

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 19-11-009  
(Filed November 7, 2019)

**JOINT TRACK 3B.1 PROPOSAL OF THE CALIFORNIA EFFICIENCY + DEMAND  
MANAGEMENT COUNCIL, CPOWER, ENEL X NORTH AMERICA, INC.,  
LEAPFROG POWER, INC. AND OHMCONNECT, INC.**

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The California Efficiency + Demand Management Council,<sup>1</sup> CPower, Enel X North America, Inc., Leapfrog Power, Inc. and OhmConnect, Inc. (collective “the Joint Parties”) respectfully submits their Track 3B.1 Proposal in Rulemaking (R.) 19-11-009 (Resource Adequacy (“RA”)). The Joint Parties’ Track 3B.1 Proposal is filed and served pursuant to the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC” or “Commission”) and the Assigned Commissioner’s Amended Track 3B and 4 Scoping Memo and Ruling, dated December 11, 2020 (“Amended Scoping Memo”).

**I.  
INTRODUCTION**

The Amended Scoping Memo in Section 2.2.1 sets forth the issues that will be considered as Track 3B.1 of this proceeding. These issues include: (1) incentives for load-serving entities (“LSEs”) that are deficient in year-ahead RA filings, as discussed in D.20-06-031, (2) refinements to the Maximum Cumulative Capacity (“MCC”) buckets adopted in D.20-06-031, and (3) other time-sensitive issues identified by Energy Division or by parties.<sup>2</sup> On January 14, 2021, Administrative Law Judge (“ALJ”) Chiv issued a Ruling stating that proposals and topics that are within the scope of Track 3B.1 include, but are not limited to: (1) modifications to qualifying capacity or resource valuation methodologies (e.g., import RA requirements, hybrid resources, variable energy resources), (2) refinements to the MCC buckets, (3) changes to the Planning Reserve Margin, and (4) seasonal RA requirements.

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<sup>1</sup> The views expressed by the California Efficiency + Demand Management Council are not necessarily those of its individual members.

<sup>2</sup> Amended Scoping Memo, at p. 4.

## II. BACKGROUND

In its June 30, 2020 Decision (D.) 20-06-031, the Commission adopted several revisions to the MCC buckets. Among these revisions, the Commission capped the volume of demand response (“DR”) capacity that a load-serving entity (“LSE”) is able to use to meet its System RA obligation at 8.3%.<sup>3</sup> As the Decision asserted, the cap is intended to address the Commission’s concerns around the risks to system reliability arising from the proliferation of use-limited resources.<sup>4</sup> Importantly, in imposing the cap, the Commission argued that the cap would not limit the growth of DR in the foreseeable future, stating: “a cap will not stifle the growth of DR within any timeframe and will allow sufficient time for an upward revision to the cap if an adjustment is warranted in the future.”<sup>5</sup> The Commission based this reasoning in part on the fact that “the cap on the DR bucket will allow for a doubling of supply-side DR.”<sup>6</sup>

While the purported space for market growth is true in theory, in practice, such room does not necessarily materialize. In fact, real market experience following the adoption of D.20-06-031 has provided evidence to the contrary. Specifically, third-party DR Providers (“DRPs”) approved to sell RA capacity outside of the Demand Response Auction Mechanism (“DRAM”) pilot have found numerous LSEs already at or near their DR MCC bucket cap during this fall’s RA procurement cycle. Given that only a handful of DRPs were approved to sell RA for the 2021 delivery year, and that the total approved capacity was relatively small, it is fair to say that the cap is already having an adverse effect on the growth potential of third-party DR. With more DRPs expected to participate in the DR Load Impact Protocol (“LIP”) process in 2021, this effect will likely be intensified.

Below, we describe the issue in greater detail and propose several revisions to the MCC DR bucket that would result in more equitable treatment of third-party DR resources while continuing to ensure system reliability as intended in D.20-06-031.

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<sup>3</sup> D.20-06-031, at Ordering Paragraph 10.

<sup>4</sup> *Id.*, at p. 55.

<sup>5</sup> *Id.*, at p. 57.

