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

REPLY COMMENTS OF THE MARIN ENERGY AUTHORITY, THE DIRECT ACCESS CUSTOMER COALITION AND THE ALLIANCE FOR RETAIL ENERGY MARKETS ON THE PROPOSED AND ALTERNATE PROPOSED DECISIONS

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
DIRECT ACCESS CUSTOMER COALITION
ALLIANCE FOR RETAIL ENERGY MARKETS

October 3, 2011

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In accordance with Rule 14.6(b) of the Rules of the California Public Utilities Commission ("Commission") and the agreement among parties to shorten time for comments, the Marin Energy Authority ("MEA"),[1] the Direct Access Customer Coalition ("DACC"),[2] and the Alliance for Retail Energy Markets ("AReM")[3] (hereinafter collectively referred to as the "CCA/Direct Access Parties") respectfully submit these reply comments on the proposed *Decision Denying Petition to Modify Decision 11-07-010* ("Proposed Decision" or "PD")

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

[3] 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.

authored by Administrative Law Judge ("ALJ") Amy Yip-Kikugawa and the *Decision Granting, in Part, Petition to Modify Decision 11-07-010 and Request to Establish a Settlement Agreement Effective Date and Grant Motion For Closure* ("Alternate Proposed Decision" or "APD") sponsored by Assigned Commissioner Ferron. Both the PD and the APD concern the *Joint Petition For Modification of Decision 11-07-010 and Request to Establish Settlement Effective Date and to Grant Motion for Closure* ("Petition"), submitted to the Commission by the Joint Parties[4] on July 28, 2011.

On September 28, 2011, the CCA/Direct Access Parties filed opening comments in support of the PD of ALJ Yip-Kikugawa on the grounds that it accurately summarizes the law and the facts, and appropriately rejected the Petition to Modify. By comparison, the APD simply accepts the Joint Parties' argument that cost shifting will not occur, but ignores the statutory issue that shifting of recoverable costs among customers is not permissible, thereby making its findings subject to judicial challenge. In doing so, of course, the APD flip-flops on the precise statutory rationale that was used in D.11-07-010 ("the "Decision") to justify the fact that cost shifting would not occur. To be precise, the Decision states:

> 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 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

[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").

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]

The APD firmly states that no cost shifting will occur and essentially says to the DA/CCA Parties, "Trust us." Trusting the APD's statement that there will no cost shifting, in the face of the Settling Parties' strong desire to avoid responsibility for ensuring there is no cost shifting is simply an untenable outcome that does not address the legitimate interests of CCA/Direct Access Parties. Therefore, the CCA/Direct Access Parties support the proposed decision, which complies with the letter of the law and imposes an affirmative obligation on the Settling Parties to ensure that there is no cost shifting. We strongly urge the rejection of the APD due to its legal deficiencies.

In summary, the CCA/Direct Access Parties note that the statute is plain and clear on its face: "It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers."[6] As noted in our opening comments, ignoring the statute and simply declining to discuss its applicability does not make the issue go away. The CCA/Direct Access Parties also note that the opening comments of the Joint Parties predictably support the APD, ignore the inconvenient statutory language and propose the following revision to the APD:

> *In the event that there are unrecovered costs associated with the QF/CHP Program attributable to Municipal Departing Load as a result of the limitation of time periods for cost recovery in the April 2011 Petition, as adopted in D.11-07-010, such costs will not be allocated to Direct Access ("DA") and Community Choice Aggregators ("CCA") customers."*[7]

This language does not cure the legal deficiency in the APD, since it fails to address the fact that any cost shifting is impermissible. Moreover, it leaves open the equally inconvenient questions of (i) who is responsible for determining whether there are unrecovered costs that are not to be

[5] *See* D.11-07-010, at p. 7, emphasis added.
[6] P.U. Code Section 366.2(d)(1).
[7] Joint Parties' Opening Comments, at pp. 2-3.

allocated to DA and CCA customers; and (ii) precisely who *will* bear these costs. The lack of an affirmative obligation on the Joint Parties to ensure that there are no unrecovered costs imposed on DA and CCA customers can only be read to create a situation where CCA/Direct Access Parties will have to spend their own limited time and resources to ensure that they are not saddled in the future with impermissible cost shifting. Shifting this burden from the Joint Parties to the CCA/Direct Parties is unnecessary, unjustified and unfair, and therefore the APD should be rejected.

In short, the time for such game playing should be over. The Commission should approve the PD for the reasons it so cogently states. If the Commission is insistent on bending policy and ignoring the law in order to facilitate implementation of the Settlement, then language proposed by the Joint Parties should be included, so long as it is amended as follows:

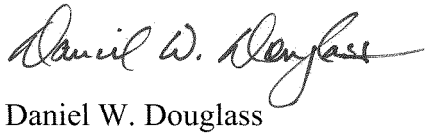
> *The Settling Parties will, on an annual basis, report to the Commission, whether there have been any unrecovered costs associated with the QF/CHP Program attributable to Municipal Departing Load as a result of the limitation of time periods for cost recovery in the April 2011 Petition, as adopted in D.11-07-010. The annual report will specify the manner in which the Settling Parties have ensured that such costs have not or will not be allocated to Direct Access ("DA") and Community Choice Aggregators ("CCA") customers.*

If this affirmative obligation is not acceptable to the Joint Parties, then the APD should be rejected for the reasons outlined above.

The CCA/Direct Access Parties reiterate the statement in our opening comments. While the procedural history in this proceeding may be extensive, the issue is not complex. The Joint Parties seek to have a decision unanimously approved by the Commission be determined after the fact to be deficient simply because it contains an accurate statement of the law. The CCA/Direct Access Parties oppose this action, believe that the precedent being set here is not one the Commission should embark upon without trepidation and therefore urge the Commission

to approve the Proposed Decision of ALJ Yip-Kikugawa and reject the Alternate Proposed Decision of Commissioner Ferron for all the reasons outlined in these comments.

Respectfully submitted,



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