

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Enhance the Role of Demand Response
in Meeting the State’s Resource
Planning Needs and Operational
Requirements.

Rulemaking 13-09-011
(Filed September 19, 2013)

**MOTION OF THE OFFICE OF RATEPAYER ADVOCATES
FOR LEAVE TO FILE CONFIDENTIAL ATTACHMENT A UNDER SEAL;
[PROPOSED] ORDER**

I. INTRODUCTION

Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) submits this motion and proposed order, in the above-referenced docket. ORA moves for leave under seal, Attachment A of *The Office Of Ratepayer Advocates’ Opening Comments On Proposals For Revisions To Demand Response Program For Bridge Fund Years*, filed concurrently with this motion today. However, before considering the motion to seal, ORA respectfully requests the Commission require Pacific Gas and Electric Company (PG&E) and Southern California Electric Company (SCE) disclose and make public “Date of Event” and the “Percentage of Available Hours Used,” as shown in the tables set forth in Attachment A.

II. DISCUSSION

ORA redacted all data as requested by the utilities Attachment A as a precautionary measure until the Commission deems the investor-owned utilities’ (IOUs) information protected under Public Utilities Code Section 583. Attachment A contains

information designated as confidential by PG&E and SCE, pursuant to material obtained by ORA data requests.¹ Section 583 states,

No information furnished to the commission by a public utility...shall be open to public inspection or made public except on order of the commission, or by the commission or commissioner in the course or a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.

Section 583 sets out the first procedural step for a party claiming confidentiality.² The IOU must then forth its substantive claim for confidentiality, whether through the D.06-06-066 IOU matrix, General Order 66-C, or § 454.5(g).³ But even if the IOU were to set forth a substantive claim for confidential treatment, *nothing prohibits the Commission from disclosing the information, if it deemed it in the public interest.* As the Commission stated, “583 does not limit our ability to disclose information.”⁴

ORA does not generally dispute the utilities’ claim for confidentiality. However, before considering the motion to seal, ORA respectfully requests the Commission require Pacific Gas and Electric Company (PG&E) and Southern California Electric Company (SCE) disclose and make public “Date of Event” and the “Percentage of Available Hours Used,” as shown in the tables set forth in Attachment A. The dates in which aggregators were called provides valuable information for comparison with system conditions and the

¹ D.07-05-032 states, “D.06-06-066 clarifies that the burden [of proof] is on the entity claiming confidentiality of information submitted to the Commission to prove why such information should not be disclosed to the public.” 2007 Cal. PUC LEXIS 131 (Cal. PUC 2007).

² D.06-06-066, p. 43.

³ The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation’s proposed procurement plan or resulting from or related to its approved procurement plan, including but not limited to, proposed or executed power purchase agreements, data request responses, consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are non-market participants shall be provided access to this information under confidentiality procedures authorized by the commission.

⁴ D.06-06-066, pp. 43-44. “As the United States Court of Appeals for the Ninth District noted in *Southern California Edison Company v. Westinghouse Electric Corporation* (9th Cir. 1989) 892 F. 2d 778, 783: ‘Section 583 does not forbid the disclosure of any information furnished to the CPUC by utilities. Rather, the statute provides that such information will be open to the public if the commission so orders, and the commission's authority to issue such orders is unrestricted.’”

dispatch of the utilities' other demand response programs to determine whether the aggregators were dispatched appropriately. The "Percentage of Available Hours Used" provides information on how frequently aggregators were called compared to the hours available in the Aggregator Managed Portfolio Agreements, reflecting the realistic usage of the agreements compared to their availability. This information—"Date of Event" and the "Percentage of Available Hours Used"—is not included in the utilities' confidential contracts and should be made public to allow stakeholders to review the administration of the aggregator-managed program.

III. CONCLUSION

WHEREFORE, ORA respectfully requests the Commission require PG&E and SCE disclose and make public the information contained in ORA's Attachment A, *The Office of Ratepayer Advocates' Opening Comments On Proposals For Revisions To Demand Response Program For Bridge Fund Years*:

- (1) "Date of Event," and
- (2) "Percentage of Available Hours Used."⁵

In either case, ORA moves the Commission for leave to file Attachment A under seal.

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⁵ Should the Commission grant this request, ORA is prepared to submit an amended PUBLIC Version of its Attachment to the R.13-09-011 service list.

Respectfully submitted,

/s/ LISA-MARIE SALVACION

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March 3, 2014

BEFORE THE PUBLIC UTILITIES COMMISSION
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[PROPOSED] ORDER

Having reviewed the Motion for Leave to File Confidential Attachment A of the Office of Ratepayer Advocates ("ORA"), and for good cause appearing,

IT IS HEREBY ORDERED that

1. Pacific Gas and Electric Company and Southern Gas and Electric Company shall disclose and make public the information contained in ORA's Attachment A, *The Office of Ratepayer Advocates' Opening Comments On Proposals For Revisions To Demand Response Program For Bridge Fund Years*:
 - a) "Date of Event," and
 - b) "Percentage of Available Hours Used."
2. ORA shall submit an amended PUBLIC Version of its Attachment A to the R.13-09-011 service list.
3. ORA Motion for Leave to file Attachment A, filed on March 3, 2014, be filed under seal.

Dated: _____, 2014

By: _____

Administrative Law Judge