

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)

**JOINT RESPONSE OF 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
TO PETITION FOR MODIFICATION OF D.23-06-029 BY
THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION**

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

Collin Smith
Regulatory Affairs Manager
Leapfrog Power, Inc.
1700 Montgomery Street, Suite 200
San Francisco, CA 94111
Telephone: 267-742-1081
E-mail: marketdev.caiso@leap.ac

Elysia Vannoy
Regulatory Affairs Manager
OhmConnect, Inc.
371 3rd Street, 2nd Floor
Oakland, CA 94607
Telephone: 510-200-8849
E-mail: elysia.vannoy@ohmconnect.com

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

Mona Tierney-Lloyd
Head, Policy & Regulatory Affairs,
Central and Western Regions
Enel X North America, Inc.
200 South Virginia Street, Suite 400
Reno, NV 89501-2407
Telephone: (415) 238-3788
E-mail: mona.tierney-lloyd@enel.com

V. John White
Executive Director
**Center for Energy Efficiency and
Renewable Technologies**
1100 11th Street, Suite 311
Sacramento, CA 95814
Telephone: 916-442-7785
E-mail: vjw@ceert.org

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The California Efficiency + Demand Management Council, (“the Council”) Leapfrog Power, Inc. (“Leap”), OhmConnect, Inc. (“OhmConnect”), CPower, Enel X North America, Inc., and Center for Energy Efficiency and Renewable Technologies (“the Joint Parties”) hereby submit this Joint Response to the Petition for Modification of Decision (“D.”) 23-06-029 by the California Large Energy Consumers Association (“CLECA”) submitted in this proceeding on August 24, 2023. This Joint Response is timely filed and served pursuant to Rule 16.4(f) of the Commission’s Rules of Practice and Procedure.

**I.
SUMMARY AND RECOMMENDED ACTION**

By D.23-06-029, issued on 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.”¹ On August 4, 2023, the Joint Parties timely filed both a Joint Application for Rehearing and a Joint Motion for Partial Stay of D.23-06-029. The Joint

¹ D.23-06-029, at p. 2.

Application for Rehearing fully details the significant legal and factual errors contained in the Decision by which the Commission wrongly and erroneously: (1) reversed the present limitation on using Reliability Demand Response Resources (“RDRR”) as an RA resource only during system emergencies without adequate notice or opportunity to respond, (2) eliminated the Transmission Loss Factor (“TLF”) adder, (3) eliminated the Planning Reserve Margin (“PRM”) adder, (4) unreasonably expanded Proxy DR (“PDR”) availability requirement, and (5) derated third-party DR qualifying capacity (“QC”) values based on test results outside of the current QC valuation process.² By the Joint Motion for Partial Stay, the Joint Parties met all criteria for the Commission to grant the requested stay of D.23-06-029 by fully demonstrating the serious and irreparable harm caused by these erroneous orders, the likelihood of the Joint Parties succeeding in their Joint Application for Rehearing, and the balance of harm and the impact of other relevant factors weighing in favor of the Commission granting the stay.

No responses in opposition to either the Joint Application for Rehearing or the Joint Motion for Partial Stay of D.23-06-029 were or have been filed. Instead, on August 21, 2023, CLECA timely filed responses in support of both the Joint Application for Rehearing and Joint Motion for Partial Stay.

CLECA’s subsequent Petition for Modification (“PFM”), at issue here, further underscores the legal and factual deficiencies related to the changes in RDRR and elimination of the TLF and PRM adders ordered in D.23-06-029 and their adverse and detrimental impact, as supported by attested new additive facts.³ To reverse these outcomes, CLECA recommends multiple modifications of D.23-06-029.

² D.23-06-029, at p. 2.

³ CLECA PFM, at pp. 1-2.

The Joint Parties greatly appreciate CLECA's continuing efforts to rectify the legal and factual errors committed by D.23-06-029 and reverse its harmful effects. On those points, the Joint Parties fully support CLECA's PFM.

However, CLECA's PFM does not address certain other errors in D.23-06-029 identified and substantiated by both the Joint Application for Rehearing and Joint Motion for Partial Stay. It is also the case that CLECA's PFM does not serve to ensure that the status quo in place prior to the issuance of D.23-06-029 on each of these critical points is maintained while the Commission considers the Joint Application for Rehearing and the PFM. For those reasons, the Joint Parties strongly urge the Commission again to immediately grant the Joint Parties' Joint Motion for Partial Stay of D.23-06-029 and, in turn, grant rehearing of all the erroneous orders addressed and confirmed by both the Joint Application for Rehearing and CLECA's PFM, with the stay to remain in place during the pendency of reconsideration of those orders.

**II.
CLECA'S PETITION FOR MODIFICATION DEMONSTRATES NUMEROUS
NEGATIVE EFFECTS THAT D.23-06-029 HAS ON SUPPLY-SIDE DR**

One of the erroneous "directives" challenged by the Joint Parties in the Joint Application for Rehearing was the elimination by D.23-06-029 of RDRR as an emergency resource, instead directing 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)."⁴ In spite of its name, an EEA Watch is not called during an emergency or in advance of an impending one but, rather, when an emergency *may* occur. That error was exacerbated by this change being identified as a "clarification" with immediate effect with no supporting ordering paragraph and without notice or opportunity for customers to modify their commitments in response where it was adopted during a closed enrollment period for the Base Interruptible

⁴ D.23-06-029, at pp. 96-97.

