October 5, 2020

Via E-Mail (EDTariffUnit@cpuc.ca.gov)
California Public Utilities Commission
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

RE: Advice Letters (ALs) 5950-E (Pacific Gas and Electric), 4293-E (Southern California Edison), and 3608-E (San Diego Gas & Electric)
(Demand Response Auction Mechanism Pilot for 2022)

PROTEST OF CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL, CPOWER, ENEL X NORTH AMERICA, INC., LEAPFROG POWER, INC., AND OHMCONNECT, INC.

Dear Energy Division Tariff Unit:

On September 15, 2020, pursuant to Ordering Paragraph (OP) 29 of Decision ("D.") 19-12-040, Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), and San Diego Gas & Electric Company ("SDG&E) (collectively, the "IOUs") jointly submitted for approval revisions to the Demand Response Auction Mechanism ("DRAM") Pilot for the 2021 auction for 2022 delivery ("DRAM Advice Letter"). The California Efficiency + Demand Management Council (the "Council"), CPower, Enel X North America, Inc., Leapfrog Power, Inc., and OhmConnect, Inc. (collectively, "the Joint Parties") appreciate the opportunity to respond to this DRAM Advice Letter filing.[1]

As a general statement, the Joint Parties are very concerned by the large number of changes (ten) that are proposed by the IOUs. A few proposed changes are administrative in nature and clearly fall within the technical scope of the DRAM Technical Working group ("Working Group") as directed by Ordering Paragraph (OP) 29 of D.19-12-040. In that decision, the Commission directed that refinements developed in the Working Group be limited to technical changes to the DRAM design, pro forma contract, or Appendices A, B, and C. Unfortunately, the Decision did not specify what constitutes a "technical" change and this question was not addressed by the Energy Division at the beginning of the Working Group process. If the Commission's intent was that any change to the DRAM design, pro forma contract, or Appendices A, B, and C constitutes a technical change, that would encompass

[1] The views expressed by the Council are not necessarily those of its individual members.

virtually any change to the DRAM Pilot, except the program budget. Presumably, that was not the Commission's intention but this ambiguity allowed parties to put forth several proposals that are, in the Joint Parties' assessment, policy and not technical in nature.

The Energy Division contributed to this confusion by proposing its own ideas for potential changes to the DRAM while simultaneously stating that it was up to the Commission to decide which are policy issues and which are technical issues. In doing this, the Energy Division implicitly put its thumb on the scale and provided its imprimatur to some issues that arguably fall into the policy category. In the absence of a clear definition of "technical" vs. "policy", the Joint Parties recommend the Commission adopt the following definitions: A technical change is meant to improve the operation and implementation of the DRAM Pilot including the auction process, clarifications to the DRAM design, pro forma contract, and Appendices A, B, and C. A policy change impacts the underlying structure of the DRAM and should require a strong evidentiary basis. Pursuant to these proposed definitions, the following proposals put forth in the Advice Letter fall within the technical category: 1) Use of Defined Terms and Capitalization in Contract Exhibits, 2) Inclusion of Subscription ID in Data Template, 3) qualifying capacity ("QC") Estimate Enhancements, 4) DRAM Must Offer Obligation, 5) Modification of Customer Data Transfer Process, and 6) Modifications to Performance Assurance. The remaining proposals are policy changes and should be disregarded by the Commission: 1) Adjusted Long-Run Avoided Cost of Capacity, 2) Use of QC vs. net qualifying capacity ("NQC") in DC Invoice Templates, 3) Penalty Structure – Shortfalls between contract quantity ("CQ") and QC, 4) Customer Movement Across Different Months, 5) Sharing of Resource IDs between Contracts, and 6) 1 MW Minimum Resource Size.

Another key point of concern is that some of the IOUs' proposed changes would revise rules that were only adopted in 2019 to be implemented in the 2020 delivery year and for which no information regarding their effectiveness has been gathered or assessed by the Independent Evaluator. These issues include 1) Use of QC vs. NQC in DC Invoice Templates, 2) Customer Movement Across Different Months, and 3) Penalty Structure – Shortfalls between CQ and QC. Notwithstanding their status as technical or policy changes, they should be rejected by the Commission pending a finding by the Independent Evaluator that changes to the existing rules are actually necessary.

