including Utilities and third-party aggregators, to initiate outreach and notification actions within 60 days of the approval of this resolution, directed only to their own customers;

13) Require in contracts that third-party aggregators undertake outreach and notification of the prohibition to their own customers and keep records of their activities;

14) Clearly and fully define affected DR programs and pilots;

15) Exempt the DRAM III pilot from verification approaches requiring the installation of additional interval meters;

16) Direct Commission staff to convene a public workshop in 2017 to discuss prohibition implementation issues;

17) Encourage consideration of “Type One” compliance issues in development of the Prohibited Resources Verification Plan directed in D.16-09-056;

18) Indicate that a “click” may constitute an electronic signature in the case of residential customers, who must accept the prohibition to participate in the DRAM.

Further, we:

- Approve SDG&E’s fund shifting request in AL 3031-E, with modifications.

- Require the Utilities to include in compliance filings ordered herein the contract language and data collection requirements on prohibited resources that they will apply to all affected 2017 DR pilots that will continue in 2018. Affected pilots include all Utilities’ Excess Supply Pilots, PG&E’s Supply Side II Pilot (SSP II) and others.²

² D.16-06-029.
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- Require the Utilities to apply the requirements of this Resolution to any new affected DR programs or pilots approved for implementation in 2018 and beyond.

We direct Utilities to address all of these modifications in supplemental compliance Advice Letters to AL 3466-E-A et al. and AL 4991-E-A et al., on different time frames. A supplemental compliance AL to 3466-E-A et al. is due on May 8, 2017. The protest period for this AL is shortened to seven days, and the period for replies to five days. A supplemental compliance AL to 4991-E-A et al. is due on May 26, 2017, and the standard protest and reply periods shall apply.

AL 3466-E-A et al. was filed to comply with Resolution E-4817, adopting with modifications the DRAM III auction design, protocols, standard pro forma contract, evaluation criteria and non-binding cost estimates. We modify AL 3466-E-A et al. only with respect to its prohibited resources requirements and otherwise approve its DRAM III provisions in full.

BACKGROUND

On December 9, 2014, the California Public Utilities Commission (Commission) issued D.14-12-024 in Rulemaking (R.)13-09-011. This Decision included a Commission policy statement that fossil-fueled back-up generation resources would not be allowed as part of DR programs for resource adequacy purposes. D.14-12-024 also set forth the requirements for the Utilities to gather information about use of back-up generation by non-residential customers.³ In September 2016, the Commission adopted D.16-09-056, which modified and deleted certain Ordering Paragraphs (OPs) in D.14-12-024. D.16-09-056 modified D.14-12-024 to end the data collection effort for fossil-fueled back-up generation and established January 1, 2018 as the date to implement a prohibition on the use of certain resources to reduce load during a DR event.

D.16-09-056 (“the Decision”) ordered the Utilities to: (1) prohibit certain resources for use during DR events, (2) modify tariffs and contracts to implement the

³ D.14-12-024 at 61.
prohibition, and (3) hire expert consultants to assess how to evaluate compliance and enforcement of the prohibition. OP 4.c. of D.16-09-056 ordered the Utilities to file a Tier 3 advice letter proposing draft language for the new prohibited resources tariff provision for review and approval by the Commission no later than 90 days after the issuance of the D.16-09-056. D.16-09-056 also directed the Utilities to include in the advice letter proposals any fund shifting necessary within the 2017 DR budgets to cover the costs of implementing the prohibition.\(^4\)

D.16-09-056 exempted the following DR programs from the prohibition: Residential and Non-Residential SmartACT\(^{TM}\), Optional Binding Mandatory Curtailment (OBMC), Scheduled Load Reduction Program (SLRP), Permanent Load Shift (PLS), Peak Day Pricing (PDP), SmartRate\(^{TM}\), and time-of-use (TOU) rates.\(^5\)

SCE, in AL 3542-E, identified three non-residential tariffs subject to the new prohibition provision in 2018: (1) CPB; (2) AP-I and (3) Time-Of-Use (TOU) BIP. Additionally, SCE noted that it “may have DR aggregator contracts subject to the new prohibition provision in 2018.”\(^6\) PG&E, in AL 4991-E-A, identified its CBP and BIP programs as well as the DRAM pilot and its local SSP II and XSP pilots as subject to the prohibition.\(^7\) SDG&E in and SDG&E AL 3031-E identified its CBP and BIP programs as subject to the prohibition.\(^8\)

\(^4\) D.16-09-056, OP 4(c) at pg. 96, 40.

\(^5\) Programs and pilots not on this list, including the DRAM III pilot, shall be referred to as “affected DR programs” or “affected programs.”

\(^6\) SCE, “Proposed Draft Language for the Provision of Prohibited Resources During Demand Response Events in Compliance with Decision 16-09-056,” (January 3, 2017), pg. 2.

\(^7\) PG&E, “Request for Approval of Tariff Language to Implement the Policy on the Use of Prohibited Resources for Demand Response Approved in Decision 16-09-056,” (January 3, 2017), pg 2.

\(^8\) SDG&E, “SDG&E Tariff and Contract Revisions to Address the Prohibition of Backup Generation Pursuant to Decision 16-09-056,” (January 3, 2017), pg. 2.
D.16-09-056 indicated the following list of resources are prohibited to be used to reduce load during DR events beginning on January 1, 2018 in topping cycle Combined Heat and Power (CHP) or non-CHP configuration:

- Distributed generation technologies using diesel;
- Natural gas;
- Gasoline;
- Propane; or,
- Liquefied petroleum gas,

D.16-09-056 also exempted the following resources from the prohibition:

- Pressure reduction turbines;
- Waste-heat-to-power bottoming cycle CHP; and,
- Storage and storage coupled with renewable generation that meets the relevant greenhouse gas emissions standards adopted for the Self Generation Incentive Program.

Resolutions E-4728 and E-4754 prohibited the use of back-up generation resources in the DRAM I and DRAM II pilots. It ordered the Utilities to exclude fossil-fueled back-up generation from DRAM bids and required bidders to demonstrate that they were not relying on fossil-fueled back-up generation by utilizing one of three options: (1) bidders could attest that they will not rely on fossil-fueled back-up generation for load drops; (2) bidders could require that none of their participants have fossil-fueled back-up generation; (3) bidders could monitor and enforce the requirement via metering on the units; or, (4) bidders could contractually require their participants to not use fossil-fueled back-up generation in the DRAM.9

D.16-09-056 directs the application of the prohibited resource requirements to the DRAM starting with 2018 delivery.10

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9 Resolution E-4728, adopted July 23, 2015, Ordering Paragraphs 2-4, at 36.

10 D.16-09-056 at 32, 36.
NOTICE

Notice of jointly filed Advice Letters AL 3466-E-A, AL 4900-E-A; and AL 2949-E-A (“AL 3466-E-A et al.”) was made by publication in the Commission’s Daily Calendar. SCE, PG&E and SDG&E state that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

Notice of Advice Letters AL 4991-E-A, AL 3542-E, and AL 3031-E (“AL 4991-E-A et al.”) was made by publication in the Commission’s Daily Calendar. SCE, PG&E and SDG&E state that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

Advice Letters 3466-E-A et al. were protested. Advice Letters AL 4991-E-A et al. were protested.

Advice Letters 4991-E-A et al. were timely protested on January 23, 2017 by the Joint DR Parties; Environmental Defense Fund and Sierra Club; and by the California Large Energy Consumers Association (CLECA).


12 EDF and Sierra Club, “Protest of Environmental Defense Fund and Sierra Club to Advice Letter 3031-E (SDG&E Tariff and Contract Revisions to Address the Prohibition of Backup Generation Pursuant to Decision 16-09-056); Advice Letter 3542-E (Proposed Draft Language for the Provision of Prohibited Resources During Demand Response Events in Compliance with Decision 16-09-056); and Advice Letter 4991-E-A (Request for Approval of Tariff Language to Implement the Policy on the Use of Prohibited Resources for Demand Response Approved in Decision 16-09-056),” (January 23, 2017).

Advice Letters AL 3466-E-A et al., were timely protested on February 9, 2017 by Comverge, CPower, EnerNOC, Inc., and EnergyHub, collectively the “Joint DR Parties.”

SCE responded to the protests filed to SCE AL 3542-E, PG&E responded to the protests filed to PG&E AL 4991-E-A, and SDG&E responded to the protests filed to SDG&E AL 3031-E by CLECA, the Joint DR Parties; and EDF and Sierra Club on January 30, 2017.

SCE responded to the protests of the Joint DR Parties to AL 3466-E-A, et al. on behalf of the Utilities on February 14, 2017.


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The following is a more detailed summary of the major issues raised in the protests.

1. Prohibition Requirements

The Joint DR Parties stated in their January 23, 2017 protest to AL 4991-E-A et al. that the Utilities had mistakenly stated that the tariffs and contracts described in it required non-residential customers to agree not to use a prohibited resource *while reducing load* during a DR event. The correct language required in D.16-09-056, said the Joint DR Parties, was that customers would not use prohibited resources *to reduce load* during a DR event. The Joint DR Parties detailed specific changes needed to each utility’s AL to bring them into compliance with D.16-09-056 language forbidding use of prohibited resources *to reduce load* during DR events.20

On January 30, in replies to protests to AL 4991-E-A et al., each of the IOUs agreed with this request.21

Subsequently, in their February 9, 2017 protest to AL 3466-E-A et al., the Joint DR Parties noted that the Utilities had again included non-compliant language regarding constraints on the use of prohibited resources during DR events in AL 3466-E-A, Section II (DRAM Purchase Agreement Modifications), filed on February 2017. In subpart B of the proposed purchase agreement, the Joint DR Parties noted, the Utilities had stated that,

“For all non-Residential Customers, Seller shall require that each Customer execute an attestation (1) agreeing that it does not have, and will not use, a Prohibited Resource to reduce load…..”

The Joint DR Parties request that the Utilities delete part of this sentence in order to be in compliance with D.16-09-045, so that the sentence reads as follows:

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21 PG&E, SCE, SDG&E, “Replies to Protests to AL 4991-E et al,” p. 2.
“For all non-Residential Customers, Seller shall require that each Customer execute an attestation (1) agreeing that it does not have, and will not use, a Prohibited Resource to reduce load…..”

On February 14, 2017 SCE responded by affirming that the Utilities will change to their 2018 DRAM Purchase Agreement Section 7.2.b.v.B as requested by the Joint DR Parties.

2. Customer Attestations

Use of Default Adjustment Values for Safety, Operational and Health Reasons

CLECA protested PG&E AL 4991-E-A et al. stating that the AL’s included inaccurate language regarding allowed use of prohibited resources for safety, health or operational reasons, accompanied by application of a default adjustment value (DAV). CLECA stated that D.16-09-056 said that for “non-residential customers who are required to use a prohibited resource for non-demand response operational reasons, a default adjustment shall be implemented.” CLECA further noted that their comments on the issue, summarized in D.16-09-056, had stated that the default adjustment is “practical for customers required to have a small backup generator to operate during an outage for health and safety reasons.” CLECA requested that the Commission direct the Utilities to add “or health reasons or operational reasons” to all places where “safety reasons” are referenced in connection with DAVs.

