BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Reforms and Refinements, and Establish Forward Resource Adequacy Procurement Obligations.

Rulemaking 21-10-002
(Filed October 7, 2021)

JOINT MOTION FOR PARTIAL STAY OF DECISION 23-06-029 BY THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL, LEAPFROG POWER, INC., OHMCONNECT, INC., CPOWER, ENEL X NORTH AMERICA, INC., AND CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES

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BEFORE THE PUBLIC UTILITIES COMMISSION
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The California Efficiency + Demand Management Council ("the Council"), Leapfrog Power, Inc. ("Leap"), OhmConnect, Inc., CPower, Enel X North America, Inc. ("Enel X"), and the Center for Energy Efficiency and Renewable Technologies ("CEERT"), (collectively, "the Joint Parties") respectfully and jointly move for a stay by the Commission of the following Ordering Paragraphs ("OP") and directives in Decision ("D.") 23-06-029 pending resolution of the Joint Parties' Application for Rehearing of D.23-06-029 filed today: Ordering Paragraph 25, at page 144; Ordering Paragraph 29, at page 145; Ordering Paragraph 30, at page 145; Ordering Paragraph 32, at page 146; and Discussion, Section 5.4.2, at pages 95 through 97 ("Joint Motion"). These orders and directive govern Reliability Demand Response Resources ("RDRR"), the Transmission Loss Factor ("TLF") and Planning Reserve Margin ("PRM") Adders, Proxy Demand Resource ("PDR") Availability, and Demand Response ("DR") Qualifying Capacity ("QC"). This Joint Motion is timely filed and served pursuant to Public

Utilities ("P.U.") Code Section (§) 1735 and Rules 1.8(d) and 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission ("CPUC" or "Commission").[1]

I.
BACKGROUND AND SUMMARY OF REQUESTED RELIEF

By D.23-06-029, with a "date of issuance" of July 5, 2023, the Commission adopted "Local Capacity Requirements for 2024-2026, Flexible Capacity Obligations for 2024, and refinements to the Resource Adequacy program scoped as Phase 3 of the Implementation Track, including modifying the planning reserve margin for 2024 and 2025 and modifying the demand response counting requirements."[2] Specific to this Joint Motion and the Joint Parties' Application for Rehearing, D.23-06-029, among other things, adopted consequential changes to the Resource Adequacy ("RA") rules that govern Supply-Side DR. In Comments on the Proposed Decision on which D.23-06-029 is based, these changes were widely protested by a broad spectrum of parties as unsupported, vague, and highly detrimental to DR and especially third-party DR providers.[3] Those Comments made clear that these changes will wrongly lead to a significant decline in Supply-Side DR through over-dispatch and devaluation and will jeopardize the financial ability of DR providers to provide DR services, thereby eliminating the availability of those DR resources to avoid or meet system emergencies and raising reliability risks and costs to ratepayers.[4]

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[1] Pursuant to Rule 1.8(d) of the Commission's Rules of Practice and Procedure, Leap, OhmConnect, CPower, Enel X, and CEERT have authorized Joseph Desmond, the Council's Executive Director, to sign on their behalf, as well as for the Council.

[2] D.23-06-029, at p. 2.

[3] Those Comments, filed on June 14, 2023, include, but are not limited to: Council/CPower Joint Opening Comments on Proposed Decision ("PD"), at pp. 9-14; Leap Opening Comments on PD, at pp. 6-12 ; OhmConnect Opening Comments on PD, at pp. 2-6; California Large Energy Consumers Association (CLECA) Opening Comments on PD, at pp. 3-7, 10-12 ; Southern California Edison Company (SCE) Opening Comments on PD, at pp. 2-6; Pacific Gas and Electric Company Opening Comments on PD, at pp. 1, 3-6.

[4] *Id.*

Yet, in spite of the deleterious impacts of these changes, D.23-06-029 nevertheless adopted the Proposed Decision, perpetuating its errors and imposing serious and irreparable harm, without reason and, in one instance, without adequate notice or opportunity to respond, on providers of Supply-Side DR (both participating customers and DR providers) and, in turn, on the availability of such resources especially during system emergencies, by "clarifying" and ordering the following:

1. Changing and overriding a significant existing standard governing the RDRR dispatch trigger as a "clarification" and with "immediate effect" [5] that failed to provide customers with notice and opportunity to disenroll or modify their load curtailment commitments in response, where it has been imposed during and continuing through a closed enrollment period; that wrongly countermands established RDRR policy that has been in effect for over a decade; that will lead to resources being triggered prior to a CAISO Emergency, which may affect their performance and availability during actual emergencies; and that may be out of compliance with the North American Electric Reliability Corporation ("NERC") regulations;
2. Inappropriately undervaluing DR resources by eliminating the TLF Adder and the PRM Adder for those resources;[6]
3. Adopting an unworkable expansion of PDR availability requirements under temporary conditions in the absence of any operational linkage to the California Independent System Operator ("CAISO") market;[7] and
4. Introducing a new and untenable risk to third-party DR resources by derating their QC values outside of the existing QC valuation process, which adds to the significant

[5] D.23-06-029, Section 5.4.2, at pp. 95-97; Ordering Paragraph 25, at p. 144, which does not specify, adopt, or order the "clarification," but simply requires the Utilities to file Tier 1 ALs for the undefined purpose to "operationalize the reliability demand response dispatch trigger."
[6] *Id*., Ordering Paragraph 29, at p. 145.
[7] *Id*., Ordering Paragraph 30, at p. 145.

economic derates DR providers already face for underperformance and will further increase the preferential treatment of Utility DR programs.[8]

Today, in response, the Joint Parties have timely filed an Application for Rehearing ("AFR" or "rehearing request") of D.23-06-029 that fully details and seeks to reverse these significant legal and factual errors. That timely AFR also preserves the Joint Parties' right to petition for judicial review if that request is denied by the Commission.[9]

However, given that the Commission is not required to issue a decision on a rehearing request on a specific date, and such a decision can be delayed by months, even years,[10] the serious harm inflicted by D.23-06-029 will continue unabated where the "[f]iling of an application for rehearing shall not excuse compliance with an order or a decision"[11] It is the case that P.U. Code §1733 prescribes that "[a]ny application for a rehearing made ten or more days before the effective date of an order," unless granted or denied before the effective date, "shall stand suspended until the application for rehearing is granted or denied".[12] However, this authority in P.U. Code §1733 has been rendered a nullity by the Commission making its decisions, including D.23-06-029, "effective" the same date that it has "voted to approve the Decision."[13]

Thus, D.26-03-029 was made "effective" on June 29, 2023, the date on which the Commission "voted to approve" that decision, even though it was not "issued" to the parties until

[8] D.23-06-029, Ordering Paragraph 32, at p. 146.
[9] P.U. Code §1731(b).
[10] *See,* D.18-03-012 (issued March 5, 2018) deciding an Application for Rehearing in R.13-09-011 (DR) two years and 3 months after it was timely filed on December 29, 2015.
[11] Commission Rules of Practice and Procedure, Rule 16.1(b).
[12] P.U. Code §1733(a).
[13] D.19-01-022, at p. 3. *See*, D.23-06-029, at p. 146 ("effective" the date the Commission "voted to approve" the decision on June 29, 2023). The Joint Parties note that, pursuant to P.U. Code §1731(a), the Commission has been given the discretion to "set the effective date of an order or decision before the date of issuance of the order or decision," but that statute does not require the Commission to do so and that discretion should certainly be moderated by the impacts of the decision being issued.

