

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Application of Pacific Gas and Electric Company for Approval of Its Demand Response Programs, Pilots and Budgets for Program Years 2023-2027	A.22-05-002
Application of San Diego Gas & Electric Company (U902E) Requesting Approval and Funding of its Demand Response Portfolio for Bridge Year 2023 and Program Years 2024-2027.	A.22-05-003
Application of Southern California Edison Company (U338E) for Approval of Demand Response Programs and Budgets for 2023-2027.	A.22-05-004

**PHASE II DRAM REPLY BRIEF OF OHMCONNECT, INC.**

Elysia Vannoy  
Regulatory Affairs Manager  
OhmConnect, Inc.  
2201 Broadway  
Suite 702  
Oakland, CA 94612  
Tel. (510) 200-8849  
Email: elysia.vannoy@ohmconnect.com

Vidhya Prabhakaran  
Anna Fero  
DAVIS WRIGHT TREMAINE LLP  
50 California Street, 23<sup>rd</sup> Floor  
San Francisco, CA 94111  
Tel. (415) 276-6500  
Fax. (415) 276-6599  
Email: vidhyaprabhakaran@dwt.com  
Email: annafero@dwt.com

Attorneys for OhmConnect, Inc.

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**PHASE II DRAM REPLY BRIEF OF OHMCONNECT, INC.**

Pursuant to Rule 13.12 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure and the *Administrative Law Judge Ruling Canceling Evidentiary Hearing and Setting Dates for Phase II Demand Response Auction Mechanism Briefing*, issued August 24, 2023, OhmConnect, Inc. (“OhmConnect”) respectfully submits this reply brief in response to the Public Advocates Office’s (“Cal Advocates”) Opening Brief on Phase II Demand Response Auction Mechanism (“DRAM”) issues, filed on October 2, 2023. The purpose of this reply brief is to address factually incorrect and misleading statements made by Cal Advocates in its opening brief regarding OhmConnect’s participation in the DRAM pilot program.

**A. The Commission Should Ignore Materially False Statements About OhmConnect in Cal Advocates’ Opening Brief**

In the initial years of the DRAM pilot program, participants navigated the Commission’s evolving program rules and framework for third-party demand response, as well as rules of the California Independent System Operator (“CAISO”) that apply to demand response resources

participating in the energy markets. As a start-up with extremely limited resources at the time, OhmConnect did its best to satisfy the sometimes inconsistent requirements of these two regulatory entities, all the while executing plans to achieve ambitious growth of user sign-ups as desired by the State of California to help establish aggregated demand response resources to provide local, system and flexible capacity as customer participation in utility demand response programs was declining. The opening brief of Cal Advocates includes misleading statements about OhmConnect that relate to that time period.

Cal Advocates' opening brief refers to a recent settlement agreement between the Federal Energy Regulatory Commission ("FERC") Office of Enforcement and OhmConnect that resolved a non-public investigation. Their opening brief includes the statement, "FERC determined that a substantial majority of the bids that were made by OhmConnect ... could not be reasonably expected to be fulfilled since the bids exceeded the registered metered load of all their customers"<sup>1</sup> The conduct at issue occurred during the first six months of 2018 but Cal Advocates misleadingly fails to note this limitation. Importantly, bids into the DRAM program had to be made months before the delivery year, which meant that DRPs like OhmConnect enrolled and registered new resources both before and after winning bids. The distinction between enrolled resources and registered resources is significant; the stipulation notes that OhmConnect "enrolled additional users throughout 2017 and 2018 and was able to register only about 22% of them by the end of the summer of 2018"<sup>2</sup> – this means that while OhmConnect succeeded in dramatically increasing the number of sign-ups, it surprisingly was unable to register 78% of the users it had signed up.

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<sup>1</sup> Cal Advocates Opening Brief at 9.

<sup>2</sup> *OhmConnect, Inc.*, 183 FERC ¶ 61,136, Stipulation and Consent Agreement at P 8 (2023).

Cal Advocates inappropriately and inaccurately seeks to portray OhmConnect as “making misrepresentations about their available capacity” and “claiming the impossible” to “fraudulently collect[] payments from ratepayers.”<sup>3</sup> FERC did not allege fraud or market manipulation, both of which require scienter or an intent to defraud; OhmConnect’s good-faith projection of growth in customer registrations during its early years of operation proved to be inaccurate in hindsight.<sup>4</sup> Cal Advocates notes that OhmConnect stipulated to certain facts indicated in the settlement agreement,<sup>5</sup> but again misleadingly omits that OhmConnect did *not* admit to any alleged violation.<sup>6</sup> The Commission should ignore the false statements in Cal Advocates’ opening brief.

**B. The Commission Also Should Disregard Cal Advocates’ Redacted Assertions About OhmConnect as Unvetted**

In addition to the unredacted wrongheaded assertions regarding OhmConnect described above, Cal Advocates makes additional assertions in its opening brief concerning OhmConnect’s capacity and performance that are redacted and under seal.<sup>7</sup> OhmConnect’s counsel requested that Cal Advocates provide OhmConnect with the redacted information that pertains to OhmConnect, but Cal Advocates declined this request and instead asked OhmConnect to seek the redacted information from either PG&E and/or the CAISO. Given the limited time available prior to submission of this brief and the need to negotiate among multiple parties to gather information, OhmConnect has not obtained this redacted information. Considering OhmConnect’s inability to vet the accuracy of and respond to Cal Advocates’ redacted

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<sup>3</sup> Cal Advocates Opening Brief at 9-10.

<sup>4</sup> 183 FERC ¶ 61,136 Stipulation and Consent Agreement at ¶ 12.

<sup>5</sup> Cal Advocates Opening Brief at 9.

<sup>6</sup> 183 FERC ¶ 61,136, Stipulation and Consent Agreement at ¶ 2 (“Ohm[connect] stipulates to the facts in Section II but neither admits nor denies the violations alleged in Section III.”); *id.* at ¶ 13 (“Ohm[connect] agrees with the facts as stipulated in Section II of this Agreement but neither admits nor denies the violations alleged in Section III of this Agreement.”)

<sup>7</sup> Cal Advocates Opening Brief at 9 and 12-14.

assertions, the Commission should afford those assertions little to no weight in making its decision with respect to the DRAM pilot program.

**C. Conclusion**

Whether or not the Commission chooses to continue the DRAM pilot program, OhmConnect intends to continue its efforts to expand residential demand response in California. Given the State’s ambitious electrification and clean energy goals, vastly greater levels of aggregated demand response resources will be needed to support grid reliability, including during extreme weather events, and to maintain affordability while achieving these goals.

Respectfully submitted,

By: /s/ \_\_\_\_\_

Vidhya Prabhakaran  
Anna Fero  
DAVIS WRIGHT TREMAINE LLP  
50 California Street, 23<sup>rd</sup> Floor  
San Francisco, CA 94111  
Tel. (415) 276-6500  
Fax. (415) 276-6599  
Email: vidhyaprabhakaran@dwt.com  
Email: annafero@dwt.com

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Attorneys for OhmConnect, Inc.