BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

| | |
|---|---|
| Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Forward Resource Adequacy Procurement Obligations. | Rulemaking 21-10-002<br>(Filed October 7, 2021) |

**OPENING COMMENTS OF THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL AND CPOWER ON PROPOSED DECISION ADOPTING LOCAL CAPACITY OBLIGATIONS FOR 2024-2026, FLEXIBLE CAPACITY OBLIGATIONS FOR 2024, AND PROGRAM REFINEMENTS**

June 14, 2023


**Joseph Desmond**
**Executive Director**
**California Efficiency + Demand Management Council**
849 E. Stanley Blvd #294
Livermore, CA 94550
Telephone: 925-785-2878
E-mail: policy@cedmc.org

**Luke Tougas**
**Consultant for**
**California Efficiency + Demand Management Council**
849 E. Stanley Blvd #294
Livermore, CA 94550
Telephone: 510-326-1931
E-mail: l.tougas@cleanenergyregresearch.com

**Kenneth D. Schisler**
**Regulatory and Government Affairs**
**CPower**
1001 Fleet Street, Suite 400
Baltimore, MD 21202
Telephone: 410-656-2391
E-mail:
Kenneth.Schisler@CPowerEnergyManagement.com

**TABLE OF CONTENTS**

*Page*

Table of Contents ........................................................ i
Table of Authorities ........................................................ ii

**I. INTRODUCTION** ........................................................ 1

**II. BACKGROUND** ........................................................ 1

**III. SUMMARY OF THE JOINT PARTIES' POSITION** ........................................................ 2

**IV. THE PD'S PROCESS FOR REFINING THE CEC PROPOSAL IS OVERLY COMPLICATED AND SHOULD BE SIGNIFICANTLY ACCELERATED** ........................................................ 3

**V. A $500/MWH PDR BID CAP WILL REDUCE, RATHER THAN INCREAS RELIABILITY** ........................................................ 6

**VI. RDRR SHOULD REMAIN AN EMERGENCY RESOURCE BUT IT SHOULD BE TRIGGERED BY AN ENERGY EMERGENCY ALERT 1 NOTIFICATION** ........................................................ 9

**VII. THERE IS NO EVIDENCE TO SUPPORT THE ALLEGED NET BENEFITS OF ELIMINATING THE TLF ADDER** ........................................................ 10

**VIII. EXPANDED DR AVAILABILITY REQUIREMENTS MAY IMPROVE DR AVAILABILITY BUT AT THE POTENTIAL COST OF LOWER DR PARTICIPATION** ........................................................ 11

**IX. ADJUSTING DR QC VALUES BASED ON TEST RESULTS OR MARKET DISPATCHES WOULD BE HIGHLY PROBLEMATIC AND WOULD CONTRAVENE THE PREVAILING DR QC COUNTING METHODOLOGY** ........................................................ 13

**X. CONCLUSION** ........................................................ 14

**APPENDIX A: Proposed Findings of Facts, Conclusions of Law, and Ordering Paragraphs**

## TABLE OF AUTHORITIES

*Page*

**CPUC DECISIONS**

Decision (D.) 10-06-034 .......... 9

D.18-11-029 .......... 10

D.23-04-010 .......... 10

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

| | |
|---|---|
| Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Forward Resource Adequacy Procurement Obligations. | Rulemaking 21-10-002 (Filed October 7, 2021) |

**OPENING COMMENTS OF
THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL ON PROPOSED DECISION ADOPTING LOCAL CAPACITY OBLIGATIONS FOR 2024-2026, FLEXIBLE CAPACITY OBLIGATIONS FOR 2024, AND PROGRAM REFINEMENTS**

## I. INTRODUCTION

The California Efficiency + Demand Management Council (the "Council") and CPower ("the Joint Parties") submits these Opening Comments on the Proposed Decision Adopting Local Capacity Obligations for 2024-2026, Flexible Capacity Obligations for 2024, and Program Refinements ("Proposed Decision" or "PD"), mailed in Rulemaking ("R.") 21-10-002 (Resource Adequacy ("RA")) on May 25, 2023. These Opening Comments are timely filed and served pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure and the instructions accompanying the Proposed Decision.

## II. BACKGROUND

The Council is a statewide trade association of non-utility businesses 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. They include energy efficiency ("EE"), demand response ("DR"), and distributed energy resources ("DER") service providers, implementation and evaluation experts, energy service companies, engineering and architecture firms, contractors, financing experts, workforce training entities, and energy efficient product manufacturers. The Council's mission is to support appropriate EE, DR, and DER policies, programs, and technologies to create sustainable jobs, long-term economic growth, stable and reasonably priced energy infrastructures, and environmental improvement.

