



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to
Oversee the Resource Adequacy
Program, Consider Program
Refinements, and Establish Forward
Resource Adequacy Procurement
Obligations.

Rulemaking 19-11-009

**PETITION OF OHMCONNECT, INC. FOR MODIFICATION OF DECISION 20-06-031
(PUBLIC VERSION)**

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Pursuant to Rule 16.4 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure (“Rules”), OhmConnect, Inc. (“OhmConnect”) submits this petition for modification of Decision (“D.”) 20-06-031.

In D.20-06-031, the Commission amended the Maximum Cumulative Capacity (“MCC”) Buckets to limit the proportion of a Load Serving Entity’s (“LSE”) resource adequacy (“RA”) obligation that could be met with use-limited resources. In particular, the decision adopted an 8.3% cap in the MCC demand response (“DR”) bucket (“MCC DR Bucket Cap”).¹

The Commission reexamined the MCC Buckets in Track 3.B1 and Track 4 of this proceeding.² In January 2021, OhmConnect, together with other parties to the proceeding (“the Joint DR Parties”), put forward several proposals to address significant issues related to DR market growth that these parties perceived with the MCC DR Bucket Cap.³ However, Decision 21-06-029 declined to modify the MCC DR Bucket Cap. The Commission did encourage “the Joint DR Parties to work with CAISO to evaluate any equity issues between [investor-owned

¹ See D.20-06-031, mimeo at 96 (Ordering Paragraph (“OP”) 19).

² See *Assigned Commissioner’s Amended Track 3B and Track 4 Scoping Memo and ruling*, at 4 (Dec. 11, 2020).

³ Joint Track 3B.1 Proposal of the California Efficiency + Demand Management Council, CPower, Enel X North America, Inc., Leapfrog Power, Inc. and OhmConnect, Inc. (Jan. 28, 2021).

utility (“IOU”)] and third-party provided DR. Should parties identify any new or changed facts regarding this issue, a petition for modification may be filed for consideration.”⁴

Since that decision, Governor Newsom issued an Emergency Proclamation ordering state energy agencies to expedite and expand DR programs to reduce the likelihood of future rotating power outages.⁵ Furthermore, as described below and in the attached declarations, the MCC DR Bucket Cap has hampered growth in the DR market in ways and for reasons that the Commission did not anticipate or expect.⁶

Accordingly, OhmConnect files this petition for modification of D.20-06-031 to modify the MCC DR Buckets to create the room for growth envisioned in D.20-06-031 and meet the requirements of the Governor’s Emergency Proclamation. The Commission can do so by raising the MCC DR Bucket Cap by the amount of IOU DR capacity that exists today. Specifically, the Commission should revise Ordering Paragraph 19 of D. 20-06-031 to increase the MCC DR Bucket to 11.3%.

I. STANDARD OF REVIEW

The Commission may “rescind, alter, or amend any order or decision” it has previously made.⁷ This authority may be exercised pursuant to a petition for modification filed pursuant to

⁴ D.21-06-029, mimeo at 25.

⁵ Emergency Proclamation, OP 12-14.

⁶ See Confidential Declaration of Franklin Fuchs in Support of OhmConnect, Inc.’s Petition for Modification of Decision 20-06-031 (“Confidential Fuchs Declaration”); Confidential Declaration of Jack Hays in Support of OhmConnect, Inc.’s Petition for Modification of Decision 20-06-031 (“Confidential Hays Declaration”); Confidential Declaration of John Anderson in Support of OhmConnect, Inc.’s Petition for Modification of Decision 20-06-031 (“Confidential Anderson Declaration”).

⁷ Pub. Util. Code § 1708.

Rule 16.4(a), which “asks the Commission to make changes to an issued decision.”⁸ Under the Rule 16.4, a petition for modification must:

- concisely state the justification for the requested relief and provide a declaration or affidavit in support of any allegations of new or changed facts;
- propose specific wording to carry out all requested modifications to the decision; and
- explain the delayed timing for any petition filed more than one year after the effective date of the Commission’s decision.⁹

The Commission has broad authority to grant a petition for modification,¹⁰ and such petitions should be granted upon a “persuasive indication” that the Commission should “make a different decision” than that previously made.¹¹ Accordingly, the Commission may modify a decision if, for example: “(1) new facts are brought to the attention of the Commission, (2) conditions have undergone a material change, or (3) the Commission proceeded on a basic misconception of law or fact.”¹²

While “changed circumstances” provide one basis for granting petitions for modification,¹³ “there is no requirement for new or changed facts before a petition for

⁸ Rule 16.4(a).

