

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding
Policies, Procedures and Rules for the Self-
Generation Incentive Program and Related
Issues.

Rulemaking 20-05-012
(Filed May 28, 2020)

**OPENING COMMENTS OF
THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL,
LEAPFORG POWER, INC., AND OHMCONNECT, INC. ON PROPOSED DECISION
IMPLEMENTING ASSEMBLY BILL 209 AND IMPROVING SELF-GENERATION
INCENTIVE PROGRAM EQUITY OUTCOMES**

Dated: February 22, 2024

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I. INTRODUCTION

The California Efficiency + Demand Management Council (“The Council”)¹, Leapfrog Power, Inc. (“Leap”),² and OhmConnect, Inc. (“OhmConnect”) (collectively, the “Joint Parties”) respectfully submit these Opening Comments on the Proposed Decision Implementing Assembly Bill 209 and Improving Self-Generation Incentive Program Equity Outcomes (“Proposed Decision” or “PD”), mailed in this proceeding on February 2, 2024. 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. 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.³ 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 The views expressed by the California Efficiency + Demand Management Council are not necessarily those of its individual members.

² Leapfrog Power, Inc. was granted party status in this proceeding on February 9, 2024.

³ 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 infrastructure, and environmental improvement.

Leap is a Demand Response Provider (“DRP”) founded in 2017 and headquartered in San Francisco, California. The company provides DR services to residential, commercial, industrial, and agricultural customers throughout the state of California. Through its technology platform, Leap enables DER providers in California to provide grid flexibility, delivering revenue for their customers and integrating additional demand-side resources into the California electricity system. Leap believes that demand-side resources integrated into California’s wholesale electricity market will play an increasingly important role in helping California achieve a resilient and zero carbon future. Leap is a registered DRP, as well as a registered Scheduling Coordinator, with the California Independent System Operator Corporation (“CAISO”).

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 CAISO and contracts to provide resource adequacy with load serving entities.

III. THE PROPOSED DECISION ERRS BY ADOPTING AN UNNECESSARILY RESTRICTIVE LIST OF QUALIFIED DR PROGRAMS

The Proposed Decision would require recipients of Self-Generation Incentive Program (“SGIP”) incentives under Assembly Bill (“AB”) 209 to enroll in a “qualified” DR program, and cites the definition of a “qualified” DR program that was adopted in Decision (“D.”) 23-12-005.

The PD states:

Furthermore, in D.23-12-005, the Commission provided a definition of “qualified” DR programs eligible to meet a DR program enrollment requirement as a condition of a customer receiving an incentive or rebate. We, therefore, adopt a requirement for AB 209 SGIP incentive recipients to enroll in a “qualified” DR program *as defined in D.23-12-005*. The list of DR programs appropriate for SGIP recipients is included as Appendix E to the decision. This list of qualified

demand response programs may be updated as new offerings are established or as programs change [emphasis added].⁴

The Proposed Decision’s Appendix E provides the following table of “qualified” DR programs:

Proposed Decision, Appendix E

Program Name	Short Name	Eligible Customers	Compatible ELRP Sub-Groups
Capacity Bidding Program	CBP	Residential, commercial, industrial, agricultural/pumping	B.2
SCE Summer Discount Plan air conditioner load switch program			
SCE Smart Energy Program			
PG&E ART (formerly SmartAC)			
PG&E SmartRate and SDG&E EECC-TOU-DR-P	SmartRate	Residential	Any sub-group
Critical Peak Pricing	CPP	Commercial, industrial, agricultural/pumping	Any sub-group
Peak Day Pricing	PDP	Commercial, industrial, agricultural/pumping	Any sub-group

The Proposed Decision’s language in the above quote presents the list in Appendix E as a comprehensive account of all existing DR programs that would meet the definition of a “qualified” DR program.⁵ However, the Appendix E list is narrower than the definition of “qualified” DR programs that was adopted in D.23-12-005, the full text of which is provided below:

⁴ Proposed Decision, at p. 73.