[1] Additional 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 http://www.cedmc.org. The views expressed by the Council are not necessarily those of its individual members.

CPower is a DER aggregator operating throughout California and the United States, managing approximately 6.3GW of customers' demand side flexibility from over 17,000 customer sites in more than 60 wholesale and retail programs nationwide. CPower participates as an aggregator in programs ranging from emergency capacity demand response to load shifting to fast response frequency regulation.

## III. SUMMARY OF THE JOINT PARTIES' POSITION

The PD adopts a series of highly consequential changes to the RA rules governing Supply Resource DR. The Joint Parties appreciate the PD's willingness to continue developing the California Energy Commission's ("CEC's") DR Qualifying Capacity ("QC") counting proposal. Though some critical details remain to be developed, this proposal has the potential to be a positive step toward reforming the DR QC process from a lengthy and expensive process to one that is more expeditious and that more directly reflects the capabilities of investor-owned utilities ("IOUs") and DR providers. However, the timeframe for completing the process to finalize the CEC's proposal is unreasonably long by any standard. The Joint Parties recommend a shortened process that would forego the need to streamline the Load Impact Protocols ("LIP"), but any effort to streamline the LIPs should begin with the OhmConnect proposal developed in the CEC's Supply Side DR QC Working Group.

The other DR-related elements in the PD would be highly detrimental to DR, especially third-party DR. These elements include:

1. Establishing a wholly arbitrary and unworkable bid cap for Proxy Demand Resources ("PDR") that undermines the much-needed ability of DR providers to manage performance risk, ensure resource availability to meet reliability needs, and avoid customer fatigue;
2. Creating a Reliability Demand Response Resource ("RDRR") dispatch trigger that will lead to resources being triggered when they are not needed, rendering them unavailable during actual emergencies;
3. Inappropriately undervaluing Supply Resource DR resources by eliminating the Transmission Loss Factor ("TLF") and Planning Reserve Margin ("PRM") Adders, while retaining them for Load Modifying DR;
4. An unworkable expansion of DR availability requirements under temporary conditions that are unlinked to the CAISO market; and

5. Introducing a new and untenable risk to third-party DR resources by derating QC values that will further increase the preferential treatment of IOU DR programs.

In aggregate, these changes will result in a significant decline in DR, especially third-party DR, by leading to its over-dispatch and devaluation. This DR will be lost and no longer be available to avoid or meet emergencies, raising reliability risks and costs to ratepayers. The PD generally justifies these moves by claiming they will improve DR reliability but in no instance does it consider the negative reliability impacts of losing a substantial amount of DR RA capacity.

The PD's seeming hostility toward DR, when considered in the context of DR's preferred resource status in the Loading Order as well as the CEC's recently-adopted statewide 7,000 MW Load Shift Goal ("LSG"), is extremely troubling. This PD is all the more concerning because Energy Division staff were singled out by the CEC during the CEC's May 31 regular business meeting, where the LSG was adopted, as playing a key role in developing the LSG. This inconsistency in DR strategy within the Commission is counterproductive and undermines the DR market in California by sending mixed signals to current and potential DR participants and DR providers. It is critical that the Commission and CEC are aligned in their DR policies in order to achieve the LSG as required by Assembly Bill 205.

From a process standpoint, the Joint Parties note that the PD takes little heed of the extensive feedback provided by DR parties, especially with regard to the potential consequences of the DR policies being considered. This lack of consideration is discouraging to parties who participate in good faith in the regulatory process.

The Joint Parties respectfully request the Commission consider our comments and revisions to the PD based on the comments below and the modifications in Appendix A.

## IV. THE PD'S PROCESS FOR REFINING THE CEC PROPOSAL IS OVERLY COMPLICATED AND SHOULD BE SIGNIFICANTLY ACCELERATED

The PD declines to adopt the CEC's DR QC counting proposal at this time but establishes a timeline to address certain elements and adopt a testing period.[2] In the meantime, it maintains the LIPs to serve as the basis for DR QC values and authorizes the Energy Division to

[2] Proposed Decision, at pp. 77 and 121 (Ordering Paragraph 22).

pursue simplification of the current LIP requirements using a stakeholder process to develop a proposal for Commission consideration.[3]

The Joint Parties agree that some elements of the CEC's DR QC methodology require additional work and are therefore supportive of a process to develop these elements. However, the first two elements cited in the PD – the formula for the bid-normalized load impact metric and the design of the capacity shortfall penalty – could be highly damaging to DR if designed incorrectly, so the success of this methodology is not yet determined. With regard to the enforcement mechanism for the capacity shortfall penalty, additional discussion is certainly warranted to discuss roles and responsibilities.