In its response to CLECA, SCE stated that OP 4.b of D.16-09-056 directs SCE to provide specific tariff language requiring that for nonresidential customers shall, “in cases where the customer is required to use the prohibited resource for safety

22 Joint DR Parties, “Response to AL 3466-E-A et al.,” p. 3.


24 CLECA, “Protest to AL 4991-E et al.,” p. 3.
reasons, agree to a default adjustment.” SCE noted that D.16-09-056 allows use of a DAV for operational but not for health reasons and that SCE will not be incorporating the latter change.25

SDG&E and PG&E agreed to CLECA’s request.26

Three-Part Attestation

The Joint DR Parties in their protest to AL 4991-E-A et al. stated that the Utilities had not provided accurate attestation language regarding use of prohibited resources or default adjustment values (DAVs). The Joint DR Parties suggested that the three-option attestation language provided by SCE in AL 3542-E for “Contracts and Forms,” be slightly modified and required of all three Utilities. Additions proposed by the Joint DR Parties are underlined:

“____ I do not have a Prohibited Resource on-site
“____ I do have a Prohibited Resource on-site and I will not use the resource to reduce load during any Demand Response event.
“____ I do have a Prohibited Resource on-site and I must run the resource(s) during Demand Response events for safety reasons....”27

On January 30, in their replies to protests to AL 4991-E-A et al, each of the IOUs agreed to the changes requested by the Joint DR Parties.28

Opportunity to Update Attestations

CLECA also objected to the omission in the ALs of any provisions to enable customers to update their affidavits during the year to reflect changed circumstances. They stated that circumstances leading to use of DAVs may change for customers and that they should not be locked into a default adjustment for a

25 SCE, “Reply to Protests to AL 3542-E,” p. 3.
26 SDG&E, “Reply to Protest of AL 3031-E;” PG&E, “Reply to Protest of AL 4991-E.”
27 Joint DR Parties, “Protest to AL 4991-E et al.,” pps. 4-9.
28 SCE, PG&E, SDG&E, “Replies to Protests,” p. 2.
year-long period with no opportunity for revisions. CLECA requested the Commission to direct the Utilities to allow customers to update their affidavits more than once per year to reflect changed circumstances.29

SCE replied that it will allow customers to update the DAV of their prohibited resources via a new Affirmative Election at times other than during the November window with two limitations: (1) the change of the default adjustment value must stem solely from a change in the operating status of a prohibited resource associated with the customer’s service account; and, (2) SCE must verify and approve the corresponding change.30 PG&E and SDG&E also agreed with the changes requested by CLECA in their replies.31

3. Consequences for Non-Compliance

In their joint protest to AL 4991-E-A et al., the Environmental Defense Fund (EDF) and Sierra Club assert that the Utilities did not include complete or consistent language indicating the implications of customer and/or aggregator non-compliance with the prohibited resources restrictions adopted in D.16-09-056.32 To address these omissions they requested several changes to tariff and contract language:

1. That the language be strengthened to make it clear that customers that fail to provide the required attestation, or who violate its terms, will be removed from the DR program;

2. That the Utilities, specifically SCE and SDG&E, be required to specify a date on which attestations and DAVs are due;

3. That the Utilities clarify the consequences for aggregators that miss deadlines for providing the required information; and,

30 SCE, “Reply to Protests of AL 3542-E,” p. 3.
31 SDG&E, “Reply to Protest of AL 3031-E;” PG&E, “Reply to Protest of AL 4991-E.”
32 EDF and Sierra Club, op. cit., pp. 3-4.
4. That the portfolios of aggregators that do not obtain customer attestations from all customers by the deadline be reduced by the amount of DR represented by the missing attestations.  

Regarding (1) – that the Utilities alter contract and tariff language to clarify that customers that fail to provide the required attestation or who violate its terms will be removed from the DR program -- SCE agreed with EDF and Sierra Club that customers that fail to provide the required attestation “will be” removed from the relevant program.  SDG&E responded that it believes that it:

“…should be at the IOUs discretion to determine whether or not it will enforce this penalty against the out of compliance party. The out of compliance party may have done so by mistake and attempted to correct their actions, which would include informing the utility. It may also not be reasonable for the out of compliance party to be penalized for 12 calendar months beginning and (sic) the month in which the customer was deemed out of compliance because they were deemed out of compliance a single time.”  

PG&E did not respond on this issue.

Regarding (2) -- that SCE and SDG&E be required to specify a date on which attestations and DAVs are due -- SCE states in its reply that EDF and Sierra Club were incorrect and that its proposed language requires third-party DRPs to provide DAV information at the time of nomination and that customer attestations must be available on request.  SDG&E stated in its reply that it did include a deadline for DR providers or aggregators to provide attestation information to the IOUs.  SDG&E states that AL 3031-E requires each third party DRP to provide to SDG&E, on an annual basis, the language included in their respective contracts and

33 EDF and Sierra Club, op. cit., pgs 2 – 3.  
34 SCE, “Reply to Protests to AL 3542-E,” p. 2.  
35 SDG&E, “Reply to Protests to AL 3031-E,” p. 2.  
36 PG&E, “Reply to Protests to AL 4991-E.”  
37 SCE, “Reply to Protests to AL 3542-E,” p. 4.
agreements informing their customers of the prohibition. PG&E did not respond on this issue.\textsuperscript{38}

Regarding (3) -- that the Utilities clarify the consequences for aggregators that miss deadlines for providing the required information -- SCE objects to EDF and Sierra Club’s characterization on this issue and states that its proposed language includes the following consequence for DRPs: “Failure to comply with the prohibition will be a potential event of default under the Aggregator’s contract with SCE, curable within 30 days after notice.”\textsuperscript{39} SDG&E and PG&E did not address this issue in their replies.\textsuperscript{40}

Regarding (4) -- that Utilities reduce the portfolios of aggregators that do not obtain customer attestations from all customers by the deadline by the amount of DR represented by the missing attestations -- PG&E responds by stating that it does not advocate that Utilities determine the amount to de-rate an aggregators’ portfolio based on the customers that are not affected to participate in the aggregator’s program. They note that just as aggregators are responsible for providing the DAV for each customer, aggregators must re-evaluate their portfolio based on the customers that are not affected to participate as a result of the prohibited resource policy and communicate the portfolio adjustment to the utility. Aggregators, they state, are responsible for complying with the prohibited resources requirements limitations on dispatch of customers in their portfolios. PG&E thus concludes that aggregators must be responsible for de-rate adjustments to their portfolios.\textsuperscript{41} SCE and SDG&E do not address this point in their replies.

\textsuperscript{38} PG&E, “Reply to Protests to AL 4991-E.”
\textsuperscript{39} SCE, “Reply to Protests to AL 3542-E,” p. 4.
\textsuperscript{40} SDG&E, “Reply to Protests to AL 3031-E;” PG&E, “Reply to Protests to AL 4991-E.”
\textsuperscript{41} PG&E, “Reply to Protests to AL 4991-E,” pgs 3-4.
4. Notification and Outreach

EDF and Sierra Club protested PG&E and SDG&E’s advice letters as they did not contain sufficient Marketing, Education, and Outreach (ME&O) plans to ensure effective notification of the prohibition. They contend that neither utility offers a specific plan to ensure that attestations are completed and the impacts of the tariff change understood by utility and aggregator customers.

PG&E concurs in its response that a ME&O plan is critical to successful compliance. PG&E then describes plans to deploy a “multi-channel, multi-touch communications strategy” to its own 200-300 directly-enrolled commercial, industrial, and agricultural customers, notifying them of the list of prohibited resources and the requirement for electronic attestation. PG&E outlines a series of sequenced communications through mail, secured online portal email, reminder emails, and telephone outreach to ensure that customers who have not completed an attestation receive multiple types of communications to finalize their attestation by the required date. PG&E notes however, that as directed in D.16-09-056, aggregators will be designing their own communications and outreach plan for their customers and that PG&E will therefore work with their aggregators to design such plans, but will not conducting the outreach itself.

In its response, SDG&E stated that EDF and Sierra Club’s protest contained a typographical error indicating that the SDG&E did not provide a sufficient plan, and that rather, that EDF and Sierra Club must have meant to refer to SCE. SDG&E’s response suggests that SDG&E included an ME&O Plan as an Attachment B to AL 3031-E. SCE did not respond to EDF and Sierra Club’s protest.

42 EDF and Sierra Club, op. cit., pg. 4.
43 PG&E, “Reply to Protest of AL 4991-E,” pg. 3.
44 D. 16-09-056 at 33.
45 SDG&E, “Reply to Protests to AL 3031-E,” p. 2.
5. Application of Final Decision on Prohibited Resources to DRAM

EDF and Sierra Club observe that D.16-09-056 requires application of prohibited resources requirements to DRAM and that while AL 4991-E-A (PG&E) indicates that the final decision approving AL 4991-E-A will apply to the DRAM program, SDG&E and SCE’s Advice Letters do not mention DRAM. EDF and Sierra Club request that AL 3542-E (SCE) and AL 3031-E (SDG&E) be revised to include DRAM in the list of programs to which the final Decision on prohibited resources shall apply.

SCE in its reply notes that the prohibited resources requirement will be enforced in DRAM through an updated 2018 DRAM Purchase Agreement pro-forma contract which SCE will file in a Supplemental Advice Letter 3466-E-A due February 2, 2017. SDG&E does not address this point in its reply. In their reply to the protest to AL 3466-E-A et al., the Utilities did not address resolution within the DRAM of the full set of issues raised in protests to AL 4991-E-A et al.

DISCUSSION

We have reviewed Advice Letters AL 3466-E-A, et. al. (AL 3466-E-A, 4900-E-A and AL 2949-E-A) and Advice Letters AL 4991-E-A et al. (AL 4991-E-A, 3542-E, and AL 3031-E), as well as all of the protests, replies, Supplemental Advice Letters, and Substitute Sheets filed to the Advice Letters. We discuss each protest issue in turn below, as it pertains to both AL 3466-E-A, et. al. and AL 4991-E-A, et. al.

1. Prohibition Requirements

Prohibited Resources Shall Not be Used to Reduce Load During a Demand Response Event.

The Joint DR Parties requested modifications throughout the ALs to indicate that prohibited resources shall not be used to reduce load during a DR event, and CLECA

46 SCE, “Reply to Protests to AL 3542-E,” pg. 3.

47 SDG&E, “Reply to Protests to AL 3031-E,” p. 2

48 SCE, “Reply to Protests to AL 3466-E-A et al.,” p. 2.
made similar requests.\textsuperscript{49} The Utilities agreed to make this change for both AL 3466-E-A, et. al., and AL 4991-E-A et al.\textsuperscript{50} D.16-09-056 specified in OP 3 that prohibited resources are prohibited from use “for load reduction during demand response events.”\textsuperscript{51} Therefore the changes requested by the Joint DR Parties and CLECA are adopted and the Utilities shall update tariff, attestation, contract language and all other related materials for all affected programs to read that prohibited resources “shall not be used to reduce load during a DR event.”

The Utilities shall reflect this in their supplemental compliance filings to this resolution for AL 3466-E-A et al. and AL 4991-E-A et al.

2. Customer Attestations

Use of Default Adjustment Values for Safety, Health and Operational Reasons

CLECA argued that the Utilities’ tariffs should permit default adjustments for health and operational reasons in addition to safety.\textsuperscript{52} PG&E and SDG&E supported this while SCE disagreed, stating that D.16-09-056 allowed use of DAVs for operational reasons but did not explicitly adopt a provision allowing use of DAVs for health reasons.\textsuperscript{53} However, SCE subsequently provided for customer use of a DAV in the case of safety, operational and health reasons in a Substitute Sheet.\textsuperscript{54}

Although D. 16-09-056 does not specifically allow for use of the DAV for health reasons, it does not identify any objections to this and we see no practical reason why health reasons are distinct from safety reasons in this case. We note that

\textsuperscript{49} Joint DR Parties, “Protest to AL 4991-E et al.” and CLECA op. cit.

\textsuperscript{50} PG&E, SCE, SDG&E, “Replies to Protests AL 4991-E et al.,” p. 2.

