BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 E) for Approval of its Demand Response Programs, Pilots and Budgets for Program Years 2023-2027	Application 22-05-002 (Filed May 2, 2022)
And Related Matters.	Application 22-05-003 Application 22-05-004

PETITION FOR MODIFICATION OF DECISION 23-12-005 OF LEAPRFROG POWER, INC., OHMCONNECT, INC., CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES, AND CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL

June 27, 2024

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TABLE OF CONTENTS

Page

Table of Contents i
Table of Authorities ii

I. BACKGROUND 1

II. SUMMARY OF PROPOSED MODIFICATIONS 3

III. OVERVIEW OF THE AUTODR PROGRAM AND DR PARTICIPATION REQUIREMENTS 4

IV. D.23-12-005 MUST BE MODIFIED TO PROVIDE THIRD-PARTY DR PROVIDERS AN ALTERNATE ROUTE TO PARTICIPATE IN AUTODR PROGRAMS 6

V. THE RELIEF REQUESTED IS A STRAIGHTFORWARD ADJUSTMENT THAT WOULD ENHANCE PARTICIPATION IN MARKET-INTEGRATED DR 8

VI. SPECIFIC WORDING TO CARRY OUT THE REQUESTED MODIFICATIONS 10

VII. CONCLUSION 11

APPENDIX A: DECLARATION OF COLLIN SMITH SUPPORTING THE PETITION FOR MODIFICATION OF DECISION 23-12-005 OF LEAPFROG POWER, INC.

TABLE OF AUTHORITIES

Page

CALIFORNIA PUBLIC UTILITIES (P.U.) CODE)

P.U. Code 1731 1
P.U. Code 1702 1

CPUC DECISIONS

Decision (D.) 06-03-024 5
D.06-11-049 5
D.12-04-045 5
D.16-09-056 7
D.23-12-005 ..... *passim*
D.24-04-006 ..... *passim*

CPUC RULES OF PRACTICE AND PROCEDURE

Rule 1.8 1
Rule 16.4 ..... 1, 3

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Leapfrog Power, Inc. (Leap), OhmConnect, Inc., Center for Energy Efficiency and Renewable Technologies (CEERT), and California Efficiency + Demand Management Council (the Council) (collectively the Joint Parties) hereby submit this Petition for Modification of Decision (D.) 23-12-005. The statutory "date of issuance" of D.23-12-005 was December 20, 2023.[1] This Petition for Modification is, therefore, timely filed and served pursuant to Public Utilities (P.U.) Code Sections 1731 and 1732 and Rule 16.4 of the Commission's Rules of Practice and Procedure.[2]

I. BACKGROUND

Leap is a demand response (DR) provider founded in 2017 and headquartered in Sacramento, California. The company provides DR services to residential, commercial, industrial, and agricultural customers throughout the state of California. Through its technology

[1] Petitions for Modification are due "within one year of the effective date of the decision proposed to be modified[]" pursuant to California Public Utilities Code Section 1731(b)(1) and Commission Rules of Practice and Procedure, Rule 16.4(d). D.23-12-005 was mailed on, and marked with a "Date of Issuance" of, December 20, 2023.

[2] Pursuant to Rule 1.8(d) of the Commission's Rules of Practice and Procedure, Leapfrog Power, Inc., OhmConnect, Inc., Center for Energy Efficiency and Renewable Technologies, and California Efficiency + Demand Management Council have authorized Megan M. Myers to sign on their behalf.

platform, Leap enables distributed energy resource (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 DR 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 no cost software service notifies households of impending DR events and rewards them for their energy reductions during those events. 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.

