

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 23-10-011
(Filed October 12, 2023)

**OPENING COMMENTS OF
THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL AND
OHMCONNECT, INC. ON THE ORDER INSTITUTING RULEMAKING TO
OVERSEE THE RESOURCE ADEQUACY PROGRAM, CONSIDER PROGRAM
REFORMS AND REFINEMENTS, AND ESTABLISH FORWARD RESOURCE
ADEQUACY PROCUREMENT OBLIGATIONS**

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I. INTRODUCTION

The California Efficiency + Demand Management Council (the “Council”) and OhmConnect, Inc. (“OhmConnect”) (hereinafter collectively “the Joint Parties”) submit these Opening Comments on the Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Reforms and Refinements, and Establish Forward Resource Adequacy Procurement Obligations (“OIR”), pursuant to Rule 6.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC” or “Commission”) and the instructions accompanying the OIR issued October 19, 2023.

II. BACKGROUND

The Council is a statewide trade association of non-utility businesses that provide energy efficiency, demand response, and data analytics services and products in California.¹ Our member companies employ many thousands of Californians throughout the state. They include energy efficiency (“EE”), demand response (“DR”), and distributed energy resources (“DER”) service providers, implementation and evaluation experts, energy service companies, engineering and architecture firms, contractors, financing experts, workforce training entities, and energy efficient product manufacturers. The Council’s mission is to support appropriate EE, DR, and

¹ Additional information about the Council, including the organization’s current membership, Board of Directors, antitrust guidelines and code of ethics for its members, can be found at <http://www.cedmc.org>. The views expressed by the Council are not necessarily those of its individual members.

DER policies, programs, and technologies to create sustainable jobs, long-term economic growth, stable and reasonably priced energy infrastructures, and environmental improvement.

OhmConnect is a third-party Demand Response Provider (DRP) founded in 2013 and headquartered in Oakland, California. The company provides DR services to residential retail electric customers in California pursuant to Electric Rules 24 (Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE)) and 32 (San Diego Gas & Electric Company (SDG&E)). Specifically, OhmConnect’s free software service notifies households of impending DR events and pays them for their energy reductions, without requiring purchase or installation of additional hardware. OhmConnect is registered to participate as a DRP in the wholesale electricity market operated by the California Independent System Operator Corporation (CAISO) and contracts to provide resource adequacy with load serving entities.

III. SUMMARY

As a general principle, any modifications to DR rules in this proceeding should apply equally and equitably to investor-owned utilities (“IOUs”) and third parties. The Commission has ruled in Decision (“D.”) 16-09-056 that an equal playing field is necessary to preserve customer choice between participation in the DR provider of their choice.² Equitable treatment between IOU and third-party DR is also practical because a healthy third-party DR market is critical if the State is to meet its aggressive policy goals such as the 2023 Preferred System Plan (“PSP”) for a 25 million metric ton greenhouse gas target currently proposed in the Integrated Resource Planning (“IRP”) proceeding³ as well as the 7,000 MW Load Shift Goal (“LSG”) (including 4,000 MW of Supply Side DR) authorized by Senate Bill 846 and adopted by the California Energy Commission (“CEC”).⁴ These aggressive targets will be difficult to reach if the third-party DR market is so difficult to operate in that DR providers choose not to participate or to participate at depressed levels. This proceeding offers the Commission an opportunity to make improvements to the DR market that both encourage reliable performance of DR resources without stifling the much-needed growth of DR to meet the LSG.

As a first and critical step toward this end, the Joint Parties respectfully urge the Commission to approve the August 4, 2023 Joint Application for Rehearing (“Joint AfR”) of

² D.16-09-056, at 52.

³ Administrative Law Judge’s Ruling Seeking Comment on Proposed 2023 Preferred System Plan and Transmission Planning Process Portfolios, issued in R.20-05-003 (IRP) on October 5, 2023.

⁴ CEC – Senate Bill 846 Load-Shift Goal Report.

Decision (“D.”) 23-06-029 submitted by the Council, OhmConnect, Leapfrog Power, Inc., CPower, Enel X North America, Inc., and Center for Energy Efficiency and Renewable Technologies to prevent the impending damage it will inflict on DR, most severely on third-party DR providers and their customers.⁵ In the event of a Commission refusal to rule on the AfR or an outright Commission rejection of the AfR, the scope of this proceeding should include the issues addressed in the AfR.