As a final opening point, the Joint Parties are dismayed by the absence of analysis, supporting evidence or discussion for many of the proposals. In some instances, a proposal is supported only by a few sentences or bullet points. In two instances, no proposal was put forth in the Working Group Report, one of which was never discussed during any of the Working Group sessions. This is far below the standard necessary for the Commission to make an informed decision on the IOUs' proposals. Proposed changes that lack adequate support include: 1) Use of QC vs. NQC in DC Invoice Templates, 2) Penalty Structure – Shortfalls between CQ and QC, 3) Modifications to Performance Assurance (no proposal in the Working Group report), and 4) 1 MW Minimum Resource Size (no proposal in the Working Group report). The IOUs appear to be using this DRAM refinement process as a "blank check" to unilaterally make whatever policy or technical changes to the DRAM they see fit while disregarding any

evidentiary standard. Based on the absence of substantive discussion or analysis for many of the proposals in the Working Group Report, the Joint Parties are concerned that a significantly lower standard will be applied to the IOUs' proposals. To avoid this, when the Commission considers each of the IOUs' proposals, before it considers the merits of a proposal, it should first carefully consider whether the IOUs have met a reasonable evidentiary standard for supporting these proposals.

The Joint Parties address each of the IOUs' recommendations below. As an initial point, the Joint Parties support the IOUs' rejection of the Energy Division proposals as discussed in Section 2 of the DRAM Advice Letter.

The Joint Parties' Response

I. Adjusted Long-run Avoided Cost of Generation ("LRAC") Methodology

The Joint Parties agree with the IOUs' recommendation that no changes to the LRAC methodology be made.[2] During the Working Group sessions, parties appeared to be in general agreement that the proposed LRAC methodology revisions were confusing and even less transparent than the current approach which is already insufficiently transparent for a healthy market. Though the Joint Parties appreciate the Energy Division's concerns about the risk that the LRAC methodology could result in the rejection of higher value bids, the competitiveness of the DRAM auctions has driven bid prices lower such that the LRAC was not a significant limiting factor in the most recent solicitation.

II. Use of Defined Terms and Capitalization in Contract Exhibits

The Joint Parties support adoption of the IOUs' proposed revisions to Exhibits C, E, and H of the DRAM Purchase Agreement ("DRAM PA") to implement the consistent use of defined terms, as well as the revisions to Exhibit G to reflect the most current version of the July 21, 2020 Final DRAM Template. These revisions will make the DRAM pro forma and associated exhibits clearer.

III. Use of QC vs. NQC in DC Invoice Templates

The Joint Parties oppose the adoption of the IOUs' proposed revisions to Section 1.6(a), 1.6(b)(iv), Exhibit A, and Exhibit C as they pertain to their proposal to use the lesser of the assigned QC or Raw Demonstrated Capacity instead of NQC because it is contrary to Commission decision. The Joint Parties also oppose the proposal to determine DC using the average performance of all dispatches or tests within a given month.

According to the IOUs, the rationale for this proposal was to maintain consistency with language in D.19-07-009, page 61, Finding of Fact 71, and Conclusions of Law 20 and 21.[3] However, upon a closer reading of this cited language, it appears that the IOUs have misinterpreted it. It is clear that the Commission's intent was to allow for concurrent dispatches

[2] DRAM Advice Letter, at p. 5.
[3] Working Group Report, at p. 6.

of resources within a given subLAP to be aggregated for the purpose of DC invoicing while declining to adopt incentives for resources to over-produce. In Section 3.7.2 of D.19-07-009, which notably is entitled, "Imposing Penalties for Capacity Shortfalls", the Commission discusses a new penalty structure and whether it should include an incentive band for over-producing resources.

The Joint Parties had proposed that in addition to the penalty bands of the penalty structure, DRAM Sellers receive a 5% premium on their DC for delivering greater than 100% of their QC in a given month. The Commission clearly rejected this proposal when it stated, "We decline to adopt incentives for over-performance. As cautioned by the CAISO, resources should perform according to CAISO market instructions and not below or above."[4] However, the Commission also explicitly allowed for DRAM resources providing System RA that are concurrently dispatched to be aggregated for the calculation of DC in a given month, with the resources that provide Local RA required to be located within the same subLAP. The Commission stated, "Where multiple resource IDs within an Auction Mechanism contract are dispatched concurrently in a particular delivery month, the aggregate performance of the concurrently dispatched resource IDs may be utilized for the purpose of Demonstrated Capacity invoicing and compared with the sum of Qualifying Capacity on the monthly Supply Plan of those resource IDs. For Local resource adequacy, we clarify that the aggregation of concurrently dispatched resource IDs is only allowed for resources within the same SubLAP."[5]

Similarly, the IOUs misinterpret Finding of Fact ("FoF") 71 from D.19-07-009 which states, "Resources should perform according to CAISO market instructions and not below or above." This FoF is virtually identical to the same statement on page 61 which, again, pertains to the issue of over-performance incentives and not the right of DRAM Sellers to aggregate the performance of resources that are concurrently dispatched. To be clear, the Joint Parties do not dispute FoF 71, only in how the IOUs are attempting to use it to support their proposal.

