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**California Efficiency + Demand Management Council, CPower, Enel X North America, Inc., Leapfrog Power, Inc., and OhmConnect, Inc. Comments on Demand Response Load Impact Protocol Requirements and Related Issues**

**Introduction:**

The California Efficiency + Demand Management Council (Council) submits these comments on behalf of itself, CPower, Enel X North America, Inc., Leapfrog Power, Inc., and OhmConnect, Inc. (hereafter, the Joint Parties). The Joint Parties appreciate the Energy Division's efforts to develop guidelines for the application of the demand response (DR) Load Impact Protocols (LIP) to determine the Qualifying Capacity (QC) values of third-party DR. It is critical that clear, simple, and transparent guidelines be quickly developed and approved to allow third-party DR providers (hereafter, DRPs) to make available their capacity to load-serving entities (LSE). The Joint Parties welcome the opportunity to provide recommendations on how the LIPs can be applied to third-party DR, and also takes this opportunity to provide feedback on several other related issues.

**Background:**

Since the California Public Utilities Commission (Commission or CPUC) adopted the LIPs in Decision (D.) 08-04-050, the LIPs have only been applied to utility-administered DR programs until D.19-06-026 required all DR capacity to use them to obtain QC values for Resource Adequacy (RA) purposes.<sup>1</sup> Decision 19-06-026 was issued without any guidance or direction to the Energy Division or to DRPs as to how to apply the LIPs, nor did this decision provide guidance on whether the LIPs required modification in order to be applied to third-party DR.

Since D.19-06-026 was approved, several RA requests for offers (RFOs) that were issued by LSEs would not consider third-party DR capacity and, therefore, several procurement opportunities were lost for DRPs. The regulatory uncertainty surrounding the application of the LIPs to third-party DR resulted in lost market and revenue opportunities outside of the Demand Response Auction Mechanism (DRAM), some of which included long-term contracts for capacity. The Joint Parties hope that the uncertainty and lost opportunities associated with 2020 RA procurement of DR capacity does not continue into 2021 and beyond. DR is a critical flexibility and resiliency pillar of California's future zero-carbon energy system, and prompt resolution is critical to advancing that future. Therefore, speedy and comprehensible resolution of the application of the LIPs to third-party DR is of utmost importance.

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<sup>1</sup> Pursuant to D.19-06-026, the QC valuation methodology since adopted in D.19-12-040 applies for Demand Response Auction Mechanism resources.

### **Confidentiality Issues Must Be Addressed First**

As a threshold issue, before moving forward with changes to the LIPs, the Energy Division must develop clear rules to protect the confidentiality of DRPs' data. Without adequate protections, it is possible that some DRPs may not participate in the load impact evaluation process rather than risk their proprietary information being shared with competing DRPs or IOU DR program staff. Specifically, the Joint Parties are very concerned about the confidentiality of the data used by DRPs to develop the load impact evaluations as well as the final QC values awarded by the Energy Division. Based on a brief review of OhmConnect's October 18, 2019 *2018 Load Impact Evaluation*, these proprietary data can include customer count, per-participant load impact, current and forecasted portfolio size, event frequency and duration, and customer location.<sup>2</sup> Though the IOUs share these same data in their draft and final load impact evaluations, and their final portfolio QC values are publicized, the IOUs are subject to heightened regulatory oversight of their DR resources as a public utility. It is important to note that the LIPs were developed for the purpose of estimating the capacity value and determining the cost-effectiveness of regulated monopoly IOU DR programs. That environment has fundamentally changed with the proliferation of both DRPs as well as non-investor owned utility (IOU) LSEs such as community choice aggregators. In this new environment, third-party DRPs are engaged in competitive activity with one another, so disclosure of market-sensitive information similar to what was shared by OhmConnect could cause harm to a DRP's competitive position. In addition, LSEs could leverage their knowledge of the amount of available DR capacity in negotiations with DRPs.

The Joint Parties appreciate that the Energy Division is trying to develop a transparent process, under a significant time constraint, for DRPs to utilize the LIPs. Confidentiality issues are complicated and ideally, there would be enough time to fully consider this issue. The January 3 schedule put forth by the Energy Division does not allow for a proper discussion of this topic so, as an interim measure, the Joint Parties recommend that the Energy Division initially err on the side of caution to avoid the sharing of any proprietary data, and allow DRPs to forego sharing draft and final load impact evaluations with parties, and forego posting individual DRP's QC data on the Commission's RA webpage. The Demand Response Measurement & Evaluation Commission (DRMEC) could review the draft load impact evaluations and provide non-binding feedback directly to each DRP and the Energy Division. To protect competitively sensitive information, the Energy Division should require the same controls approved for DRAM bidders in Ordering Paragraph 22 of Decision 19-12-040, such that IOU DR program staff should not have access to DRPs' data when being reviewed by the DRMEC. Also, members of the DRMEC should sign non-disclosure agreements with each DRP.