\textsuperscript{51} D. 16-09-056 at 84.

\textsuperscript{52} CLECA, op. cit., pp. 2-3.

\textsuperscript{53} PG&E, SCE, SDG&E, “Replies to Protests AL 4991-E et al.,” p. 2.

D.16-09-056 does not define “operational reasons” other than to note that, “fossil-fueled resources can be used in either non back-up or emergency configurations.”

We therefore permit the already-filed modifications to AL 4991-E, et. al. on this matter and approve the consistent application of this language in tariffs and contracts for all affected DR programs and pilots including the DRAM. The Utilities shall reflect the direction in this section in their supplemental compliance filings to this resolution for AL 3466-E-A et al. and AL 4991-E-A et al.

Three-Part Attestation

The Joint DR Parties in their protest to AL 3466-E-A et al. requested that language requiring a customer to state that it “does not have... a prohibited resource,” should be removed. As they had in their response to AL 4991-E-A et al., the Joint DR Parties reasoned that the full original sentence – that a customer, “does not have, and will not use” a prohibited resource – makes little sense, because, “if the customer has to attest that it ‘does not have’ a prohibited resource, how can it then also attest that it will not use a prohibited resource during a DR event.”

As a remedy, in the case of AL 4991-E-A et al., the Joint DR Parties suggested that all three Utilities adopt the following attestation and contract language (JDRP additions underlined; Joint Utilities edits in italics):

“____ I do not have a Prohibited Resource on-site.

55 D.16-09-056, p. 30.
“_____ I do have a Prohibited Resource on-site and I will not use the resource to reduce load during any Demand Response Event.

“_____ I do have a Prohibited Resource on-site and I may have to run the resource(s) during Demand Response events for safety reasons, health reasons, or operational reasons. My Prohibited Resource(s) has (have) a total nameplate capacity of ______ kW. I understand that this value will be used as the Default Adjustment Value (DAV) to adjust the Demand Response incentives / charge for my account.”

The Utilities unanimously agreed to the issues raised by the Joint DR Parties in their replies to protests to AL 4991-E-A et al. 60

Therefore, although the Joint DR Parties did not specifically propose the three-part attestation and contract language in their subsequent protest to AL 3466-E-A et al., we infer that they support use of three-part attestation language across all affected DR programs and pilots.

We agree with the use of this three-part attestation to implement the direction provided in D. 16-09-056. In addition to OPs 3-5, D.16-09-056 states that, “demand response providers shall revise the program tariff or contract language to state that non-residential customers are required to indicate, at the time of enrollment, whether they have a prohibited resource on their premises and agree not to use it to reduce load during a demand response event.” 61 Therefore, these changes are adopted and the Utilities shall alter tariff, attestation, and contract language to require use of this three-part attestation language for non-residential customers participating in all affected programs and pilots including the DRAM.

The Utilities shall reflect the direction in this section in their supplemental compliance filings to this resolution for AL 3466-E-A et al. and AL 4991-E-A et al.

60 Advice Letters (ALs) 4991-E (PG&E), 3542-E (SCE), and 3031-E (SDG&E) (Use of Prohibited Resources for Demand Response).
61 D. 16-09-056, pg. 35.
Opportunity to Update Attestations

CLECA requested that customers have the opportunity to update attestations during the course of a year to reflect changed circumstances. PG&E and SDG&E agreed with this proposal and SCE, in its reply, accepted it with two conditions: (1) the change of the default adjustment value must stem solely from a change in the operating status of a prohibited resource associated with the customer’s service account; and, (2) the Utility must verify and approve the corresponding change.

We find the two conditions requested by SCE to be reasonable and accept it, so long as the customer can provide appropriate proof (e.g., work order, invoice, or inspection). Further, we believe that this approach should be consistently applied to minimize customer confusion and support customer compliance.

The Utilities shall reflect the direction in this section in their supplemental compliance filings to this resolution for AL 3466-E-A et al. and AL 4991-E-A et al.

3. Consequences for Non-Compliance

EDF and Sierra Club raised four specific issues on non-compliance in their protest, which we address in turn here.

Customers that do not provide the required attestation, or who violate its terms, will be removed from the DR program

SCE accepted this EDF and Sierra Club proposal while SDG&E objected, stating that it may not always be appropriate to remove a customer from a program if they failed to comply by mistake and tried to contact the utility to correct their mistake, or were out of compliance on only one occasion. We agree with SDG&E’s logic and

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find helpful to distinguish between different types of non-compliance. Customer failure to provide a required attestation, or providing an inaccurate attestation due to clerical error, may be considered a “Type One” non-compliance issue, whereas failure to abide by a “no-use” attestation or intentionally submitting an inaccurate DAV value are more serious infractions.

SCE proposes in AL 3542-E to differentiate consequences for customers that: (1) fail to provide a signed attestation by the required date, a “Type One” non-compliance issue; versus, (2) those found to have violated their attestations by using a prohibited resource to reduce load during a DR event (in the case of non-residential customers) or their signed contracts (in the case of residential customers), “Type Two” non-compliance issues. SCE states that customer failure to provide a signed attestation results in removal from the program but is curable immediately upon its provision. However, customer violation of the terms of a signed attestation results in removal from the DR program for twelve calendar months after which time the customer will be eligible to re-enroll. PG&E proposed similar language, but would only remove customers with “Type Two” non-compliance issue from the DR program for the remainder of the calendar year.

We believe that SCE’s approach to customer non-compliance as indicated in AL 3542-E is preferable and largely compatible with SDG&E’s concerns. Customer failure to abide by the prohibition terms by attesting to the “no-use” provision, but then using a prohibited resource to reduce load during a DR event; or, intentionally submitting an invalid nameplate capacity value for the prohibited resource(s) may be considered “Type Two” non-compliance actions that necessitate significant consequences. We believe, as SCE proposed, that removal of customers to whom this applies from the DR program for a period of twelve calendar months is the appropriate time frame. PG&E’s approach of removing customers for only the remainder of the calendar year sends an inappropriate and mixed message that it is all right for a customer to violate the terms of the prohibition in October but not in January. PG&E’s proposed approach is particularly inadequate since many DR programs are only dispatched a handful of times a year.

Further, we believe that progressive consequences are appropriate for any customer found to have had a “Type Two” non-compliance issue two or more times. We believe that dis-enrollment for a period of three years from the relevant DR program for repeated instances of “Type Two” infractions is reasonable.

Other types of non-compliance appear to be less serious “Type One” non-compliance issues that may not undercut the intent of the prohibition, at least during this launch phase, and that may well occur due to administrative error. We will allow up to a 60-day “cure” period for customers and DRPs to correct such instances, as long as the correction is validated, and, when appropriate, verified.

D.16-09-056 also specified that tariff or contract language for residential customers on the prohibition required that, “an additional and separate provision is added near the beginning of the tariff or the customer contract highlighting the prohibition,” a step that will increase customer awareness that was not reflected in Utility ALs, nor raised in protests.65

In order to support customer awareness of the prohibition, and compliance, we believe that setting a modest time frame for DR provider notification and outreach activities to begin is appropriate.

Outlining consistent consequences for non-compliance actions across all Utilities and all affected DR programs support DR provider and customer understanding of the prohibition, compliance with it, and will streamline verification.

We therefore require use of the following approach in supplemental compliance filings to this resolution for AL 4991-E-A et al., and AL 3466-E-A et al.:

1. All DR providers with returning customers, including Utilities and third-party aggregators in DRAM or other affected DR programs, will begin the process of notification and outreach to their own customers only no later than

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65 D. 16-09-056 at 37.
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60 days from approval of the supplemental compliance filings to this resolution. Notification and outreach shall include activities such as providing all returning non-residential customers with a three-step attestation as discussed herein; or, for new customers, providing an updated customer contract that: (A) outlines the prohibition in a new and separate provision near the beginning; (B) indicates that customer compliance may be subject to verification; (C) indicates the consequences of non-compliance specified herein; and, (D) for non-residential customers, requires a customer signature, which may be electronic. Non-residential attestations shall be appended upon completion to existing non-residential customer contracts, as appropriate.

2. Any returning customer that does not accept (residential) or agree to the prohibition by signing an updated contract or completing an attestation (non-residential) by December 31, 2017, or the Utility-established contract submission data in Q4 2017, will be removed from the relevant program no later than January 7, 2018 but will be eligible to re-enroll subject to acceptance (residential) or upon submittal of the updated contract / attestation (non-residential). Any new customer that does not accept (residential) or agree (non-residential) to the prohibition will not be eligible to participate in the DR program. These are “Type One” infractions.

3. Type One infractions include mistakes that may be reasonably found to be clerical or administrative in nature such as inaccurate representation in an attestation of a nameplate value of a prohibited resource or that no prohibited resource is on site, as long as the resource is not used to reduce load during a DR event. These instances of “Type One” infractions may be subject to a 60-day cure period for customer correction and DRP validation.

4. Any customer that is found to have: (a) attested to the “no-use” provision but is verified to have used a prohibited resource to reduce load during a DR event; or, (b) intentionally submitting an invalid nameplate capacity value for the prohibited resource(s) will be removed from the DR program for twelve calendar months from the date of removal after which time the customer will be eligible to re-enroll. The consequences for two or more such instances shall be removal from the DR program for a period of three years.
The Utilities shall reflect this direction in their supplemental compliance filings to this resolution for AL 3466-E-A et al. and AL 4991-E-A et al.

Utilities shall specify a date on which attestations and default adjustment values are due

D.16-09-056 at OP 4(b) indicates that existing non-residential customers in affected DR programs must provide attestations no later than December 31, 2017, and that new non-residential customers must do so at the time of enrollment. D.16-09-056 is less clear to whom these signatures and attestations must be provided, however.

Review of party comments on AL 3466-E-A et al. and AL 4991-E-A et al. reveal complexity regarding requirements for customer submittal of attestations by the specified dates. This is because attestations include customer account information that is confidential in the case of nomination programs such as the DRAM. Rule 24 and Rule 32 addressed this confidentiality issue by requiring a “firewall” between Utility Rule 24 / 32 staffs and Utility DR Program staffs. The rules ensure that Rule 24 / 32 staffs may assist third-party aggregators with CISR form completion, provide information for DRAM customer registration in the CAISO’s DRRS, and provide customer load data for CAISO Settlement processes. But, Rule 24 / 32 staffs may not provide customer specific information to Utility DR Program staffs, nor may they participate directly in DRAM DRP contract management activities.

While the Rule 24 / 32 firewall provides protections to support DR competition, it complicates implementation of the prohibition. In effect, neither group of Utility staffs is permitted to both: (1) review attestations containing DRAM customers

66 D.16-09-056, OP 4(b), pg. 85.

account information; and, (2) undertake remedial actions as specified in DRAM contracts in the case of inaccurate or incomplete attestations.\(^68\) This challenge does not exist for non-DRAM third party aggregator programs.

We therefore take the following approach to address this DRAM-specific challenge:

1. Aggregators shall be required to collect and store attestations for all returning non-residential customers by December 31, 2017;
2. Aggregators participating in all affected DR programs other than the DRAM shall be required to provide attestations for returning customers to Utilities no later than the Utility-specified submittal date in Q4 2017.
3. Aggregators participating in the DRAM shall be required to make attestations available upon request after December 31, 2017 to Utilities and/or the Commission, as approved via Advice Letter.
4. Aggregators participating in DRAM shall record and submit a summary of DAV values alongside submittal of monthly Demonstrated Capacity information\(^69\) as part of invoicing; aggregators participating in non-DRAM affected DR programs shall undertake similar procedures. Utilities shall deduct DAV values from aggregator capacity payments;
5. Utilities shall modify Demonstrated Capacity templates and other forms as necessary to accommodate monthly DAV submittal with invoicing;

\(^68\) While Utility DR Program staffs are prohibited from receiving customer account information directly from Utility Rule 24 / 32 staffs, they may receive it if transmitted directly from the DRPs. This would seem to undercut the spirit of Rule 24 / 32 prohibitions, however. Possible “work-arounds” to this merit further exploration that is not feasible prior to adoption of this Resolution.