Again, the IOUs misinterpret Conclusions of Law ("CoL") 20 and 21 which clearly apply to the question of over-performance incentives. CoL 20 states, "The Commission should incentivize Auction Mechanism resources to perform as accurately as possible", and CoL 21 states, "The Commission should not adopt incentives for over-performance in the Auction Mechanism." However, in citing these provisions to support its proposal, PG&E is conflating over-performance incentives with the aggregation of DRAM resource performance during concurrent dispatches.

For resources providing System RA, there is no value provided to customers by setting the DC calculation to the lesser of (A) corresponding NQC or (B) the QC set forth in the Supply Plan. If a DRAM Seller is providing System RA and under-delivers in one Resource ID (relative to the Supply Plan), and over-delivers in another Resource ID for an equivalent amount of capacity (relative to the Supply Plan), then the CAISO system is not negatively impacted by allowing DRAM Seller to substitute performance in one Resource ID for another (provided that the performance of each Resource ID is still capped at the resource's NQC). Setting a restriction to limit DC based on the QC for that specific Resource ID set forth in the Supply Plan will

[4] Decision 19-07-009, at p. 61.
[5] *Id.*, at p. 61.

provide a further disincentive for customers to deliver excess capacity. If this restriction were in place during the August and September critical heat events, it would have resulted in significant limitations on the amount of capacity that customers were incentivized to provide (capping them at the Supply Plan quantity), where many DRPs were able to deliver capacity in excess of the Supply Plan quantity for a single Resource ID to the benefit of all customers in the State.

The Commission should reject the IOUs' proposal to determine DC using the average performance of all dispatches or tests in a given month. In addition to including no proposal for this change in the Working Group Report, they have not addressed this proposal in the Advice Letter other than to say that they propose to adopt it without providing any justification or support for why it should be adopted.[6] As a related issue, the Joint Parties oppose the IOUs' proposed definition of "Clock Hour" in Exhibit A and as used in the context of DC Dispatch and DC Test. The proposed definition, "the sixty (60) minute interval that starts at 00:00 and ends at 00:59", is highly problematic because it establishes that for a full hour of dispatch to be counted as an hour of DC, the dispatch must begin at the top of the hour and occur in increments of 60 minutes. Therefore, the DC of a CAISO dispatch beginning at 1645 and concluding at 1715 would receive no DC value and a dispatch beginning at 1645 and concluding at 1815 would only receive one hour of DC value. The CAISO real-time market regularly clears on non-clock intervals. To constrain settlements to clock intervals would be contrary to prior Commission directives that DRAM settlements be based upon market awards and market-based performance.

The Joint Parties also note that the use of average performance of all dispatches or tests in a given month disincentivizes resources from being actively dispatched in the market. If resources are being paid based on their performance during the highest hour, it is more likely that resources will actively seek market dispatches and perform to the best of their capabilities throughout the entire dispatch period in order to achieve the best possible highest hour. If performance is averaged across the entire dispatch period, resources have no incentive to perform well at any given hour because the highest-performing hour essentially becomes derated.

IV. Inclusion of Subscription ID in Data Template

The Joint Parties support adoption of the IOUs' proposed revisions to Exhibit D of the DRAM Purchase Agreement to include the Subscription ID in the Data Issues template. This change is a process improvement that will save time for the IOUs by eliminating the need for them to submit a follow-up request to the DRAM Sellers for the added information.

V. Qualifying Capacity Estimate Enhancements

The Joint Parties generally support the IOUs' proposed QC estimate enhancements in Section 3.1(a)(ii) and Exhibit G of the DRAM Purchase Agreement. This change is an appropriate clarification of QC data requirements.

[6] DRAM Advice Letter, at p. 6.

VI. Penalty Structure – Shortfalls between Contract Quantity and Qualifying Capacity

The Joint Parties strongly oppose the IOUs' proposed revisions to Sections 4.1, 4.2(a), and 9.1(b)(vi) to implement revisions to the DRAM penalty structure. The proposed changes are premature and violate the Commission's balance of accountability and fairness.