July 5, 2023,[14] leaving no opportunity for an AFR to be filed that could "suspend" the order automatically. In these circumstances, the only relief from this procedural vice for a party to abate the harm caused by one of the Commission's orders is afforded by P.U. Code §1735. Section 1735, as interpreted and applied by the Commission, allows the Commission the discretion, where certain requirements have been met, to grant a stay of one of its decisions pending a decision on a rehearing request of that order. [15]

To that end, pursuant to P.U. Code §1735, the Joint Parties move for an immediate stay of the following legally deficient orders and directives of D.23-06-029 pending resolution of its rehearing request of that decision: Ordering Paragraph 25, at page 144; Ordering Paragraph 29, at page 145; Ordering Paragraph 30, at page 145; Ordering Paragraph 32, at page 146; and Discussion, Section 5.4.2, at pages 95 through 97. In doing so, the Joint Parties have met all of the requirements for this stay to be granted and for the Commission to do so expeditiously where the passage of time only increases the harm caused by these orders for DR and DR providers.

II.
STANDARD OF REVIEW OF MOTION TO STAY A COMMISSION DECISION PENDING RESOLUTION OF AN APPLICATION FOR REHEARING

P.U. Code §1735 makes clear that, while filing an application for rehearing does not excuse a person or corporation "from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof," an exception is made "in such cases and upon such terms as the commission by order directs."[16] The Commission has interpreted and

[14] D.23-06-029, at p. 146.
[15] P.U. Code §1735; see, e.g., D.04-08-056, at pp. 2-3.
[16] P.U. Code §1735; emphasis added.

applied this provision as giving it "the authority to stay a decision in its discretion" pending resolution of a rehearing request[17] as follows:

> "The Commission has applied a variety of factors in determining whether there is good cause to grant a stay pending rehearing of its own decisions. Two of the primary factors in determining whether to grant a stay are: 1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; and 2) whether the moving party is likely to prevail on the merits. The Commission has applied the irreparable harm/likelihood of success on the merits standard in a number of cases. [Citations to D.01-11-069 and D.99-09-035.] This standard is applied flexibly; a moving party need not demonstrate that both factors have been met. Rather, if there is high degree of irreparable harm, something less than likelihood of success on the merits may justify a stay. Similarly, if there is no harm to the moving party, a stay may not be appropriate even if the party may ultimately prevail."[18]

Finally:

> "In considering whether to impose a stay, the Commission also balances harm to the applicant or the public interest if the decision is later reversed, versus harm to other parties or the public interest if the decision is affirmed. [Citation to Commission Resolution E-3627.] The Commission can also look at the harm to the public if the decision is stayed versus the harm to the public if it is not. In addition, the Commission has considered other factors relevant to a particular case, such as whether an applicant for rehearing will go to court before the Commission has had an opportunity to act on the rehearing application."[19]

Thus, the Commission has made clear that, in determining what constitutes "harm" to stay a Commission order, the Commission applies the "harm/likelihood of success on the merits standard…flexibly,"[20] and "[i]n evaluating irreparable harm, the Commission exercises its broad discretion based on the facts and circumstances of a given case"[21] In doing so, the Commission has taken into account, not only direct financial harm to the applicants, but also related costs and harm to the public caused by its orders, any role played by the applicant(s) in creating that harm,

[17] D.04-08-056, at p. 2.
[18] *Id.*, at pp. 2-3.
[19] *Id*., at p. 3.
[20] *Id*.
[21] D.19-01-022, at p. 4.

and any remediation undertaken by the Commission's decisions to alleviate such harm.[22] A stay may also be ordered by the Commission "for any other reasons relevant to the particular case," including the "potential harm to the parties in the event that the requirements" of its decision may be "modified" in response to the Application for Rehearing.[23]

A relevant example of the Commission's exercise of its "broad discretion" to order a stay on RA issues was the Commission's decision (D.19-12-064) granting the Motion of the California Community Choice Association ("CalCCA") to stay D.19-10-021 (RA import rules) pending the disposition of CalCCA's Application for Rehearing of that decision. In doing so, the Commission first summarized the Commission's considerations in granting a stay pursuant to P.U. Code Section 1735, then summarily determined that "good cause" had been demonstrated by CalCCA to grant the requested stay and that "[t]here is potential for harm to the parties in the event that the requirements of D.19-10-021 are modified in response to [CalCCA's] application for rehearing of D.19-10-021."[24]

To better understand these conclusionary determinations, a review of CalCCA's Motion to Stay is necessary. Namely, by its Motion, CalCCA had alleged that the RA import rules and requirements adopted in D.19-10-021 were new and vague and resulted in "the compliance eligibility" and deadlines "of many existing import RA contracts held by CalCCA members [to be] called into question" and, in turn, would force contract renegotiation or replacement on an emergency basis that was "likely to cause substantial market disruption and substantial increases in costs to ratepayers."[25] The CalCCA Motion contended that this contract renegotiation and

[22] D.19-01-022, at pp. 4-5.
[23] D.19-12-064, at pp. 1-2.
[24] *Id.*
[25] R.17-09-020 (RA) CalCCA Motion for Stay of D.19-10-021, at p. 2.

replacement could result in unnecessarily increasing ratepayer costs based on estimated incremental CCA customer costs and potential noncompliance penalties for CCAs.[26]

The CalCCA Motion then summarized the "numerous legal errors" alleged in its AFR to demonstrate the likelihood of it succeeding on the merits[27] and concluded that the "balance of harm" weighed in favor of granting the stay.[28] In support of that last point, the CalCCA Motion made clear that the only harm that would ensue from granting the stay was maintaining the status quo. However, if the stay were not granted, "LSEs will be required to enter into a last-minute scramble to renegotiate existing contracts or purchase from new suppliers" in "an effort to comply with vague directives" or "risk non-compliance" to the detriment of ratepayers.[29]

CalCCA's conclusion that it would prevail on the merits of its AFR proved correct where a rehearing was ordered with respect to three of its principal contentions of legal error. Specifically, in the Commission found "good cause" to grant that rehearing and continue the stay until its completion on the grounds that D.19-10-021 had effectively changed prior standards by wrongly characterizing that change as "merely a clarification of existing standards,"[30] had erred by modifying previously adopted requirements "without an evidentiary record to support such modifications,"[31] and had erred by being "impermissibly vague as to certain key terms and definitions, thus leaving RA importers uncertain as to what types of contracts are sufficient to meet the requirements of the Decision."[32]

[26] R.17-09-020 (RA) CalCCA Motion for Stay of D.19-10-021, at p. 4.
[27] *Id*., at p. 5.
[28] *Id.,* at pp. 7-8.
[29] *Id*.
[30] D.20-03-016, at pp. 5-7.
[31] *Id*., at pp. 7-8.
[32] *Id*., at pp. 8-9.

III.
GROUNDS SUPPORTING EXPEDITED PARTIAL STAY OF D.23-06-029 PENDING RESOLUTION OF APPLICATION FOR REHEARING

A. The Commission Must Stay the Erroneous Ordering Paragraphs and Directive in D.23-06-029 Pending Resolution of the Joint Parties' Timely Application for Rehearing of Those Matters to Cease and Prevent Serious and Irreparable Harm to DR Customers, DR Providers, and DR MWh Available to Ensure Grid Reliability.