IV. THE JOINT PARTIES’ COMMENTS ON PRELIMINARY SCOPE OF R.23-10-011

Among the scoping issues in this proceeding, the OIR proposes to include DR Qualifying Capacity (“QC”) Counting Conventions.⁶ According to the OIR, this issue would include “Energy Division’s load impact protocol simplification process, as discussed in D.23-06-029”, and “Energy Division’s Working Group to refine elements of the California Energy Commission’s incentive-based supply-side DR QC proposal to be submitted in December 2024, as authorized in D.23-06-029.”⁷ The OIR states that within this issue, the Commission would consider “testing requirements and requirements to market integrate investor-owned utility DR programs.”⁸ [id.]

The Joint Parties agree that DR QC counting issues should be in-scope given the ongoing efforts, pursuant to D.23-06-029, to simplify the Load Impact Protocols (“LIPs”) and complete the CEC’s Incentive-Based Method. As D.23-06-029 lays out, these processes will continue playing out over the 2024-2025 period.

1. The Joint Parties Support Consideration of DR Testing Requirements in the Rulemaking.

The Joint Parties also strongly support the proposed scope to consider DR testing requirements.⁹ Specifically, the Commission should consider how testing requirements would interact with the incentive-based DR QC methodology while avoiding a double penalty that could occur if a poor test event performance leads to a derated QC in the corresponding quarter

⁵ Joint Application for Rehearing 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, submitted in R.21-10-002 (RA) on August 4, 2023.

⁶ OIR, at p. 5.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

in the following year and a financial penalty; and 2) development and adoption of criteria for third-party DR providers to reduce their testing frequency from quarterly to biannually.

If the Commission chooses to retain the DR QC derates based on test performance failures that was adopted in D.23-06-029, Ordering Paragraph 32, and apply it to the incentive-based DR QC methodology, DR providers and their customers will be subject to a double penalty – first, in a derate of the QC value in the same quarter in the following year, and second, a financial penalty for failing to perform consistent with the QC value.

It is also critical that the Commission adopt clear criteria for DR providers to reduce their testing frequency when they demonstrate good performance. In D.20-06-031, the Commission adopted minimum testing requirements for third-party DR resources procured by non-IOU load serving entities (“LSEs”).¹⁰ These testing requirements consisted of a two-tiered approach in which “new or changing” DR resources would be subject to one four-hour dispatch (either as an economic dispatch or out-of-market test event) per quarter, whereas “stable resources with solid track records” would only require one two-hour test per year.¹¹ In adopting this two-tiered testing requirement, the Commission cited an insufficient record to determine criteria to differentiate between “new and changing” resources and “stable” resources, and ruled that all third-party DR resources procured by non-IOU LSEs would be subject to the stricter testing regime pending the development of a clear set of rules.¹² These rules have yet to be developed. The preliminary scope should be modified to include 1) the development of criteria for defining new and changing resources versus stable resources, 2) design of a less stringent testing requirement, and 3) the process through which third-party DR resources can test out of the four-hour quarterly testing requirements to the less stringent testing requirement.

Also, within the issue of testing requirements, the scope should include consideration of instances of missing IOU meter data that inhibit the ability of DR providers to report their quarterly testing results on a timely basis. DR providers have documented the failure of certain IOUs to provide timely and accurate metering data in the context of DR programs,¹³ but unfortunately this issue also arises under the DR providers RA contracts with such IOUs and

¹⁰ D.20-06-031, at pp. 93-94 (Ordering Paragraphs 13 and 14).

¹¹ *Id.*, at pp. 37-38.

¹² *Id.*, at p. 40.

¹³ A.22-05-002, *et al.*, *Joint Phase II Opening Brief of CPower and Enel X North America, Inc. (Joint DR Parties)*, pp. 41-43 (July 12, 2023).

affects their ability to comply with Commission RA reporting requirements. Though some IOUs are more successful than others in providing timely and accurate customer meter data, failure to provide the necessary data for DR providers to accurately demonstrate their performance during their required test events has been an ongoing problem. This proceeding should address ways to ensure the accurate and timely transfer of data between the IOUs and DR providers that contract to provide RA. This could include, but is not limited to, establishing a rule that DR providers are only required to provide results of test events once they have received at least 95 percent of the associated RQMD from the local IOU. Such a rule would mirror the standard that the Commission already adopted in the context of the Demand Response Auction Mechanism (“DRAM”) to address similar issues in that program.¹⁴

2. Any Changes to the Commission’s Bifurcation Policy Should Be Applied Equally to Third-Party DR Providers.

The Joint Parties are concerned by the OIR’s proposal to reassess “requirements to market integrate investor-owned utility DR programs.”¹⁵ This appears to imply that the Commission may reconsider its bifurcation policy adopted in D.14-03-026 as it applies to IOUs. By excluding mention of third-party DR providers, the Joint Parties are concerned that the Commission may create a different set of requirements to qualify for RA capacity, namely that the IOUs would not be required to integrate their DR programs into the CAISO market whereas third parties would. The Joint Parties fully support DR market integration but also believes that customers and, by extension, DR providers, should have the option to choose whether to participate in a Supply Side or Load Modifying DR program without being subject to prejudice or disadvantage.