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.[3] The Council's member companies employ many thousands of Californians throughout the state. They include energy efficiency (EE), DR, and 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. SUMMARY OF PROPOSED MODIFICATIONS

California Public Utilities Commission Rules of Practice and Procedure, Rule 16.4(b) states that:

> A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.[4]

On December 20, 2023, the Commission issued D.23-12-005, which is the Decision Directing Certain Investor-Owned Utilities' Demand Response Programs, Pilots, and Budgets for the Years 2024-2027, in Application (A.) 22-05-002, et al. (2023-2027 DR Programs). In approving the investor-owned utilities' (IOU) 2024-2027 DR program portfolios, the Commission approved their respective Automated DR (AutoDR) programs, including the DR programs that are eligible to satisfy the requirement that recipients of AutoDR incentives

[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.
[4] CPUC Rule 16.4(b).

participate in a DR program. Currently, the only third-party DR program that is able to satisfy eligibility requirements for AutoDR for Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) is the DR Auction Mechanism (DRAM).[5]

However, on April 18, 2024, the Commission issued D.24-04-006, which is the Decision Sunsetting the Investor-Owned Utilities' Demand Response Auction Mechanism (DRAM) Pilot Programs, in A.22-05-002, et al. (2023-2027 DR Programs). This decision sunsets the DRAM pilot programs of PG&E, SCE, and San Diego Gas & Electric Company (SDG&E), by December 31, 2024.[6] With DRAM ending, AutoDR customers that want to participate in third-party DR programs are losing the only option they have to do so. In light of this, the Commission should modify D.23-12-005 to allow other third-party Resource Adequacy (RA) DR contracts to satisfy DR participation requirements for the AutoDR program.

III. OVERVIEW OF THE AUTODR PROGRAM AND DR PARTICIPATION REQUIREMENTS

The AutoDR program offers customers financial incentives to install technologies that facilitate an automated response to DR events or price signals. This automation occurs without the need for any manual action from the customer, ensuring a seamless and efficient adjustment of energy usage during a DR event. The AutoDR program includes programs to incentivize customer adoption of smart thermostat controls, and commercial and industrial (C&I) customer

[5] PG&E "Automated Demand Response Program Manual – 2023 Overview and Policies" which can be found here: https://www.pge.com/assets/pge/docs/save-energy-and-money/energy-savings-programs/adr-program-manual.pdf and SCE Technology Incentive Program FAQ which can be found here: https://www.thermostatrewards.com/sce-tip/faq#:~:text=Once%20your%20eligibility%20is%20confirmed,notification%20on%20your%20eligibility%20status

[6] D.24-04-006, at pp. 30-31 (Ordering Paragraphs 1-3).

adoption of equipment control systems.[7] AutoDR programs run by PG&E and SCE were re-approved in D.23-12-005, with funds authorized to be collected from distribution rates.[8]

The AutoDR program was originally approved for 2006-2008 in D.06-03-024 and D.06-11-049.[9] It offers upfront incentives for audits and semi-automatic technologies, covering up to 100 percent of project costs. Incentives were paid in full upfront, and customers could direct incentives to third-party sponsors. For the 2013-2016 cycle (D.12-04-045), a new structure was developed that limited upfront payments to 60 percent, with the remaining 40 percent based on first-year demand response performance.[10] In its 2023-2027 DR application, PG&E proposed a structure whereby customers receiving 100% of the incentive upfront must remain in a qualified DR program for five years, whereas those receiving only 60% upfront remain in a qualified program for three years.[11]

SCE's AutoDR incentive is similarly structured, except it does not pay out incentives until after the control equipment has been verified and tested.[12] SCE also offers a $75 connected thermostat incentive that is available to residential and small/medium business customers, which was reapproved in D.23-12-005.[13]

In order to qualify for AutoDR incentives, recipients must participate in a qualified DR program for a specific period of time (either three or five years, depending on how the incentive

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[7] D.23-12-005, at p. 108.
[8] *Id.*, at pp. 216-217.
[9] D.06-03-024 (Decision Adopting Settlement), issued in A.05-06-006, et al. (2006-2008 DR Applications) on March 16, 2006, Attachment C at p. C-8 and D.06-11-049 (Order Adopting Changes to 2007 Utility Demand Response Programs), issued in A.05-06-006, et al. (2006-2008 DR Applications) on December 1, 2006, at p. 73 (Ordering Paragraph 6).
[10] PG&E 2023-2027 DR Programs, Pilots, and Budgets – 2024-2027 Full Proposal – Prepared Testimony (Exhibit (Ex.) PG&E-2), submitted in A.22-05-002, et al. (2024-2027 DR Applications) on May 2, 2022, at p. 4-4, line 1 through p. 4-12, line 9.
[11] D.23-12-005, at pp. 116-117.
[12] SCE Automated Demand Response with Customized Control Incentives which can be found here: https://www.sce.com/business/demand-response/ADR-customized-control-incentives
[13] D.23-12-005, at p. 114.

