

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)

**TRACK 1 PROPOSAL OF
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES AND
THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL**

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Center for Energy Efficiency and Renewable Technologies (CEERT) and the California Efficiency + Demand Management Council (the Council) appreciate this opportunity to submit its Track 1 Proposal in Rulemaking (R.) 23-10-011 (RA). CEERT and the Council's Track 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 Scoping Memo and Ruling, issued in this proceeding on December 18, 2023 (Scoping Memo).

**I.
BACKGROUND**

CEERT is a nonprofit public-benefit organization founded in 1990 and based in Sacramento, California. CEERT is a partnership of major private-sector clean energy companies, environmental organizations, public health groups and environmental justice organizations. CEERT designs and fights for policies that promote global warming solutions and increased reliance on clean, renewable energy sources for California and the West. CEERT is working toward building a new energy economy, including cutting contributions to global warming, and reducing dependence on fossil fuels. CEERT has long advocated before the Commission for increased use of preferred resources and for California to move towards a clean energy future.

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

II. INTRODUCTION

The Scoping Memo states that this proceeding is divided into three tracks and “Track 1 will consider system and flexible capacity requirements for 2025, local capacity requirements for the next three years, and the highest-priority refinements to the RA program.”² One of the issues to be considered in Track 1 are “[o]ther time-sensitive issues identified by Energy Division or by other parties in proposals[.]”³

One of the most time-sensitive issues that must be addressed in the RA proceeding is the treatment of demand response (DR) resources. On July 5, 2023, the Commission issued Decision (D.) 23-06-029 which is the Decision Adopting Local Capacity Obligations for 2024-2026, Flexibility Capacity Obligations for 2024, and Program Refinements, in the previous RA rulemaking, R.21-10-002 (RA). This decision makes numerous changes to RA DR rules,

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.

² Proposed Decision, at p. 3.

³ *Id.*, at p. 5.

particularly as it pertains to third-party DR providers (DRPs). Namely, D.23-06-029 reverses the present limitation on using Reliability DR Resources (RDRR) as an RA resource during system emergencies only,⁴ (2) eliminates the Transmission Loss Factor (TLF) Adder and PRM Adder,⁵ (3) adopts unworkable Proxy DR (PDR) availability requirements,⁶ and (4) introduces a new and untenable risk to third-party DR resources by derating their qualifying capacity (QC) values outside of the existing QC valuation process.⁷

In response to the issuance of D.23-06-029, CEERT and the Council, along with Leapfrog Power, Inc., OhmConnect, Inc., CPower, and Enel X North America, Inc. (the Joint Parties) submitted a Joint Application for Rehearing (AFR) of D.23-06-029 and a Joint Motion for Partial Stay of D.23-06-029 in the previous RA rulemaking (R.21-10-002) on August 4, 2023. On December 18, 2023, the Commission issued D.23-12-038 denying this rehearing request and the Motion for Partial Stay.

By doing so, the Commission has failed to consider the impact of these RA rule changes on DR and the need to address further issues that continue to threaten the availability of this valuable, carbon-free supply side resource. In addition, while the Commission suggested in its December 2023 decision (D.23-12-005)⁸ on the Utilities' DR Programs "that the Commission and the Energy Division consider opening a rulemaking shortly to address DR issues,"⁹ the Commission has taken no steps to do so. As such, this proceeding must prioritize and take immediate steps to address, clarify and even reverse RA rules that fail to properly account for the

⁴ D.23-06-029, at pp. 95-97.

⁵ *Id.*, at pp. 99, 102 and 145 (Ordering Paragraph 29).

⁶ *Id.*, at p. 146 (Ordering Paragraph 30).

⁷ *Id.*, at p. 146 (Ordering Paragraph 32).

⁸ D.23-12-005 is the Decision Directing Investor-Owned Utilities' Demand Response Programs, Pilots, and Budgets for the Years 2024-2027 issued on December 20, 2023, in Application (A.) 22-05-002, et al. (DR Applications).

⁹ D.23-12-005, at p. 188.

value and attributes of Supply-Side DR, especially to ensure its ongoing availability to support the grid during extreme weather events.