Program (“BIP”), a significant reliability resource. Such failures were anticipated to lead to confusion and would subject those customers to great financial risk.⁵

CLECA’s PFM confirms that these adverse outcomes, and worse, have in fact occurred and resulted in chaotic responses that continue today to the detriment of participating BIP customers.⁶ These results are the direct consequence of the Commission’s failure in D.23-06-029 to consider all of the potential repercussions, including damage to customer participation, caused by reversing existing rules with immediate effect and with no opportunity for a customer to respond to those changes. Worse are the facts, as attested to by CLECA, that, during an emergency RDRR call, California Independent System Operator (“CAISO”) Operating Procedure 4220 did not adequately address this change nor had CAISO employees been trained or instructed in its administration.

Thus, as supported by attached sworn declarations, CLECA states that only 15 days after the issuance of D.23-06-029, on July 20, 2023, “BIP events were called when RDRR was exceptionally dispatched during EEA-1 conditions for the first time.”⁷ CLECA describes the reaction to this exceptional dispatch as “chaos,” noting that it led to questions as to “whether the July 20 events were in error, or real events.”⁸ Furthermore, CLECA states that these events were called before the investor-owned utilities (“IOUs”), DR providers, RDRR participants, and CAISO “operators could be properly trained on the new dispatch conditions and procedures, or even determine which rules were currently in effect.”⁹

CLECA also establishes that “[r]elying on BIP for such a short duration for short-term operating reserve shortfalls is an inappropriate departure from the long-standing use of BIP in

⁵ See, e.g., Application for Rehearing, at p. 21 and Motion for Partial Stay, at p. 13.

⁶ CLECA Petition for Modification, at pp. 7-9.

⁷ *Id.*, at p. 7.

⁸ *Id.*, at p. 8.

⁹ *Id.*

emergency situations that threaten firm load shed.”¹⁰ These events were “incredibly costly for the BIP participants,” who CLECA affirmed incur significant fixed costs to participate in BIP events, often requiring the shutdown of business operations for several hours.¹¹ Asking BIP participants to incur these costs for an event that lasts 4-19 minutes – as the July 20 event did¹² – creates unreasonable costs and substantial operational issues.¹³ The Joint Parties agree that there was confusion among customers and DRPs as well about the CAISO EEA-Watch dispatch that occurred shortly after the issuance of the Commission’s Decision, which had immediately changed the dispatch trigger and conditions for BIP dispatches.

CLECA also describes a “tumultuous revision process” of Operating Procedure 4420 conducted by the CAISO in response to D.23-06-029, which risked confusion, possibly impacted grid reliability, and revealed an insufficient review of, training on, and education for the new operating procedures.¹⁴ In addition, there are currently deficiencies in the CAISO Tariff and Business Practice Manual (“BPM”) and CAISO “requires additional time to modify its tariffs to properly reflect these costs and parameters if RDRR resources are to be bid and dispatched during non-emergency day of EEA Watch conditions.”¹⁵

Clearly, the inter-relationship between the Commission’s Orders and CAISO Tariff and BPMs were not considered as a necessary implementation step of the Order. Those changes to CAISO Tariffs, which require FERC approval, and BPMs, which do not, are not instantaneous or immediate, further highlighting the importance of staying this decision to allow time for these changes to be established.

¹⁰ CLECA Petition for Modification, at p. 8.

¹¹ *Id.*, at p. 9

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*, at pp. 9-10.

¹⁵ *Id.*, at pp. 11-13.

CLECA’s PFM further highlights and confirms the same points made by the Joint Parties regarding the significant risk of customer disenrollments from BIP due to D.23-06-029.¹⁶ The Joint Parties agree with CLECA that D.23-06-029 “deviates from the long-standing practice to preserve BIP resources until true grid emergencies threaten the loss of firm load.”¹⁷ The Joint Parties also support CLECA’s contention that between D.23-06-029, “the subsequent July 20 BIP events, and current, inadequate BIP incentive levels, customer participation in RDRR is significantly at risk.”¹⁸

Lastly, the Joint Parties agree with CLECA that D.23-06-029 wrongly orders the elimination of the TLF and PRM adders in 2024.¹⁹ CLECA states that Southern California Edison Company (“SCE”) estimated that “should 250 MW of BIP resources be lost due to [D.23-06-029], the estimated RA replacement resources would cost ratepayers \$80 million per year.”²⁰ In the Application for Rehearing and Motion for Partial Stay, the Joint Parties demonstrated the significant financial impacts on DR parties if the TLF and PRM adders are eliminated.²¹ This new assessment referenced by CLECA only serves to reinforce the importance that this decision be stayed and, ultimately, reheard and reversed.

III. CONCLUSION

The facts attested to in CLECA’s PFM further support the Joint Parties’ Application for Rehearing and Motion for Partial Stay and demonstrate the immediate need for the Commission to grant the Joint Motion for Partial Stay to halt the harmful outcomes of the Commission’s unwarranted determinations in D.23-06-029. That Partial Stay should also be ordered to remain

¹⁶ CLECA Petition for Modification, at p. 13.

¹⁷ *Id.*

¹⁸ *Id.*, at p. 14.

¹⁹ *Id.*, at pp. 4-5.

²⁰ *Id.*, at pp. 14-15.

²¹ *See, e.g.*, Application for Rehearing, at pp. 21-22 and Motion for Partial Stay, at pp. 15-16.

in effect through a rehearing of D.23-06-029 or its modification in response to CLECA's PFM. It is imperative for the Commission to take these steps immediately to avoid or at least minimize the irreparable harm that has and will be caused by D.23-06-029.

Dated: September 22, 2023

Respectfully submitted,

/s/ JOSEPH DESMOND

Joseph Desmond
On Behalf of the
California Efficiency + Demand
Management Council, Leapfrog Power, Inc.,
OhmConnect, Inc., CPower, Enel X North
America, Inc., and Center for Energy
Efficiency and Renewable Technology
849 E. Stanley Blvd #294
Livermore, CA 94550
Telephone: 925-785-2878
E-mail: policy@cedmc.org