The Joint Parties also support testing the methodology in parallel with the LIP-based QC process in 2024 for the 2025 RA year, but the PD's proposed timeline for finalizing the methodology and getting a Commission decision is far too long. Parties and CEC staff have devoted a great deal of resources to this effort, which has been ongoing for almost two years. The PD would add another two years until a decision can be issued on the final methodology (June 2025). By that time, the LIP-based process will have already been completed for the 2026 RA year, so the new methodology, if approved by the Commission, would not be usable until 2026 for the 2027 RA year. Under this proposed timeline, beginning with the CEC convening the Supply Side DR QC working group in summer 2021, the entire process to replace the LIPs will have taken approximately five-and-a-half years – an unreasonable amount of time by any standard. The process to replace the entire RA framework will have taken far less time. The Commission can and should accelerate this timeframe by two years if it adopts the Joint Parties' proposed timeframe in Table 1 below.

---

[3] Id., at pp. 77-78.

**Table 1: Joint Parties' Proposed Revised Schedule**

| Milestone | PD Timeframe | Joint Parties' Proposed Timeframe | Explanation |
|---|---|---|---|
| Initiate Working Group to refine specific elements of the CEC proposal, as directed by Commission Decision. | July 2023 | July-November 2023 | The outstanding elements of the CEC proposal should be developed by November so that the methodology can be tested in the 2025 RA year DR QC process in parallel with the LIP process. |
| LIP process begins for 2025 RA compliance year. In ex post analysis on 2023 performance, the CEC methodology is run side-by-side by LIPs on a "what if" basis with no penalties applied. | December 2023 | December 2023 | No change |
| Final LIP reports for 2025 RA compliance year filed. Energy Division and CEC draft joint report summarizing ex post results for 2023. | April 2024 | April 2024 | No change |
| Energy Division and CEC continue refining incentive-based proposal, incorporating learnings from "what if" exercise. | April-December 2024 | April-June 2024 | At this point, the proposal should not need significant revision, so three months should be adequate. |
| Energy Division and CEC submit refined incentive-based proposal to the RA proceeding. | December 2024 | July 2024 | A July revised proposal would allow for a Commission decision in November so IOUs and DR providers could use it starting in December for the 2026 RA year DR QC process. |
| **[New]** Commission decision on final incentive-based proposal | N/A | November 2024 | A final decision is needed in November because if the Commission does not adopt the final incentive-based proposal, IOUs and DR providers will need to secure their consultants for the LIP process. |
| LIP process begins for 2025 RA compliance year. | December 2024 | N/A; LIP process replaced by new incentive-based methodology. | N/A; LIP process replaced by new incentive-based methodology. |
| **[New]** Incentive-based QC process begins for 2025 RA compliance year | N/A | December 2024 | The incentive-based DR QC method will replace the LIP process for the 2026 RA compliance year. |

This accelerated, yet workable, timeline would forego the need to create yet another working group to revise the LIPs. If the Commission is intent on streamlining the LIPs on an interim or permanent basis, a well-developed and highly feasible streamlined LIPs proposal has already been developed by OhmConnect and vetted through the CEC's DR QC Working Group with a great deal of feedback provided by stakeholders.[4] This proposal pragmatically pares down the LIPs to only those elements that are necessary for determining the short-term QC value of Supply Resource DR and should be adopted in this decision until or unless it is superseded by the CEC's incentive-based DR QC methodology.[5] Alternatively, the Commission could issue a ruling shortly after issuing a decision on this PD requesting parties to submit opening and reply comments on it.

At the very least, if the Commission chooses to create a working group process to streamline the LIPs, the OhmConnect proposal should serve as the starting point for discussions because parties are very familiar with it and have already had several opportunities to provide feedback on it in the CEC's working group. Any substantive changes to the LIPs would require a Commission decision, a step that does not appear to have been contemplated in the PD. It has become evident during past efforts by the Energy Division to refine the LIPs that they have no authority, absent a Commission decision, to make substantive changes, including eliminating or modifying individual protocols. Changes of this magnitude would surely be needed to effectuate a proper streamlining of the LIPs. Therefore, any working group process to streamline the LIPs should conclude with a Commission decision by November 2023 so that they can be used in 2024 for the 2025 RA year process.

To summarize, the Commission should adopt the Joint Parties' accelerated timeline to finalize the CEC's proposed DR QC method and forego LIP revisions. However, if the Commission is intent on retaining the PD's timeline and streamlining the LIPs in the interim, it should adopt the existing streamlined LIPs proposal or at the very least, use it as a starting point for discussions.