is structured).[14] Qualified DR programs include both load-modifying programs like Peak Day Pricing and supply-side programs like the Capacity Bidding Program (CBP) or DRAM.[15] However, non-DRAM RA contracts with investor-owned utilities (IOUs), community choice aggregators (CCAs), or energy service providers (ESPs) do not currently satisfy the AutoDR participation requirement.

IV. D.23-12-005 MUST BE MODIFIED TO PROVIDE THIRD-PARTY DR PROVIDERS AN ALTERNATE ROUTE TO PARTICIPATE IN AUTODR PROGRAMS

The issuance of D.24-04-006, which sunsets the DRAM program, is a new and changed fact that requires modification of D.23-12-005. AutoDR programs require customers to enroll in a qualifying DR program, and the only third-party DR program that can currently satisfy that requirement is DRAM.[16] With the discontinuation of DRAM at the end of 2024, customers receiving (or that want to receive) these incentives will instead need to enroll in a DR program run by an IOU. This will have negative impacts on third-party DR providers who currently represent customers who have enrolled in AutoDR, limiting these providers' ability to support these customers in meeting their DR participation requirements under the AutoDR program.

With the impending DRAM sunset, the only way that third-party DR providers will be able to work with existing and future AutoDR participants will be to enroll them in an IOU-run

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[14] *See, e.g.,* PG&E "Automated Demand Response Program Manual – 2023 Overview and Policies" which can be found here: https://www.pge.com/assets/pge/docs/save-energy-and-money/energy-savings-programs/adr-program-manual.pdf and SCE Technology Incentive Program FAQ which can be found here: https://www.thermostatrewards.com/sce-tip/faq#:~:text=Once%20your%20eligibility%20is%20confirmed,notification%20on%20your%20eligibility%20status

[15] Ex. PG&E-2, at p. 4-5, lines 1-7.

[16] PG&E "Automated Demand Response Program Manual – 2023 Overview and Policies" which can be found here: https://www.pge.com/assets/pge/docs/save-energy-and-money/energy-savings-programs/adr-program-manual.pdf and SCE TIP FAQ which can be found here: https://www.thermostatrewards.com/sce-tip/faq#:~:text=Once%20your%20eligibility%20is%20confirmed,notification%20on%20your%20eligibility%20status.

DR program, essentially requiring third-party DR providers to become sub-contractors to IOUs in order to serve AutoDR customers. This is contrary to Commission precedent, such as that set forth in D.16-09-056 which states that "[u]tilities and third-party providers should fairly compete on a level playing field to vie for customers to enroll in their demand response programs."[17] With DRAM ending, third-party DR providers will not have a level playing field to enroll customers in their own DR programs because customers are actively incentivized to enroll in IOU-run programs instead, so that they can retain access to AutoDR. Consequently, in order to satisfy their DR participation requirement under AutoDR, existing AutoDR participants enrolled in a third-party DR program will have no other choice but to leave the DR provider unless the DR provider agrees to participate in the Capacity Bidding Program (CBP).

In order to rectify this situation, the Joint Parties respectfully request that the Commission modify D.23-12-005 to make it clear that AutoDR participation requirements can be satisfied through non-DRAM third-party programs, specifically bilateral RA contracts with IOU, CCAs, and ESPs. There is little functional difference between DRAM and bilateral RA contracts, as both are economic supply-side DR programs that are counted for RA with similar availability requirements. In fact, in its decision to sunset DRAM, the Commission identified utility and CCA RA solicitations as one of the alternate DR participation pathways that third-party DR providers could leverage in lieu of DRAM.[18]

Furthermore, because AutoDR incentives are funded through distribution rates, which are paid for by all customers taking retail electric service, it is wholly appropriate that AutoDR incentives also support resources that provide RA to all load-serving entities (LSE). In fact, the current situation, in which AutoDR incentive recipients must participate in IOU programs,

[17] D.16-09-056 at p. 52.
[18] D.24-04-006 at p. 25

disadvantages CCAs by preventing them from accessing the full benefits of an incentive that are also paid for by their customers.