By their Application for Rehearing, the Joint Parties demonstrate that D.23-06-029 errs as a matter of law and fact by imposing a compliance directive, cast as a mere "clarification," that changes an existing standard as "effective immediately" by eliminating RDRR as an emergency resource and allowing for its use "for economic or exceptional dispatch upon the declaration of a day-of Energy Emergency Alert ("EEA") Watch (or when a day-ahead EEA Watch persists in the day-of)."[33] By doing so, the Commission did not proceed "in the manner required by law" where the Commission sought to effect this change without supporting findings of fact, conclusions of law, or ordering paragraphs and without adequate notice of and opportunity for affected customers to respond to these heightened performance obligations during a closed enrollment period.[34]

D.23-06-029 further errs by eliminating the TLF Adder and the PRM Adder (effective in the 2024 delivery year); expanding availability requirements for all DR resources other than RDRRs; and adjusting and derating DR QC values for third-party DR providers outside of the existing QC valuation process.[35] As detailed in the Application for Rehearing, not only do these actions contravene standards of review required for Commission decisions, but they fail to maintain competitive parity between third-party DR providers and Utilities needed to facilitate customer choice and "grow" DR to provide grid reliability and meet State clean energy policy

[33] D.23-06-029, at pp. 96-97.
[34] *See,* Joint Parties Application for Rehearing of D.23-06-029, at pp. 2-26 . *See also*, as to the closed enrollment period, nn. 45 and 46*, infra*.
[35] Joint Parties Application for Rehearing, at pp. 2-26.

goals, as required by D.16-09-056.[36] For purposes of this Motion, these adverse Commission actions in D.23-06-029, individually and especially, cumulatively, will certainly result in serious and irreparable harm for DR providers by creating compliance uncertainty and imposing unknown costs and deleterious risks for DR customers.

1. Serious and Irreparable Harm Caused by RDRR Dispatch Trigger "Clarification."

Unnecessary increased dispatches that needlessly disrupt a DR customer's core business operations or create dispatch fatigue will translate to declining enrollment in DR, and, in turn, result in lost revenue and value for DR providers and their ability to offer Supply-Side DR resources.[37] Further, as the Council and CPower confirmed in their Comments on the underlying Proposed Decision: "This DR will be lost and no longer be available to avoid or meet emergencies, raising reliability risks and costs to ratepayers."[38]

Comments filed on the Proposed Decision, as well as record evidence in the Utilities' pending 2023-2027 DR Applications (A.22-05-002, et al.), bear this out. As a recent letter from the California Large Energy Consumers Association ("CLECA") to Commission President Reynolds (attached and incorporated herein as Appendix A hereto), advised with respect to the change in the RDRR's trigger in D.23-06-029 from EEA2 to EEA Watch in D.23-06-029:

> "As recognized by CAISO, SCE, CLECA, and others, this change may lead to more frequent dispatch of RDRR and further erode BIP participation levels. [*Footnote citation to SCE Reply Comments on Proposed Decision, at p. 2*.] Notably, during extreme heat waves, the eight RDRR dispatches in 2020 in SCE's service territory, seven in PG&E's service territory, and three events system-wide in 2022 prevented and mitigated rolling blackouts, and helped preserve grid reliability and the life-sustaining provision of electricity. After 2020, however, SCE BIP accounts dropped from 417 service accounts to 305 accounts, and PG&E's BIP accounts dropped from 493 to 306. [*Footnote citation to Exhibit (Ex.) SCE A. 22-05-002, et al., Exh. SCE-03 at p. 15: Table 111-6; see also Ex. PG&E-*

[36] D.16-09-056, at pp. 51, 55; Ordering Paragraph 8, at pp. 97-98.
[37] *See, e.g.,* CLECA Opening Comments on Proposed Decision, at pp. 4-6; Council/CPower Opening Comments on Proposed Decision, at pp. 2-3.
[38] Council/CPower Opening Comments on Proposed Decision, at p. 3.

> *2 at p. 7-6: Table7-1*.] We do not know what the impact of D. 23-06-029 on BIP participation will be, but the potential for increased RDRR dispatches clearly risks further disenrollments and reduced resources available to grid operators."[39]

By its letter, CLECA seeks to advance adoption of higher incentives for BIP participation in the separate proceeding, A.22-05-002, et al., as a response to this adverse impact of D.23-06-029. Similarly, SCE has very recently served a motion in A.22-05-002, et al., to offer supplemental testimony in that proceeding to revise its BIP incentive proposal in response to the RDRR trigger directive of D.23-06-029, where "it is expected that the California Independent System Operator (CAISO) will pivot to utilizing BIP as a fast-ramping resource to prevent emergencies rather than strictly as an emergency response mechanism."[40] SCE confirms that "[t]his change in utilization exposes customer operations to more frequent interruption,"[41] an outcome that clearly harms and threatens participation in a valuable reliability program.

While CLECA and SCE have taken these steps to find a remedy for the harm imposed by D.23-06-029, it is the case that a decision on BIP incentives in A.22-05-002, et al., has not been proposed or issued, where reply briefs are still to be filed in that proceeding, and, in turn, no such outcome can be guaranteed. Instead, the more immediate cure for D.23-06-029's erroneous and unlawful "clarification" that imposed this rule change as "effective immediately" is to stay that "clarification" pending the resolution of the Joint Parties' Application for Rehearing where it is clear that the Commission has erred in imposing this directive in the first place.

Namely, the "clarification" is not only wrong as to the law, but certainly as to the process used by the Commission to "implement" this change in a manner that imposes additional hardship on affected customers and DR providers. This adverse outcome has been detailed in

[39] The cited exhibits were admitted into the evidentiary record of A.22-05-002, et al., by ALJ's Ruling issued in that proceeding on July 28, 2023.
[40] A.22-05-002, et al. (Utilities 2023-2027 DR Programs) SCE Revised Motion to Supplement Testimony (August 3, 2023), at p. 5.
[41] *Id*.

both Comments on the Proposed Decision, but also, more recently, by the Joint Parties in their protest to SCE's Tier 1 Advice Letter filed on July 7, 2023, to revise multiple tariff programs to include the "clarification," again with immediate effect. The Joint Parties' Protest, filed on July 27, 2023, is attached and incorporated herein as Appendix B hereto. As stated therein:

> "No finding of fact or conclusion of law was included in D.23-06-029 either to support the change in dispatch rules made by the Commission's 'clarification' or the need for it to take 'immediate effect' or to provide notice of the specific tariff change that would be required to implement this 'clarification.' Further, only a single Ordering Paragraph (OP 25) appeared to be tied to this 'clarification,' but only as to a filing requirement where it directed that '[t]o the extent tariff adjustments are needed to operationalize the reliability demand response resource dispatch trigger, Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall submit those tariff adjustments as a Tier 1 Advice Letter within 10 days of the effective date of this decision.' [Footnote citation to D.23-06-029, at p. 125.] The terms 'operationalize' or 'reliability demand response dispatch trigger' are not defined in any way or in any part of D.23-06-029."[42]

In its Reply to the Joint Protest (attached and incorporated by reference herein as Appendix C), SCE acknowledges that it was compelled to file this Advice Letter to comply with OP 25, but that ""[a]s a party to R.21-10-002, SCE expressed concerns about expanded dispatch triggers and continues to hold these concerns."[43]

The Commission's claim that its directive was merely a "clarification," instead of a significant change to an existing standard, is further belied by the reality of the number of tariff adjustments SCE was required to make in response and the harm resulting to customers from that "clarification" taking immediate effect during a closed enrollment period.[44] By the Commission doing so, affected customers had no notice and no ability or opportunity to "opt out" of the program before the new dispatch requirements have taken effect or revise their Firm Service Level (in the case of SCE's Base Interruptible Program (BIP) tariff).

[42] Appendix B hereto, at p. 2.
[43] Appendix C hereto, at p. 2; footnote omitted.
[44] Appendix B hereto, at p. 2; SCE Advice Letter 5067-E.