## V. A $500/MWH PDR BID CAP WILL REDUCE, RATHER THAN INCREASE RELIABILITY

The PD adopts a $500/MWh bid cap, applicable in July-September, for the CAISO day-ahead market and real-time market.[6] The PD's intent is to prevent instances in which RDRR are

[4] Qualifying Capacity of Supply-Side Demand Response Working Group Final Report (December 2022), at p. 12.
[5] Proposed Decision, at p. 73.
[6] *Id*., at pp. 84 and 121-122 (Ordering Paragraph 23).

dispatched prior to PDRs and to increase PDRs' contributions to reliability.[7] The PD also adopts the Energy Division's compliance verification proposal to review all DR tariffs and contracts as well as CAISO market bid data.[8]

As an initial point, under the CAISO tariff, long-start PDRs are not required to dispatch in the real-time market, so the PD should be modified to clarify that the bid cap proposal does not represent a requirement for long-start PDRs to bid or schedule into the real-time market for hours they are not already dispatched.

The Joint Parties do not dispute that RDRRs should not be dispatched prior to any PDR, but the PD errs in adopting a PDR bid cap because it would unfairly limit the ability of some DR participants to reflect their opportunity costs in their CAISO market bids because many DR participants' opportunity costs exceed \$500/MWh. Those customers unwilling to curtail at \$500/MWh are not obligated to participate in DR and will simply discontinue participating. The same risk would also apply to higher bid caps such as the one in effect for PG&E's Capacity Bidding Program ("CBP").

This bid cap proposal appears intended to compensate for a disfunction in the CAISO market that prevents market prices from adequately reflecting grid conditions. The PD concedes "the fact that wholesale prices in the CAISO market, particularly in the day-ahead market, are not always reliable indicators of a grid emergency."[9] The PD cites CAISO Department of Market Monitoring ("DMM") analysis to support this statement.[10] Fundamentally, adding a distortion to the CAISO market that could lead to price suppression in order to correct for a preexisting CAISO market disfunction does not seem productive and risks creating downstream impacts, such as discouraging DR participation and limiting the dispatch of high opportunity cost conventional resources, that may conflict with or undermine the intent of the proposal. Instead of adopting a bid cap, the Commission should work with the CAISO to ensure market prices accurately reflect system conditions.

---

[7] Proposed Decision, at p. 83.
[8] *Id.*, at pp. 84 and 121-122 (Ordering Paragraph 23).
[9] *Id.*, at p. 79.
[10] *Id.*, at p. 80.

If the Commission wishes to ensure that PDRs are dispatched prior to RDRRs, the DMM recommendation of a $949/MWh bid cap would be an easily workable fix because the minimum RDRR bid is $950/MWh.[11]

The PD also errs by failing to provide an adequate justification for adopting a $500/MWh bid cap. The PD cites the need to improve PDRs' contribution to reliability, but it does not explain how this concept is measured in this context. Nor does it consider other critical questions such as:

1) What is an appropriate contribution to reliability for DR?

2) Are there other ways to improve DR contribution to reliability that are less negatively impactful on DR participants and DR providers?

3) How much DR capacity is the Commission willing to lose to achieve these marginal improvements to contribution to reliability?

This latter question is highly relevant because presumably the Commission would intend that the aggregate reliability value of the remaining DR after a bid cap is implemented would be greater than the aggregate reliability value of the larger quantity of DR prior to a bid cap being implemented. None of these critical questions have been considered which renders this proposal poorly supported, highly arbitrary, and at risk of creating unintended consequences.

In fact, the bid cap could very well lead to the opposite outcome it is intended to achieve, where customers reach their monthly dispatch limits before the greatest reliability need is reached. The Joint Parties note that the CAISO's recently-proposed revisions to its Outage Management Business Practice Manual specifies that a PDR may take a Fatigue Break for the balance of the month once it dispatches for 24 hours that month.[12] So, though a $500/MWh bid cap may result in those PDRs that remain in the market to reach their monthly dispatch limit, they very well may not be available when needed the most.

The PD also errs by ignoring the practical aspects of the Energy Division's verification regime to enforce compliance with the bid cap. For instance, the PD provides no estimate of the administrative cost that would be required to review every CAISO market bid by PDRs. When juxtaposed with the PD's elimination of the TLF Adder solely for the purpose of reducing the administrative burden on Energy Division staff, which the Joint Parties suspect would be far less

[11] Proposed Decision, at p. 82.
[12] CAISO PRR 1509.

than the burden of examining every CAISO market bid of every PDR, it is unclear that the benefits outweigh the costs. This does not include the additional effort that would be required to review all applicable DR RA contracts to ensure they include the proposed bid cap provision. The PD would impose an incremental unquantified, but likely significant, administrative burden for the purpose of *eliminating* some quantity of available DR RA capacity that the PD claims would improve overall DR contribution to reliability. This is highly illogical and reflects contradictory principles.

