



August 26, 2019

Via U.S. Mail, E-Mail (EDTariffUnit@cpuc.ca.gov) and Fax (415-703-2200)

California Public Utilities Commission

Attention: Tariff Unit

505 Van Ness Avenue

San Francisco, CA 94102

**RE: Advice Letters (ALs) 4054-E (Southern California Edison), 5615-E (Pacific Gas and Electric) and 3418-E (San Diego Gas & Electric)
(Demand Response Auction Mechanism Pilot for 2020)
RESPONSE OF CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT
COUNCIL**

Dear Energy Division Tariff Unit:

On August 12, 2019, Southern California Edison (“SCE”), Pacific Gas and Electric (“PG&E”) and San Diego Gas & Electric (“SDG&E”) jointly submitted their Demand Response Auction Mechanism (“DRAM”) Pilot for 2020. The California Efficiency + Demand Management Council (the “Council”) appreciates the opportunity to respond to this Joint Advice Letter filing.

Background

The Council is a statewide trade association of non-utility companies that provide energy efficiency, demand response and data analytics services and products in California.¹ Our member companies employ many thousands of Californians throughout the state, including demand response and grid services technology providers, implementation and evaluation experts, energy service companies, engineering and architecture firms, contracts, financing experts, workforce training entities, and manufacturers of energy efficiency products and equipment. The Council’s mission is to support appropriate demand response and energy efficiency policies, programs, and technologies to create sustainable jobs, long-term economic growth, stable and reasonably priced energy infrastructures, and environmental improvement.

¹ More information about the Council, including the organization’s current membership, Board of Directors, antitrust guidelines and code of ethics for its members, can be found at www.cedmc.org.

The Council has been an active participant in the Demand Response (“DR”) Programs, Pilots and Budgets proceeding (A.17-01-012, et al.) and DR Rulemaking (R.13-09-011).

Response

I. The Proposed Penalty Structure in AL 4054-E (SCE) for Qualitative Criteria is Unreasonable and is Inconsistent with a Prior Commission Decision.

The penalty structure for the new prior performance qualitative criteria proposed by SCE in Advice Letter 4054-E is excessive and unreasonable. Penalizing DRAM bidders for delivering less than 100% of their contract capacity at the levels suggested by SCE is unreasonable and is in contravention of the intent of the DRAM, which is to encourage new entrants. Penalizing prior performance for anything less than 100% delivery of contract capacity is also inconsistent with the Demonstrated Capacity penalty structure adopted by the Commission in Decision (“D.”)19-07-009.² Adding confusion to this issue, the Advice Letter indicates a 20% penalty cap which is in contradiction with some of SCE’s proposed individual prior performance qualitative criteria which can be as high as 50%.³

Should the Commission approve SCE’s prior performance qualitative criteria, they should be applied beginning with 2020 performance for the solicitation for 2021 delivery. Applying such aggressive penalties on a retroactive basis is completely unfair and very well could freeze out of the market DRAM Sellers who attempted in good faith to participate in the DRAM Pilot in its early stages but whose bids will have been inflated because they struggled to deliver on their contracts. The DRAM was and remains a pilot, and though poor performance should certainly not be encouraged, it should also not be punished so severely as to preclude a DRP from participating in the DRAM due to one year of poor performance.

The Council notes that at no time during the DRAM Step 2 process, during which six workshops were convened to discuss additional improvements to the DRAM, did SCE propose these qualitative criteria. Given the magnitude of their potential impact on the DRAM solicitation process, going forward all qualitative criteria should be approved by the Commission, on a prospective basis, prior to being applied to the DRAM bid selection process.

Advice Letter 4054-E should be modified to remove SCE’s prior performance qualitative criteria and SCE should adopt those used by PG&E and SDG&E.

² Decision (D.) 19-07-009, Ordering Paragraph 10.

³ Joint Advice Letter 4054-E (SCE)/5615-E (PG&E)/3418-E (SDG&E), at p. 8.

II. SCE's Measurement of Performance in Advice Letter 4054-E is Contrary to the DRAM Pro Forma Contract.

SCE's proposed prior performance qualitative criteria indicate that performance for the purposes of applying the qualitative criteria is to be measured by coincident peak load reduction.⁴ This is contrary to Section 1.6 of the DRAM pro forma and should be removed from Advice Letter 4054-E.

