

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)

**OPENING COMMENTS OF
THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL
ON PROPOSED DECISION DENYING PETITION FOR MODIFICATION OF
OHMCONNECT, INC.**

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I. INTRODUCTION

The California Efficiency + Demand Management Council (“Council”)¹ respectfully submits these Opening Comments on the Proposed Decision Denying Petition for Modification of OhmConnect, Inc. (“Proposed Decision” or “PD”), mailed in this proceeding on March 18, 2022. 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. THE PROPOSED DECISION ERRS IN REJECTING THE OHMCONNECT PFM DUE TO THE EXPIRATION OF THE GOVERNOR’S EMERGENCY DECLARATION AND A FAILURE TO DEMONSTRATE NEW FACTS

A. The Proposed Decision incorrectly claims that the relevant portions of the Governor’s Emergency Declaration cited by OhmConnect expired on October 31, 2021.

The PD adopts the Pacific Gas and Electric (“PG&E”) and San Diego Gas & Electric (“SDG&E”) argument that OhmConnect, Inc.’s (“OhmConnect’s”) Petition for Modification (“PFM”) “fails to assert a new or changed fact” because the Governor’s July 30, 2021 Proclamation of a State of Emergency (“Emergency Proclamation”), which OhmConnect cites in support of its PFM, was set to expire on October 31, 2021.² Consequently, the PD finds that the language cited by OhmConnect cannot be interpreted to warrant an expansion of DR programs.³

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

² Proposed Decision, at p. 5.

³ *Id.*, at p. 6.

The notion that the portion of the Emergency Proclamation cited by OhmConnect in the PFM “expired” on October 31, 2021 is verifiably false, highly arbitrary, and irrelevant. OhmConnect’s PFM specifically cited Ordering Paragraph (“OP”) 13 of the Emergency Proclamation in its support. Ordering Paragraph 13 directs the Commission to “meet the purposes and directives of this proclamation, including by expanding and expediting approval of demand response programs...to ensure that California has a safe and reliable electricity supply through October 31, 2021, to reduce strain on the energy infrastructure, and to ensure increased clean energy capacity *by October 31, 2022.*”⁴ (emphasis added) By way of the final directive in this quoted passage, OP 13 could not have expired on October 31, 2021. Furthermore, its direction that increased clean energy capacity be in place *by* October 31, 2022 does not imply that such clean energy capacity is no longer needed after that date. It only directs that it be in place no later than that date and does not specify the duration of need for the increased clean energy capacity.

Therefore, any inferences that either date constitutes an “expiration date” are without basis; the PD is factually incorrect in claiming that “the portion of the Emergency Proclamation cited by OhmConnect in its petition – that the Commission expand and expedite approval of demand response programs – expired on October 31, 2021.” As such, this statement cannot provide reasonable grounds for the PFM’s denial.

B. The PD ignores the new and changed facts that precipitated OhmConnect’s PFM.

The PD states that, under Rule 16.4(b) a PFM must include “any allegations of new or changed facts” and be supported by an appropriate declaration or affidavit.⁵ The PD neglects to consider any of the new or changed facts put forth by OhmConnect, instead simply stating that the language from the Emergency Proclamation cited by OhmConnect had expired. As the Council demonstrated above, there was no expiration of the relevant language from the Emergency Proclamation. However, what remains as a new fact is that the Governor’s Office placed an emphasis on procurement of additional DR.

The PD’s claim that the purported October 31, 2021 expiration of the Emergency Proclamation justifies denial of OhmConnect’s PFM is inconsistent with the rationale behind the

⁴ Emergency Proclamation, OP 13.

⁵ Proposed Decision, at p. 5.

procurement ordered in the Phase 2 decision of the Emergency Reliability proceeding. Decision 21-12-015 cites the need for new resources (including DR) and directs the IOUs to procure new third-party DR through bilateral solicitations. Finding of Fact (“FoF”) 8 states, “There is a need for *new* supply- and demand-side resources to serve as contingency resources at net peak in summer 2022 and 2023.”⁶ (emphasis added) The decision also explicitly states that any DR procured through these solicitations must be incremental to existing DR resources and contracts. Ordering Paragraph (“OP”) 13 of this decision states,

Pacific Gas and Electric Company (PG&E), Southern California Edison Company, and San Diego Gas & Electric Company shall procure Resource Adequacy capacity from eligible third-party Demand Response (DR) providers for 2022 and 2023 deliveries through bilateral contracts. The third-party DR resources shall be comprised of *new resources incremental to all existing DR resources* already committed to any load serving entity. The procured DR capacity shall be integrated into the California Independent System Operator (CAISO) markets as economic DR and must abide by all RA and CAISO rules. The procured DR capacity shall be exempt from the Load Impact Protocol process and count toward the overall megawatt targets established for each investor-owned utility (IOU) in this decision and must be available at peak and net peak. Because these procured resources are incremental to IOUs’ and all load serving entities’ (LSEs’) 15% Planning Reserve Margin, these resources need not be applied to any LSEs’ Maximum Cumulative Capacity bucket cap calculation. The IOUs shall adopt the capacity penalty structure from PG&E’s Capacity Bidding Program. The IOUs shall submit bilateral contracts and cost recovery proposal to the Commission through Tier 1 Advice Letters.⁷ (emphasis added)