III. CEERT AND THE COUNCIL TRACK 1 PROPOSAL

As discussed above, D.23-06-029 contained numerous RA DR rule changes that are harmful to DR and DRPs. To begin with, D.23-06-029 reversed the limitation on using Reliability Demand Response Resources (RDRR) as an RA resource during system emergencies only and instead directed that the 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”) Watch (or when a day-ahead EEA Watch persists in the day-of).”¹⁰ The impact of this provision is that it will lead to RDRRs being triggered sooner than they were intended to be, rendering them unavailable during actual emergencies.

D.23-06-029 also eliminated the Transmission Loss Factor (TLF) Adder, effective in 2024 which will put DR at a competitive disadvantage to generation resources, which are not required to account for their transmission line losses when selling capacity in the CAISO market.¹¹ In addition, D.23-06-029 eliminated the Planning Reserve Margin (PRM) Adder which puts Supply-Side DR at a competitive disadvantage to Load-Modifying DR, which implicitly includes this Adder by reducing the amount of capacity a load-serving entity needs to procure against their RA requirement.¹²

D.23-06-029 also expanded Proxy DR (PDR) availability which would increase the frequency that DRPs are required to be available, potentially in conflict with the current

¹⁰ D.23-06-029, at p. 96.

¹¹ *Id.*, at pp. 99, 102 and 145 (Ordering Paragraph 29).

¹² *Id.*, at pp. 97-99, 102 and 145 (Ordering Paragraph 29).

guardrails meant to prevent customer fatigue.¹³ Lastly, D.23-06-029 derated third-party DR qualifying capacity (QC) values based on test results outside of the current QC valuation process.¹⁴

These issues were identified in the Joint Parties' AFR of D.23-06-029, and while that AFR was denied by the Commission in D.23-12-038, that order does not change the fact that many of the rules from D.23-06-029 have impacted and will continue to adversely impact DR and DRPs. As such, CEERT and the Council propose that in Track 1 of this proceeding, the Commission direct a full evaluation of current RA DR rules, including any changes on customer participation and retention in Supply-Side DR programs that have taken place since the issuance of D.23-06-029. In doing so, the Commission, especially where the Commission based its rejection of the AFR on lack of "substantial evidence" to do so,¹⁵ should certainly give an opportunity in Track 1 of R.23-10-011 (RA) to actually develop such an "evidentiary record" with notice and opportunity to be heard on the impacts to DR and DRPs of the changes adopted in D.23-06-029 and any other changes to any DR rule that the Commission may be considering in this RA cycle. It is noteworthy, that despite the reference to "evidence" in D.23-12-038 in denying the AFR, the fact is that no hearings were held in R.21-10-002 where an "evidentiary record" was developed and, as such, certainly one did not exist to support the conclusions reached in D.23-06-029 or D.23-12-038. Instead, the "evidence" relied upon by the Commission in both orders were merely comments or statements made in Commission pleadings filed by certain parties or staff reports.¹⁶

¹³ D.23-06-029, at p. 145 (Ordering Paragraph 30).

¹⁴ *Id.*, at p. 146 (Ordering Paragraph 32).

¹⁵ D.23-12-038, at pp. 28-32.

¹⁶ *Id.*

The Commission should certainly not continue on a path of rejecting party positions on a discretionary basis in making critical decisions impacting Supply-Side DR without developing an evidentiary record to support such orders and should not suggest it has done so simply based on filed pleadings or reports. For that reason, CEERT and the Council strongly propose that Track 1 of R.23-10-011 do the following: (1) schedule testimony and evidentiary hearings to consider and address the issues of the impact of the D.23-06-029 RA DR rule changes on Supply-Side DR and DRPs since the issuance of that decision, (2) evaluate the merits of any other Commission RA DR supply-side DR rule changes that the Commission is planning to undertake in Track 1, and (3) permit parties to submit responsive proposals that identify, limit, and reverse negative effects of those rules.

IV. CONCLUSION

CEERT and the Council appreciate the opportunity to submit this Track 1 Proposal.

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Respectfully submitted,

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