The IOUs' primary argument in making the proposal is that 1) DRAM Bidders would be more realistic in the amount of capacity bid into the DRAM auctions, and 2) a purported lack of penalties creates a gap that allows DRAM Sellers to deliver a lower QC than Contract Quantity (CQ).[7] First, the IOUs have provided no evidence to indicate the frequency or magnitude of the purported shortfalls between CQ and QC, or that the current penalty structure does not balance greater accountability with fairness, a principle that the Commission applied when approving the current penalty structure. In approving it, the Commission stated, "These bands balance the Commission's need to ensure performance and deter unwanted market behavior with a Commission intention of fairness."[8] This should be the standard against which any revisions to the penalty structure are measured; adding another layer of penalties on top of the existing penalty structure with no counterbalancing benefit to DRAM Sellers ignores any principle of fairness.

It is also entirely premature to make such significant revisions to the DRAM penalty structure before the effectiveness of the current penalty structure can be assessed by the Independent Evaluator. In D.19-07-009, the Commission stated, "To deter undesired market behavior while ensuring ratepayer funds are protected, we do not adopt punitive penalties in Step One. However, we note that punitive penalties shall be considered in the future, if performance does not improve."[9] To this point, it has not yet been determined whether performance has improved under the current penalty structure, so until the Independent Evaluator can perform its assessment, it would be counter-productive and inappropriate to make additional changes to it. The Commission should also be careful not to adopt penalty structures that will lead to perverse incentives especially at a time when more DR resources are needed. Having a penalty band that pays DR resources for 50% of QC regardless of whether they performed at 51% or 84% will end up incentivizing resources to perform at 51% even if they could perform at 84% as the value to perform at 84% will not be there. Such a significant penalty, even for resources performing at 84% of QC, would also likely have a chilling effect in DRAM participation because the potential risks will far outweigh the benefits.

In addition to the lack of evidence or analysis to support this proposal, the Commission should consider the practicalities behind the existing tolerance band when DC is greater than 90% of QC. As a matter of business practice, DRAM Bidders will often base their recruiting efforts on their contractual requirements, not the other way around. DRAM Bidders will sometimes bid MW into a DRAM auction that reflect their existing customer portfolio plus

[7] Working Group Report, at p. 8.
[8] Decision 19-07-009, at p. 60.
[9] *Id.*, at p. 59.

forecasted recruiting efforts. This is already acknowledged and accounted for in Exhibit G of the DRAM Purchase Agreement. Despite the best intentions of a DRAM Seller, they may sometimes not be successful in recruiting enough customers to the deliver the exact amount of capacity that was awarded. Another potential scenario is that a DRAM Seller could lose one or more large customers to a competing DRAM Seller after the contract is executed. The IOUs' proposal would essentially require that DRAM Bidders only bid the capacity they have enrolled at the time of the DRAM solicitation. This would then reduce the incentive for DRAM Sellers to recruit more customers because there would never be any certainty that the newly-recruited customers' capacity could be sold.

VII. Customer Movement Across Different Months & Sharing of Resource IDs between Contracts

The Joint Parties oppose the proposed revisions to Section 3.4(d), Section 1.1(a), 1.6(j), and 11.1(a)(i), and deletions of Sections 1.4(a)(iii), 1.6(h), 4.2(g), 4.2(h), and 7.2(b)(vi) of the DRAM Purchase Agreement to implement new restrictions on customer movements between resources and partially support limited restrictions on the sharing of Resource IDs between contracts. Regarding new customer movement restrictions, the IOUs provide no evidence that the existing restrictions have been ineffective in reducing customer double-counting, they have not fully considered the benefits of shifting customers, nor have they satisfactorily explained why the existing regulatory and enforcement mechanisms are insufficient to ensure good behavior by DRAM Sellers. Regarding the sharing of Resource IDs between contracts, the Joint Parties do not necessarily oppose eliminating Resource ID sharing between Sellers but this practice should be allowed to continue by individual DRAM Sellers.

In proposing restrictions on customer movements, the IOUs provide no evidence that the customer movement restrictions adopted in D.19-07-009 have been ineffective.[10] In the Working Group Report, they state as a problem statement, "…parties have looked upon customer shifting as perhaps being a bit suspect; i.e., difficult to verify at best, or at worst, as an opportunity to potentially inflated testing or dispatch results but not improve the actual reliability of the resources, if certain controls cannot be put in place to prevent this scenario."[11] Looking at something as "a bit suspect" does not, by any standard, constitute a finding that customer movements pose such a significant problem that new restrictions are needed. Furthermore, the IOUs do not even cite which parties have expressed this concern or when. Instead, they attempt to manufacture a narrative to create the impression that this is a widely-accepted opinion.