6. Third parties and Utilities, in their role as DRPs, shall instruct their respective Scheduling Coordinators to bid into the CAISO wholesale market their DR portfolio amounts (MW) prior to de-rating. 70

7. Utilities are authorized to confer with DRPs and Commission staff to identify an agreed upon format for attestation submittal, and to refine other implementation details adopted herein, as needed;

8. Utilities are authorized to submit a Tier 2 Advice Letter outlining agreed-upon procedures for collection of DRAM customer attestations and any necessary modifications to the prohibition implementation procedures adopted here by September 15, 2017. Utilities may also in this Advice Letter, or that due May 26, 2017, request funding or fund-shifting authority necessary to implement the prohibition.

With regards to residential customers, Utilities shall require in their contracts with third-party aggregators that by December 31, 2017, and on an annual basis thereafter, third-party aggregators shall provide the language on the prohibition included in their respective residential customer contracts.

The Utilities shall reflect the direction in this section in their supplemental compliance filings to this resolution for AL 3466-E-A et al. and AL 4991-E-A et al.

Consequences for aggregators that miss deadlines for providing the required information

SCE included language in AL 3542-E stating that it would apply the following to aggregators that fail to comply with the prohibition: “failure to comply with the prohibition will be a potential event of default under the Aggregator’s contract with SCE, curable within 30 days after notice.” 71 However, SCE only proposed this

70 It is the de-rated portfolio capacity amount that must be used by Utilities to determine capacity payments to aggregators. Utility contracts with aggregators should properly reflect this. Aggregator’s contractors with their customers, however, must require the customer to provide the full load drop amount prior to de-rating. It is this full load drop amount that must be bid into the wholesale market. See Appendix II for an illustration.

approach for “non-tariffed DR contracts to third party-aggregators in 2018 and beyond.” SCE did not propose to apply this approach to its BIP or CBP programs or to the DRAM pilot, all of which allow for aggregator participation. SDG&E and PG&E did not propose language on this topic.\(^{72}\)

Again, we believe that a consistent and clear approach is necessary to ensure full customer compliance with the prohibited resource provisions of D.16-09-056. The Decision states that all DRPs, including the Utilities and third party DRPs “shall enforce the prohibition,” and that this shall be accomplished through tariff and contract language for all affected programs, including “similar language” in third party DRP contracts with customers.\(^{73}\) We conclude that the Utilities have not met this requirement with regards to indicating clear and consistent consequences for third party aggregators that fail to comply with the provisions of the Decision. We see no reason why consequences to third party aggregators for failure to comply with the prohibitions should vary across programs. We believe that any lack of clarity or consistency in the application of our adopted prohibitions will negatively impact both customer and third party aggregator compliance. We therefore approve the approach taken by SCE in AL 3542-E with regards to future aggregators and require the Utilities to modify tariff and contract language to add the following provision for all affected programs and pilots allowing aggregator participation:

“Failure to comply with the prohibition will be a potential event of default under the Aggregator’s contract with [[SCE], [PG&E], or [SDG&E]], curable within 30 days after notice.”

The Utilities shall reflect this direction in supplemental compliance filings to this resolution for AL 3466-E-A et al. and AL 4991-E-A et al.

\(^{72}\) PG&E, “Request for Approval of Tariff Language to Implement the Policy on the Use of Prohibited Resources;” and, SDG&E, “SDG&E Tariff and Contract Revisions to Address the Prohibition of Backup Generation Pursuant to Decision D.16-09-056,” p. 4.

\(^{73}\) D.16-09-056, OP 4 at 95, 32, and 40.
Portfolios of aggregators that do not obtain customer attestations from all customers by the deadline should be reduced by the amount of DR represented by the missing attestations.

PG&E disagrees with the request by EDF and the Sierra Club in this area, stating that it does not advocate that Utilities determine the amount to de-rate an aggregators’ portfolio and that aggregators must be responsible to de-rate and provide adjustments to their own portfolios.\(^{74}\) For the most part, we concur with PG&E on this point. Aggregators shall collect attestations for all of their returning customers by December 31, 2017; ongoing or new customers that do not agree to the prohibition and provide an attestation shall be removed from the program. We have indicated above that aggregators shall provide DAVs to Utilities on a monthly basis. Utilities shall then deduct the DAV amount from the aggregator capacity payment.

We encourage Utilities, third-party aggregators and Scheduling Coordinators to discuss DAVs with the California Independent System Operator (CAISO) and to identify whether and if so the appropriate means by which DAVs or other information may be represented in DR bids and settlement payments in the wholesale market.

4. Notification and Outreach Plans

D.16-09-056 requires all DR providers to “furnish to existing customers notification and outreach about the changes,” and that in the case of aggregator programs, “it is the responsibility of the third-party aggregator to provide such notification and outreach.”\(^{75}\) The Decision further specified that for returning non-residential customers, the DRPs shall provide “notice to the customers of the new provision and outreach that a signature…” shall be provided by December 31, 2017.\(^{76}\)

\(^{74}\) PG&E, “Reply to Protests to AL 4991-E,” p. 3-4.

\(^{75}\) D. 16-09-056 at 33.

\(^{76}\) D.16-09-056, OP 4.b. at 96.
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All Utilities state that they plan to begin customer education and outreach to educate customers about the list of prohibited resources that may not be used for load reduction during DR events following Commission approval of proposed tariff and contract language. SCE and PG&E also provide descriptions of their proposed customer outreach and notification strategies and propose several metrics to assess the effectiveness of their outreach. 77

SDG&E included in AL 3031-E a marketing section outlining steps its Account Executives will take to contact and inform customers of the changes required via mail and email. However, SDG&E also said that, “it will not require the customer to select attestation or default adjustment until the final audit verification plan is approved by the Commission.” 78 PG&E also stated that it will notify its direct-enrolled BIP customers, along with BIP and CBP aggregators of the attestation requirement or default adjustment once the Commission approves the audit verification plan advice letter. 79 D. 16-09-056 states that attestations shall be required for all returning non-residential customers no later than December 31, 2017. 80 We therefore find SDG&E’s correction to EDF’s protest to be incorrect and find SDG&E’s notification and outreach plans on the prohibition to be insufficient.

We agree with EDF and Sierra Club that D.16-09-056 requires notification and outreach on prohibited resources requirements and that thorough planning and

77 SCE AL 3542-E, “Proposed Draft Language for the Provision of Prohibited Resources During Demand Response Events in Compliance with Decision 16-09-056” (January 3, 2017), p. 6, Attachment B.


80 D.16-09-056 OP 4(b)
performance of actions is necessary to ensure customer compliance. AL 3542-E (SCE) and PG&E’s Reply to Protests to AL 4991-E provide general information on their notification and outreach plans. There are some gaps, however, so we clarify several modifications necessary for all Utility outreach and notification plans. Final Utility notification and outreach plans shall be included in supplemental compliance filings to AL 4991-E et al. and shall:

- Conform to D.16-09-056.
- Provide metrics and include targets for each metric.
- Clearly indicate that Utilities will conduct notification and outreach to their own customers only, and that third-party aggregators will conduct notification and outreach to their own customers.
- State that Utilities will coordinate with third party aggregators on their respective notification and outreach activities to avoid duplication and minimize customer confusion.

Utility submittals were also not fully clear on requirements in programs allowing participation of third-party aggregators. For DRAM, any such requirements must preserve a neutral competitive playing field for participating third parties aggregators. Therefore, we require all Utilities to add language to their contracts requiring third-party aggregators to:

- Undertake outreach and notification to all customers informing them of the prohibition;
- Develop metrics, targets and record keeping systems to assess the effectiveness of their customer outreach and notification efforts.
- For DRAM, be able to demonstrate these materials to the CPUC upon request.
- For other third-party aggregator programs, be able to demonstrate these materials to Utilities upon request.

The Utilities shall reflect the direction in this section in their supplemental compliance filings to this resolution for AL 3466-E-A et al. and AL 4991-E-A et al.
5. Application of Final Decision on Prohibited Resources to DRAM

We agree with EDF and Sierra Club that D.16-09-056 requires application of the prohibited resources requirements to DRAM. However, as noted, AL 3466-E-A et al. does not adequately ensure application of the prohibited restrictions to the DRAM in conformance with D.16-09-056. We have, therefore, throughout this resolution indicated additional changes that we require in an approved AL 3466-E-A, and that we require the Utilities to adhere to in a supplemental compliance filing to this resolution. To support a timely Utility supplemental compliance filing on AL 3466-E-A et al., we summarize the changes we approve herein to apply to that supplemental compliance Advice Letter to this resolution in Appendix A.

Issues Not Raised in Protests:

Consequences of Non-Compliance – Ineligibility to Participate in Any Affected DR Program for One Calendar Year.

Given the lack of stringency seen in AL 4991-E-A et al., we wish to send a clear and consistent signal to Utilities, third-party aggregators and customers regarding this prohibition. We believe such clarity and consistency aligns with the goal of streamlining verification activities. Therefore, in order to be clear and consistent, and to discourage customer gaming of DR programs regarding the prohibitions, we approve modifications to the Advice Letters of all Utilities such that customers who have been found to have violated their attestation or their signed contract under an affected program a single time shall be removed from all affected DR programs including the DRAM for twelve calendar months from the time of removal. The consequences for two or more violations shall be removal from all affected DR programs for a period of three years.

For non-residential customers, an attestation is considered violated if: (a) a customer attests to the “no-use” provision but is verified to have used a prohibited resource to reduce load during a DR event; or, (b) a customer intentionally submits an invalid nameplate capacity value for the prohibited resource(s);

The Utilities shall reflect the direction in this section in their supplemental compliance filings to this resolution for AL 3466-E-A et al. and AL 4991-E-A et al.
Affected DR Programs:

The Decision indicates a finite list of exempt programs, implying that all DR programs and pilots that are not explicitly exempted shall be subject to the prohibitions. Only PG&E mentioned affected DR pilots in AL 4991-E-A, but failed to outline the requirements it would apply to these pilots. SCE & SDG&E failed to indicate any affected pilots subject to the prohibitions. SCE further referenced future undefined “future non-tariffed DR contracts to third-party aggregators,” but did not fully describe requirements such aggregators would be subject to, as discussed above. We consider that as DR pilots were not specifically exempted from the restrictions in the Decision these should be considered “affected DR programs” to which the restrictions shall apply.

We define “affected DR programs” as all DR programs and pilots not specifically exempted from the prohibition requirements in D.16-09-056. Likewise, we require the Utilities to:

- Apply the modifications specified herein to all affected DR programs, pilots and contracts operating in the years 2018 and forward, unless explicitly exempted by Commission decision;
- Include in the compliance filings ordered herein the contract language requirements on prohibited resources that they will apply to all affected 2017 DR pilots continuing into 2018. Affected pilots include all Utilities’ Excess Supply Pilots, PG&E’s Supply Side II Pilot (SSP II), and SDG&E’s Armed Forces Automated DR Pilot.81

The Utilities shall reflect the direction in this section in their supplemental compliance filings to this resolution for AL 3466-E-A et al. and AL 4991-E-A et al.