Specifically, as prescribed by the Utilities' respective Base Interruptible Program ("BIP") tariffs, participants have a 30-day window each year during the *month of November* during which they may disenroll from the program or revise downward the amount of load curtailment they are able to provide during an event. [45] Therefore, BIP participating customers and aggregators did not have an opportunity to modify their commitments in response to the "immediate effect" of the dispatch change adopted by the Commission in D.23-06-029 and will not have that opportunity for months to come, all of which subjects them to greater financial risk. This fact was also raised and confirmed by Pacific Gas and Electric Company ("PG&E") in its Comments on the Proposed Decision,[46] but was ignored by the Commission in retaining its determination to make of its clarification in D.23-06-029 "effective immediately."[47]

The harm imposed by the Commission's "clarification" is also made clear in the letter sent to the Commissioners and the Service List in R.21-10-002 by Polaris Energy Services on August 1, 2023. By that letter, which is attached and incorporated by reference herein as Attachment D, Polaris states that the "change to the RDRR trigger is unreasonable because it provides a more sensitive trigger for BIP without the ability to unenroll before the peak season and likely dispatches."[48] Further, in "addition to more frequent events, this will allow RDRR to be used for short, price-based events that no one has anticipated" and that impose requirements that customers may no longer be able to meet or create financial harm or penalty risks to their disadvantage.[49]

[45] PG&E Schedule E-BIP, at Sheet 13; SCE Schedule TOU-BIP, at Sheet 17; SDG&E Schedule BIP, at Sheet 2
[46] PG&E Opening Comments on Proposed Decision, at p. 6.
[47] D.23-06-029, at p. 97.
[48] Appendix D, at p. 2.
[49] *Id*.

Clearly, like D.19-10-021 for which a stay and rehearing were granted, D.23-06-029 has erred by wrongly characterizing a fundamental change to a significant existing standard as merely a "clarification" and doing so without support or findings of fact and without adequate notice or opportunity for affected customers to respond.[50] The consequential harm from this error duplicates and exceeds that contended by CalCCA in its successful Motion to Stay D.19-10-021.

Further, such action by the Commission will certainly not contribute to any "growth" in DR, but only continue the decline in participation that is evidenced by the Utilities' most recent reporting on the Commission's interim collective, statewide DR goal of 5 percent of the sum of the Utility's peak demands. That goal, approved in 2014, has never been reached since that time and, instead, has continuously declined to only "***0.76 %*** of the IOU coincident peak load" as of June 30, 2023.[51]

Yet, D.23-06-029, like the Proposed Decision, routinely dismisses or ignores the impact of its adopted changes on DR participation and, as stated by CPower and the Council, "takes little heed of the extensive feedback provided by DR parties," especially with respect to the adverse "consequences" of its directives on *customers* who must alter their business operations in order to provide DR resources.[52] Among other things, D.23-06-029 fails to account for the impact of 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" and results in limiting commercial opportunities for DR providers at odds with the California Energy Commission's

[50] *See,* D.20-03-016, at pp. 4-10.
[51] R.13-09-011 (DR) Joint IOU Status Report on Progress Toward Interim Goal Approved in Decision 14-12-024 (June 30, 2023), at p. 3; emphasis added.
[52] Council/CPower Opening Comments on Proposed Decision, at p. 3.

new Load Shift Goal, which was established by the California Legislature in Senate Bill 846 (Stats. 2022; ch. 239)[53] and which the Commission's staff has embraced.[54]

Further, in "clarifying" that CAISO is allowed "to use RDRR, as an RA resource, for economic or exceptional dispatch upon declaration of a day-of EEA Watch (or when a day-ahead EEA Watch persists in the day-of)," [55] the Commission wrongly relies on D.10-06-034. Specifically, that change is not supported by and is contrary to D.10-06-034, which makes clear that RDRR can only be triggered at the point immediately prior to the CAISO's "need to canvas neighboring balancing authorities and other entities for available *exceptional* dispatch energy or capacity."[56] The sum of these errors and harmful outcomes caused by the Commission's "clarification" clearly warrants an immediate stay of D.23-06-029.

2. Serious and Irreparable Harm Caused by Removing TLF and PRM Adders for DR.

In addition, for third-party DR providers, the elimination of the TLF Adder, based solely on a claimed Commission administrative burden, will create further immediate and serious financial harm. This impact was specifically identified by Leap in its Opening Comments on the Proposed Decision, but wrongly ignored both there and in D.23-06-029. Yet, as detailed by Leap, the impact of the TLF Adder on a DR provider's cash flow is significant, especially as the DR provider attempts to expand its portfolio over time, as exemplified by the following:

> "[A] DRP that has 90 MW of NQC contracted in 2023… would translate to a TLF-adjusted portfolio of 92.4 MW. If the portfolio were to expand to 100 MW of NQC in 2024 at the prevailing prices reported by RA brokers (~$21/kW month), this expansion would add around $2.5m to the company's overall revenue and provide it with a TLF-adjusted portfolio of 102.7 MW. However, if the TLF adder were removed in that same year, that DRPs portfolio would drop to 100 MW, and its revenue would fall by $0.7m. This $0.7m loss would wipe out over 25% of the DRP's 2023-2024 revenue growth and represent roughly a 6% loss of

[53] Public Resources Code §25302.7.
[54] Council/CPower Opening Comments on Proposed Decision, at pp. 3, 11.
[55] D.23-06-029, at p. 96.
[56] D.10-06-034, at p. 14; emphasis added.

> revenue overall (assuming the original 90 MW were compensated at the average rates listed in the 2021 Resource Adequacy Report). [Footnote citation to CPUC 2021 Energy Division 2021 Resource Adequacy Report.]
>
> "This is a material revenue loss that will be especially damaging to smaller DRPs that lack backstop funds from a larger parent company, which will make it more difficult for newer DRP companies to bid for RA contracts. This would also place DR at a competitive disadvantage compared to other capacity resources by not fully recognizing the benefits it brings as a resource already connected to the distribution system."[57]

This harm is further exacerbated with respect to the impact to the DR industry as a whole. Considering publicly-reported net qualifying capacity ("NQC") values for third-party DR providers in 2023, a high-level calculation reveals the removal of these two Adders would eliminate roughly 226 MW of third party DR capacity over the 12 months in that year. Using the Commission's RA capacity penalty of $8.88/kW-month as a proxy value for RA, the financial loss to the third party DR industry from this eliminated capacity would exceed $2 million, a substantial figure that represents over 6% of the industry's revenue potential in 2023 alone.[58] From this, it is clear that implementing D.23-06-029 would create serious and irreparable financial harm to the DR industry by eliminating more than one-twentieth of the sector's potential revenue overnight, a staggeringly large impact that is unlikely to be outweighed by any reduced administrative costs on the part of the Commission.

These cumulative harms are confirmed here by the Declaration of Collin Smith in support of the Joint Motion (attached and incorporated by reference herein as Appendix E) and will also result in Supply-Side DR being placed at a competitive disadvantage to fossil resources contrary to State policy.[59] Further, the TLF Adder is a legitimate capacity benefit where it represents electricity that would have been lost in the transmission process if supplied by a

[57] Leap Opening Comments on Proposed Decision, at p. 7.
[58] Appendix E, Declaration of Collin Smith in Support of Joint Motion for Partial Stay.
[59] D.16-09-056, Ordering Paragraph 8, at p. 97-98.

generation plant. Compounding the loss of that benefit is the fact that LSEs will now be required to make up for that lost capacity by procuring additional and redundant RA, unnecessarily increasing rates as this "lost capacity" is already being supplied by DR resources in the form of avoided line losses.[60] This type of harm is akin to that identified by CalCCA in its successful motion to stay D.19-10-021.[61] Furthermore, removing the TLF Adder (as well as the PRM Adder) will negatively impact the cost-effectiveness of Utility DR programs by reducing their capacity value, which will risk lowering the incentive payments received by participating customers.