IV. THE RELIEF REQUESTED IS A STRAIGHTFORWARD ADJUSTMENT THAT WOULD ENHANCE PARTICIPATION IN MARKET-INTEGRATED DR

In D.23-12-005, the Commission defined DR programs that are "qualified" to meet participation requirements for incentive programs established outside of the DR application and proceeding.[19] Although this definition did not explicitly apply to AutoDR, it indicates that the Commission could exercise similar authority to tie AutoDR's eligibility requirements to DR programs established outside of this proceeding. In fact, the Commission clearly contemplated this outcome when it stated, "We note with approval that the connected thermostat incentive program for SCE customers mostly requires enrollment in a market-integrated supply side DR program. We do not presently adopt but are mindful of the need to move toward mandating that all connected thermostat incentives funded through DR budgets *must require enrollment in a 'qualified' DR program, as defined in this decision*. [emphasis added]"[20]

Though the Commission may not have contemplated taking this step so soon after the D.23-12-005 was issued, DRAM's sunsetting has created the necessity to begin moving in the direction it identified in the above passage, in order to avoid creating a competitive disparity between third-party and IOU-run DR programs in California. The most straightforward step for the Commission to remove this disparity would be to designate RA contracts between a third-party DR provider and an IOU, CCA, or ESP as a "qualified program" for AutoDR enrollment, given the similarity between DRAM and non-DRAM RA contracts.

Third-party RA contracts also meet the definition for a "qualified" DR program established in D.23-12-005, as this definition includes "Economic supply-side market integrated

[19] D.23-12-005, at Attachment 1
[20] *Id.*, at p. 114.

DR programs counted for RA irrespective of whether the administrator is an IOU, CCA or third-party DRP [DR provider]."[21] As such, adding RA contracts to the list of programs that meet AutoDR DR participation requirements would provide a relatively simple "first step" towards the Commission's intention of applying the definition from D.23-12-005 to a broader range of incentive programs, while also rectifying the competitive disparity created by the decision to sunset DRAM.

Removing this disparity will allow third-party DR providers to continue recruiting customers that install controllable equipment via AutoDR incentives. It will also ensure customers that had been participating in the DRAM through a DR provider can maintain their enrollment with their DR provider of choice. Otherwise, if a DR provider does not participate in the CBP, its customers with AutoDR incentives could also be forced to unenroll from that DR provider's programs and enroll with their local IOU. On a broader level, revising the DR programs that are eligible to satisfy the AutoDR program requirement will increase the incentive for third parties to participate in California's DR market, which in turn will assist California in meeting its aggressive clean energy goals. As stated in the Commission's Energy Action Plan II, DR and energy efficiency are "the State's preferred means of meeting growing needs."[22] Ensuring a level playing field for DR providers is key to achieving this goal, as market competition drives down costs for DR and fosters innovation that improves the customer experience.

This issue is not hypothetical. By way of example, in 2023, Leap's partners enrolled roughly 25 MW of dispatchable load in DRAM to ensure those customers would receive

[21] D.23-12-005, at Attachment 1.
[22] Energy Action Plan II, at p. 2.

AutoDR incentives.[23] After DRAM is sunset, this load would need to be enrolled in CBP or risk having their incentive funding clawed back. Expanding DR program eligibility would also be largely seamless from a budget perspective. PG&E specifically stated in its Opening Brief in Phase 2 of A.22-05-002 et al that the budget it requested for AutoDR incentives would be sufficient to cover incentives for DRAM participants if that program was extended; presumedly, SCE would have done the same under the assumption that those DRAM participants would move to CBP to retain their AutoDR incentives.[24] Since DRAM will sunset after this year, this portion of each IOU's budget can be repurposed to cover AutoDR customers that enroll in other third-party DR programs.