Reducing Uncertainty on DRAM Participation Costs Prior to Verification Plan Approval

81 D.16-06-029 at 6, 9, 13, 19 and OP 25(d) at 94.
D.16-09-056 approved preparation of a Prohibited Resources Verification Plan ("Plan") parallel to the roll-out of the DRAM III pilot. In that we required Utility submittal of a draft Plan on April 1, 2017, but see now that this timing necessarily entails that we will approve the Plan subsequent to the timeframe for DRAM III bid submission and contract completion as approved in Resolution E-4817. We cannot prejudge here what verification approaches we will approve in the Plan. However, we see now that the lack of certainty about the nature and cost of these requirements could negatively impact DRAM III bidding and contracting processes. Prior to approval of the Plan, we see the primary need as minimizing uncertainties about the cost of verification activities to customers and third-party aggregators in DRAM III. Therefore, we adopt an exemption herein such that the installation of additional interval metering shall not be required for verification purposes for customers included in DRAM III pilot contracts. However, Resolution E-4817 also authorized a “secondary” DRAM III pilot auction in 2018, contingent on certain conditions. Therefore, we clarify that this exemption from interval metering requirements for verification shall be applied only to DRAM III pilot customer and third-party aggregator contracts signed prior to adoption of the Plan. DRAM III pilot contracts signed subsequent to our adoption of the Plan shall be responsive to the final terms of the Plan itself, not the exemption approved herein.

Estimated Costs

SCE and PG&E in their respective Advice Letters did not request fund-shifting approval as provided for in D.16-09-056. However, SDG&E in AL 3031-E requests authority to shift $934,498 2017 DR funds to implement the prohibition. They indicate that $933,498 is required for system changes and $1,000 for marketing and outreach. SDG&E proposes to shift the funds from “Category 4 – DR Enabling Programs Technology Incentives (TI)” from the 2017 Demand Response Approved Program Budget. We disagree with SDG&E’s proposal and authorize the utility to

82 SDG&E, “Tariff and Contract Revisions to Address the Prohibition of Backup Generation Pursuant to Decision 16-09-056,” p. 4.
shift funds across more categories rather than solely from its Category 4 budget. We direct SDG&E to draw funds from additional underspent programs in order to avoid potential bulk depletion of Category 4 funds and require SDG&E to revise its fund-shifting proposal in its supplemental compliance Advice Letter (AL 3031-E-A) to this resolution as required herein.

**COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on March 27, 2017.

Three parties provided comments on April 17, 2017: Ohm Connect and Electric Motor Werks, Inc; the Joint DR Parties; and, the Joint Utilities. The Joint Utilities subsequently provided revised comments on April 19, 2017. We summarize their comments here.


Eliminate Requirement of a Monthly Spreadsheet and Authorize the Development of an Agreed Upon Implementation Approach

The Joint DR Parties have “serious concerns” about the need for and use of a monthly summary spreadsheet of customer attessions and DAVs, as proposed in the draft Resolution. They state that this would be an administrative burden and include information that is not directly related to affirming whether a customer is using a prohibited resource or not. The spreadsheet would provide IOUs with information additional to that needed to register the customer into the wholesale market, which is “extremely competitively sensitive,” and the need for it has not been demonstrated. The IOUs concur that submittal of a summary spreadsheet of customer information, including account numbers, is problematic, and does not address the needs of nomination-based programs like the DRAM. The IOUs request that they be allowed to work with aggregators to develop the best implementation approach.

We concur with these comments and conclude that submittal of a customer attestation summary spreadsheet will not be required. For the DRAM, resolution of this issue is greatly complicated due to the “firewall” mandated in Rule 24 and Rule 32, which prohibits Utility staff engaging in data provision to support customer registration in DRAM to transfer customer specific information to Utility staff managing DR programs or the DRAM auction.

We permit the following approach as a starting basis that may be further developed or modified through collaboration between Utilities and aggregators: (1) third-party aggregators participating in DRAM shall collect attestations for all returning non-residential customers by December 31, 2017, and for all new non-residential customers at the time of enrollment and shall store these and make them available upon request to the Utility or the Commission; (2) third-party aggregators in all

88 Joint Utilities, “Revised Comments,” April 19, 2017, p. 4-5.
other affected DR programs shall provide attestations for all returning non-residential customers to the Utility by the Utility-specified date in Q4 2017, and all new non-residential customers at the time of enrollment; (3) third party aggregators shall provide the attestations to Utilities or the Commission in a mutually agreed on format; (4) third party aggregators shall submit their monthly DAV values as part of their invoicing for capacity payments, and Utilities shall modify the relevant forms as needed to accommodate this.

To the extent modifications are needed to this initial framework, we authorize Utilities to file final details of the agreed-upon prohibition implementation approach in a Tier 2 Advice Letter no later than September 15, 2017, or in the May 26, 2017 supplemental Advice Letter required in this resolution.

A Public Workshop to Discuss Additional Issues

The Joint Utilities proposed that the Commission schedule a public workshop to discussing remaining outstanding challenges to implement the prohibition. They propose several topics:

- Understanding that the prohibited resources restriction applies to DRAM, but does not include monitoring through Rule 24/32 processes;
- Clarification that if a customer is removed from an affected DR program, reenrollment will be subject to available room and waitlists may be applicable;
- Consideration in advance of implementation of needs for additional dispute resolution processes such as arbitration;
- Clarification that removal of customers with verified Type Two non-compliance issues from all DR programs does not pertain to programs that have been exempted in D.16-09-056 OP 3.

The Utilities note that additional funding or an exception from fund-shifting rules may be needed to implement the prohibition. They indicate that requests of this
nature could be included in the required May 26, 2016 supplemental filing if the requested workshop occurred prior to this date.\textsuperscript{90}

We concur that an additional public workshop would be useful and direct Commission staff to coordinate with IOUs and aggregators on the timing and agenda. We will permit the May 26, 2017 supplemental filing to indicate funding or fund-shifting requests for Utilities to implement the prohibition if the timing allows for this. Alternatively, Utilities may submit funding or fund-shifting requests in the optional Tier 2 Advice Letter authorized above.

Recognize that Certain Infractions are More Serious than Others

The Joint DR Parties indicated that our draft erred in not sufficiently differentiating types of non-compliance infractions. They state that infractions such as “misrepresenting the existence of an on-site generator, the use of it or a nameplate capacity” may be administrative errors and are not all equally problematic to the intent of the prohibition, which is specifically to prevent the use of prohibited resources to reduce load during DR events. If a customer doesn’t identify an on-site generator but it is not used to reduce load during a DR event, they argue, there is “no harm to the intent of the prohibition.” They request that a customer that represents its nameplate capacity at a level that is disputed should have a chance to resolve the dispute without being expelled from the program.

The Joint DR Parties state that denial of capacity payments for one to three years for what may be administrative errors is a significant and punitive judgment that will drive customers away from DR. Immediate expulsion for errors not undercutting the intent of the prohibition eliminates opportunities to cure deficiencies, they state. The Joint DR Parties request greater balance between discouraging use of prohibited resources and wanting customers to provide DR services.\textsuperscript{91}

We agree that the draft erred in not sufficiently differentiating types of customer non-compliance issues, particularly the instance where a customer attestation is

\textsuperscript{90} Joint Utilities, “Revised Comments,” April 19, 2017, p. 4-5.

\textsuperscript{91} The Joint DR Parties, “Joint Comments” April 17, 2017, p. 6.
found to have misrepresented the prohibited resource(s) on site, but these resources were not used to reduce load during a DR event. In this case, we agree that a cure period, allowing customers to correct attestation errors is appropriate. We authorize use of a 60-day cure period for these cases and modify the resolution to reflect this. We request that the workshop authorized above discuss appropriate consequences in the cases where a customer is found to have submitted an inaccurate attestation more than one time, or additional possible non-compliance scenarios not mentioned herein.

**New Non-Residential Customers Will be Informed of the Prohibition through Contracts and Returning Non-Residential Customers will Acknowledge the Prohibition Through Attestations**

The Joint DR Parties request clarification that returning non-residential customers of third-party DR aggregators be permitted to acknowledge the prohibition through provision of a signed attestation that may be appended to an existing contract as appropriate. New non-residential customers will receive both the contract and the attestation at the same time, they state, with the understanding that participation as a DR resource depends on abiding by the terms of the prohibition.  

We concur that this is an acceptable response in alignment with D.16-09-056 and have modified the resolution accordingly.

**Utilities Shall Engage Only with their Own Customers and Third Parties Only with Theirs to Implement the Prohibition**

The Joint DRPs requested clarification on draft language that they saw as authorizing Utilities to collect attestations directly from the customers of DRAM third-party aggregators. The Joint DR Parties also request clarification on which entities— Utilities or third-party aggregators – are responsible for contacting the customers of third-party aggregators as part of the required notification and outreach. The Joint DR Parties further request that the Commission direct the

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92 The Joint DR Parties, “Joint Comments” April 17, 2017, p. 3.
Utilities to closely coordinate with third-party DR aggregators about their outreach and notification plan to minimize the likelihood for customer confusion.\textsuperscript{93}

We clarify that Utilities may request the attestations of the customers of non-DRAM third-party aggregators, as discussed above, but shall in all instances request these from the relevant third-party aggregator, not directly from the customer. In addition, Utilities shall not target nor contact the customers of third-party aggregators as part of Utility outreach and notification activities on the prohibition. Third-party aggregators alone are responsible for outreach to their own customers. We also direct Utilities and third-party aggregators to closely coordinate about their intended outreach and notification plans to minimize customer confusion.

\textbf{Allow Customers to Change their Attestations as Often as Needed:} The Utilities suggest that customers be allowed to change their attestations mid-year more than once because “IOUs seek the most accurate information... and so long as a customer can provide a new enrollment form and appropriate proof (e.g., work order, invoice, or inspection) of a changed, added or removed prohibited resource, the customer should be able to update its attestation to adjust the DAV.” The Utilities agree that a customer should only be authorized to adjust its DAV due to a changed, added or removed prohibited resource.\textsuperscript{94}

We concur and will not limit the frequency of such changes as long as the customer can provide a new enrollment form, where applicable, and appropriate proof (e.g., work order, invoice or inspection to support the updated attestation and DAV. We have altered the resolution to reflect this.

\textbf{Deadlines for Customers to Submit Updated Contracts or Attestations Should be Revised in Line with IOUs Existing Deadlines.}

The IOUs request authorization to establish their own contract submission dates so long as non-conforming customers can be removed from the relevant programs by January 7, 2018. The IOUs wish to require customers in BIP, BIP-ADD and API to

\textsuperscript{93} The Joint DR Parties, “Joint Comments” April 17, 2017, p. 4.

\textsuperscript{94} Joint Utilities, “Revised Comments,” April 19, 2017, p. 2.
submit the documents no later than December 1, 2017; customers in third-party programs in which SCE is the DRP must submit the documents no later than December 15, 2017. Both of these dates precede the date now required, December 31, 2017. 95

We accept this proposal.

A “Click” May Function as an Electronic Signature

OhmConnect and eMotorwerks request modifications to indicate that for residential customers, a “click” may constitute a customer signature for purposes of the prohibition. They site D.16-09-056, which indicates that an electronic signature is acceptable, and D.16-06-008, which indicates that a “click” “provides reasonable verification of the customer’s signature.” 96

We accept this proposal as long as the customer is provided with the Terms of Use and the relevant prohibition information as part of moving to the “click.”

Residential Customers May “Accept” the Prohibition

OhmConnect and eMotorwerks argue that D.16-09-056 only requires non-residential customers to provide a signature as part of agreeing to the prohibition. They propose that residential customers may “accept” the prohibition and need not “agree to it via signing an updated contract.” They explain that existing third-party contracts with customers typically allow contract terms to change with notification and ensure that customers agree to these changes in the Terms of Use by their continued use of the DRP’s services. 97

We accept this proposal.