<sup>6</sup> *Id.*

### III. THE JOINT PARTIES' TRACK 3B.1 PROPOSAL

#### A. Concerns with the MCC DR Bucket Cap Implementation

##### 1. *The MCC Bucket cap on DR has the unintended consequence of effectively capping DR at below 8.3% levels.*

In D.20-06-031, the Commission states that the 8.3% cap “translates to 3,735 MW of the current peak RA requirement.”<sup>7</sup> Consequently, the cap “provides for DR growth of approximately 100 percent over the current levels when accounting for the 15 percent PRM adder.”<sup>8</sup> While this may be the case at the system level, MCC buckets are applied at the level of each LSE. LSEs have varying resource mix and cost preferences, and the MCC buckets set limits on the amount of capacity an LSE may procure from certain types of resources, but an LSE is under no obligation to procure any resources from the DR bucket. Some may decide to procure fewer or no DR resources (other than what is allocated to them from IOU DR programs) while others prefer a relatively greater share of DR in their portfolios. So, if an LSE chooses not to procure DR up to its 8.3% cap, the resulting “headroom” is not available to other LSEs that might be interested in procuring greater amounts of DR capacity. If several LSEs choose not to procure DR up to their cap for any reason, the overall cap of 3,735 MW will be effectively reduced by an amount equal to LSEs’ unused headroom which will limit DRPs’ opportunities to sell their capacity.

DRPs have observed this issue in practice. In conversations with potential counter-parties in the Fall of 2020, multiple LSEs indicated that they would like to procure incremental DR but were nearly at their MCC cap. While such an outcome may be acceptable in a competitive market environment - an entity is not entitled to contracts if there are no willing buyers - it is harmful and distortionary in a market where interested buyers *do* exist but are precluded from purchasing the product. Moreover, it portends a problem when this is occurring in a market where just *two* sellers were approved to sell any significant amount of DR capacity, and the total volumes approved are relatively small.<sup>9</sup> If, under these circumstances, these sellers are finding LSEs at their cap, parties might wonder what kind of market really exists for an even

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<sup>7</sup> D.20-06-031, at p. 57.

<sup>8</sup> *Id.*

<sup>9</sup> The most recent CPUC NQC list can be found here:  
<https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442467498>.

greater number of DRPs with larger volumes of DR capacity. Therefore, even though the 8.3% cap does, in theory, translate to an approximate doubling of current DR capacity at the system level, the LSE-level implementation of the cap all but ensures that, in practice, the cap is much lower.

**2. The cap uniquely prejudices third-party DRPs.**

Investor-owned utility (“IOU”) DR programs (including both economic and emergency-triggered DR) currently represent the vast majority of existing DR capacity in the state (see Table 1). RA credit for these programs is allocated to LSEs on a pro rata basis upon receipt of their year-ahead RA obligations. LSEs are then able to procure additional DR from third-party DRPs until their respective 8.3% bucket cap is reached. In allocating IOU DR credits first, the Commission reinforces a system in which IOU DR preempts third-party DR resources in filling the MCC bucket. This, in addition to the fact that IOU DR is a *must take* resource while procurement of third-party DR is *optional*, represents obvious preferential treatment of IOU DR programs over third-party DR.

**Table 1. Approved August 2021 Capacity from DR Resources**

	<b>IOU</b>	<b>DRAM</b>	<b>Non-DRAM Third-Party</b>	<b>Totals</b>
<b>PG&amp;E</b>	401.60	95.38	186.12	683.10
<b>SCE</b>	976.93	115.07	61.45	1153.44
<b>SDG&amp;E</b>	17.05	26.51	19.20	62.76
	<b>1395.58</b>	<b>236.96</b>	<b>266.76</b>	<b>1899.30</b>

*This table represents the full System RA value of approved resources, including avoided T&D losses and the PRM, as it would be calculated toward the MCC bucket.*

At a basic level, this is inequitable and prejudicial to third-party DR. It also overtly contradicts the principles of DR, as adopted by the Commission in D.16-09-056, which notes that “DR shall be market-driven [...] with a preference for services provided by third-parties through performance-based contracts at competitively determined prices.”<sup>10</sup>

Compounding this issue is the fact that IOU-administered DR program capacity is still much greater than third-party DR while the retail electricity market has become more fragmented as numerous Community Choice Aggregators (“CCAs”) have begun serving retail customers. Because they are credited first, these larger IOU DR programs risk “crowding out” directly

<sup>10</sup> D.16-09-056, at Ordering Paragraph 8.

procured third-party DR resources in the case of LSEs whose total obligation, and therefore the MCC DR bucket, is relatively small. Because executing contracts carries administrative costs for both the Buyer and Seller, the remaining room under the 8.3% cap may not be worth the administrative cost of the contract for some LSEs and DRPs.