Similar harm will occur by eliminating the PRM Adder for DR, which represents roughly three times the amount of revenue that is associated with the TLF Adder. In removing the PRM Adder, which accounts for DR's ability to reduce forced outages and load forecast error, the Commission sought to justify that change by stating that it would remove the risk of over-estimating DR's available capacity.[62] However, in doing so, the Commission ignored the fact that the PRM Adder is also implicitly applied to Load-Modifying DR, which reduces an LSE's overall RA requirement and thereby their PRM procurement needs. The Commission fails to explain how this "over-estimation" risk is applicable only to Supply-Side DR, given that it and Load-Modifying DR provide identical services to the grid. This discrepancy also creates a bias towards Load-Modifying DR, which translates to a bias towards Utility-run DR programs (which are able to transition their DR portfolios from Supply-Side to Load-Modifying Programs). As a result, in addition to directly eliminating a substantial amount of revenue for third-party DR providers, it also harms third-party competitiveness by causing Load Serving Entities ("LSEs") to prefer load-modifying, Utility-run programs when purchasing DR capacity.

[60] See, Appendix E (Declaration of Collin Smith).
[61] *See,* Section II, *supra*.
[62] D.23-06-029, at p. 132.

3. Serious and Irreparable Harm Caused by Expanded PDR Availability Requirement.

Serious harm is further increased by D.23-06-029 expanding PDR availability requirements to include: (1) all days during which a CAISO Flex Alert has been issued, (2) the CAISO has issued a Grid Warning, or (3) the Governor's Office has issued an emergency notice.[63] This measure, though not effective until the 2024 RA year, will cause harm to DR providers because they have already completed the Load Impact Protocol ("LIP") process for determining their 2024 DR QC values. DR provider LIP evaluations include an enrollment forecast that is based on the availability requirements that were in effect prior to the adoption of D.23-06-029. The expanded availability requirement is unquantifiable and will consequently discourage DR participation because current and potential DR participants will have no definitive understanding of their required availability.

Further, this expanded availability will be operationally difficult to implement because they constitute out-of-market signals and consequently are not reflected in the CAISO's Automated Dispatch System ("ADS"). Tying these additional DR availability requirements to those signals will hinder the ability to dispatch PDRs in the CAISO market via automation, which is a critical component of modern DR programs to ensure resources are dispatched seamlessly in response to DR events.

4. Serious and Irreparable Harm Caused by Derating DR QC for Third Party DR Providers.

Serious harm to DR providers is further increased by the approach adopted by D.23-06-029 for de-rating the QC values of third-party DR providers. First, that action was taken without lawful notice and opportunity to be heard to the prejudice and disadvantage of DR providers.[64] Second, it also created an unnecessary duplicative, complex, confusing, and costly "QC

[63] D.23-06-029, Ordering Paragraph 30, at p. 145.
[64] OhmConnect Opening Comments on Proposed Decision, at pp. 5- 6.

adjustment process" for third-party DR programs that will only "exacerbate [their] unequal treatment … compared to IOU [Investor Owned Utility]-run programs," to which this approach does not apply.[65] As a result of the Commission's adopted derating approach, a DR provider faces the prospect of "los[ing] a substantial amount of its quarterly revenue in a given year based on one bad test event the preceding year," which "is exceptionally draconian and creates a level of revenue uncertainty that will push DR participants towards IOU-run programs or (potentially) away from participation in California's energy market in general."[66]

5. Cumulative Harm Caused by D.23-06-029.

All of these errors unfortunately suggest that, in issuing D.23-06-029, the Commission has elected to ignore the facts that DR, unlike generation, is wholly dependent on *customers* and their voluntary willingness to respond to system emergencies to curtail or alter business operations to provide needed capacity, which is garnered through years of trust and relationships developed between DR providers and their customers. This is particularly troubling and suggests a significant disconnect between Commission proceedings where the Commission has acknowledged and confirmed the central and exclusive role of customers in providing DR:

> "Demand Response (DR) programs encourage reductions, increases, or shifts in electricity consumption by *customers* in response to economic or reliability signals. Such programs can provide benefits to ratepayers by reducing the need for construction of new generation and the purchase of high-priced energy, among others."[67]

Clearly, the Commission erred in D.23-06-029 by failing to account for "DR party" input that provides the knowledge, experience, and understanding of customer participation in DR programs, especially Supply-Side DR resources. In doing so, the Commission has adopted three orders and one directive in D.23-06-029 that will impose "overly demanding and punitive"

[65] Leap Opening Comments on Proposed Decision, at p. 11.
[66] *Id*.
[67] D.22-12-009, at p. 2; D.23-01-006, at p. 2; emphasis added

requirements that will seriously and irreparably harm the ability of third-party DR providers to continue in business, and ensure the customer participation and retention needed to provide zero carbon DR capacity, especially during climate emergencies.[68] The demonstration of harm herein is certainly on an order that is equivalent to, and further exceeds, the harm demonstrated by CalCCA in its granted Motion to Stay D.19-10-021 and requires the Commission to use its discretion to grant a stay of D.23-06-029 as requested by this Motion.

B. The Joint Parties Are Likely to Succeed on the Merits of Their Application for Rehearing of D.23-06-029.

D.23-06-029 is fraught with legal error that requires reversal of Ordering Paragraphs 25, 29, 30, and 32, and Discussion, Section 5.4.2, at pages 95 through 97. This legal error, as detailed extensively in the Joint Parties' Application for Rehearing of D.23-06-029 filed today and incorporated by reference herein, means that the Joint Parties are likely to succeed on the merits of their AFR. The legal error of those orders and directives has been identified in Section II.A. above and again, in sum, as demonstrated by the AFR, including the following: [69]

- D.23-06-029 errs in failing to proceed in the manner required by Commission decisions governing the treatment of DR resources.
- D.23-06-029 errs in failing to proceed in the manner required by law.
- D.23-06-029's elimination of RDRR as an emergency resource and the TLF and PRM Adders, expansion of DR availability, and derating of DR QC values are not supported by its Findings of Fact or Conclusions of Law.
- By imposing several provisions in D.23-06-029, the Commission abused its discretion and violated Statutory and Constitutional rights of due process.

[68] Leap Opening Comments on Proposed Decision, at p. 2.
[69] Joint Parties Application for Rehearing of D.23-06-029, at pp. 2-26.

The Joint Parties' AFR demonstrates that individually and collectively these errors require rehearing of D.23-06-029, and, in turn, the Joint Parties are likely to succeed on the merits of their AFR.

C. The "Balance of Harm" Weighs in Favor of Granting the Stay.

If the stay is granted, there is no "harm" that will ensue where the stay will solely result in the continuation of the status quo on the limited orders and directive in D.23-06-029 being challenged by the Joint Parties' Application for Rehearing without impacting any other determinations made by the Commission in that decision. This partial stay is needed to allow the Commission to address and resolve the legality and ambiguity of the contested orders without imposing unnecessary serious and irreparable harm on DR and DR providers in the interim.

On the other hand, if the stay is not granted, DR providers and their customers will be subject to the uncertainty, risk, and cost imposed on them by being required to comply with rules that are both vague and unlawful. Thus, the third-party DR providers will have to take immediate action to begin the process of compliance by informing customers of the increased requirements, but reduced value, in continuing to provide Supply-Side DR, as well as to renegotiate virtually all of their existing contracts to accommodate these changes that go into effect immediately. This circumstance will certainly lead to declining participation and enrollment in such programs. As stated above, the consequences of those decisions include disadvantaging third-party DR providers over Utilities to the extent they are not subject to these rules and will result in a further loss of valuable and reliable DR resources needed to provide carbon-free capacity for reliability at increased cost to ratepayers and to the detriment of State energy policies.

D. Other Relevant Factors Support the Stay.

The orders and directive challenged by the Joint Parties' Application for Rehearing, again, impose serious and irreparable harm and are not supported by law or fact. In addition, those actions are further contrary to the principles adopted by the Commission to govern and "grow" all DR Programs and the State's need and goal of maintaining and providing reliable electric service provided by carbon-free resources, a role that DR has filled in the grid emergencies over the last several summers.