Clarify Obligations of Utilities as DRPs

The Joint DR Parties request clarification on the consequences to Utilities of non-compliance with the prohibition. They state that issues that need clarification include: to whom must IOUs demonstrate compliance? Who is ensuring that the capacity the utilities’ submit monthly to CAISO contains only customers that have submitted attestations and agreed to abide by the prohibition? Might penalties be levied on Utilities for failure to comply with the terms of the prohibition, and how would this occur?

The Joint DR Parties argue that these questions must be answered fairly and clearly to ensure a fair competitive environment, rather than any advantage to the IOUs.98

We are sympathetic to these questions and the concern for fair application of the prohibition. To address this we note the following:

Commission staffs may assess Utilities’ (in their role as DRPs) conformance with customer attestation and DAV collection requirements through data requests and/or audits at any time, including requests of: (1) lists of customers enrolled in the affected DR program(s); (2) Attestation information for all continuing Utility customers enrolled in the product(s); (3) A list of customers taking DAVs and their amounts; and, (4) Records indicating that aggregator and/or customer incentive payments have been adjusted by DAVs, as applicable.

This type of validation of Utility compliance with the prohibition may also be appropriate for inclusion in the Verification Plan (Plan) directed in D.16-09-056. We request that the Plan development process consider whether and how any consultants retained to implement the final Plan may perform this and other “Type One” non-compliance oversight activities as discussed herein.

Additional “Type One” Non-Compliance issues that could arise for Utilities in their role as DRPs include:

• Utility (as DRP/Scheduling Coordinator [SC]) enrollment of a non-residential customer in DR program when the customer has not provided an attestation;
• Utility (as DRP/SC) failure to ensure correction of customer attestations found to be inaccurate, but for which the resources in question had not been used to reduce load during a DR event;

As with third-party DRPs, allowing a 60-day opportunity to cure these deficiencies seems reasonable, noting the frequency for which this issue occurs in relevant reporting materials, with no further consequences at this time.

“Type Two” Non-Compliance issues that could arise include Utility (as DRP/SC) failure to expulse a customer verified to violated its attestation for the indicated time frame (1 year for one violation; 3 years for two or more).

Although we anticipate little immediate need for concern in this area, we request that Commission staff report such instances to the Commission’s Enforcement Division (with a copy to parties to R.13-09-011) for further action no later than 60 days after they are verified to have occurred.

Additional Corrections:
The Joint Utilities suggested additional corrections, generally grammatical in nature, including:99

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• Modify OP 5 to clarify that only non-residential customers may use a DAV. Also, modify attestation language to allow customers to indicate that they “may have to” run a prohibited resource, not that they “must” during a DR event. We accept these modifications.

• Modify OP 27 to conform to dicta discussion, which correctly indicates that DRPs shall not apply the de-rated portfolio values in the CAISO wholesale market. We accept this modification.

• OP 37: Clarify that utility retail meters may be used in the verification process. To address this IOUs, propose to modify language that for DRAM, “interval metering the installation of additional interval meters will not be required for verification proposes…” In addition, add this clarification to Appendix 1 (E), which currently does not mention this issue. We accept this modification.

• Clarify Appendix 1 (DRAM standard contract language) to add, at the bottom of “B” the language that, “Seller shall collect and store all such Customer attestations. Buyer may, at Buyers election, collect and store such Customer attestations after December 31, 2017.” We accept this proposal with modifications as discussed above that clarify that: (a) Utilities shall not collect these attestations directly from the customers of third-party aggregators, but rather from the aggregator; and, (b) Utilities shall not request customer attestations from DRAM third-party aggregators until such time as the method for accomplishing this has been approved via Advice Letter as outlined herein.

• Modify Appendix 1 (C) to indicate that non-residential customers that fail to provide an attestation at the time of enrollment (if a new customer) or by December 31, 2017 (if an existing customer) will be removed from the Seller’s DRAM Resource (rather than all affected DR programs), but will be eligible to re-enroll subject to the requirements of the prohibition. We accept this modification.

• Modify Appendix 1 (D) with grammatical corrections to provide clarity. We accept this modification.

• Modify Appendix 1 (E) to indicate that Sellers will develop “metrics, targets and record keeping systems to assess the effectiveness of their customer outreach and notification efforts… and will provide such materials to Buyer
upon Buyer’s request.” We accept this modification, but suggest that such notification and outreach plans may be provided to the CPUC rather than the Buyer, at the Seller’s election.

- Modify Appendix 1 (E) to point to a “Exhibit G” that will set forth the requirements of the completed attestation summary spreadsheets. The requirement for a spreadsheet has been eliminated.

**FINDINGS**

1. Ordering Paragraph 4(c) of D.16-09-056 directed Southern California Edison (SCE) Company, Pacific Gas & Electric (PG&E) Company, and San Diego Gas & Electric (SDG&E) Company (jointly, the Utilities”) to file a Tier 3 Advice Letter (AL) to proposing draft language for the new prohibited resources tariff provision for review and approval. D.16-09-056 directed the Utilities to include proposals for fund shifting from within the 2017 demand response budgets to cover the costs of implementing the prohibition.


4. The Utilities filed AL 3466-E-A (SCE), 4900-E-A (PG&E) and, 2949-E-A (SDG&E) (AL 3466-E-A et al.) on February 2, 2017.

5. Both AL 4991-E-A and AL 3466-E-A et al. included proposals to address the requirements of D.16-09-056 on prohibited resources, including Ordering Paragraphs 3 – 4 and Section 4.1.3.

6. AL 3466-E did not discuss prohibited resource requirements of D.16-09-056, nor did Resolution E-4817.

7. AL 3466-E-A et al. complied with all of the requirements contained in Resolution E-4817.
8. The Utilities in AL 4991-E-A et al. and AL 3466-E-A et al. did not outline consistent contract language and tariff changes to implement the prohibited resources requirements of D.16-09-056.

9. It is reasonable that the tariff and contract provisions to implement the prohibition requirements of D.16-09-056 be reviewed for consistent application across all affected DR programs and addressed in a single resolution.

10. D.16-09-056 indicated the following list of resources are prohibited to be used to reduce load during DR events beginning on January 1, 2018: distributed generation technologies using diesel, natural gas; gasoline; propane; or liquefied petroleum gas in topping cycle Combined Heat and Power (CHP) or non-CHP configuration.

11. D.16-09-056 exempted the following resources from the prohibition: pressure reduction turbines, waste-heat-to-power bottoming cycle CHP, and, storage and storage coupled with renewable generation that meets the relevant greenhouse gas emissions standards adopted for the Self Generation Incentive Program.

12. In AL 4991-E-A et al. the Utilities identified the following programs as subject to the new prohibition provisions in 2018: the Capacity Bidding Program (CBP), the Base Interruptible Program (BIP) and, for SCE, the Agricultural and Pumping Program (AP-I).

13. In AL 3542-E, SCE indicated that it may have DR non-tariff, aggregator contracts subject to the new prohibition provision in 2018 but did not identify any program by name, nor did it identify any pilots as subject to the prohibitions.

14. PG&E, in AL 4991-E-A, identified the DRAM III pilot, its local Supply Side II Pilot (SSP II) and its local Excess Supply Pilot (XSP) as subject to the prohibition, but did not provide any proposed tariff or contract language to address these pilots.

15. SDG&E in AL 3031-E did not identify any pilots as subject to the prohibitions.

16. D.16-09-056 exempted the following DR programs from its prohibited resources requirements: Residential and Non-Residential SmartAC™, Optional Binding Mandatory Curtailment (OBMC), Scheduled Load Reduction Program (SLRP), Permanent Load Shift (PLS), Peak Day Pricing (PDP), SmartRate™, and time-of-use (TOU) rates.
17. It is reasonable to conclude that beginning on January 1, 2018, all Utility demand response (DR) programs and pilots not explicitly exempted from the prohibitions adopted in D.16-09-056 are subject to them and shall be considered affected DR programs.

18. D.16-09-056 at OP 3 specified that the listed prohibited resources shall not be used for load reduction during DR events.

19. AL 4991-E-A et al. incorrectly included proposed tariff and contract language requiring non-residential customers to agree not to use a prohibited resource while reducing load during a DR event.

20. D.16-09-056 at OP 4(b) states non-residential customers may use prohibited resources for safety reasons during a DR event if they agree to a default adjustment.

21. D.16-09-056 at Section 4.1.3.2 states non-residential customers may use a prohibited resource for operational reasons during a DR event if they agree to a default adjustment.

22. D.16-09-056 at OP 4(b) and Section 4.1.3.2 states that the tariff or contract language of affected DR programs shall be revised to include a new and separate provision outlining the prohibitions and requiring a customer to agree to it.

23. D.16-09-056 at OP 4(c) states that new non-residential customers shall provide a signature agreeing to the prohibition or the default adjustment at the time of enrollment and that returning non-residential customers shall do so by attestation no later than December 31, 2017.

24. D.16-09-056 at Section 4.1.3.2 requires DR providers to revise their program tariff or contract language for new non-residential customers to state that they are required to indicate, at the time of enrollment, whether they have a prohibited resource on their premises and whether it will be used to provide curtailment during a DR event.

25. In AL 3466-E-A et al. the Utilities did not provide correct or complete language required in attestations for non-residential customers in D.16-09-056.

26. SCE in AL 3542-E included the correct and complete attestation language required in D.16-09-056 for the AP-I and BIP programs only. It did not include it
for the CBP program or for future non-tariffed DR contracts for third party aggregators.

27. Neither PG&E in AL 4991-E-A or SDG&E in AL 3031-E required the correct and complete attestation language for non-residential customers required in D.16-09-056.

28. The Joint DR parties supported use of a three-part attestation in their response to AL 4991-E-A et al. and did not comments on this issue in their protest to AL 3466-E-A et al.

29. It is reasonable to infer that the Joint DR Parties support use of the three-part attestation for the DRAM and other affected DR programs.

30. It is reasonable, with some conditions, to allow for customers to update their default adjustment affidavits throughout the year to reflect changed circumstances.

31. It is reasonable to set a modest time frame for DR provider notification and outreach activities to begin, well in advance of January 1, 2018 when the new requirements go into effect.

32. D.16-09-056 at Section 4.1.3.2 specifies that notification and outreach includes, but is not limited to, providing customers with an updated contract that: (a) outlines the prohibition in a new and separate provision; (b) indicates that customer compliance may be subject to verification; (c) indicates the consequences of non-compliance; and, (d) for non-residential customers, indicates that a signature is required.

33. D.16-09-056 at Section 4.1.3.2 requires that, once provided with an updated contract, new residential customers must agree to not to use a prohibited resource to reduce load during a DR event.

34. D.16-09-056 states that for residential contracts, this provision shall be added near the beginning of the tariff or customer contract.

35. D.16-09-056 at states that, once provided with the provision, new non-residential customers shall provide a signature, including electronic, agreeing to the prohibition or a default adjustment at the time of enrollment and that returning non-residential customers shall sign an attestation no later than December 31, 2017.
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36. D.16-06-008 indicates that a “click” provides reasonable verification of the customer’s signature.

37. D.16-09-056 at Section 4.1.3.2 requires that the new customer contract provisions explain that residential and non-residential customer compliance may be subject to verification and list all of the potential consequences for non-compliance.

38. It is reasonable that returning residential customers may accept the prohibition if provided for under their contract’s Terms of Use.

39. D.16-09-056 at Section 4.1.3.2 requires third party DR providers to include similar language in customer contracts for residential and new non-residential customers as that included in Utility program tariffs or though attestations for returning non-residential customers.