### **Representation on the DRMEC**

If the DRMEC is to have a role reviewing DRP draft evaluation plans and draft load impact evaluations, DRPs and non-IOU LSEs should be allowed representation on the DRMEC for the sake of fairness and transparency. As a representative of the DRP community, the Council is well-suited to join the DRMEC. The Council has no direct financial interest in the outcome of DRMEC deliberations and would therefore be an effective and even-handed advocate for DRP interests. The Council already has a history of representing energy efficiency industry interests at the California Technical Forum (Cal TF) and the California Energy Efficiency Coordinating Committee (CAEECC), so it would be an ideal

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<sup>2</sup> Although OhmConnect disclosed several pieces of information it considers confidential in its 2018 Load Impact Evaluation, it only did so because the short turn-around time and sparse guidelines for third-party DR left it no other option. As standard practice going forward, OhmConnect fully shares the confidentiality concerns and supports the proposal set out in these comments.

candidate to represent DR industry interests in the DRMEC. Similarly, there are a handful of industry organizations representing non-IOU LSEs that the Energy Division should consider inviting to join the DRMEC. The Joint Parties are also supportive of the Pacific Gas and Electric Company (PG&E) suggestion that the California Independent System Operator (CAISO) be represented on the DRMEC as well.

### **Process and Application of the LIPs**

The Joint Parties recommend that the Energy Division focus this phase of the informal process on determining which LIPs should apply to DRPs, which should not, and which will require modification or clarification. It is not clear how far the Energy Division's authority extends to actually revise the LIPs, as they were originally approved (in D.08-04-050) and subsequently revised (in D.10-04-006) by Commission decision. If Energy Division Staff does not have authority to approve any of the recommended changes below, a process for how to address those outstanding issues should be discussed during the January 24, 2020.

The first step in simplifying the LIP requirements for third-party DR should be to limit the number of protocols required to be applied in load impact evaluations to only those that are needed and relevant. In the December 20 Energy Division call, parties were informed that all LIPs must be used when developing load impact evaluations. However, to the Joint Parties' knowledge, there are no provisions in the LIPs nor in D.08-04-050 that prohibit the utilization of a sub-set of the LIPs. In fact, D.08-04-050 seems to foresee the need for some flexibility in how the LIPs are applied. Finding of Fact 4 states, "Each different type of DR activity will require different input data, produce different output information and require an evaluation approach that takes into account unique elements of that DR resource."<sup>3</sup> In addition, Conclusion of Law 2 states, "It is reasonable to allow flexibility on the part of load impact evaluators to choose methodologies feasible for and suitable to a particular type of DR activity."<sup>4</sup>

The primary difficulty in applying all of the LIPs in their current form to third-party DR is the difference in the relatively stable nature of the IOU DR program composition compared to the more dynamic composition of third-party DR. For example, LIPs are applied on a programmatic level to IOU DR programs with long histories and relatively stable participation over time. Even if DRPs participated in programs such as the Capacity Bidding Program or the now-canceled Aggregator Managed Portfolio, the IOUs have assessed the combined performance on a programmatic basis, not on an aggregator-by-aggregator basis. The programmatic approach allows the IOU to "smooth out" variances that are the result of DR customers moving from one aggregator to another. The other major difference in looking at the LIPs on a programmatic versus an aggregator basis is that, relative to the history of the IOUs' DR programs, DR provided by DRPs (as opposed to aggregators) is relatively new, beginning with the DRAM in 2016. Since then, the amount of capacity that has changed hands from one DRP to another has been dramatic. So much so, that it is very difficult to use a DRP's historic profile of a portfolio of DRAM capacity in one year to reflect the capabilities of a future commitment, particularly as many DRPs build their resource portfolio to match their explicit DRAM commitments – not on an open ended basis with no specific procurement targets as the IOUs typically operate their programs.

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<sup>3</sup> Decision 08-04-050, Finding of Fact 4.

<sup>4</sup> Ibid, Conclusion of Law 2.