⁹ See Commission Rule 16.4; Pub. Util. Code §§ 1701, 1708.

¹⁰ See *In re Application of the Exposition Metro Line Constr. Auth.*, D. 09-02-032, 2009 Cal. PUC LEXIS *13; see also Pub. Util. Code § 1708.

¹¹ *In re Order Instituting Rulemaking for Adoption of Amendments to a General Order and Procedures to Implement the Franchise Renewal Provisions of the Digital Infrastructure and Video Competition Act of 2006*, D. 17-12-006, 2017 Cal. PUC LEXIS 578, *15 (Dec. 14, 2017) (quoting *In re Applications of PG&E Co.*, D.92058, 1980 Cal. PUC LEXIS 785, *26 (July 29, 1980)).

¹² D.17-12-006, 2017 Cal. PUC LEXIS, *15 (citing *In re United Parcel Serv., Inc.*, D. 97-04-049, 1997 Cal. PUC LEXIS 427, *15 (Apr. 9, 1997)).

¹³ See *In re Application of the Exposition Metro Line Constr. Auth.*, D. 09-02-032, 2009 Cal. PUC LEXIS 74, *12 (Feb. 20, 2009)); see also *In re Application of Sw. Gas Corp. for the Issuance of Limited Exemptions from the Affiliate Transaction Rules*, D. 99-11-016, 1999 Cal. PUC LEXIS 664, *7 (Nov. 4, 1999).

modification may be granted.”¹⁴ Petitions for modification may and should also be granted where there exist ambiguities, inconsistencies, or omissions in the underlying decision.¹⁵ Moreover, such petitions may and should be granted where there are fundamental inequities in the decision¹⁶ and/or where critical policy considerations went entirely unnoticed.¹⁷

As will be demonstrated below, OhmConnect’s petition for modification satisfies all of the Rule 16.4 requirements and provides compelling justifications for why the Commission should modify D.20-06-031.

II. NEW AND CHANGED FACTS REQUIRE THE MODIFICATION OF DECISION 20-06-031 TO RAISE THE MCC DR BUCKET CAP

A. Governor Newsom’s Recent Emergency Proclamation Highlights the Need to Modify the MCC DR Buckets to Allow for Additional DR to Maintain Grid Reliability

On July 30, 2021, citing projected shortfalls in electric supply and the continued threat of wildfires, drought and extreme heat events, Governor Newsom signed an Emergency Proclamation ordering state energy agencies to work on “accelerating plans for the construction,

¹⁴ *In re Application of S. Cal. Edison Co. for Authority to Institute a Rate Stabilization Plan with A Rate Increase and End of Rate Freeze Tariffs*, D. 05-07-047, 2005 Cal. PUC LEXIS 298, *6 (July 21, 2005).

¹⁵ *See, e.g., Application of S. Cal. Edison Co. for Authority to Recover Capital Additions to its Fossil Generating Facilities Made Between Jan. 1, 1996 and Dec. 31, 1996*, D. 99-07-005, 1999 Cal. PUC LEXIS 475, **2-5 (July 8, 1999); *Investigation on the Commission’s Own Motion and Order to Show Cause to Determine if Pac. Gas. & Elect. Co. Should Be Held In Violation of Gas Tariff Rule 16 for Failure to Provide Trenching at No Cost within the Allowance of 100 Feet*, D. 98-02-003, 1998 Cal. PUC LEXIS 319, **3-4 (Feb. 4, 1998); *In re S. Cal. Edison Co. and San Diego Gas & Elect. Co., for a Certificate of Public Convenience and Necessity*, D. 92-09-071, 1992 Cal. PUC LEXIS 947, **1-2 (Sept. 16, 1992); *In re Application of San Diego Gas & Elect. Co. for Authority to Increase Its Authorized Level of Rate Base Revenue under the Elect. Revenue Adjustment Mechanism and Steam Revenue Adjustment Mechanism*, D. 92-04-016, 1992 Cal. PUC LEXIS 351, *3 (Apr. 8, 1992).

¹⁶ *See Petition of S. Cal. Edison Co. for Modification of Res. E-3843*, D. 04-09-004, 2004 Cal. PUC LEXIS 444, *1 (Sept. 2, 2004).