In response to the Emergency Declaration, which was issued after the approval of D.21-06-029, the Commission adopted D.21-12-015 for the procurement of a wide range of incremental resources, including DR. Despite the Commission waiving the DR cap for incremental DR procured pursuant to this decision, FoF 8 and OP 13 did not specify that D.21-12-015 was the only venue through which incremental DR could be procured. This new need clearly meets the standard as a “new or changed fact,” so the Commission cannot justify denial of OhmConnect’s PFM on their absence.

⁶ D.21-12-015, Finding of Fact 8.

⁷ *Id.*, Ordering Paragraph 13.

C. The Proposed Decision does not substantiate why granting OhmConnect’s PFM threatens grid reliability.

The PD claims that the Emergency Proclamation expiration date aside, it does not warrant lifting the DR cap to 11.3% without the consideration of the impact of such an increase on grid reliability.⁸ However, this ignores the entire premise for OhmConnect’s proposal to raise the DR cap – to simply improve the chances that the 8.3% DR cap can actually be reached – not to exceed the 8.3% cap. As OhmConnect states, “the true cap faced by the non-IOU DR resources for each LSE is actually 8.3% *minus the RA value of IOU DR programs.*”⁹ (emphasis added)

In its PFM, OhmConnect explained three different ways that the 8.3 percent DR procurement cap that was adopted by D.20-06-031 has effectively limited DR procurement to a level far below this cap: 1) the LSE-specific application effectively eliminates any headroom not used by LSEs, 2) IOU DR programs are counted first against each LSE’s cap, thus limiting the amount of third-party DR that can be procured, and 3) the LSE-specific cap forces DR providers to identify LSEs with DR headroom which is virtually impossible because LSEs often work through brokers.¹⁰ OhmConnect further supports its arguments with confidential declarations from Franklin Fuchs, Jack Hays, and John Anderson. None of these reasons nor the affidavits were refuted in the PD, so the Council would argue that Rule 16.4(b) has been satisfied. Regardless, by waiving the DR cap for incremental DR procured pursuant to D.21-12-015, the Commission has already tacitly acknowledged that procuring above or outside of the DR cap does not threaten reliability, but actually helps to preserve it.

III. THE PD ERRS IN REJECTING THE PFM FOR FAILURE TO SATISFY RULE 16.4(D)

As cited by the PD:

“Under Rule 16.4(d), a petition for modification must be filed within one year of the decision and if more than one year has elapsed, ‘the petition must also explain why the petition could not have been presented within one year of the effective

⁸ Proposed Decision, at p. 6.

⁹ PFM, at p. 7.

¹⁰ *Id.*, at pp. 6-7.

date of the decision.’ If the Commission determines the late submission is not justified, it may issue a summary denial of the petition.”¹¹

The PD cites the PG&E and SDG&E claim that OhmConnect has failed to explain why the PFM could not have been presented within the one-year timeframe.¹² This is false. In its PFM, OhmConnect stated that the MCC Buckets issue, including the DR cap, were explicitly scoped into Track 3.B1 and Track 4 of R.19-11-009 and OhmConnect actively participated in these tracks, including by submitting proposals on this topic.¹³ It was not reasonable for OhmConnect to seek modification of a topic approved in D.20-06-031 that was, at the same time, explicitly scoped into an open proceeding. The Council posits that OhmConnect would have been told as such had it submitted such a PFM at that time. As OhmConnect explained, while D.21-06-029 – which addressed Tracks 3.B1 and Track 4 issues – was not adopted until June 2021, a year after D.20-06-031 adopted the DR cap, declined to modify the Maximum Cumulative Capacity (“MCC”) buckets or the DR cap, it invited stakeholders to file a PFM “[s]hould parties identify any new or changed facts regarding this issue.”¹⁴ Therefore, the PD is incorrect in stating that OhmConnect did not explain the reasons for filing the petition one year after the initial decision and, as such, this statement cannot be used in good faith to reject OhmConnect’s PFM when OhmConnect was simply responding to the Commission’s invitation.

IV. CONCLUSION

The Council appreciates this opportunity to provide these Opening Comments on the Proposed Decision and urges the Commission to revise the PD to grant OhmConnect the relief it seeks.

¹¹ Proposed Decision, at p. 7.

¹² *Id.*, at p. 7.

¹³ PFM, at p. 1.

¹⁴ D.21-06-029, at p. 25.

Respectfully submitted

April 7, 2022

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