⁵ *Id.*

1. Economic supply-side market integrated DR programs counted for RA irrespective of whether the administrator is an IOU, CCA or third-party DRP.
2. Load modifying DR programs that satisfy the following two requirements:
 - a. The program is indirectly integrated with the CAISO energy market such that the program's dispatch signal is linked to the energy prices in the Day-Ahead or real-time market – operational domain.
 - b. The program's load impact is counted towards RA obligations directly or indirectly through an approved process (such as, via a process for reducing RA obligations by integrating the program's load impact with CEC's peak forecasts) – planning domain.
3. Any DR pilot authorized and designated by the Commission in a DR proceeding including R.22-07-005 as a “qualified” DR program eligible to meet the DR enrollment requirement.
4. Critical Peak Pricing or Peak Day Pricing. These options, which at this time do not meet requirement 2a above, shall be discontinued as a “qualified” DR program if they still do not meet requirements listed here when the dynamic rate(s) under consideration in R.22-07-005 (to comply with CEC adopted Load Management Standards (California Code of Regulations – Title 20, Article 5, Section 1623) are made available to customers.⁶

Comparing Appendix E to the above definition, it is clear that Appendix E does not include the full scope of qualified DR programs under Section 1 of the D.23-12-005 definition. As illustrated above, Section 1 refers to “Economic supply-side market integrated DR programs counted for RA *irrespective of whether the administrator is an IOU, CCA or third-party DRP.*” [emphasis added] However, the only DR program cited in Appendix E that fits this description is the Capacity Bidding Program (“CBP”). This leaves out any Community Choice Aggregator (“CCA”) or third-party Supply-Side DR programs that provide Resource Adequacy (“RA”) capacity, such as Demand Response Auction Mechanism (“DRAM”) contracts and any other bilateral contract for Supply-Side DR that provides RA capacity.

The Proposed Decision acknowledges that the list of programs in Appendix E is only a “sub-set” of “qualified” DR programs included under the definition adopted in D.23-12-015, but it provides no explanation for why the two should differ, nor has a record been established as to why the “qualified” DR programs listed in Appendix E should be substantially more limited than what is allowed under the definition that was adopted less than three months prior.⁷ Furthermore, not including third-party and CCA DR programs in the SGIP “qualified” DR programs will prevent customers already enrolled in a third-party or CCA DR program from participating in the

⁶ D.23-12-005, at p. 25.

⁷ Proposed Decision, at p. 74.

SGIP without first unenrolling from that program and enrolling in an IOU DR program. Similarly, customers not already enrolled in a DR program would then be prevented from enrolling in a third-party or CCA DR program once they receive an SGIP incentive. This is highly discriminatory and anti-competitive.

Presenting an incomplete list also risks creating additional confusion around which programs qualify, which defeats the purpose of providing a list in the first place. Although the Proposed Decision states that the list of qualified DR programs “may be updated as new offerings are established or as programs change,” all of the programs omitted from Appendix E currently exist and have been in place for several years. There is no reason why CCA and third-party Supply-Side DR programs that provide RA capacity, in conformance with Section 1 of the D.23-12-005 definition, would be excluded from the list in Appendix E at this time. Participants in these DR programs would legally qualify for SGIP incentives from the moment that the PD is adopted, and excluding these programs from the list in the PD creates unnecessary ambiguity for customers that would want to take advantage of these incentives to install and enroll new devices in programs to support California’s grid reliability.

The Joint Parties recommend that, to avoid confusion in this decision or any future decisions, the PD be modified to simply refer to the definition of “qualified” DR programs that was approved in D.23-12-005. This would be consistent with the PD’s requirement that “the list of ‘qualified’ DR programs [qualifying for SGIP] gets updated by the Commission or the IOUs as per D.23-12-005 direction”⁸ Even if Appendix E was modified to reflect the full suite of programs that meet the definition in D.23-12-005, programs will inevitably change over time. Rather than lock in a specific set of programs that can meet the DR participation requirement in this decision, simply using the definition in D.23-12-005 will ensure more flexibility and avoid the need to revise this specific list of programs in the future. This approach would also avoid circumventing the Commission’s directive adopted in D.23-12-005 that the IOUs are to submit a Tier 2 advice letter on an as-needed basis to establish and update the eligible program lists. The Commission should rely on these advice letter lists rather than create a parallel and separate process for sub-sets of the SGIP. Maintaining two separate lists of “qualified” DR programs is arbitrary, administratively inefficient, confusing, and anti-competitive.