### **Limitations on LIPs for New DR Resource Participation in RFOs**

Another difficulty in applying the current LIPs to third-party DR pertains to the treatment of new DR customers. While the LIPs are used to estimate the QC associated with the historical performance of an existing resource, they cannot be used to determine the QC of a new resource. If, for example, a DRP is responding to an RFO for RA capacity using customers that have not previously worked with a DRP or are not part of an existing portfolio, the DRP would not be able to respond to the RFO because it does not have a QC associated with it from an LIP analysis. If not addressed, this limitation could stunt new DR development in all-source RFOs. The Joint Parties request that the DR and RA Sections of the Energy Division consider this limitation and suggest a way for DR resources to be considered for participation in RFOs for new capacity. One approach would be to allow DRPs to submit supporting information, similar to what is required in Appendix A of D.19-12-040, to the soliciting LSE or to the DR and RA Sections to support their QC values. Regardless of the solution adopted, there needs to be a way to address the need for QC values for RFOs outside the typical RA RFO timeframe. DRPs should have more than one opportunity per year to get QC values for their resources.

### **Proposed Revisions to DR LIP Requirements**

The Joint Parties recommend that changes or clarifications be made to the following protocols:

- **Protocol 10:** This protocol specifies statistical tests and measures that must be reported for regression methods used for ex post load impact estimation. For the reasons discussed below for Protocol 17, this protocol should not be required if the conditions are met for not performing regression analyses to estimate ex post load impacts.
- **Protocols 11-16:** These protocols apply to non-event-based DR such as time-of-use rates, which DRPs typically do not offer. In the December 20 call, the Energy Division stated that currently, all protocols are applicable to DRPs but clearly these protocols should not apply to the event-based DR that DRPs provide. To avoid confusion, the Energy Division should explicitly state that DRPs providing event-based DR should be exempt from these protocols.
- **Protocol 17:** This protocol states that ex ante load impacts should be informed by ex post load impacts whenever possible, and if ex post estimates or models are not used, an explanation should be provided. A clear set of conditions are needed for when using regression-based ex post load impacts is not practical. For instance, when a DRP's portfolio in the upcoming RA delivery year is expected to be significantly larger or smaller than the prior year (in which case ex post load impacts are meaningless), or when a DRP has enrolled or expects to enroll customers with no DR participation history with that DRP. In the latter instance, a customer's participation history with prior DRPs is moot because the current DRP will not have access to the customer's prior event data.
- **Protocol 24:** This protocol applies to the determination of load impacts at the DR program portfolio level. This is more applicable to the IOUs who have multiple DR programs, some of which have dual-participating customers. Because each DRP will typically provide the same economically-dispatched DR, it is unnecessary to require DRPs to estimate their portfolio-level load impacts. The Energy Division should exempt DRPs from this protocol.
- **Protocol 4 (ex post)/Protocol 18 (ex ante):** These counterpart protocols (one for ex post load impacts and the other for ex ante load impacts) require that the mean change in energy use per hour (kWh/hour) for each hour of the day be estimated for each day type and level of aggregation defined in the following Protocol 8 (ex post) or Protocol 22 (ex ante), respectively. To the extent that a DRP's portfolio will only be used for RA, the relevance of requiring these calculations for all 24 hours for each day type is unclear when the Availability Assessment Hours (AAH) for System and

Local Resource Adequacy are only 4:00 p.m.-9:00 p.m. DRPs should be required to only perform these analyses based on the AAH at minimum, with an option to perform them for more hours of the day.

