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

Application of Southern California Edison Company (U338E) for Applying the Market Index Formula and As-Available Capacity Prices adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities beginning July 2003 and Associated Relief.	A.08-11-001 (Filed November 4, 2008)
And Related Matters.	R.06-02-013 R.04-04-003 R.04-04-025 R.99-11-022

RESPONSE OF THE MARIN ENERGY AUTHORITY, THE ALLIANCE FOR RETAIL ENERGY MARKETS, SHELL ENERGY NORTH AMERICA (US), L.P., AND THE DIRECT ACCESS CUSTOMER COALITION TO JOINT PETITION FOR MODIFICATION OF DECISION 11-07-010 AND REQUEST TO ESTABLISH SETTLEMENT EFFECTIVE DATE AND TO GRANT MOTION FOR CLOSURE

Daniel W. Douglass
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, California 91367
Telephone: (818) 961-3001
Facsimile: (818) 961-3004
douglass@energyattorney.com

Attorneys for

**MARIN ENERGY AUTHORITY
ALLIANCE FOR RETAIL ENERGY MARKETS
DIRECT ACCESS CUSTOMER COALITION**

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OF THE STATE OF CALIFORNIA**

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In accordance with Rules 11.1(e) and 16.4(f) of the Rules of the California Public Utilities Commission ("Commission"), the Marin Energy Authority ("MEA")[1], the Alliance for Retail Energy Markets ("AReM")[2], Shell Energy North America (US), L.P. ("Shell Energy") and the Direct Access Customer Coalition ("DACC")[3] (hereinafter collectively referred to as the "CCA/Direct Access Parties") respectfully submit this response to the *Joint Petition For Modification of Decision 11-07-010 and Request to Establish Settlement Effective Date and to*

[1] The Marin Energy Authority is the not-for-profit public agency formed by the County of Marin and seven other towns and cities that administers the Marin Clean Energy program, a renewable energy alternative to Pacific Gas and Electric Company's retail electric supply service and California's first Community Choice Aggregation ("CCA") program.

[2] AReM is a California mutual benefit corporation formed by Electric Service Providers (ESPs) that are active in California's "direct access" retail electric supply market. The positions taken in this filing represent the views of AReM and its members but not necessarily the affiliates of its members with respect to the issues addressed herein.

[3] DACC is a regulatory alliance of educational, commercial and industrial customers that utilize direct access for all or a portion of their electricity requirements.

SB_GT&S_0750713

Grant Motion for Closure ("Petition"), submitted to the Commission by the Joint Parties[4] on July 28, 2011.

I. INTRODUCTION

On April 1, 2011, the Settling Parties and the California Municipal Utilities Association ("CMUA") submitted a petition for modification of Decision ("D.") 10-12-035 ("Original Petition"). The Original Petition presented a proposed settlement that had been reached among the Settling Parties and CMUA ("Proposed Settlement") addressing the imposition of costs on Municipal Departing Load ("MDL") that will result from the CHP Settlement that was approved in D.10-12-035.

The CCA/Direct Access Parties protested the Original Petition for two reasons: the First, the Proposed Settlement appeared to be structured such that there were would be costs incurred by the Investor-Owned Utilities ("IOUs") as a result of implementation of the CHP Settlement that, absent the Proposed Settlement, would have been recovered by MDL. The CCA/Direct Access Parties argued in their protest that any costs that MDL was exempt from paying as a result of the Proposed Settlement should be paid by the Settling Parties, and not by Community Choice Aggregation ("CCA") customers or Direct Access ("DA") customers. Second, the CCA/Direct Access Parties asserted that the cost recovery treatment afforded to MDL customers should also be available to CCA and Direct Access customers.

In Decision 11-07-010 ("D.11-07-010" or "Decision"), the Commission ruled:

> The proposed modifications in the Petition limit the time period to recover certain costs associated with the Settlement from MDL Customers. Therefore, there is a possibility that MDL Customers would not be responsible for some

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[4]The Joint Parties include Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, the California Cogeneration Council, the Independent Energy Producers Association, the Cogeneration Association of California, the Energy Producers and Users Coalition, the Division of Ratepayer Advocates, The Utility Reform Network, and the California Municipal Utilities Association ("CMUA").

SB_GT&S_0750714

> portion of the costs related to generation resources procured on their behalf. Pursuant to Pub. Util. Code § 366.2(d)(1), which prohibits the shifting of recoverable costs between customers, the IOUs cannot recover costs attributable to MDL Customers from bundled or other departing load customers (i.e., CCA and DA Customers). As such, any unrecovered costs attributable to MDL Customers shall be the responsibility of the Settling Parties. Since costs incurred on behalf of MDL Customers shall be the responsibility of MDL Customers, as specified in D.08-09-012, or Settling Parties, as required under Pub. Util. Code § 366.2(d)(1), Joint Respondents' concern that there would be a potential for cost shifting to CCA and DA Customers is unfounded.[5]

On July 28, 2011, the Joint Parties submitted the Petition stating that the language was "objectionable" and as a result the CHP settlement could not become effective.