¹⁷ *See S. Cal. Edison Co. Application for Rehearing of Res. G-3062*, D. 94-01-049, 1994 Cal. PUC LEXIS 57, **2-3 (Jan. 19, 1994) (emphasis omitted).

procurement, and rapid deployment of new clean energy and storage projects.”¹⁸ Among other things, the Governor specifically ordered the CPUC to:

exercise its powers to ... meet the purposes and directives of this proclamation, *including by expanding and expediting approval of demand response programs* and storage and clean energy projects, to ensure that California has a safe and reliable electricity supply through October 31, 2021, to reduce strain on the energy infrastructure, and to ensure increased clean energy capacity by October 31, 2022.¹⁹

Besides establishing a new program to incentivize large industrial customers to reduce energy consumption during times of acute grid stress, the Governor’s proclamation also makes clear that the Commission, the California Independent System Operator (“CAISO”) and the California Energy Commission (“CEC”) are to expedite and expand *all* DR programs.²⁰

As the record of Rulemaking 19-11-009 describes and as further discussed below, the current implementation of the 8.3% MCC DR Bucket cap seriously impedes the realization of the state’s full DR potential. The Governor’s Emergency Proclamation is a material development that demonstrates that the Commission needs to immediately modify the MCC DR Bucket cap in D.20-06-031 to ensure expansion of all DR programs, including and especially third-party DR programs.

B. The Commission Must Modify the Cap Because the 8.3% DR Cap Is Already Hampering Growth in the DR Market

As described below, in establishing the cap, the Commission believed that there was a great deal of space still available for growth in the DR market. This would be true in a centralized capacity market. However, the structure of California’s Resource Adequacy program results in the current 8.3% MCC DR Bucket cap limiting the State’s full DR potential because of

¹⁸ Emergency Proclamation, OP 2.

¹⁹ Emergency Proclamation, OP 13. (emphasis added).

²⁰ See Emergency Proclamation, OP 12-14.

(i) the per-LSE application of the MCC bucket caps, (ii) preferential crediting for IOU DR, and (iii) reliance on bilateral agreements that often are completed through intermediaries.

A decision should be modified if “the Commission proceeded on a basic misconception of law or fact.”²¹ Here, the Commission’s establishment of the 8.3% MCC DR Bucket cap was based on the misconception that the cap would still allow for significant growth of the DR market when the current facts show that the cap directly hampers the growth of the DR market.²²

First, the Commission noted that the 8.3% cap “translates to 3,735 MW of the current peak RA requirement.”²³ Consequently, the Commission concluded the cap “provides for DR growth of approximately 100 percent over the current levels....”²⁴ However, while this is true at the *system* level, the Commission requires each individual LSE to utilize the MCC buckets with respect to their individual procurement. As a result, if one LSE does not procure DR resources, that headroom in the LSE’s bucket is not “available” to any other LSE. Since some LSEs opt not to purchase their maximum allowed DR capacity, the effective cap is lower than 8.3%.²⁵

Second, not all DR has equal opportunity to be counted under the cap. The MCC DR Bucket encompasses both IOU and third-party demand response provider (“DRP”) DR. However, LSEs within an IOU territory receive a portion of the RA value of that IOU’s DR portfolio commensurate with their share of load. This value is allocated to each LSE as a credit against its total RA obligation and is counted first toward the MCC DR Bucket. The LSE is then

²¹ D.17-12-006, 2017 Cal. PUC LEXIS, *15 (citing *In re United Parcel Serv., Inc.*, D. 97-04-049, 1997 Cal. PUC LEXIS 427, *15).

²² See e.g., Confidential Fuchs Declaration at ¶4(b); Confidential Hays Declaration at ¶4(a); Confidential Anderson Declaration at ¶4(a).

²³ D.20-06-031, at 57.

²⁴ *Id.*

²⁵ See Joint Track 3B.1 Proposal of the California Efficiency + Demand Management Council, CPower, Enel X North America, Inc., Leapfrog Power, Inc. and OhmConnect, Inc. (Jan. 28, 2021) at 3-4.

able to fill the rest of the bucket with any directly-procured third-party DR resources. This means that IOU DR capacity is given preference over any third-party DRP's DR capacity, which is crowded out when a LSE approaches its individual cap.²⁶ As a result, the true cap faced by the non-IOU DR resources for each LSE is actually 8.3% *minus the RA value of IOU DR programs*. Estimating that IOU DR represents 3-4% of total system need, third-party DRPs face a 4.3-5.3% cap at best.

Third, while total DR capacity in California remains below 8.3% of system need, it is difficult to impossible for a DRP to identify the remaining potential buyers. Many LSEs procure RA capacity through intermediaries, or brokers, who represent numerous LSEs in solicitations. When an offer is declined, the DRP typically receives very general feedback, e.g., "a number of our LSEs are near the cap and cannot proceed."²⁷ Brokers are not permitted to disclose the names of their clients and do not disclose to a DRP which LSEs continue to have space in their DR buckets. Therefore, it is practically impossible for a DR resource owner to identify which potential buyers still have the capability to purchase a DR product.