40. The Utilities in AL 4991-E-A outlined a range of varying consequences for customer non-compliance with the prohibition.

41. The Utilities in AL 3466-E-A et al. did not indicate any specific consequences for non-compliance to be included in DRAM Sellers’ customer contracts.

42. It is reasonable to find that events of customer non-compliance are not all equally problematic to the intent of the prohibition, which is to prevent the use of prohibited resources to reduce load during DR events

43. It is reasonable to find that failure to accept the prohibition (residential customers), failure to sign an attestation or an updated contract that includes an attestation by December 31, 2017 for returning non-residential customers, or failure to agree to the prohibition at the time of enrollment (for new non-residential customers) shall be considered a “Type One” customer non-compliance issue.

44. It is reasonable to find that a second and more serious type of customer non-compliance occurs when a customer: (a) attested to the “no-use” provision but is verified to have used a prohibited resource to reduce load during a DR event; or, (b) a customer intentionally submits an invalid nameplate capacity value for the prohibited resource(s), and that these shall be considered “Type Two” customer non-compliance issues.

45. It is reasonable to find that a non-residential customer that intentionally submits an invalid nameplate capacity value for the prohibited resource(s) has
violated its attestation (a “Type Two” infraction), but that mistakes that may reasonably be considered clerical or administrative errors shall be considered a Type One infraction.

46. It is reasonable that progressive consequences be applied to any customer found to have two or more Type Two non-compliance violations.

47. It is reasonable that consistent and clear consequences be applied to residential and non-residential customers for each of the two types of non-compliance actions for all affected DR programs.

48. PG&E in AL 4991-E-A requires DR providers and aggregators to demonstrate compliance with the prohibitions by providing customer attestations and default adjustments for existing customers to PG&E by December 31, 2017 for DRAM and CPB, by and by December 1, 2017 for BIP.

49. It is reasonable that Utilities may need to set timelines for receipt of customer attestations for affected DR programs throughout the month of December, 2017 in order to ensure processing by early January, 2018.

50. PG&E in AL 4991-E-A states that any BIP or CBP customer that fails to provide the required attestations by their respective deadlines or has submitted inaccurate information through clerical error – a Type One non-compliance actions – will be removed from the program but will be eligible to re-enroll subject to the requirements of the prohibition.

51. PG&E in AL 4991-E-A states that any new DR customer that does not complete these requirements for CBP or BIP will not be eligible to participate in the DR program.

52. PG&E does not impose similar requirements on DRAM customers, as DRAM II contracts contain a prohibition on using back-up generation, or on customers participating in affected pilots in AL 4991-E-A or AL 4900-E-A.

53. SCE, in AL 3542-E, proposed that any existing AP-I or BIP customer that did not fill out a revised contract agreeing to the prohibition or providing a default adjustment value (by indicating the nameplate capacity of the prohibited resource) by December 1, 2017 will be removed from the program, effective on their first meter read following that date, a Type One compliance consequence.

54. SCE did not indicate the same requirement for its CBP or its future non-tariffed third-party aggregator program in AL 3542.E.
55. SCE in AL 3542-E proposed to remove any customer demonstrating Type Two non-compliance from the applicable SCE or third-party aggregator run-DR program with such customers ineligible to re-enroll for 12 calendar months from the removal date.

56. SCE in AL 3542-E proposed contract language for third party aggregators stating that failure to comply with the prohibition will be a potential even of default under the Aggregator’s contract with SCE, curable within 30 days of notice.

57. The Utilities in AL 3466-E-A et al. and SDG&E in AL 3031-E and PG&E in AL 4991-E-A did not indicate consequences for third party aggregators of failure to comply with the prohibitions contained in D.16-09-056.

58. PG&E, in AL 4991-E-A, states its intention to collect customer attestations and default adjustment values from all non-residential customers, including those of third-party aggregators, but does not indicate if it intends to collect those directly from customers or from the relevant aggregator.

59. D.16-09-056 does not clearly indicate to whom the non-residential customer signature and attestation must be provided when collected by a third-party aggregator.

60. It is reasonable to conclude that D.16-09-056 does not in all cases require third-party aggregators to provide their non-residential customer attestations and signatures to Utilities.

61. D.16-09-056 at Section 4.2.3.2 requires a third-party aggregator to include similar language in customer contracts or attestations as that required by Utilities, to demonstrate how it is enforcing the prohibition and to provide necessary documentation.

62. It is reasonable to find that the protections on Utility access to confidential customer account information contained in Rule 24 / 32 should be upheld as part of implementing the prohibition.

63. It is reasonable to conclude that compliance efforts would be strengthened if third-party aggregators participating in affected DR programs other than the DRAM provide attestations for returning non-residential customers to the Utilities by December 31, 2017.
64. It is reasonable to conclude that compliance efforts would be strengthened if DRAM third-party aggregators are required to collect and store attestations for returning non-residential customers by December 31, 2017, and provide these upon request to Utilities and/or the Commission, as approved by Advice Letter.

65. It is reasonable that third-party aggregators provide to the Utilities by December 31, 2017 and on an annual basis thereafter, language on the prohibition included in their respective residential customer contracts.

66. It is reasonable to conclude that all third-party aggregators must provide a summary of customer DAVs in order for these to be deducted from capacity payments where applicable.

67. It is reasonable that Utilities and third-parties may need to refine implementation details as adopted herein and that a public workshop on additional unresolved issues would be helpful.

68. It is reasonable to indicate consistent consequences for all third party aggregators and DR providers of failing to comply with the prohibitions.

69. It is reasonable that Utilities in their role as DR providers should face similar consequences for violations of the prohibition as those for third-party DR providers, including opportunities to “cure” deficiencies in customer attestations or similar issues.

70. It is reasonable to note that Commission staff may request data from the Utilities or conduct audits of Utility implementation of the prohibition.

71. It is reasonable that the Verification Plan development process directed in D.16-09-056 consider whether and how any consultants retained to implement the final Plan may perform reviews of customer, DRP and/or Utility “Type One” compliance.

72. It is reasonable that Utilities, third-party aggregators and others are encouraged to discuss methods to reflect default adjustment values in Supply Plans provided to the CAISO and in bids into the wholesale market.

73. D.16-09-056 indicates that all DR providers including the Utilities and third-party DR providers are responsible for enforcing its prohibitions.

74. D.16-09-056 requires all DR providers to furnish to existing customers notification and outreach about the prohibition and that, in the case of
aggregator programs, it is the responsibility of the third-party aggregator to provide such notification and outreach.

75. It is reasonable to conclude that to avoid customer confusion and duplication of efforts, aggregators should provide this outreach to their own customers, that Utilities should not contact or target third-party aggregator customers, and that coordination between Utilities and aggregators would support customer understanding of the prohibition.

76. SCE in AL 3542-E and PG&E in AL 4991-E-A and its Reply to Protests of AL 4991-E-A provide a reasonable summary of their notification and outreach plans for affected programs that do not allow third party aggregators, including metrics to assess the effectiveness of these activities.

77. SDG&E in AL 3031-E did not provide a reasonable summary of its outreach and notification plans on the prohibition, nor did it provide metrics to assess the effectiveness of its activities.

78. It is reasonable to conclude that if DR providers including Utilities and third-party aggregators do not keep records of their outreach and notification activities, and their achievements against metrics, it will prove impossible for subsequent verification activities to determine what actions occurred.

79. D.16-09-056 requires application to the DRAM of the prohibited resources requirements it adopts.

80. It is reasonable to conclude that clear and consistent application and communication of the prohibited resources requirements across all Utilities and affected DR programs will facilitate customer understanding of and compliance with the prohibited resources requirements of D.16-09-056.

81. It is reasonable to conclude that a Utility approach of removing a customer from an affected program for a year for failure to comply with the prohibition but allowing the same customer to enroll during that period in a different affected DR program sends an inconsistent message, may encourage customer gaming and may undermine customer compliance.

82. It is reasonable that the modifications adopted herein be applied to all affected DR programs, pilots and contracts operating in the years 2018 and forward, unless explicitly exempted by Commission decision.
83. It is reasonable that the compliance filings ordered herein include that contract language or attestation requirements on prohibited resources will apply to all affected 2017 DR pilots continuing into 2018.

84. Affected 2017 DR pilots that may be continuing into 2018 include all Utilities’ Excess Supply Pilots, and PG&E’s Supply Side II Pilot (SSP II), and others.

85. It is reasonable to reduce uncertainty associated with the costs of verification of the prohibited resources restrictions for DRAM III pilot contracts that must be signed prior to completion of the Verification Plan ordered in D.16-09-056.

**THEREFORE IT IS ORDERED THAT:**


3. We define “affected DR programs” as all DR programs and pilots not specifically exempted from the prohibition requirements in D.16-09-056.

4. Utilities shall clarify tariff and contract language for all affected DR programs to state that prohibited resources shall not be used to reduce load during DR events.

5. Utilities shall modify tariff and contract language for all affected DR programs to allow non-residential customers’ use of default adjustment values (DAV) in cases where prohibited resources must be used for safety as well as operational and health reasons during DR events.

6. Utilities shall modify tariff and contract language for all affected DR programs to allow customers for whom conditions have changed to adjust their DAV over the course of a year, under certain conditions, namely that: (a) the customer’s change in default adjustment value results from a change in the operational status of a prohibited resource associated with
the customer’s service account; and, (ii) that the Utility can verify this and has the option to approve.

7. Utilities shall modify tariff and contract language for all affected DR programs to require the inclusion in all non-residential customer contracts, including those of third-party aggregators, of a three-part attestation that includes a declaration of whether or not a customer has a prohibited resource on site, as discussed herein.

8. All DR providers with existing customers, including Utilities and third-party aggregators in DRAM and other affected DR programs, shall begin notification and outreach activities to their customers no later than 60 days from approval of the supplemental compliance filings to this resolution. Utilities and third-party aggregators shall coordinate this notification and outreach such that a Utility shall provide notification only to its own DR customers and a third-party aggregator shall provide notice only to its own DR customers.

9. Utilities shall provide to their customers in affected DR programs notification and outreach that includes, but is not limited to, supplying an updated customer contract or attestation; Utilities shall require in contracts that third-party aggregators in affected DR programs do the same.

10. The Utilities shall modify tariff and contract language for all affected DR programs to require that updated customer contracts outline the prohibition, indicate that customer compliance may be subject to verification, indicate the consequences of non-compliance specified herein, and require a customer signature, which may be in an electronic format, including a “click.”

11. Utilities shall modify tariff and contract language for all affected DR programs to require that updated non-residential customer contracts include a three-part attestation as approved herein.

12. Utilities shall modify tariff and contract language for all affected DR programs to require that all updated residential customer contracts provide information on the prohibition in a new and separate provision near the beginning of the contract.
13. Utilities shall alter tariff and contract language to require for all affected DR programs that any new residential or non-residential customer that does not agree to the prohibition or, for non-residential customers, provide an attestation will not be eligible to participate in the DR program until the failure is remedied.

14. Utilities shall require for all affected DR programs that any customer that is found to have violated its attestation (in the case of non-residential customers) or its acceptance / signed contract agreeing not to use a prohibited resource to reduce load during a DR event (in the case of residential customers) a single time shall be removed from the DR program for twelve calendar months from the time of removal after which time the customer will be eligible to re-enroll; the consequences for two or more such instances shall be removal from the DR program for a period of three years.

15. Utilities shall require, for all affected DR programs, that for non-residential customers an attestation is considered violated if: (a) a customer attested to the “no-use” provision but is verified to have used a prohibited resource during a DR event, or (b) a customer intentionally submits an invalid nameplate capacity value for the prohibited resource(s),

16. The Utilities shall alter tariff and contract language for all affected DR programs other than the DRAM to indicate that the Utilities will collect attestations from their own returning non-residential customers and will require submittal by third-party aggregators of attestations for all of their returning non-residential customers by the Utility-specified date in Q4 2017.