As an introductory comment, the Petition provides clear proof that the CCA/Direct Access Parties' concerns about "cost shifting" are valid. Rather than adjust the CMUA settlement to apportion any stranded costs among themselves, the Joint Parties take the route of trying to layer even more costs onto CCA and DA parties. Put simply, if the Joint Parties are so sure there will be no stranded costs from the CMUA settlement, then the utilities' shareholders should be willing to accept responsibility for those costs if there are any.

In trying to support their Petition, the Joint Parties appear to be hedging all their bets. First, in a convoluted and impenetrable explanation, they attempt to convince the Commission that the Proposed Settlement has no potential to cause any costs to be shifted. Then, demonstrating that they <u>are</u> concerned about cost shifting, the Join Parties argue that the objectionable language should be set aside because the Commission has no jurisdiction to impose any costs on certain of the Settling Parties. None of these arguments presents any reason for the Commission to grant the Petition, as explained in more detail below.

[5] See D.11-07-010, page 7.

II. RESPONSE

A. The Joint Parties' Contention That There Is No Cost Shifting as a Result of the Proposed Settlement Is Unsupported and Unpersuasive.

In the Petition, the Joint Parties argue that the "date specifications" contained in the Original Petition were "carefully chosen" to

> "limit NBCs for Initial Program Period PPAs to 2022 for existing facilities and 2027 for new facilities. These specified dates ensure that no cost shifting occurs as a result of the Original Petition.[6]

One can only wonder why the Settling Parties argue so strenuously against language in the Decision that says they must pay for any cost shifting, if indeed, as they claim, there is no cost shifting to be worried about. Moreover, the arguments presented by the IOUs that there are no costs that are shifted from one group to another as a result of the Proposed Settlement do nothing more than recite the expiration dates of contracts that the utilities may enter into as a result of the CHP Settlement, and do not address the fact that during the term of those contracts, there are costs that MDL would have paid under D.10-12-035, but that under the Proposed Settlement they no longer pay. The Commission has correctly ordered that the Settling Parties should be responsible for those costs, and nothing in the Petition is convincing otherwise.

Given that the Settling Parties are so convinced that there will be no cost shifting as a result of the Proposed Settlement, it seems curious that they could not come to some agreement to avoid this Petition, and to avoid compromising the effectiveness of the CHP Settlement. This inability for them to reach agreement on how to share such costs seems to fly in the face of their contention that there will be no cost shifting at all. Moreover, it seems equally curious that the Settling Parties would claim that D.11-07-010 threatens the CHP Settlement, rather than

[6] See Petition, page 6.

suggesting that they will abandon the Proposed Settlement with CMUA if the Petition is not granted. This may make for a more dramatic threat, but it does not constitute a believable one.

B. The Petition Errs When It Says that the Commission May Not Impose Costs on the CHP Developers and Owners Who are Settling Parties.

As noted above, it is curious that the Joint Parties are so eager to argue there will be no cost shifting to DA or CCA customers, even while they strenuously object to the Commission's determination that any cost shifting must be borne by the Settling Parties. Equally curious is that the Joint Parties argue that:

> the additions to D.11-07-010 endeavor to impose costs from the QF/CHP Settlement on non-jurisdictional entities, *i.e.*, CHP projects and developers. CHP projects and developers are not lawfully subject to Commission jurisdiction on cost allocation as reflected in the objectionable additions to D.11-07-010.[7]

First, the QF/CHP Settlement was approved in Decision 10-12-035; it is not those costs that were approved in the CHP Settlement that are at issue here. Rather, it is the cost shifting that will occur as a result of the Proposed Settlement that was approved in D.11-07-010 that is at issue.

Second, the D.11-07-010 does not impose any costs on CHP projects or developers. D.11-07-010 states only that "any unrecovered costs attributable to MDL Customers shall be the responsibility of the Settling Parties."[8] If the Settling Parties agree among themselves that the all of the costs should be paid by the IOUs rather than the CHP projects or developers, they are free to bring that agreement before the Commission for approval (in which case, the CCA/Direct Access Parties would hope that the consumer advocate members of the Settling Parties would insist such costs should be paid by the IOUs' shareholders).

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[7] See Petition, page 7.

[8] D.11-07-010, page 7.

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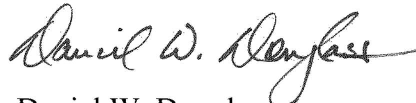
The point is that the Commission has crossed no jurisdictional line here; the Joint Parties brought the Proposed Settlement before the Commission, and the Commission has set forth the terms under which it is willing to approve the Proposed Settlement. If the Joint Parties do not like the Commission's conditions, they can modify their settlement terms and conditions or they can decide to abandon their Proposed Settlement, but they cannot argue that the Commission has stepped outside its bounds in establishing the conditions under which the Commission will approve the Proposed Settlement.

III. CONCLUSION

The CCA/Direct Access Parties urge the Commission to reject the Petition for all the reasons outlined in this Protest.

Respectfully submitted,



Daniel W. Douglass

Attorneys for
MARIN ENERGY AUTHORITY
ALLIANCE FOR RETAIL ENERGY MARKETS
DIRECT ACCESS CUSTOMER COALITION

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