3. The Commission Should Ensure Equitable Treatment of IOU and Third-Party DR with Regard to the DR Maximum Cumulative Capacity (“MCC”) Bucket.

DR procurement is capped at 8.3 percent of each LSE’s RA requirement, with IOU DR being counted first against the cap. If an LSE elects not to procure up to its 8.3 percent limit, that headroom cannot be transferred to another LSE and is lost. Because IOU DR gets “first dibs” on each LSE’s DR headroom, the amount of third-party DR that an LSE can procure is limited which risks inhibiting the third-party DR market. The Joint Parties recommend that the

¹⁴ D.19-07-009, at p. 110 (Ordering Paragraph 12).

¹⁵ OIR, at p. 5.

scope be modified to consider the equitability of the cap as applied to IOU-administered and third-party DR programs.

4. The Proceeding Scope Should Consider the Issues That Were Addressed in the Joint AfR If the Commission Rejects or Ignores It.

Should the Commission reject the Joint AfR or choose not to rule on it, the Joint Parties respectfully urge the Commission to revisit the issues that were the subject of the Joint AfR.

These include:

1. Activation criteria for Reliability Demand Response Resources (“RDRR”). The Commission should revisit its elimination of RDRR as an emergency resource due to the fact that doing so will lead to them being triggered sooner than intended, rendering them unavailable in actual emergencies.¹⁶
2. Costs and benefits of the Transmission Loss Factor (“TLF”) Adder. The rulemaking should consider the actual administrative costs to the Energy Division of applying the TLF Adder and compare to the value of lost DR capacity in order to determine whether the TLF Adder should be restored to the DR Net Qualifying Capacity (“NQC”) process.¹⁷ Alternatively, the Commission could consider other approaches to apply the TLF Adder without imposing an administrative cost.
3. Treatment of the Planning Reserve Margin (“PRM”) Adder for Load Modifying and Supply-Side DR. D.23-06-029’s elimination of the PRM Adder for Supply Side DR created an inconsistent valuation of Supply-Side and Load Modifying DR that has placed them on unequal playing fields.¹⁸ The rulemaking should consider the policy implications of this, especially with regard to the potential for greater valuation by non-market-integrated IOU DR programs and the competitive disadvantage that it would impose on third-party DR.
4. Clarification of Proxy Demand Resource (“PDR”) availability requirements. D.23-06-029 adopted an open-ended PDR availability requirement by including all days during which a CAISO Flex Alert has been issued, the CAISO has issued a Grid Warning, or the Governor’s Office has issued an emergency notice.¹⁹ For the sake of transparency, DR

¹⁶ See, e.g., Joint AfR, at pp. 2-3.

¹⁷ See, e.g., *Id.*, at p. 3.

¹⁸ See, e.g., *Id.*, at pp. 3-4.

¹⁹ D.23-06-029, at p. 145 (Ordering Paragraph 30).

participants need to have a clear understanding of the extent to which they will be expected to be available to dispatch.²⁰ This rulemaking should develop clear limits for when these additional criteria can be applied.

5. Derating DR QC values of third-party DR based on test results. D.23-06-029 authorized the Energy Division to unilaterally derate the QC values of third-party DR based on performance during a single test event.²¹ The decision ignored clear evidence of IOU DR underperformance and failed to specify exactly how a determination for a potential derate should be made.²² The rulemaking should consider the equitability of not subjecting IOU DR to the same requirements and develop clear guidelines for how a derate would be warranted.

V. THE JOINT PARTIES' COMMENTS ON CATEGORY, NEED FOR HEARING, AND SCHEDULE

The Joint Parties do not object to the preliminary determinations regarding category, need for hearing and schedule.

VI. CONFIRMATION OF PARTY STATUS

Pursuant to Section 7 at page 9: "Persons who file responsive comments become parties to the proceeding (*see* Rule 1.4(a)(2)) and will be added to the 'Parties' category of the official service list upon such filing." By filing these responsive comments, therefore, the Council and OhmConnect request "party status" and inclusion on the service list of R.23-10-011 as a party as follows:

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²⁰ *See, e.g.*, Joint AfR, at p. 4.

²¹ D.23-06-029, at p. 146 (Ordering Paragraph 32).

²² *See, e.g.*, Joint AfR, at pp. 4-5.

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VII. CONCLUSION

The Joint Parties appreciate the Commission's consideration and the opportunity to provide Opening Comments on the OIR. The Joint Parties urge the Commission to amend the preliminary scope for this OIR as recommended herein.

Dated: November 8, 2023

Respectfully submitted,

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