D.23-06-029 fails to include any rationale for taking action that conflicts with this precedent and policy and, moreover, reflects a complete misunderstanding of Supply-Side DR as to its value and, in turn, as to the adverse impact of its adopted vague, unnecessary, and excessive compliance requirements on those required to "generate" this resource – namely, electric customers. Instead, D.23-06-029 fails to account for how its actions will impact customers' business operations and dispatch fatigue and will unnecessarily lead to a decline in customer participation and retention in DR.

IV.
CONCLUSION

Based on the grounds stated herein, the Joint Parties respectfully move for the Commission to immediately grant a stay of Ordering Paragraphs 25, 29, 30, and 32, and its "clarification" discussion at pages 95 through 97 while it fairly and appropriately assesses the legality of those orders in response to the Joint Parties' Application for Rehearing. To do otherwise, imposes flawed, harmful, and unnecessary requirements on DR providers and their customers that will continue to jeopardize and impose excessive costs and risk on their ability to provide DR needed to ensure grid reliability and meet State clean energy policies. The requested stay should, therefore, be granted promptly to prevent any further serious harm resulting from the

implementation of the challenged provisions pending the resolution of the Joint Parties' rehearing request.

Respectfully submitted,

August 4, 2023

/s/ JOSEPH DESMOND

Joseph Desmond
On Behalf of the Joint Parties
California Efficiency + Demand Management Council, Leapfrog Power, Inc., OhmConnect, Inc., CPower, Enel X North America, Inc., and Center for Energy Efficiency and Renewable Technologies (Joint Parties)
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APPENDICES

APPENDIX A

CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION LETTER TO CPUC PRESIDENT REYNOLDS
July 14, 2023

Buchalter

425 Market Street
Suite 2900
San Francisco, CA 94105
415.227.0900 Phone
415.227.0770 Fax

File Number: C4521-0002
415.227.3551 Direct
nsheriff@buchalter.com

July 14, 2023

VIA E-MAIL (ALICE.REYNOLDS@CPUC.CA.GOV)

Alice Reynolds
President
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: R.21-10-002, A.22-05-002, et al.; Written ex parte communication

Dear President Reynolds:

I write on behalf of the California Large Energy Consumers Association (CLECA). CLECA members participate in the Base Interruptible Programs of Southern California Edison Company (SCE) and Pacific Gas & Electric Company (PG&E). CLECA members make up a significant portion of BIP, and BIP makes up a significant portion of Reliability Demand Response Resources (RDRR).

Last month, the California Public Utilities Commission (Commission) adopted Decision 23-06-029, which established when and how to dispatch RDRR, and operationally re-aligned the trigger to a day-of Energy Emergency Alert (EEA) Watch. Previously, RDRR's trigger was aligned with an EEA 2. As recognized by CAISO, SCE, CLECA, and others, this change may lead to more frequent dispatch of RDRR and further erode BIP participation levels.[1] Notably, during extreme heat waves, the eight RDRR dispatches in 2020 in SCE's service territory, seven in PG&E's service territory, and three events system-wide in 2022 prevented and mitigated rolling blackouts, and helped preserve grid reliability and the life-sustaining provision of electricity. After 2020, however, SCE BIP accounts dropped from 417 service accounts to 305 accounts, and PG&E's BIP accounts dropped from 493 to 306.[2] We do not know what the impact of D. 23-06-029 on BIP participation will be, but the potential for increased RDRR

[1] *Reply Comments of Southern California Edison Company on the Proposed Decision of Administrative Law Judges Chiv and O'Rourke Adopting Local Capacity Obligations for 2024-2026, Flexible Capacity Obligations for 2024, and Program Refinements*, filed in R. 21-10-002, June 19, 2023 at 2 ("SCE and others have indicated that redefining when these resources are dispatched in order to allow them to be potentially dispatched more often and earlier may significantly reduce participation in the programs"); *see also* D. 23-06-209 at 93.
[2] *See* in A. 22-05-002, et al., Exh. SCE-03 at p. 15: Table 111-6; *see also* Exh. PGE-2 at p. 7-6: Table7-1.

dispatches clearly risks further disenrollments and reduced resources available to grid operators. To mitigate this risk, the Commission can and should work swiftly in the pending demand response applications (A. 22-05-002, et seq.) to increase the BIP incentive level, particularly for SCE Sub-transmission level high load factor customers, commensurate to the incentive value of lower voltage customers. Substantial record evidence supports such an increase in those consolidated proceedings.[3] I respectfully urge the Commission to expeditiously adopt increased BIP incentives to promote continued participation in BIP and RDRR, for the critical interest of grid reliability.

Heat domes and wildfires have occurred already this summer, both within California and beyond our borders, and some continue now. Further, certain anticipated online dates for new, in-state resources are delayed. As may be recalled, there were multiple, frequent calls led by the Governor's Office during the 2020 and 2022 heat waves to coordinate emergency responses and help manage grid operations. Given this context, CLECA is reaching out to the Governor's Office to discuss concerns regarding potential over-use of BIP and RDRR, associated customer fatigue, and the pressing need for higher BIP incentives—particularly for SCE Sub-transmission level customers, to moderate the potential, deleterious impact of D. 23-06-029 on BIP participation.

Please do not hesitate to contact me with questions, or if you would like additional detail.

Very truly yours,

BUCHALTER
A Professional Corporation

Nora Sheriff

By: Nora Sheriff

NS:mm
cc: Analea Patterson
Grant Mack
Genevieve Shiroma
Darcie L. Houck
John Reynolds
Karen Douglas
Service lists for R. 21-10-002 and A. 22-05-002

[3] *See* in A. 22-05-002, et al., Exh. CLECA-01 at p. 9:14-18; Exh. IPC-01 at p. 4; Exh. JDRP-01 at p. 18; and Exh. Council-03 at p. 9.

APPENDIX B

JOINT PROTEST OF
CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL,
ENEL X NORTH AMERICA, INC., CPOWER,
LEAPFROG POWER, INC., AND OHMCONNECT, INC. TO
SOUTHERN CALIFORNIA EDISON COMPANY ADVICE LETTER 5067-E
July 27, 2023

Energy Division Tariff Unit
Joint Protest to AL 5067-E (SCE OP 25 D.23-06-029)
July 27, 2023

July 27, 2023

CPUC Energy Division (EDTariffUnit@cpuc.ca.gov)
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

RE: **Southern California Edison Company (SCE) Advice Letter (AL) 5067-E (Modifications to Demand Response Program Tariffs in Compliance with Decision 23-06-029)**
JOINT PROTEST

Dear CPUC Energy Division Tariff Unit:

On July 7, 2023, Southern California Edison Company (SCE) submitted Advice Letter (AL) 5067-E requesting approval of changes to multiple Demand Response (DR) program tariffs in compliance with Decision (D.) 23-06-029 with a date of issuance in Rulemaking (R.) 21-10-002 (Resource Adequacy (RA)) of July 5, 2023. Pursuant to General Order 96-B and the instructions included in AL 5067-E, the California Efficiency + Demand Management Council, Enel X North America, Inc., CPower, Leapfrog Power, Inc., and OhmConnect, Inc. (collectively, Joint Parties), all of whom are parties to R.21-10-002, hereby submit this Joint Protest to AL 5067-E.