17. Utilities shall alter DRAM contract language to require third-party aggregators to collect and store attestations for all returning non-residential customers by December 31, 2017, and to make these available upon request to Utilities and/or Commission staffs.

18. Utilities shall alter tariff and contract language to require, for all affected DR programs, that third-party aggregators shall provide to the Utility the language on the prohibition included in their respective residential customer contracts. The Utilities shall require this by December 31, 2017 and on an annual basis thereafter.

19. Utilities shall require for all affected DR programs that any existing residential and/or non-residential customer that fails to accept the prohibition by
December 31, 2017 (residential) or sign an updated contract / attestation by the Utility-established submission date in Q4 of 2017 (non-residential customer), will be removed from the relevant program no later than January 7, 2018 but will be eligible to re-enroll upon submittal of the contract / attestation.

20. Utilities shall require in their contracts that third-party aggregators shall collect and store all non-residential customer attestations.

21. Utilities shall for all affected DR programs clearly indicate that third-party aggregators, and Utilities for programs without aggregators, are responsible for: (a) removing customers from their portfolio if they have not agreed to the prohibition or provided an attestation with a DAV; and (b) recording, and de-rating their portfolio by a summary DAV on a monthly basis.

22. Utilities shall modify DRAM III contracts to require third-party aggregators to submit a summary DAV as part of the monthly submittal of Demonstrated Capacity information and invoicing, and to indicate that such summary DAV values shall be deducted from monthly capacity payments from Utilities to third-party aggregators.

23. Utilities shall ensure via contract appropriate adjustment of capacity payments by the summary DAV amount to aggregators for non-DRAM affected programs.

24. Utilities shall for all affected Utility DR programs and the DRAM modify tariffs and contracts to require that bids into the wholesale market reflect portfolio amounts prior to de-rating.

25. Commission staff shall coordinate with IOUs and aggregators on the timing and agenda for a workshop to discuss additional prohibition implementation issues.

26. Utilities are authorized to work with third-parties to develop agreed-upon implementation approaches that modify those adopted herein, as necessary, and to include these and any funding or fund-shifting requirements to implement the prohibition in a Tier 2 Advice Letter filed no later than September 15, 2017.

27. Utilities, third-party aggregators and other market participants are encouraged to take up the issue of DAVs for discussion with the CAISO to
seek agreement on whether and how DAVs may be represented in bids and/or settlement payments in the wholesale market.

28. SCE and PG&E shall provide notification and outreach plans pertinent to their own customers that articulate targets for each proposed metric.

29. PG&E shall ensure that its notification and outreach plan conforms to the timeline requirements of D.16-09-056.

30. SDG&E shall provide an outreach and notification plan for its own customers that conforms to the requirements of D.16-09-056 and that includes the metrics and targets it will use to assess the plan’s effectiveness.

31. Utilities shall, for all affected DR programs allowing third-party aggregators, indicate in tariffs and contracts that third-party aggregators that miss deadlines for providing required customer information and/or do not remove non-compliant customers from their portfolio shall be notified of a potential event of default, curable within 30 days.

32. DRPs including Utilities shall be provided with a 60-day period to cure any customer “Type One” violations that do not involve use of a prohibited resource to reduce load during a DR event.

33. Commission staff shall report instances of Utility “Type Two” non-compliance to the Commission’s Enforcement Division (with a copy to parties to R.13-09-011) for further action no later than 60 days following verification.

34. Utilities shall, for all programs allowing third-party aggregators, require in contracts that third-party aggregators: (a) undertake outreach and notification to all customers informing them of the prohibition; (b) develop metrics, targets and record keeping systems to assess the effectiveness of their customer outreach and notification efforts; (c) for DRAM, be able to demonstrate these materials to the CPUC upon request; and, (d), for other third-party aggregator programs, be able to demonstrate these materials to Utilities upon request.

35. Utilities shall modify tariff and contract language for all affected DR programs to require that customers verified to have violated their attestation or their signed contract a single time shall be removed from all affected DR programs, including the DRAM, for twelve calendar months from the time of removal. The
consequences for two or more violations shall be removal from all affected DR programs for a period of three years.

36. Utilities shall apply the modifications approved herein to all affected DR programs, pilots and contracts operating in the years 2018 and forward, unless otherwise explicitly exempted by Commission decision.

37. Utilities shall include in the compliance filings ordered herein the contract language requirements on prohibited resources that they will apply to all affected 2017 DR programs and DR pilots continuing into 2018.

38. Utilities and DR providers shall ensure that the DRAM III pilot contracts that they execute prior to our adoption of the Prohibited Resources Verification Plan ("Plan") indicate that the installation of additional interval meters will not be required for verification purposes for aggregator customers. This exemption shall be applied only to DRAM III pilot Utility and third-party aggregator contracts signed prior to adoption of the Plan. DRAM III pilot contracts signed subsequent to our adoption of the Plan shall be responsive to the final terms of the Plan itself.

39. Fund-shifting of $934,498 2017 DR requested by SDG&E in AL 3031-E is approved contingent upon SDG&E submitting a revised proposal to draw funds from additional underspent programs to Category 4 to avoid potential bulk depletion of this category of funds.

40. Utilities shall file a supplemental compliance AL that includes the modifications to AL 3466-E-A et al. as approved in this resolution, and as summarized in Appendix I, no later than May 8. The protest period for this supplemental compliance filing is shortened to seven days, and the period for replies to five days.

41. Utilities shall file a supplemental compliance AL that includes the modifications to AL 4991-E-A et al. as approved in this resolution, and as summarized in Appendix I, no later than May 26. The protest and reply period to this supplemental compliance AL shall follow the standard timeline.

This Resolution is effective today.
I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 27, 2017, the following Commissioners voting favorably thereon:

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

MICHAEL PICKER  
President  
CARLA J. PETERMAN  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
Commissioners
Appendix I

Required Modifications to AL 3466-E-A et al., Section 7.2(b)(v) of the DRAM Purchase Agreement (additions underlined):

A. For all Residential Customers, Seller shall include a provision in its contract forbidding the use of Prohibited Resources to reduce load during a Dispatch by any PDR or RDRR providing Product to Buyer. Seller shall provide any returning Residential Customers with notice of such provision. Customers must agree to the prohibition by signing the updated contract. Any existing customer that fails to do so by December 31, 2017 will be removed from the program but will be eligible to re-enroll subject to the requirements associated with the prohibition. Any new customer that does not accept the prohibition complete this component of the enrollment process will not be eligible to participate in the program.

B. For all non-Residential Customers, Seller shall require that each Customer execute an attestation (1) indicating whether it has a Prohibited Resource on site; (2) indicating that if it has a Prohibited Resource it will not use the resource to reduce load during a Dispatch by any PDR or RDRR providing Product to Buyer; or, (3) if applicable, certifying that the Customer may have to, and affirmatively elects to, use a Prohibited Resource during Demand Response events for operational, health or safety reasons, providing the nameplate capacity of the Prohibited Resource, and agreeing to a default adjustment in which the amount of Product such Customer can provide is reduced by the nameplate capacity of the Prohibited Resource (or, if the Customer has multiple Prohibited Resources, by the sum of the nameplate capacity values from all Prohibited Resources on the site), regardless of whether the Prohibited Resource was actually used. Seller shall collect and store all such Customer attestations and make them available upon request, after December 31, 2017, to the CPUC or to the Buyer, as directed by the CPUC.

C. For new non-Residential Customers, the attestation shall occur at the time of enrollment and shall be provided with an electronic signature. For returning non-Residential Customers, Seller shall provide notice to the Customers of the new provision and outreach to the Customers that a signature, which may be an electronic signature, attesting to the prohibition or the default adjustment, shall be provided to Seller no later than December 31, 2017. Any new non-Residential
customer that does not complete this component of the enrollment process will not be eligible to participate in Seller’s DRAM resource in the program. Any existing non-residential Customer that fails to do so by December 31, 2017 will be removed from the Seller’s DRAM resource program but will be eligible to re-enroll subject to the requirements associated with the prohibition.

D. Seller shall include additional and separate provisions in its agreements with Customers explaining and implementing these restrictions, specifying that Customer compliance will be subject to verification, indicating that provision of inaccurate Prohibited Resource information shall be corrected within sixty days; and, that the listing all potential consequences for a single incidence of noncompliance with the provision will be removal from the program and ineligibility to enroll in any DR program subject to the prohibited resource requirement in D.16-09-056 for twelve calendar months from the removal date (for a single instance of non-compliance), consequences for two or more incidences of non-compliance shall be removal from the program and ineligibility to enroll in any affected DR program or three years from the removal date (for two or more instances of non-compliance). and, All Contracts with for all non-Residential Customers shall indicate that the non-compliance consequences shall apply if: (a) the customer attested to have no on-site Prohibited Resource or attested to the “no-use” provision of Prohibited Resource(s) but is verified to have used a Prohibited Resource to reduce load during a demand response event; or (b), a customer intentionally submits an invalid nameplate capacity value for the Prohibited Resource(s).

E. Seller shall provide such documentation as may be reasonably necessary for Buyer to verify the accuracy of the attestations referenced in subsections B(1) – (3) and (2) above and Seller’s compliance with and enforcement of this Section 7.2(b)(v). For all non-Residential Customers, (a) Sellers will provide summary DAVs monthly (with Demonstrated Capacity information); and, by December 31, 2017 provide Buyer with customer attestations, default adjustments and a completed summary spreadsheet (to be provided) for all returning customers; (b) Sellers will, on a monthly basis thereafter, provide Buyer with an updated version of the summary spreadsheet that includes complete information for all new non-residential customers; (c) Sellers will ensure that the spreadsheet indicates default
adjustment values (DAVs) for all customers selecting this option and the resulting de-rated portfolio value, and that this information is reflected in their Market Notice to Buyer submittals; and, (b) Sellers will ensure that bids in the wholesale market reflect portfolio amounts prior to de-rating. Seller shall comply with any Prohibited Resource audit verification plan that is developed in accordance with D. 16-09-056 and approved by the CPUC (the Plan). For Customer contracts executed with Seller prior to the CPUC’s adoption of the Plan, installation of additional interval metering will not be required for verification purposes.

By following December 31, 2017, and on an annual basis thereafter for all residential customers, Seller shall provide to Buyer, on an annual basis, the language on the prohibition included in their respective residential customer contracts or agreements. Seller will develop metrics, targets and record keeping systems to assess the effectiveness of its Customer outreach and notification efforts required under this Section 7.2(b) (v), and will provide such materials to the CPUC upon Buyer’s request.

F. Seller shall include provisions in its contracts with Non-Residential Customers providing that Customers may adjust their DAV, if (a) the Customer’s change in DAV results from a change in the operational status of a Prohibited Resource associated with the Customer’s Service Account; and, (b) Seller has verified this change in operational status.

G. Seller failure to comply with the prohibition will be a potential event of default, curable within 30 days after notice.
To apply a DAV:

- Customer provides a load drop during the DR event equal to the full load drop amount (5 MW).
- Customer uses a prohibited resource with a nameplate value of 1 MW during the DR event. This resource will typically not be grid connected.
- Aggregator bids the full load drop level (5 MW) into CAISO wholesale market.
- Utility bases capacity payment to aggregator on the sum of all de-rated load drop levels for all customers (for this customer, 4 MW).
- Aggregator provides Utility with full load drop levels, de-rated load drop levels and DAVs for all customers electing to use DAVs.