The PD should be modified to eliminate the $500/MWh bid cap; alternatively, the PD should be modified to adopt a cap of $949/MWh and forgo adopting a highly burdensome process for Energy Division staff to verify compliance.

## VI. RDRR SHOULD REMAIN AN EMERGENCY RESOURCE BUT IT SHOULD BE TRIGGERED BY AN ENERGY EMERGENCY ALERT 1 NOTIFICATION

The PD adopts a requirement that RDRRs "should be enabled and available for economic dispatch upon the declaration of a day-of [Energy Emergency Alert ("EEA")] Watch (of when a day-ahead EEA Watch persists in the day-of)."[13] The PD errs by eliminating RDRR as an emergency resource, contrary to the Commission's own past directives. The PD correctly cites D.10-06-034 as the key document that established the parameters for the Reliability Demand Response Product ("RDRP", now known as RDRR). However, the PD mistakenly justifies the use of RDRRs prior to an emergency by mischaracterizing D.10-06-034 and asserting that it "enabled RDRR bids to be available for dispatch *before* CAISO emergency measures are engaged [emphasis added]."[14] In fact, the citation provided in the PD leads to a list of key features of the RDRP (now RDRR) product, one of which is that "RDR[R] can be triggered at the point immediately prior to the ISO's need to canvas neighboring balancing authorities for available exceptional dispatch energy or capacity."[15] The settlement approved by D.10-06-034 also specifies that RDRRs "will be eligible for dispatch once the CAISO has issued a Warning Notice under its Emergency Operating Procedures and immediately prior to the CAISO need to canvas neighboring balancing authorities and other entities for available exceptional dispatch

[13] Proposed Decision, at pp. 93 and 123 (Ordering Paragraph 30).
[14] *Id.*, at p. 92.
[15] D.10-06-034, at p. 14.

energy/capacity."[16] In neither of these instances is the RDRR envisioned to be used prior to an emergency.

Furthermore, the PD cites the Commission's clarification in D.18-11-029 of the appropriate RDRR dispatch order under the CAISO's now-defunct Alert, Warning, Emergency ("AWE") system.[17] In that decision, the Commission confirmed that "the use of RDRR can occur anytime within the Warning Stage."[18] According to CAISO Operating Procedure 4420, when translated to the CAISO's current EEA system, the former "Warning" and "Stage 1" notices are subsumed within EEA 2.[19] Therefore, there is no basis under any existing decisions to make RDRRs available during an EEA Watch. However, the Joint Parties concede that EEA 1 can be considered an emergency condition because energy deficiencies are expected at this point. So, an emergency can be at least partially avoided, as the PD cites as a goal, by activating RDRRs once an EEA 1 notification has been issued. This would improve the dispatchability of RDRR while maintaining it as the emergency resource it was intended to be. The PD should be modified to specify that RDRRs should be enabled and available for economic dispatch upon the declaration of an EEA 1.

## VII. THERE IS NO EVIDENCE TO SUPPORT THE ALLEGED NET BENEFITS OF ELIMINATING THE TLF ADDER

The PD proposes to eliminate the TLF Adders, effective in the 2024 delivery year, citing a finding in D.23-04-010 that the associated crediting effort requires substantial administrative overhead for a small incremental amount of capacity value.[20] The PD errs by neglecting to address any of the comments provided by parties opposing this proposal. The PD cites several of these but does not explain why none of them are valid. Of all the opposition arguments made, one of, if not the most, consequential one is that it would create a mismatch in the value of Load Modifying DR compared to Supply Resource DR despite being virtually identical resources. This will favor one type of DR over the other with no real consideration as to the consequences. If the Commission's intent is to channel more DR to Load Modifying, it should state this as a policy while continuing to retain Supply Resource opportunities.

---

[16] D.10-06-034, Appendix A, at p. 5.
[17] Proposed Decision, at p. 92.
[18] D.18-11-029, at p. 40.
[19] CAISO Operating Procedure 4420, at p. 9.
[20] Proposed Decision, at pp. 98 and 122 (Ordering Paragraph 27).

Eliminating the TLF Adder would also put California at odds with other wholesale capacity markets, where incorporating the TLF Adders into DR capacity value is common practice. In the New York Independent System Operator ("NYISO"), for example, avoided transmission losses are incorporated into Special Case Resource Installed Capacity ("ICAP") values.