**3. *The cap raises unnecessary barriers to the deployment of additional DR resources.***

Due to the issues described above, the DR MCC bucket cap hinders the State from achieving its environmental and climate change mitigation policies. This is very counter-productive, especially when considering that the Commission is seeking to add more capacity on an expedited basis for summer 2021 and 2022 reliability.

If the few DRPs that were awarded DR Qualifying Capacity (“QC”) values are unable to sign contracts for the 2021 capacity they already qualified through the DR LIP process, not only will there be no incentive to develop additional resources or encourage new market participants, the amount of available DR capacity providing RA in summer 2021 may not even match existing levels.

**B. Proposals to Refine the MCC DR Bucket**

Below, we put forward several options to address the issues raised above. The options are not mutually exclusive and the Commission may consider one or more of these options to be adopted together.

***Option 1: Apply the 8.3% cap at the System level only.***

As discussed above, the application of the MCC bucket caps at the level of each LSE effectively ensures that the DR bucket cap is below 8.3% of total system peak need. At the same time, there is no definitive evidence around the level of DR penetration at which system reliability may be a concern. During the heat storms this summer, for example, DR and voluntary load curtailment helped prevent additional blackouts. We recommend applying the 8.3% cap at the System level only. One way to effectuate this option in practice is to uncap the LSE-specific DR bucket until such time that the total approved DR providing RA begins to near the 8.3% threshold. Given that the volumes of DR approved to count toward an LSE’s RA obligation are publicly known, and these volumes are currently far below the 8.3% cap in aggregate, the Commission can be certain that allowing DRPs to sell all of their approved capacity uncapped in the short-term will not threaten System reliability. The cap and its application can be revisited in

a future RA proceeding, if and when total approved DR capacity begins to reach the 8.3% threshold.

***Option 2: Adopt the cap for third-party procured resources only (i.e., exempt allocated DR from fulfilling the bucket).***

We have significant concerns around the implementation of any cap on DR in which IOU DR programs, whose MWs are allocated to LSEs first, preempt directly-procured capacity from DRPs. To maintain a level playing field between IOU and third-party DR programs, especially while the DRAM budget remains small and fixed, we propose that any cap on the DR MCC bucket explicitly exclude DR allocations from IOU DR programs. DR allocations are, by and large, not capacity procured via competitive solicitations and, under current Commission rules, they represent credits that lower an LSE's RA obligation. It is not equitable for credits from programs with which third-parties cannot directly compete for contracts to effectively be favored in fulfilling the MCC DR bucket. To the extent that the Commission decides to maintain the MCC DR bucket cap, it should make sure that third-party resources are not squeezed out by must-take IOU DR credits.

***Option 3: Allow Behind-the-Meter resources that are able to meet the operational characteristics of Bucket 1 to count toward Bucket 1.***

In D. 20-06-031, the Commission recognizes that: "...[behind-the-meter DR energy storage] resources – and potentially other forms of economically triggered Proxy Demand Resource ("PDR") – may well be able to meet the technical requirements of Bucket 1. We anticipate further exploration of whether specific DR programs with appropriate, homogeneous operating characteristics should be included in Bucket 1 before the DR bucket constrains development of these resources."<sup>11</sup> As we note above, if two DRPs approved to sell relatively small volumes are struggling to sell their full approved capacity, even when willing buyers for this capacity exist, it is fair to say that the DR MCC bucket *is already* constraining the development of this resource. The Commission should allow any resource that is able to meet the operational characteristics of Bucket 1 to count toward Bucket 1.

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<sup>11</sup> D.20-06-031, at p. 57.

There is little reason for why any resource that is able to meet the operational requirements of a different MCC bucket should not be able to count toward it. While the Commission may have anticipated tackling this issue at a later date, we do not see a benefit to waiting and recommend doing so in Track 3B.1 of this proceeding. At best, this could encourage the development of new and better models of DR that are able to expand the current availability limits. At the very least, if BTM energy storage is able to be procured under a different bucket, it could free up headroom in the DR MCC bucket for more use-limited DR resources.

#### **IV. CONCLUSION**

The Joint Parties look forward to working with the Commission and interested parties to develop a methodology that fairly treats third-party DR resources while continuing to ensure system reliability as intended in D.20-06-031.

Respectfully submitted,

January 28, 2021

/s/ GREG WIKLER

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