In the IOUs' examination of the purported benefits of shifting customers, they provide two irrelevant charts and make a handful of unsupported statements. The IOUs' cite Figure 1, which shows the 2018-2019 bidding practices of supply plan Proxy Demand Resources (PDRs) to support their claims that during the August 2020 Stage 3 emergency, some DRAM resources were not being dispatched in the day-ahead market.[12] The IOUs provide no evidence or even information to indicate how many times this occurred, how many DRAM resources exhibited

[10] Decision 19-07-009, at Ordering Paragraph 4.
[11] Working Group Report, at p. 10.
[12] *Id.*, at p. 10.

this behavior, or the number of MW involved, nor the circumstances that purportedly led to DRAM resources not being scheduled in the CAISO market.

The Joint Parties fully agree with the IOUs that DRAM Sellers must be able to deliver the entire portfolio they have under contract. However, the new rules that were approved in 2019 to improve DRAM performance, including restrictions on customer movement, have only gone into effect in June due to the abbreviated 2020 delivery period. This existing restriction of limiting movement within a delivery month should prevent the potential for gaming, the chief concern raised in the Working Group, and the IOUs have provided no evidence to show that these new customer movement restrictions have been ineffective.

The IOUs have also not considered that customer movement is sometimes essential to the normal business operations of DRAM Sellers that can occur throughout the year and do not conform with the DRAM deliverability period. For instance, a customer that is being utilized to meet the requirements of a DRAM contract may need to be moved to an RA contract signed with a community choice aggregator, with one or more new customers being used to backfill the DRAM contract. Customer movements are also sometimes triggered by changes to a customer's capabilities due to new enabling technologies or load characteristics. Similarly, customers also have varying load curtailment capabilities in different months. As a result, one set of customers may be able to provide 1 MW of curtailment in July, but only 0.1 MW of curtailment in January. Another possible scenario is if a DRAM Seller has a shaped DRAM contract in which they provide different amounts of capacity across different months that requires movement of customers into or out of resources. It is common for Summer months to have more capacity than the shoulder months. Restricting movement of customers across months will prevent DRAM Sellers from being able to effectively set up resources that meet the varying contract commitments across months, as this will require unique combination of customers. Requiring that this group of customers remain static within the same Resource ID across all months will limit the DRAM Seller's ability to manage curtailment capabilities within resource groups against their monthly contracted capacity.

The IOUs' claim that the current system of wholesale market enforcement of DRAM resources is problematic is unfounded and the IOUs' presumption that the FERC and CAISO must monitor every dispatch or day-ahead offer of DRAM resources is without merit.[13] The IOUs have not discussed why DRAM resources, which constitute a small fraction of the capacity that bids energy into the CAISO market, should be monitored any differently from other resources. The IOUs' assertion that the relatively short-term nature of DRAM contracts warrants prompt enforcement of market infractions is also unfounded because DRAM Sellers can be sanctioned well after the fact. The IOUs also possess audit rights that allow them to examine DRAM Seller behavior. The IOUs seem to be assuming that all DRAM Sellers will seek to cheat as a rule so they must all be sanctioned in advance with more restrictions. This is reflected in their statement that, "we believe that the reliability of DRAM resources should not be dependent on prompt enforcement from CAISO and FERC. Additionally, IOU audit rights may also not result in penalties or future compliance."[14] The Joint Parties strongly object to this illogical presumption. DRAM Sellers have made significant financial investments to operate in

[13] Working Group Report, at p. 11.
[14] *Id.*, at p. 12.

the California market, so any finding of malfeasance, whether occurring through IOU, CAISO, CPUC, or FERC investigation, will undoubtedly damage their business prospects both inside and outside of California. This proposal should be rejected.

The IOUs' proposed prohibition on sharing of Resource IDs between contracts is reasonable as it pertains to multiple DRAM Sellers. However, there are some specific conditions under which DRAM Sellers should be allowed to share Resource IDs between their own contracts. For instance, if the DRAM Seller has multiple contracts with the same IOU, one of which may or may not be a DRAM contract, it may be make sense from an operational standpoint to group customers from two or more contracts into a single Resource ID rather than using two separate Resource IDs. The Commission should eliminate the sharing of Resource IDs across different DRAM Sellers' contracts, but not across the same DRAM Seller's contracts with a single IOU.

VIII. Cost Effectiveness Tool Development

The Joint Parties fully agree with the IOUs that any cost effectiveness methodology is a policy issue and should not be addressed through an advice letter.[15] Because of the significant implications for the future of the DRAM should the wrong cost effectiveness methodology be adopted, and in the face of the extensive questions included in PG&E's cost effectiveness proposal, a more focused effort is needed to address this issue. However, the Joint Parties take issue with several statements made by the IOUs as discussed further below.