The PD also errs by providing no evidence to support its contention that the administrative burden of implementing the TLF Adder actually outweighs the value of the DR capacity that would be lost.[21] The associated administrative burden has never been quantified, nor even has the DR capacity value that would be lost with the elimination of the TLF Adder. Without this, it is unclear how the PD can make such a claim. If the administrative burden is the main concern, the Commission should instead open a stakeholder-driven process to consider ways to reform how the TLF Adder is applied so that it is less burdensome. The Joint Parties suspect it is likely a simple matter of creating a spreadsheet macro that can automatically apply the TLF Adder to the DR QC values of the small number of IOU and third-party DR programs and resources. Furthermore, given that the Commission still intends to apply the DLF Adder, which requires the exact same steps to apply as the TLF Adder, it is clear that this administrative burden is not prohibitive.

The PD dismisses the significance of the DR capacity lost by eliminating the TLF Adder, but this represents lost revenue that can be significant to some DR providers, particularly earlier-stage companies that cannot rely on the deep pockets of a legacy business. The Commission should avoid limiting commercial opportunities of DR providers, especially in light of the CEC's new Load Shift Goal.

For all of these reasons, the PD should be modified to reverse the elimination of the TLF Adder.

## VIII. EXPANDED DR AVAILABILITY REQUIREMENTS MAY IMPROVE DR AVAILABILITY BUT AT THE POTENTIAL COST OF LOWER DR PARTICIPATION

The PD adopts expanded availability requirements for PDRs to include all days during which 1) a CAISO Flex Alert is called, 2) the CAISO has issued a Grid Warning, or 3) the

[21] Proposed Decision, at p. 98.

Governor's Office has issued an emergency notice.[22] Specifically, the PD specifies that resources "must be available during events for which alerts, notifications, and/or warnings are issued prior and up to the 10 a.m. day-ahead market deadline."[23] The PD also clarifies that the term, "Grid Warning", refers to the notifications issued under CAISO's Energy Emergency Alert ("EEA") system.[24] LSEs are directed to include these requirements in their contract language with DR providers.[25] The Joint Parties presume that this expanded availability would not change the 24-hour minimum monthly availability, but if that is not the case, the PD should clearly state this. In such an instance, the Joint Parties would have additional strong concerns.

The PD errs because it would create unnecessary uncertainty for DR participants without consideration of the impacts on DR participation. If current or potential DR participants are unable to know when they are required to be available, they will be limited in their ability to assess whether they can reliably curtail consistent with the requirements of qualifying as an RA resource. Furthermore, the PD's dismissal of "parties' concerns that the additional requirements may create some challenges for certain DR participants" because "the instances in which the additional availability will be needed are limited and the need for the resources in those moments outweighs the potential for certain providers to be unable to perform" is simply a presumption and is unsupported by the record.[26]

From an operational standpoint, all of the circumstances under which required PDR availability would be expanded are out-of-market signals for which there is no unequivocal, automated signal to communicate via API that they have been reached. Although the Joint Parties' preference is that this expanded availability not be adopted, if it was, these events should be integrated with the CAISO API to ensure that seamless automation is possible. This is especially critical because the proposed 10:00 a.m. deadline, which is intended to align with the closing of the CAISO day-ahead market, leaves no room for error should any of the events occur, for instance, at 9:55 a.m.

The PD should be modified to eliminate this expanded availability requirement; if the Commission is intent on expanding PDR availability during less defined circumstances such as

---

[22] Proposed Decision, at pp. 102 and 122-123 (Ordering Paragraph 28).
[23] *Id.*, at p. 103 and 122-123 (Ordering Paragraph 28).
[24] *Id.*, at p. 102.
[25] *Id.*, at pp. 103 and 122-123 (Ordering Paragraph 28).
[26] *Id.*, at p. 102.

the three considered here, it should instead seek to incentivize DR participants and DR providers to enhance their availability; i.e., use carrots rather than sticks.

## IX. ADJUSTING DR QC VALUES BASED ON TEST RESULTS OR MARKET DISPATCHES WOULD BE HIGHLY PROBLEMATIC AND WOULD CONTRAVENE THE PREVAILING DR QC COUNTING METHODOLOGY

The PD adopts the Energy Division proposal to derate the QC values of third-party DR when dispatches, either in the form of test events or market schedules, are below the supply plan values.[27] The PD errs by conflating DR performance, as measured by the designated CAISO baseline, to a QC value derived through the LIPs. This is like comparing apples to oranges.