I.
GROUNDS FOR PROTEST

In a Discussion section of D.23-06-029 (Section 5.4.2), the Commission stated:

> "[T]he Commission clarifies that CAISO should be allowed to use RDRR [Reliability Demand Response Resources], as an RA resource, for economic or exceptional dispatch upon the declaration of a day-of EEA Watch (or when a day-ahead EEA Watch persists in the day-of)."[1]

Further in that Discussion, the Commission stated:

> "Because the Commission is clarifying an existing policy, this clarification is effective immediately. The Commission recognizes that one or more of the IOUs' tariffs, such as SCE's BIP tariff, may define their program triggers in a way that is inconsistent with the Commission's clarification. If tariff adjustments are needed to operationalize the RDRR dispatch trigger, an IOU is required to submit those tariff adjustments as a Tier 1 Advice Letter within 10 days of the effective date of this decision."[2]

[1] D.23-06-029, at p. 96.
[2] *Id.*, at p. 97.

No finding of fact or conclusion of law was included in D.23-06-029 either to support the change in dispatch rules made by the Commission's "clarification" or the need for it to take "immediate effect" or to provide notice of the specific tariff change that would be required to implement this "clarification." Further, only a single Ordering Paragraph (OP 25) appeared to be tied to this "clarification," but only as to a filing requirement where it directed that "[t]o the extent tariff adjustments are needed to operationalize the reliability demand response resource dispatch trigger, Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall submit those tariff adjustments as a Tier 1 Advice Letter within 10 days of the effective date of this decision."[3] The terms "operationalize" or "reliability demand response dispatch trigger" are not defined in any way or in any part of D.23-06-029.

These failings render this "clarification" not only unsupported in the manner required for Commission decisions, but impermissibly vague. Further, the July 7, 2023 deadline established by OP 25 for this Tier 1 Advice Letter, by which filing date the AL becomes "effective," was merely 2 days after the date of issuance of D.23-06-029, which was July 5, 2023. As a result, customers adversely affected by this dispatch change have not been provided with adequate notice of this change and, more importantly, without time or opportunity to take action in response, including, but not limited to "opting out" of the program before the new dispatch requirements have taken effect or revising their Firm Service Level (in the case of SCE's Base Interruptible Program (BIP) tariff).

It is the Joint Parties' understanding that SCE is responding to an "order" with the intent to comply with that order. But the subject matter of this compliance, a significant change in an existing dispatch trigger, was not appropriately or adequately supported by the Commission's decision. Having this vague, but significant "tariff adjustment" take "immediate effect" clearly serves to disadvantage all customers that participate in the multiple programs affected by SCE's AL 5067-E, which include BIP, Agricultural & Pumping Interruptible Program, Summer Discount Plan Program, and Smart Energy Program.[4]

Uncertainty for customers and third party DR Providers resulting from the Commission's "clarification" is also evidenced by the fact that SCE was alone in offering a "tariff adjustment" in response to OP 25. While this may be due to differences in the Utilities' tariffs on dispatch triggers, the Commission did not examine or consider those differences in making its "clarification" or that inconsistencies in tariff language that will result will certainly add to customer confusion and further impede informed decisions they need to make regarding program participation.

Worse, the Commission's determination in D.23-06-029 that its significant change to existing standards was a mere clarification is clearly at odds with the reality of the tariff

[3] D.23-06-029, OP 25, at p. 144.
[4] AL 5067-E, at p. 1.

adjustments required to comply with that "clarification," as evidenced by the multiple dispatch triggers added by SCE to each of the affected tariffs. Approval of this advice letter to take "immediate effect" will also foreclose consideration of any timely Application for Rehearing, due August 4, 2023, contesting the legality of this "clarification."

II.
REQUESTED RELIEF

For these reasons, the Joint Parties protest AL 5067-E and respectfully request that AL 5067-E be suspended either (1) pending the outcome of any Application for Rehearing of D.23-06-029 or (2), at the least, until January 1, 2024, to permit customers an opportunity to take action in response to such a change as to whether they wish to disenroll from the program or adjust upward their Firm Service Level. Clearly, loss of DR capacity is highly disadvantageous to preserving and growing DR needed for grid reliability and meeting State clean energy goals, factors which the Commission failed to consider in adopting its "clarification."

Respectfully submitted on July 27, 2023:

By: /s/ Joseph Desmond
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Director, Energy Division
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simon.baker@cpuc.ca.gov

cc (E-Mail): Connor Flanigan
Managing Director, State Regulatory Operations
Southern California Edison Company
E-mail: AdviceTariffManager@sce.com

Tara S. Kaushik
Managing Director, Regulatory Relations
Southern California Edison Company
c/o Karyn Gansecki
E-mail: Karyn.Gansecki@sce.com

cc: Courtesy Electronic Service to Service Lists in R.21-10-002 (RA) and A.22-05-002, et al. (Utilities DR Programs)

APPENDIX C

SOUTHERN CALIFORNIA EDISON COMPANY REPLY TO JOINT PROTEST TO ADVICE LETTER 5067-E
August 2, 2023

SOUTHERN CALIFORNIA EDISON®
An EDISON INTERNATIONAL® Company

Connor Flanigan
Managing Director, State Regulatory Operations

August 2, 2023

Energy Division
Attention: Tariff Unit
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Southern California Edison Company's Reply to the Joint Protest of Advice 5067-E from California Efficiency+ Demand Management Council, Enel X North America, Inc., CPower, Leapfrog Power, Inc., and OhmConnect, Inc.

Dear Energy Division Tariff Unit:

In accordance with Section 7.4.3 of General Order (GO) 96-B, Southern California Edison Company (SCE) replies to the Joint Protest of Advice 5067-E from the California Efficiency + Demand Management Council, Enel X North America, Inc., CPower, Leapfrog Power, Inc., and OhmConnect, Inc. (collectively, Joint Parties).

BACKGROUND

SCE submitted Advice 5067-E in compliance with Decision (D.)23-06-029 (the Decision) issued in Rulemaking (R.)21-10-002, which stated in relevant part:

> To provide consistency between the Commission's established principle for RDRR [Reliability Demand Response Resources] and CAISO's [California Independent System Operator] dispatch practices, the Commission clarifies that CAISO should be allowed to use RDRR, as an RA [Resource Adequacy] resource, for economic or exceptional dispatch upon the declaration of a day-of EEA [Energy Emergency Alert] Watch (or when a day-ahead EEA Watch persists in the day-of).[1]
>
> [ ]

[1] D.23-06-029 at 96-97.

> To the extent tariff adjustments are needed to operationalize the [RDRR] dispatch trigger, . . . [SCE] shall submit those tariff adjustments as a Tier 1 Advice Letter within 10 days of the effective date of this decision.[2]

In their Protest, the Joint Parties do not assert that Advice 5067-E is improper and acknowledge that "SCE is responding to an 'order' with the intent to comply with that order."[3] Rather, the Joint Parties assert that "the subject matter of [SCE's] compliance, a significant change in an existing dispatch trigger, was not appropriately or adequately supported by the Commission's decision."[4] Accordingly, the Joint Parties request that AL 5067-E "be suspended either (1) pending the outcome of any Application for Rehearing of D.23-06-029 or (2), at the least, until January 1, 2024, to permit customers an opportunity to take action in response to such a change as to whether they wish to disenroll from the program or adjust upward their Firm Service Level."[5]

RESPONSE TO JOINT PROTEST

Advice 5067-E is consistent with and required by the Decision. The Joint Parties' arguments pertain not to the propriety of SCE's advice letter, but to the Decision itself. As a party to R.21-10-002, SCE expressed concerns about expanded dispatch triggers[6] and continues to hold these concerns. Nevertheless, SCE is required to comply with Commission decisions and there should be consistency between the Decision and SCE's tariffs. Dissatisfaction with a Commission decision is not a basis to deny approval of an advice letter submitted in compliance with that decision. Should the Commission at any point revise the Decision's orders with respect to RDRR dispatch triggers, SCE will be prepared to submit a subsequent advice letter to update its tariffs accordingly. But in the interim, approval of Advice 5067-E should not be withheld, and SCE's tariffs should be updated to be consistent with the Decision.