The result of all three facts combined is that third-party DRPs have been limited by the cap much sooner than the Commission anticipated or intended.

²⁶ See Confidential Fuchs Declaration at ¶4(a); Confidential Declaration of Hays at ¶4(b). Furthermore, some LSEs may wish to sign multi-year contracts with a DR provider. LSEs may estimate how much space will remain in the DR bucket following the deduction of IOU DR allocations, but these allocations change. Therefore, an LSE may unintentionally procure DR in excess of the cap following a higher-than-expected IOU DR allocation and only the third-party DR contract will be devalued. Similarly, only third-party DRPs are susceptible to having executed DR contracts upended mid-year as a result of adjustments to an LSE's load forecast and thus to its RA obligation. See e.g., Confidential Anderson Declaration at ¶4(b). IOU DR programs should continue to receive full RA value, as qualified by the Load Impact Protocols process or an alternative QC methodology if one is ultimately adopted by the Commission. Similarly, LSEs in each IOU territory should continue to receive their full share of IOU DR capacity as a credit toward their RA obligation. However, the Commission should level the playing field to ensure that third-party DR does not continue to face disproportionate and undue hardships. This fundamental inequity provides another reason in support of granting this petition for modification.

²⁷ See Confidential Anderson Declaration at ¶4(a); Confidential Fuchs Declaration at ¶4(c)&(d).

III. SPECIFIC MODIFICATIONS REQUESTED

The Commission can maintain the spirit of the 8.3% cap while providing third-party DRPs a true opportunity to realize the room for growth envisioned in D.20-06-031 by raising the cap by the amount of IOU DR capacity that exists today. Just under 1.5 GW of IOU DR capacity has been approved to receive RA credit for 2022,²⁸ representing approximately 3% of expected peak system demand. If the Commission were to account for this capacity within the MCC DR Bucket, the revised bucket cap would be 11.3%.

This approach also makes sense because the majority of IOU DR participates in the CAISO market as a reliability demand response resource (“RDRR”). RDRR has a fundamentally different role in the RA program than proxy demand resource (“PDR”). PDRs—nearly all third-party DRPs participate in the CAISO market using the PDR model—operate like most other supply resources; they are bid and dispatched economically by the CAISO. RDRR, on the other hand, is an emergency resource class that can only be called after the CAISO declares a grid warning or emergency.

Accordingly, PDRs dispatch much more frequently than RDRR. The Department of Market Monitoring (“DMM”) Market Performance Report for June 2021 showed that “PDR resources were consistently dispatched in both the day-ahead and real-time market.”²⁹ RDRR resources were dispatched on June 17 only.³⁰ Because these two resource types behave very differently, the Commission should not and need not equate them.

²⁸ See CPUC, 2022-20224 PG&E, SCE, SDG&E Demand Response Totals, <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/resource-adequacy-homepage/resource-adequacy-compliance-materials>.

²⁹ CAISO, *Summer Market Performance Report June 2021*, at 73 (July 26, 2021), <http://www.caiso.com/Documents/SummerMarketPerformanceReportforJune2021.pdf>.

³⁰ *Id.* at 7.

Raising the MCC DR bucket cap is the most straightforward option to maintain the intent of the original decision, recognize the current harm to the DR market imposed by the current cap, and allow for the needed growth in DR. Further, DR is first in the California Loading Order and a preferred resource for utility procurement under AB 57. Accordingly, the Commission should revise Ordering Paragraph 19 of D. 20-06-031 to increase the MCC DR Bucket to 11.3%.

IV. THE PETITION IS TIMELY FILED GIVEN THE CHANGED CIRCUMSTANCES

Since D.20-06-029 was issued, Governor Newsom issued an Emergency Proclamation on July 30, 2021 ordering state energy agencies to expedite and expand all DR programs. Additionally, as demonstrated above and in the attached declarations, the MCC DR Bucket Cap has hampered growth in the DR market in ways and for reasons that the Commission did not anticipate or expect. Accordingly, this petition could not have been presented within one year of the effective date of the decision. However, given the issuance of the Emergency Proclamation and evidence of stunted DR growth through ongoing market experience, OhmConnect's petition is timely and its requested modifications should be granted.

Respectfully submitted,

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(ENTIRE DECLARATIONS FILED UNDER SEAL)