Each year, IOUs and DR providers must perform regression analyses through the LIPs to calculate the ex post load impacts in order to fairly compare DR performance against the prior year's QC values, which in turn inform the following year's ex ante load impacts which inform that year's QC values. Under this system, poor performance in one year depresses QC values in the following year, through lower ex ante load impacts, potentially combined with a unilateral adjustment made by Energy Division staff. The PD would bypass this entire process which raises the question of how and when the original QC value would be restored. For example, does the derate expire after one year or does it continue regardless of future performance? If the latter, this would be extremely unfair, especially if DR providers are not given an equally achievable opportunity to reverse the derate.

The PD also errs by misconstruing the difference between market dispatches relative to supply plans, which represent DR QC values, and IOU market schedules, which do not.[28] Third-party DR on supply plans are obligated to be bid into the CAISO market at its QC value regardless of the weather conditions. IOU DR is not on supply plans, so the IOUs have the freedom to tailor their bids to reflect the capability of their DR resources *on that day*, which does not need to reflect the QC value awarded it by the Energy Division. Therefore, contrary to the PD's assertions, the DMM analysis showing that IOU DR resources "appear to have met a majority of the scheduled load reductions" is moot in this context.[29] The Joint Parties maintain that derating third-party DR for under-performance when not applying the same standard to IOU DR is highly discriminatory and should not be adopted.

---

[27] Proposed Decision, at pp. 107 and 123 (Ordering Paragraph 30).
[28] *Id.*, at p. 107.
[29] *Id.*

## X. CONCLUSION

The Joint Parties ask that the Proposed Decision be modified for the reasons stated above. Those needed modifications are included in Appendix A (Proposed Modifications to Findings of Fact, Conclusion of Law, and Ordering Paragraph) attached and incorporated by reference hereto.

Dated: June 14, 2023

Respectfully submitted,

/s/ JOSEPH DESMOND
Joseph Desmond
On Behalf of the
California Efficiency + Demand
Management Council and CPower
849 E. Stanley Blvd #294
Livermore, CA 94550
Telephone: 925-785-2878
E-mail: policy@cedmc.org

# APPENDIX A

## THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL AND CPOWER PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS FOR THE PROPOSED DECISION ADOPTING LOCAL CAPACITY OBLIGATIONS FOR 2024-2026, FLEXIBLE CAPACITY OBLIGATIONS FOR 2024, AND PROGRAM REFINEMENTS

The California Efficiency + Demand Management Council (the "Council") and CPower propose the following modifications to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs in the Proposed Decision Adopting Local Capacity Obligations for 2024-2026, Flexible Capacity Obligations for 2024, and Program Refinements, mailed in R.21-10-002 on May 25, 2023 ("Proposed Decision").

Please note the following:

- A page citation to the Proposed Decision is provided in brackets for each Finding of Fact, Conclusion of Law, or Ordering Paragraphs for which a modification is proposed.
- Added language is indicated by **bold type**; removed language is indicated by **bold strike-through**.
- A new or added Finding of Fact, Conclusion of Law, or Ordering Paragraph is labeled as "**NEW**" in **bold underscored** capital letters.

## PROPOSED FINDINGS OF FACT:

16. [110] The CEC's supply-side DR QC proposal would benefit from further refinement and testing **which should be done on an accelerated basis**.

17. [110] The existing LIPs process is imperfect **and should be replaced with a new incentive-based methodology**.

18. [110] Implementing a bid price cap for PDRs **~~would prevent the possibility of an irrational dispatch order where RDRR is dispatch before PDRs and increase PDRs' contributions to reliability.~~** **would limit the ability of some DR participants to reflect their opportunity costs in their CAISO market bids.**

21. [111] The~~re~~ **Proposed Decision has not demonstrated that there** is significant administrative burden on Energy Division Staff associated with applying the TLF and PRM adders to DR resources and a relatively small amount of MW associated with the adders.

22. [111] Removal of the TLF and PRM adders is **not** likely to enhance reliability, particularly during stressed conditions, by removing the risk that the adders over-estimate the amount of capacity available to the CAISO on high system stress days. **Instead, elimination of the TLF Adder would favor one type of DR over the other and also put California at odds with other wholesale capacity markets.**

~~**23. [111] Adjustments are needed to the existing DR availability requirements to ensure DR is available during the types of prolonged weather events experienced in recent years.**~~

25. [111] Third party DR **performance should be equitably compared to IOU DR performance** ~~**is not performing reliably in comparison to monthly supply plans**~~.

**PROPOSED CONCLUSIONS OF LAW:**

17. [113] Energy Division should be authorized to lead a working group, with support from CEC Staff, to refine elements of the CEC's incentive-based supply-side DR QC proposal and submit a joint proposal in the RA proceeding no later than ~~December~~ **July** 2024 **so that a final decision can be issued in November 2024**.