- **Protocol 5 (ex post)/Protocol 19 (ex ante):** These counterpart protocols require that mean change in energy use per year be reported for the average across all participants and for the sum of all participants on a DR resource option for each year over which the evaluation is conducted. As discussed above, the relevance of these values outside of the AAH is unclear, so DRPs should only be required to perform these analyses based on the AAH, while still having the option to perform them for all hours.
- **Protocol 6 (ex post)/Protocol 20 (ex ante):** These counterpart protocols require that estimates be provided for the 10th, 30th, 50th, 70th and 90th percentiles of the change in energy use in each hour, day and year, as described in Protocols 4 and 5 (ex post)/Protocol 17 and 18 (ex ante), for each day-type and level of aggregation described in Protocol 8 (ex post) or Protocol 22 (ex ante). Again, as discussed above, DRPs should only be required to perform these analyses based on the AAH, while still having the option to perform them for all hours.
- **Protocol 22:** This protocol specifies the analyses required for each day type using CAISO 1-in-2 and 1-in-10 weather conditions. However, only the “monthly system peak day” calculated under IOU 1-in-2 weather conditions are needed to estimate QC value for RA purposes. Calculating the “average weekday” and the “typical event day” under 1-in-2 weather conditions and calculating anything under 1-in-10 weather conditions is not relevant to estimating the RA QC value.
- **Protocol 26:** This protocol specifies the format and content of the load impact evaluation reports. One requirement of this protocol is that “a comparison of impact estimates derived from the analysis and those previously obtained in other studies and those previously used for reporting of impacts toward resource goals, and a detailed explanation of any significant differences in the new impacts and those previously found or used.”<sup>5</sup> It is reasonable to expect that a DRP’s portfolio will likely change significantly from one year to the next, so this requirement is not relevant. In addition, it is not clear what value such a comparison would have in determining QC value even if a DRP’s portfolio was fairly stable, so this requirement should be removed.

### **Comments on the Timeline for Obtaining QC Values**

The Joint Parties appreciate the revisions made by the Energy Division to the schedule for obtaining QC values. However, significant problems remain that must be addressed.

**Filing of Draft Evaluation Plan:** The Joint Parties are concerned that with this informal process expected to conclude by February 7, DRPs will only have two weeks to put together their draft load impact evaluation plans, which are due February 21. This is an insufficient amount of time considering that some DRPs will be seeking to engage consultants for the first time in this process (consultants who may have never applied the LIPs to third-party DR). The Joint Parties recommend that the Energy Division allow DRPs to notify the Energy Division and DREMC that draft evaluation plans are in development but allow additional time if needed for circulation. A well thought out evaluation plan will yield a better study process and there are likely to be a limited pool of qualified evaluators/consultants which could make the tight timelines problematic.

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<sup>5</sup> Decision 08-04-050, Appendix A, at p. 146.

**August 17 Submission of Eligible DR Capacity:** In Step 4, the Energy Division’s DR Section would submit eligible DR capacity to the RA Section by August 17 with the RA Section posting the final QC values on September 1.<sup>6</sup> The Joint Parties are very concerned about this schedule for these milestones because it would be highly problematic for DRPs to be notified of their QC values on September 1. Because the Energy Division issues initial RA requirements to LSEs in July, DRPs would have to wait for up to two months (assuming the initial RA requirements are given on July 1) before they could sell their capacity which could cause them to miss several LSE solicitations. This is unnecessary and highly discriminatory to DRPs.

With final load impact evaluations due on May 15, an August 17 milestone would leave the DR Section three months to make a determination on eligible DR capacity. This is an excessive amount of time. The Energy Division should keep the initial June 29 deadline for the DR Section to submit capacity values to the RA Section and require that the RA Section post QC values by July 13. This preserves the two-week lead time between the DR Section submitting eligible DR capacity to the RA Section and the RA Section finalizing each DRP’s QC values.

**Rationale and Timeline for Notifying the Energy Division of Counter-Parties:** The Joint Parties have concerns regarding the October 1 requirement for DRPs to submit their counter-parties and MWs sold to the Energy Division. The purpose of this requirement is unclear, especially because LSEs’ year-ahead supply plans will include this information. It is also unclear why this requirement would be applicable only to DRPs and not to the owners of other resource types. The October 1 deadline would effectively reduce the timeframe during which DRPs can negotiate with LSEs by a few weeks. This would be highly discriminatory against DRPs by handicapping their ability to sell their capacity. Importantly, DRPs may still be negotiating with counter-parties or waiting for brokers to finalize transactions at that time and until the final compliance deadline of October 31. Therefore, the Joint Parties recommend this milestone be removed. If the Energy Division insists on adopting this type of milestone, it should provide an explanation for why this is necessary and push out the date to October 31.

### **Supplemental Process to Update Load Impact Evaluations**

The Joint Parties continue to believe that DRPs should have an opportunity to update their load impact evaluations later in the year to reflect updated customer portfolios and performance.<sup>7</sup> Under the current process, load impact evaluations are performed once a year for the upcoming year and are based on ex post data from the prior year. This means that, in any given compliance month, the QC value of DR is based on two-year-old ex post data. For example, August 2021 QC values will be based on August 2019 performance and customer data. DRP portfolios change rapidly as providers test new technologies, incentives, messaging, etc. in an effort to provide the greatest value to customers and improve performance. A DRP’s customer base may differ substantially from year-to-year, including changes to reference loads and the penetration of enabling technologies. A DRP should have an opportunity to have the most up-to-date information be reflected in the QC values assigned to its resources for the following year.