III. The Proposed Change to Performance Assurance in the DRAM Pro Forma Contract is Detrimental to DRAM Sellers.

SCE, PG&E and SDG&E ("the Joint Utilities") propose to make a material change to Section 5.5(a) of the DRAM purchase agreement regarding administration of Performance Assurance. Whereas in the prior DRAM purchase agreement, the investor-owned utilities ("IOUs") could draw upon PA following an Event of Default or Early Termination, the updated DRAM pro forma contract inserts an additional ability for an IOU to draw upon Performance Assurance in the event of outstanding unpaid amounts owed from Seller to Buyer.

It would be more appropriate to maintain the earlier language, since this new requirement will impact DRAM Sellers' ability to secure Performance Assurance financing instruments for their DRAM agreements. Whereas an Event of Default is a defined criterion in the contract, the ability for an IOU to draw upon Performance Assurance "if amounts are owing and unpaid from Seller to Buyer" is ill-defined. Given the existing language allowing for an Event of Default if payments are overdue *and noticed*, this change to the PA is unnecessary and detrimental to DRAM Sellers.

Therefore, this proposed modification to the DRAM purchase agreement contained as Attachment A to the Advice Letters 4054-E (SCE), 5615-E (PG&E) and 3418-E (SDG&E) should be removed.

IV. The Proposed Change to the Demonstrated Capacity Requirements in the DRAM Pro Forma Contract is Inconsistent with a Prior Commission Decision.

The proposed Section 1.6(f) of the DRAM pro forma states:

"Seller shall not include the performance of any DRAM Resource Customer service account that was moved in a Showing Month pursuant to Section 3.4(d) in more than one [Proxy DR (PDR)] for purposes of the calculation of Demonstrated Capacity for such Showing Month."⁵

⁴ Joint Advice Letter 4054-E (SCE)/5615-E (PG&E)/3418-E (SDG&E), at p. 8.

⁵ Ibid, Attachment A (2020 DRAM Purchase Agreement), at p. 7.

This language appears to state that the performance of a service account changing PDR within a given month may not be counted in any PDR. This is inconsistent with D.19-07-009 which prohibits the double counting of any service account during a given month but does not prohibit counting a service account at all during the month. The decision states, "Seller must avoid any potential double counting of customer performance associated with service account movement permitted by the exemptions when invoicing Demonstrated Capacity." The proposed Section 1.6(f) of the DRAM pro forma should be revised to allow the performance from a service account to be counted in no more than one PDR in a given month.

CONCLUSION

The Council recommends that the Advice Letter be modified to make the changes recommended above.

Respectfully submitted,

August 26, 2019

GREG WIKLER

Greg Wikler

Executive Director

California Efficiency + Demand Management
Council

gwikler@cedmc.org

cc (U.S. Mail & E-Mail):

Ed Randolph

Director, Energy Division

California Public Utilities Commission

Energy Division

505 Van Ness Avenue, Room 4004

San Francisco, CA 94102

E-Mail: efr@cpuc.ca.gov

cc (E-Mail):

Gary A. Stern, Ph.D.
Managing Director, State Regulatory Operation
Southern California Edison Company
8631 Rush Street
Rosemead, CA 91770
E-mail: AdviceTariffManager@sce.com

Laura Genao
Managing Director, State Regulatory Affairs
c/o Karyn Gansecki
Southern California Edison Company
601 Van Ness Avenue, Suite 2030
San Francisco, CA 94102
E-mail: Karyn.Gansecki@sce.com

Erik Jacobson
Director, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B13U
P.O. Box 770000
San Francisco, CA 94117
E-Mail: PGETariffs@pge.com

Megan Caulson
Regulatory Tariff Manager
San Diego Gas & Electric Company
8330 Century Park t., CP31D
San Diego, CA 92123
E-Mail: mcaulson@semprautilities.com

cc: Courtesy Electronic Service to Service Lists in R.13-09-011 (Demand Response) and A.17-01-012, et al. (Demand Response Programs)