~~**18. [113] Energy Division should be authorized to pursue simplification of the current LIP requirements using a stakeholder process.**~~

19. [113] Energy Division's proposed PDR bid cap of $500/MWh should **not** be adopted for both the day-ahead and real-time markets.

21. [113] The TLF ~~**and PRM**~~ adder~~s~~ should **not** be removed for DR resources beginning with the 2024 RA compliance year **nor should it** ~~**and**~~ be removed for the 2024 slice-of-day test year. **Eliminating the TLF Adder would favor one type of DR over the other and also put California at odds with other wholesale capacity markets. The PRM adder should be removed for DR resources beginning with the 2024 RA compliance year and removed for the 2024 slice-of-day test year.**

~~**22. [114] DR availability requirements should be expanded so that resources are available when most needed.**~~

24. [114] Third-party DR QC should **not** be derated based on performance during test events relative to their QC values.

**PROPOSED ORDERING PARAGRAPHS:**

22. [120-121] Energy Division is authorized to lead a working group, with support from California Energy Commission (CEC) Staff, to refine elements of the CEC's incentive-based supply-side demand response qualifying capacity proposal and submit a joint proposal in the Resource Adequacy (RA) proceeding in ~~December~~ **July** 2024 **so that a Commission Decision can be issued in November 2024 which replaces the LIP process with a new incentive-based methodology**. The schedule for the Working Group and the joint report is as follows:

| Milestone | Timeframe |
|---|---|
| Initiate Working Group to refine specific elements of the CEC proposal, as directed by Commission Decision. | ~~**July 2023**~~ **July-November 2023** |
| LIP process begins for 2025 RA compliance year. In ex post analysis on 2023 performance, the CEC methodology is run side-by-side by LIPs on a "what if" basis with no penalties applied. | December 2023 |
| Final LIP reports for 2025 RA compliance year filed. Energy Division and CEC draft joint report summarizing ex post results for 2023. | April 2024 |
| Energy Division and CEC continue refining incentive-based proposal, incorporating learnings from "what if" exercise. | April – ~~**December**~~ **June** 2024 |
| Energy Division and CEC submit refined incentive-based proposal to RA proceeding. | ~~**December**~~ **July** 2024 |
| **Commission decision on final incentive-based proposal** | **November 2024** |
| LIP process begins for 2025 RA compliance year. | December 2024 |
| **Incentive-based QC process begins for 2026 RA compliance year** | **December 2024** |

23. [121-122] Beginning with the 2024 Resource Adequacy compliance year, in order for proxy demand response resources to count toward Resource Adequacy requirements, proxy demand response resources ~~**must be bid no higher than $500 per megawatt hour for the**~~

~~**months of July through September in the day-ahead and real-time markets. The Energy Division Director or their delegate is authorized to issue correction or deficiency notices to load-serving entities if any non-compliant proxy demand response resources are shown on their Supply Plans and the load-serving entities do not have enough capacity to meet their Resource Adequacy requirements without the non-compliant proxy demand response resources. This requirement does not apply to demand response auction mechanism resources contracted for the 2024 delivery year.**~~ **should not be subject to a $500/MWh bid cap. If the Commission is intent on ensuring that PDRs are dispatched prior to RDRRs, the Commission should adopt CAISO DMM's recommendation of a $949/MWh bid cap.**

27. [122] The Transmission Loss Factor adder **shall not be,** and the Planning Reserve Margin adder for demand response resources shall be ~~**are**~~ removed beginning with the 2024 Resource Adequacy compliance year and for the 2024 slice-of-day test year.

~~**28. [122-123] Beginning with the 2024 Resource Adequacy compliance year, all demand response resources, except Reliability Demand Response Resources, are required to be available during all days during which a California Independent System Operator (CAISO) Flex Alert is called, up through the last day for which the CAISO has issued a Grid Warning, Alert, or Notice, or the Governor's Office has issued an emergency notice. The resource must be available for the duration of an Alert, Warning, or Notice that is issued prior and up to the 10 a.m. day-ahead market bid deadline. Load-serving entities are required to implement these requirements in contracts with demand response providers.**~~

~~**30. [123] Beginning with the capacity awards granted through the LIP process for the 2024 Resource Adequacy compliance year, test performance failures will be considered when making capacity awards to non-investor-owned utility demand response (DR) resources procured by third-party DR providers under the Load Impact Protocols (LIPs). Derates will be applied so that they correspond to performance during test events for the relevant quarter. The average performance results of each quarter will inform the capacity awarded through the LIPs for the respective sub-load aggregation point.**~~