In a non-sequitur, the IOUs attempt to conflate the DRAM resources as generation because it is a supply resource and purportedly functions "more similar to a generation procurement product than a DR Loading Order resource", and therefore should not be considered a preferred resource.[16] This is patently absurd. DRAM resources undeniably reduce load and therefore meet any definition of DR. As the IOUs are fully aware, the Commission adopted bifurcation rules in D.14-03-026, and required IOU and third-party DR to be market-integrated to receive RA value. The Commission did not state that market-integrated DR, regardless of how it is procured, is no longer considered a preferred resource. By the IOUs' own standard, their own market-integrated DR programs would not qualify as preferred resources because they too are supply resources.

The IOUs' claim that because DRAM resources are "procurement products", they should compete head-to-head in an all-source solicitation and meet a specific need is discriminatory and ignores the large number of dedicated procurement mechanisms that the State has used in the past for public policy purposes.[17] The IOUs ignore the large number of other dedicated procurement mechanisms that the Commission has authorized over the years, which include: 1) Renewable Auction Mechanism ("RAM"), 2) Bioenergy Renewable Auction Mechanism ("BioRAM"), 3) Renewable Portfolio Standard ("RPS"), 4) energy storage procurement requirement, and 5) California Solar Initiative ("CSI"). Similarly, the IOUs' claim that DRAM resources should meet a specific need, for which no definition is provided by the IOUs, is a red

[15] DRAM Advice Letter, at p. 13.
[16] *Id.*, at p. 14.
[17] *Id.*

herring. The procurement mechanisms listed above were not created to meet a specific need, so it is unclear why the DRAM should be treated differently. The reality is that the Commission adopts these dedicated procurement mechanisms as a matter of public policy to develop a market for a specific technology or resource type and the DRAM falls into this category. Further undermining the IOUs' arguments, there actually is ample evidence that a need exists. LSEs' annual RA requirements constitute a need. The 3,300 MW of incremental RA procurement that was directed in D.19-11-016 constitutes a need. The rolling backouts and CAISO stage emergencies in August, Stage emergencies in September, and very tight supplies in early October clearly indicate there is a need. In fact, the approximately 150-200 MW of DRAM capacity that was eliminated when the DRAM budget was reduced by half for 2020 would have been very useful to avoid or mitigate the August rolling blackouts. The IOUs ignore these very obvious needs.

With regard to the IOUs' cost-effectiveness proposal, it is so severely lacking in detail that it should not be adopted. How to calculate DRAM cost effectiveness is a complicated issue that cannot be resolved during a one-hour working group discussion and a one-page proposal. A more dedicated discussion is needed in which a methodology is developed and demonstrated before being tested in 2022.

The Joint Parties disagree with the IOUs' attempt to incorporate the DR Load Impact Protocols ("LIPs") into any cost-effectiveness analysis.[18] Decision 19-07-009, as modified by D.19-12-040, created guidelines for capacity counting to support a DRAM bid and the QC value of DRAM contracts. The IOUs' backdoor attempt to institute the LIPs for the DRAM is a significant policy issue, lacks any supporting arguments or evidence, and was never proposed in the Working Group Report.

Should the Commission continue to move forward with a DRAM cost-effectiveness requirement, the Joint Parties support the IOUs' proposal to use a neutral third party to perform the evaluations rather than the IOUs.[19] However, the incremental budget for this third party should not be taken from the existing DRAM budget which has already been cut in half and burdened with consulting fees. Instead, the IOUs should pay the third party out of their respective EM&V DR program budgets.

The Commission should reject the IOUs' cost effectiveness proposal and initiate a dedicated effort to address this issue.

IX. DRAM Must Offer Obligation

The Joint Parties disagree with the CAISO's interpretation of the DRAM bidding requirements that there is no specific requirement that DRAM resources bid during the CAISO's Availability Assessment Hours ("AAH").[20] However, to provide greater clarification, the Joint Parties support the IOUs' proposed revisions to Section 3.4(a) of the DRAM Purchase Agreement. Section 3.4(a) of the DRAM PA already explicitly states:

[18] DRAM Advice Letter, at p. 15.
[19] *Id*.
[20] Working Group Report, at pp. 18-21.

> Seller shall, and shall cause each of the PDRs in the DRAM Resource and corresponding DRPs and SCs to, comply with all applicable CAISO Tariff provisions, CPUC Decisions and all other Applicable Laws, including the Bidding of the DRAM Resource into the applicable CAISO Markets during the Availability Assessment Hours as required by the CAISO Tariff.