VI. SPECIFIC WORDING TO CARRY OUT THE REQUESTED MODIFICATIONS

This adjustment would require changes to Ordering Paragraphs 42 and 43 in D.23-12-005, as well as additions to relevant sections in the Findings of Fact (FoF) and Conclusions of Law (CoL). The Joint Parties have outlined these changes below, with all changes marked by **bolded and underlined** text.

Finding of Fact:

NEW. Excluding DRAM, there are no DR programs administered by third parties that can satisfy DR participation requirements for AutoDR incentives.

Conclusion of Law:

NEW. It is reasonable to allow RA contracts with IOUs, CCAs, and ESPs to satisfy AutoDR participation requirements, so that AutoDR customers will still have the option to enroll in a third-party DR program in the absence of DRAM.

[23] *See* Attachment A to this Petition which is the Declaration of Collin Smith.
[24] PG&E DRAM Opening Brief, at p. 29.

Ordering Paragraphs:

42. Pacific Gas and Electric Company (PG&E) shall conduct its Auto Demand Response activities, as amended by this decision. PG&E is authorized to cumulatively recover $6.918 million during calendar years 2024-2027 for its program. **In addition to the existing list of DR programs that can satisfy Automated Demand Response participation requirements, DR RA contracts with IOUs, CCAs, and ESPs also qualify to satisfy the DR participation requirement for Automated Demand Response.**

43. Southern California Edison (SCE) shall conduct its Auto Demand Response activities, as amended by this decision. SCE is authorized to cumulatively recover $21.517 million during calendar years 2024-2027 for its Auto Demand Response activities. **In addition to the existing list of DR programs that can satisfy Auto Demand Response participation requirements, DR RA contracts with IOUs, CCAs, and ESPs also qualify to satisfy the DR participation requirement for Automated Demand Response.**

VII. CONCLUSION

The decision to sunset DRAM (D.23-12-005) has created an unbalanced playing field against third-party DR in California that must be immediately resolved. As mentioned above, many third-party customers who have already applied for AutoDR incentives did so with the intention of using DRAM to fulfill their DR participation requirements. These customers would now need to be enrolled in IOU programs instead, disrupting both their operations and their third-party DR providers' ability to grow their business in California. In Leap's portfolio alone, 25 MW of capacity had enrolled in DRAM in 2023 to retain access to AutoDR incentives. This issue will continue to impact third-party DR providers in the future, as any DR provider with customers applying for AutoDR incentives will be required to enroll those customers in IOU-run

programs. This result runs explicitly counter to the Commission's goal of establishing a "level playing field" and should be rectified by adding DR RA contracts to the list of DR programs that can satisfy AutoDR participation requirements.

Dated: June 27, 2024

Respectfully submitted,

/s/ MEGAN M. MYERS

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APPENDIX A

DECLARATION OF COLLIN SMITH SUPPORTING THE PETITION FOR MODIFICATION OF DECISION 23-12-005 OF LEAPRFROG POWER, INC.

I, Collin Smith, declare as follows:

1. I am the Regulatory Affairs Manger for Leapfrog Power, Inc.
2. I have professional experience in demand response regulation and policy that I have gained through a decade working in the electricity sector. This includes work experience with relevant teams at the National Resource Defense Council, National Grid, and Strategen Consulting. I have filed comments, briefs, and testimony in regulatory proceedings across the U.S., including in many proceedings with the Commission on topics related to demand response policy.
3. I was actively engaged in Application (A.) 22-05-002, et al. (2024-2027 Demand Response (DR) Applications) and submitted comments related to the Commission's decision to sunset the DR Auction Mechanism (DRAM), among other topics.
4. In 2023, Leap's partners enrolled roughly 25 MW of dispatchable load in DRAM to ensure those customers would maintain access to AutoDR incentives.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 27, 2024 By:

_____

Collin Smith
Regulatory Affairs Manager
Leapfrog Power, Inc.