Sincerely,

/s/ Connor Flanigan
Connor Flanigan

CF:dm:lp

---

[2] Id., Ordering Paragraph (OP) 25.
[3] Joint Protest at p. 2 (internal quotation marks in original).
[4] Id.
[5] Id. at p. 3.
[6] *See* SCE's Opening Comments, pp. 2-5, filed June 14, 2023 and Reply Comments, pp. 2-5, filed June 19, 2023.

cc: Simon Baker, Director, CPUC Energy Division
Joseph Desmond Joseph Desmond Executive Director California Efficiency + Demand Management Council
Elysia Vannoy Regulatory Affairs Manager OhmConnect, Inc.
Mona Tierney-Lloyd Head of U.S. State Policy Public Policy and Institutional Affairs Enel X North America, Inc.
Collin Smith Regulatory Affairs Manager Leapfrog Power, Inc.
Kenneth D. Schisler Regulatory and Government Affairs CPower
Service Lists in R.21-10-002 (RA) and A.22-05-002, et al.

APPENDIX D

POLARIS ENERGY SERVICES LETTER TO CPUC COMMISSIONERS
August 1, 2023

August 1, 2023

Via E-mail

Commission President Alice Reynolds (Alice.Reynolds@cpuc.ca.gov)
Commissioner Genevieve Shiroma (Genevieve.Shiroma@cpuc.ca.gov)
Commissioner Darcie Houck (Darcie.Houck@cpuc.ca.gov)
Commissioner John Reynolds (John.Reynolds@cpuc.ca.gov)
Commissioner Karen Douglas (Karen.Douglas@cpuc.ca.gov)
Service List in Rulemaking (R.) 21-10-002 (Resource Adequacy)

RE: Polaris Energy Services' Written Communication Regarding Decision (D.) 23-06-029

To Commissioners and Service List in R.21-10-002 (Resource Adequacy):

Pursuant to California Public Utilities Commission's Rules of Practice and Procedure, Rule 8.2(c)(3)(A), Polaris Energy Services (Polaris) submits this written ex parte communication in Rulemaking (R.) 21-10-002 (Resource Adequacy (RA)). On July 5, 2023, the California Public Utilities Commission (Commission) Energy Division issued Decision (D.) 23-06-029 in R.21-10-002 (RA). D.23-06-029 is the Decision Adopting Local Capacity Obligations for 2024-2026, Flexible Capacity Obligations for 2024, and Program Refinements. As discussed in more detail below, D.23-06-029 contains several provisions that are of grave concern to Polaris Energy Services (Polaris).

Polaris is the leader in agricultural demand response (DR) and load management. Polaris manages a network of 500+ irrigation and water conveyance pumps connected in the field to Polaris Pump Automation Controllers (PAC) gateways and third-party irrigation management systems – that represents 75 MW of peak demand. Polaris aggregates irrigation pumping load in the Baseload Interruptible Program (BIP), Capacity Bidding Program (CBP) and Emergency Load Reduction Program (ELRP).

As a BIP provider, of chief concern to Polaris is the provision in D.23-06-029 pertaining to reliability DR resources (RDRRs). Specifically, D.23-06-029 states that the California Independent System Operator (CAISO) "should be allowed to use RDRR, as an RA resource, for economic or exceptional dispatch upon the declaration of a day-of

[Energy Emergency Alert (EEA)] (or when a day-ahead EEA Watch persists in the day-of)."[1]

As such, this change to the RDRR trigger is unreasonable because it provides a more sensitive trigger for BIP without the ability to unenroll before the peak season and likely dispatches. In addition to more frequent events, this will allow for RDRR to be used for short, price-based events that no one has anticipated.

Customers' flexibility, interest, operational planning and technology are deployed based on the current program parameters. While BIP may be dispatched at any time, customers ensure that they are prepared to respond when grid conditions are most likely to trigger events. Dispatching BIP according to a different set of parameters changes customers' cost and benefit analysis and risk calculations. Furthermore, a different trigger not only may increase event frequency but may introduce short, economically motivated events.

In addition to the financial compensation, customers understand the severity of circumstances that lead to a BIP event and are willing to do their part to help. However, many are not interested in providing economic resources that may end up costing them money in lost production and product.

It is reasonable to change program parameters over time, but customers should be able to unenroll if they are no longer able to meet the requirements or find it beneficial to do so. In a year where program revenue has been extremely low for agricultural customers because of high precipitation and ensuing low groundwater pumping, the penalty risk greatly outweighs many customers' benefit.

As such, Polaris urges the Commission to modify D.23-06-029 to eliminate this provision.

Respectfully submitted,

August 1, 2023

/s/ BRIAN ALWARD
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[1] D.23-06-029, at p. 96.

APPENDIX E

DECLARATION OF COLLIN SMITH IN SUPPORT OF THE JOINT MOTION FOR PARTIAL STAY OF DECISION 23-06-029 BY THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL, LEAPFROG POWER, INC., OHMCONNECT, INC., CPOWER, ENEL X NORTH AMERICA, INC., AND CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES

August 4, 2023

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

DECLARATION OF COLLIN SMITH IN SUPPORT OF THE JOINT MOTION FOR PARTIAL STAY OF DECISION 23-06-029 BY THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL, LEAPFROG POWER, INC., OHMCONNECT, INC., CPOWER, ENEL X NORTH AMERICA, INC., AND CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES

1. I, Collin Smith, am the Regulatory Affairs Manager for Leapfrog Power, Inc. ("Leap"), which is a party to R.21-10-002 and has joined in the Joint Motion for Partial Stay of Decision 23-06-029. My business office is located at 1700 Montgomery Street, Suite 200, San Francisco, CA 94111.

2. On information and belief, based on my experience and work for Leap with Leap personnel and customers providing demand response ("DR") services, I believe the following to be true and correct without any waiver of privilege or confidentiality:

   a. The impact of eliminating the Transmission Loss Factor ("TLF") Adder will create serious harm for Demand Response Providers ("DRPs") where it will significantly reduce their cash flow as illustrated by the example provided in the Joint Motion at pages 15-16. I attest that the facts and calculations included in that example are true and correct to the best of my knowledge and belief and that the resulting revenue loss would eliminate around 25% of 2023-2024 revenue growth for a DRP whose portfolio grows from 90 to 100 MW over that time. This would translate to around 6% loss of revenue overall, assuming the existing 90 MW contracts were at the average rates listed in the California Public Utilities Commission's ("Commission's") 2021 Resource Adequacy ("RA") Report.

b. Such a material revenue loss will be especially damaging to smaller DRPs that lack backstop funds from a larger parent company and, in turn, will make it more difficult for new DRP companies to expand their operations in California.

c. Based on publicly available figures on Net Qualifying Capacity ("NQC") values for third-party DR resources in 2023, the TLF and Planning Reserve Margin ("PRM") Adders collectively account for 226 MW of third-party DR capacity over the 12 months in that year. Using the Commission's RA capacity penalty of $8.88/kW-month as a proxy value for RA, this means that removing those two adders would equate to over $2 million in financial losses for the third-party DR industry, representing over 6% of the industry's revenue potential in 2023.

d. By eliminating the TLF Adder, third party DRPs RA capacity resources will be placed at a competitive disadvantage to fossil-fueled resources.

e. Application of the Commission's adopted de-rating of DR qualifying capacity put DRPs at risk of losing a substantial amount of quarterly revenue in a given year based on one bad test event the preceding year. That level of revenue uncertainty will create a disincentive for customers to remain with a DRP and an incentive for the customer to instead to participate in a Utility program instead.

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Executed on August 4, 2023, at San Francisco, California.

[*s*] Collin Smith
Collin Smith
Regulatory Affairs Manager
Leapfrog Power, Inc.