This contract provision clearly references the requirement that DRAM resources comply with the AAH pursuant to the CAISO tariff. Furthermore, joint Advice Letter 3208-E (SCE) et al, which was approved by Resolution E-4728 and modified by Resolution E-4737, specified that DRAM resources must comply with the CAISO's AAH. Under the heading, "CAISO Must Offer Obligation", the advice letter states, "Seller, through its designated SC, shall bid into the CAISO Day-Ahead Market the contracted MW during the Availability Assessment Hours, as required by the CAISO Tariff and Business Practice Manual for DR resources to meet their RA obligation. Outside of those hours, there would be no CAISO bidding requirements unless required by the CAISO tariff or CPUC rules."[21] This should be a sufficient amount of documentation to satisfy the CAISO's concerns. However, the Joint Parties are willing to support the IOUs' proposed revisions to Section 3.4(a) of the DRAM purchase agreement if that will address the CAISO's concerns.

X. 1 MW Minimum Resource Size

The Joint Parties oppose the IOUs' proposed Section 3.4(e) of the DRAM purchase agreement to prohibit DRAM Sellers from having more than one sub-MW Resource ID in each subLAP. On procedural grounds, the IOUs' proposed revisions should be ignored because it was never submitted as a formal proposal in the Working Group Report. This issue was discussed during one of the working groups at the request of the Energy Division but no proposal was put forth into the Working Group Report. The IOUs have also included no language in the Advice Letter explaining why this change should be adopted. In effect, the IOUs simply propose to unilaterally modify the DRAM PA based on no evidence or proposal whatsoever. In the absence of an actual proposal, the Commission should reject the contract revisions.

Should the Commission consider this proposal, the Joint Parties oppose limitations on sub-MW resources because it would unjustifiably impinge upon the business practices of the DRAM Sellers. DRPs have several legitimate reasons for utilizing sub-MW resources. These include:

- **DRP has insufficient customers within a subLAP.** Under some conditions, a DRP may have not recruited enough customers within a subLAP to form a larger resource. This can happen when the DRP is relatively new to the California market or perhaps their recruiting efforts are unsuccessful. Another related factor could be if a DRP is building a portfolio in a new (for them) or less populated subLAP. It should be noted that there are 29 DRPs registered at the CAISO. One result of so many competitors in the market is that some DRPs will have some smaller resources as they seek market share; in addition, aggressive recruiting

[21] DRAM Advice Letter, at p. 4.

efforts by DRPs can cause some customers to move from one DRP to another which can cause the size of some PDRs to fluctuate as DRPs are forced to rebalance their resources.

- **Ease of settlement.** A DRP with a customer having multiple locations (e.g. a grocery store chain) will often prefer to use a single, dedicated PDR for the customer's locations within a subLAP. This simplifies DRP settlement with the customer based on energy market revenues, whereas multiple customers' locations within a single PDR can complicate the settlement process. Similarly, scheduling coordinators will sometimes group a DRP's customers in a subLAP into a dedicated PDR rather than mix customers from multiple DRPs into a single PDR.
- **DRPs will group customers by common operational factors.** When a DRP builds a PDR, it will seek to group locations by common operational factors such as desired frequency of dispatch, opportunity cost, dispatch duration, and response time. This is necessary so that when a PDR is scheduled in the CAISO market, all of the locations composing the resource will be available to provide the committed energy when scheduled. For instance, grouping locations that are capable of dispatching daily with locations that can only meet the minimum Resource Adequacy dispatch requirements would inevitably leave some customers dissatisfied because the PDR would be dispatched too frequently for some or not frequently enough for others. The other option for the DRP would be to bid only a portion of the PDR's capacity on a daily basis and all of the PDR's capacity on a less frequent basis. This would create problems because the PDR would not always be bidding the full number of MWs in its supply plan.

  The same conundrum exists when grouping locations with different opportunity costs and dispatch duration. It would be impractical to place locations who have a preference to dispatch at $250/MWh in the same PDR as locations who prefer to be dispatched at $500/MWh because it would unnecessarily limit the dispatches of the $250/MWh locations. Conversely, any bids of such a resource at $250/MWh would only result in the lower opportunity cost locations dropping load. Similarly, some locations may be willing to reduce load for longer than four consecutive hours (e.g. a facility that will shut down for the day for a DR event) but others are only able to meet the minimum requirements to qualify for Resource Adequacy.