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<sup>6</sup> The Joint Parties did not receive the official revised schedule that changed this milestone date from June 29 to August 17. It was only through word-of-mouth that this was made known.

<sup>7</sup> As stated earlier, a separate process is also needed for DRPs to get QC values for new portfolios when responding to RFOs outside of the load impact evaluation timeline.

The Joint Parties propose the Energy Division allow DRPs to submit an optional LIP “update” in early fall of each year. For this update, the DRP would use the same methodology and models already vetted during the load impact evaluation process, but expand the underlying data set to include current year data through the end of August. This would avoid the need for a new review of the evaluation plan or draft updated load impact evaluation. The update would be a short supplement to the original final report - all existing models would simply be re-run using the more recent data set. Importantly, the Energy Division would update the QC values (if appropriate), based on the new data. Specifically, the updated data set would include:

1. More recent customer composition data, including enrollment, reference loads, and adoption of AutoDR-enabling technologies; and
2. Performance data from the first eight months of the current year.

The Joint Parties’ proposed revised Table 1 timeline included a proposed timeline for the update process. This portion is copied below.

|  |                    |
|--|--------------------|
| DRP submits LIP supplement to DR Section | September 10, 2020 |
| DR Section approves updated LIP MW       | September 24, 2020 |
| RA Section posts updated LIP MW          | October 1, 2020    |

**Assessment of a DRP’s Enrollment Forecast**

DRP enrollment projections are a core component of each load impact evaluation because, when multiplied by the average per-customer ex ante load impact, they have a direct impact on the QC value of a portfolio. As can be observed in the critical responses to OhmConnect’s *2018 Load Impact Evaluation*, enrollment projections can be highly contentious.<sup>8</sup> The challenge faced by a DRP in this situation is trying to put forth an enrollment projection that is consistent with its customer enrollment experience while providing evidence to support it in the eyes of other parties and the Energy Division. Unfortunately, there are no clear criteria for what constitutes a reasonable or realistic enrollment forecast, so it seems possible that some parties may never be completely satisfied by any DRP’s enrollment forecast. More importantly, the lack of criteria allows the Energy Division, when assessing the QC value of a DRP’s portfolio, to make subjective reductions in an enrollment forecast with no explanation or transparency, despite having no experience in DR customer enrollment or operations.

The Joint Parties are concerned that if the Energy Division consistently derates the enrollment forecasts and, by extension, the QC values of DRPs’ portfolios, this could limit the growth of DR because it will not be commercially rational for DRPs to grow their portfolio beyond what the Energy Division has determined is the limit of the DRP’s capability to deliver. Additionally, many DRPs do not enroll

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<sup>8</sup> “PG&E’s Comments on the Draft 2018 Load Impact Evaluation for OhmConnect’s Demand Response Resources” submitted in A.17-01-012, et al. on October 17, 2019, at p. 3; “Southern California Edison Company’s Amended Comments on Notice of Availability of OhmConnect, Inc. Draft Load Impact Report for Program Year 2018 Pursuant to Load Impact Protocols Adopted by D.08-04-050, as Modified by D.10-04-006 and Applied to Third-Party Demand Response Resources by D.19-06-026” submitted in A.17-01-012, et al. on October 18, 2019, at pp.9-10; “Informal Comments to the Draft Load Impact Report” submitted by the Public Advocates Office in A.17-01-012, et al. on October 18, 2019, at p. 3.

without corresponding commitment, and have demonstrated national track records of enrolling customers in portfolios specifically to meet contracted commitments. Enrollment efforts and expected results are strongly correlated to desired QC to meet contracts and would not separately be achieved. The enrollment projection evaluation process needs to take this into account.

The criteria on which enrollment projections are evaluated should be transparent. The Joint Parties recommend that the Energy Division lay out clear guidelines by which a DRP's enrollment forecast is assessed. This may include a list of information that the DRP must provide to substantiate their enrollment forecast, including historic growth numbers.

If you have any questions, feel free to reach out to me by email at [gwikler@cedmc.org](mailto:gwikler@cedmc.org) or by phone at 925-286-1710.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Wikler". The signature is fluid and cursive, with a large initial "G" and a long, sweeping underline.

Greg Wikler  
Executive Director  
California Efficiency + Demand Management Council