⁸ Proposed Decision, at p. 74.

If the Commission does retain the list in Appendix E, it is imperative that it update the list to include all programs that meet the D.23-12-005 definition. Doing so will remove any ambiguity for customers as to what programs are “qualified” for those receiving SGIP incentives, and even more critically, eliminate the erroneous impression that third-party and CCA DR programs are not included in the “qualified” DR programs list. For the Commission’s convenience, the Joint Parties have provided an updated list of all existing programs that would be included under the D.23-12-005 definition, which can be copied directly into the final decision adopted in this proceeding.

Revised Proposed Decision, Appendix E [additions in bold, underlined font]

Program Name	Short Name	Eligible Customers	Compatible ELRP Sub-Groups
Capacity Bidding Program	CBP	Residential, commercial, industrial, agricultural/pumping	B.2
<u>Demand Response Auction Mechanism</u>	<u>DRAM</u>	<u>Residential, commercial, industrial, agricultural/pumping</u>	<u>B.1</u>
<u>Supply-Side Third-party DR provider and CCA DR programs that provide RA</u>		<u>Residential, commercial, industrial, agricultural/pumping</u>	<u>B.1</u>
SCE Summer Discount Plan air conditioner load switch program			
SCE Smart Energy Program			
PG&E ART (formerly SmartAC)			
PG&E SmartRate and SDG&E EECC-TOU-DR-P	SmartRate	Residential	Any sub-group
Critical Peak	CPP	Commercial,	Any sub-group

Pricing		industrial, agricultural/pumping	
Peak Day Pricing	PDP	Commercial, industrial, agricultural/pumping	Any sub-group

V. CONCLUSION

The Joint Parties appreciate the opportunity to provide Opening Comments on the Proposed Decision. In addition, the Joint Parties request that the Proposed Decision be modified for the reasons stated above. Those needed modifications to the Proposed Decision are included in Appendix A (Proposed Modifications to Findings of Fact, Conclusion of Law, and Ordering Paragraph) attached and incorporated by reference hereto.

Dated: February 22, 2024

Respectfully submitted,

/s/ JOSEPH DESMOND

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APPENDIX A

THE CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL, LEAPFROG POWER, INC., AND OHMCONNECT, INC. PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS FOR THE PROPOSED DECISION IMPLEMENTING ASSEMBLY BILL 209 AND IMPROVING SELF-GENERATION INCENTIVE PROGRAM EQUITY OUTCOMES

The California Efficiency + Demand Management Council, Leapfrog Power, Inc., and OhmConnect, Inc. (collectively “the Joint Parties”) propose the following modifications to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs of the Proposed Decision Implementing Assembly Bill 209 and Improving Self-Generation Incentive Program Equity Outcomes (“Proposed Decision”), mailed in R.20-05-012 (SGIP) on February 2, 2024.

Please note the following:

- A page citation to the Revised Proposed Decision is provided in brackets for each Finding of Fact, Conclusion of Law, or Ordering Paragraphs for which a modification is proposed.
- Added language is indicated by **bold type**; removed language is indicated by **bold strike-through**.
- A new or added Finding of Fact, Conclusion of Law, or Ordering Paragraph is labeled as “**NEW**” in **bold, underscored** capital letters.

PROPOSED ORDERING PARAGRAPHS:

17. [92] Program Administrators for the Self-Generation Incentive Program must ensure that incentive applicants are required to enroll in a qualified Demand Response program as described **in Decision 23-12-005**~~in Appendix E and Section 13.3 of this Decision.~~