  Finally, some locations may be capable of responding quickly enough to participate in the real-time market while others require more notification which limits them to the day-ahead market only. Adding more granularity, locations that can participate in the real-time market can be further grouped by 60-minute, 15-minute, and 5-minute dispatch capability.
- **Baseline variability.** For larger PDRs, the baseline can sometimes be more variable if there are many locations or if there is too much diversity among the locations. Greater baseline variability can sometimes "zero out" the actual load reduction of a market dispatch, especially for smaller dispatches, so dispatches of smaller PDRs are sometimes more accurately measured. For example, if a 10 MW PDR receives a 100-kW market award, the curtailment could be lost in any changes to the baseline.
- **Some customers do not want their performance influenced by another customer.** DRPs work with many different customers who have varying amounts of capacity in each subLAP. A single customer, for example, could have multiple locations in a single subLAP and might

not want the performance of their customers impacted by the performance of another customer's locations.

A 1 MW minimum requirement is also in direct conflict with FERC Order 2222 which explicitly requires all RTO/ISOs to implement minimum size requirements for DER participation in markets that is no larger than 100 kW. Although DRAM is under the jurisdiction of the CPUC and not FERC, setting a minimum size of 1 MW is in direct conflict with the FERC's guidance that aggregations of small DERs (of at least 100 kW) should be able to provide all wholesale market products that they are technically capable of doing, which should extend to RA capacity under DRAM.

XI. Modification on Customer Data Transfer Process

The Joint Parties disagree with the IOUs that its proposed improvements to the Customer Data Transfer Process could not be implemented in time for 2022.[22] This outlook means that no improvements could be made until 2023 at the earliest. Because of the relatively narrow scope of the proposal, the necessary details and associated changes to Electric Rule 24/32 ("Rule 24/32") and DR program tariffs can be developed within a reasonable period of time. The Joint Parties support the IOUs' suggestion that a separate public discussion process be used to resolve this proposal. The Commission should convene one or more workshops in the fourth quarter of this year to further develop this proposal and the associated changes to Rule 24/32. Upon conclusion of this process, the Commission could make a determination on whether the IOUs should take action to address the problems described in the proposal and, if applicable, direct the IOUs to develop proposals for Commission approval. This process could be completed in the first half of 2021 which would allow enough time for implementation by early 2022.

The Joint Parties disagree with the IOUs that the DRAM should be made a permanent mechanism as a precondition to making any improvements to the customer data transfer process.[23] The problems with the IOUs' customer data transfer process described in this proposal will impact any entity that relies on Rule 24/32, not only DRAM Sellers, and the Council's detailed proposal demonstrated the urgency of resolving these problems. The Commission should move as quickly as possible to address this issue

XII. Reduced Times a Seller May Request Return of Performance Assurance

Like the IOUs' proposed limitations on sub-MW resources, their proposal to revise Section 5.3(a) of the DRAM purchase agreement was not included in the Working Group Report. Even more egregiously, it was not even discussed during any of the three working groups. On this basis alone, the Commission should reject this proposal. Should the Commission nevertheless consider this proposal, it should be rejected because the IOUs' have not demonstrated why it is necessary. In fact, the only mention of this revision in the Advice Letter itself is where they simply say, "Section 5.3(a) is modified to limit the number of times a Seller may request a return of the applicable portion of its performance assurance, and to allow the

[22] DRAM Advice Letter, pp. 7-8.
[23] *Id.*, at p. 8.

Buyer more time to process such requests."[24] The IOUs' proposal to limit the frequency by which Sellers can request a refund of any Performance Assurance payment surplus from a monthly to a quarterly basis is unjustified, especially considering that Performance Assurance is performed monthly. The IOUs should not be allowed to hold onto Sellers' funds if it is no longer needed. In addition, the IOUs do not address why they should be allowed ten additional business days to implement a reduction in Performance Assurance. The Commission should reject this revised language.

CONCLUSION

The Joint Parties recommend that the Commission take the actions recommended above. Many of the new restrictions the IOUs propose to impose on the DRAM Pilot are unsupported, unnecessarily burdensome, and far exceed the rigor their own DR programs are subjected to. Such excessive restrictions are anti-competitive in that they risk pushing DRAM Sellers and their customers into the IOUs' own aggregator DR programs. The Joint Parties generally support rule changes that effectively incentivize DRAM Sellers to provide real load reduction in the market. However, overly restrictive DRAM rules will stifle the competitive nature of the program and the Commission will continue to see a decline in participants and new entrants year over year, which has already been observed by the Independent Evaluator. The August and September heat events are a clear demonstration of why the DRAM Pilot should be expanded and not set up to fail with onerous restrictions that imply all DRAM Sellers are guilty until proven innocent and fail to understand the business nuances of third-party DR.

Respectfully submitted,

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[24] DRAM Advice Letter, at p. 12.

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