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)

JOINT RESPONSE OF ENERNOC, INC., JOHNSON CONTROLS, INC., AND COMVERGE, INC. ("JOINT DR PARTIES") IN OPPOSITION TO THE MOTION OF THE OFFICE OF RATEPAYER ADVOCATES DATED MARCH 3, 2014

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March 13, 2014

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EnerNOC, Inc., Johnson Controls, Inc., and Comverge, Inc. ("Joint DR Parties") respectfully submit this Response in Opposition to the Motion of the Office of Ratepayer Advocates (ORA) served in this Rulemaking (R.) 13-09-011 on March 3, 2014. This Joint Response is filed and served pursuant to Rule 11.4(b) of the Commission's Rules of Practice and Procedure.

I. ORA'S MOTION IS MISLABELED, FAILS TO PROVIDE ADEQUATE NOTICE OF THE RELIEF REQUESTED, AND SHOULD BE REJECTED ON PROCEDURAL GROUNDS ALONE.

On March 3, 2014, ORA filed a motion entitled "Motion of the Office of Ratepayer Advocates for Leave to File Confidential Attachment A Under Seal; [Proposed] Order." The referenced Attachment A was included in ORA's Opening Comments on Proposals for Revisions to Demand Response Programs for Bridge Fund Years filed in this proceeding on the same day (March 3).

By ORA labeling its Motion in this manner, all parties could fully expect that ORA's Motion sought permission to file Attachment A under seal to maintain appropriate confidential treatment of the information pursuant to Public Utilities (PU) Code Section 583. Authority to

make such a motion is provided in Article 11 ("Motions") of the Commission's Rules of Practice and Procedure.[1]

However, only by reading the full contents of ORA's Motion does it become apparent that this request is only part of the relief that ORA is seeking and, as to the other requests, those are, in fact, diametrically opposed to asking for the continued protection of confidential information. Instead, ORA states that it "redacted all data as requested by the utilities [in] Attachment A as a "precautionary measure until the Commission deems the investor-owned utilities' (IOUs) information protected under Public Utilities Code Section 583."[2] Only later in the Motion does ORA state that the motion is for the purpose of "*disput[ing]* the utilities' claim for confidentiality" regarding information related to Pacific Gas and Electric Company's (PG&E's) and Southern California Edison Company's (SCE's) Aggregator Managed Portfolio (AMP) programs.[3]

Nowhere in the labeling of ORA's Motion is there any indication that this was the primary purpose of the Motion. In contrast, on October 21, 2013, ORA's Motion for Leave to File Confidential Comments Under Seal (October 2013 Motion) in this proceeding was a one-paragraph request (with accompanying order) to file as confidential "market-sensitive information from the Aggregator Managed Portfolio contracts of Pacific Gas and Electric Company and Southern California Edison Company (SCE)" pursuant to Section 583 and General Order 66-C. This prior motion demonstrates that (1) ORA fully understands the purpose and permitted requests that can be made under a motion so labeled and (2) agrees that information related to AMP is market sensitive and must be maintained as confidential. The latter point is discussed further in the following section.

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[1] Commission Rules of Practice and Procedure, Rule 11.4.
[2] ORA Motion, at p. 1.
[3] ORA Motion, at p. 2; emphasis added.

In addition, ORA has filed no motion in this proceeding challenging the assertion of confidentiality generally for any of PG&E's and SCE's DR Programs. Yet, by seeking confidential treatment of its Appendix A by this motion, ORA, for the first time, requests that the Commission "*make public*" information provided in confidence by the utilities related to the dispatch of the AMP contracts.[4] Further, the attached Proposed Order goes far beyond a request to file confidential information under seal and, instead, would order public disclosure of protected information, give ORA permission to amend its Attachment A accordingly, and then file that document under seal.

Clearly, not only have the Commission's own rules governing requests to file documents under seal been violated by ORA's March 3 "Motion," but this Motion does not provide adequate notice, and, in turn, compromises the opportunity to respond, to its actual requested relief in violation of due process. On these grounds alone, ORA's March 3 Motion either should not be accepted for filing or should be rejected or denied.

II.
ORA'S ACTUAL REQUEST FOR THE COMMISSION TO "MAKE PUBLIC" CONFIDENTIAL INFORMATION RELATED TO THE AMP CONTRACTS IS WITHOUT MERIT AND MUST BE DENIED.

In its October 2013 Motion, ORA concedes that PG&E's and SCE's AMP contracts contained "market-sensitive information" designated as protected information under Section 583 and GO 66-C.[5] In its current Motion, ORA, however, now seeks disclosure of information received by ORA from, and deemed confidential by, PG&E and SCE identifying "dates in which aggregators were called" ("Date of Event" and "Percentage of Available Hours Used") that directly relate to the terms and conditions of the AMP contracts.[6] ORA's Motion offers *no*

[4] ORA Motion, at p. 3.
[5] ORA 2013 Motion, at p. 1.
[6] ORA Motion, at pp. 2-3.

argument or basis for how this information is not "market-sensitive," and, in fact, never addresses or uses that term in asking for this relief.

In fact, the terms of the AMP contracts, including any performance thereunder, meet the very definition of "market sensitive" since this "information has the potential," "if released to market participants," to materially "affect the market for electricity" and "a buyer's market price for electricity."[7] Moreover, the release of this information will identify to the market and to the DR providers when and how frequently PG&E dispatched one contract vis-à-vis the others. The DR providers themselves are not aware of how their competitors are being dispatched relative to their own contracts. Disclosure of the information sought to be made public by ORA's motion would give a DR provider insight as to how the utility values one contract versus another. It is "market sensitive" information that, but for this release, would not otherwise be known to competitive DR providers or the market. PG&E's dispatch decisions, relative to these contracts, are, and should remain, confidential.

ORA's Motion has failed to provide any basis for the Commission to find that the information it asks to have publicly disclosed is not market sensitive, has not demonstrated how the public interest would be served by such disclosure, and has not demonstrated how any public benefit would outweigh the potential competitive harm that its request for PG&E and SCE to disclose "Date of Event" and "Percentage of Available Hours Used" related to the AMP Contracts. Under these circumstances, the Commission should summarily deny ORA's Motion.

III.
CONCLUSION

It is clear that ORA's March 3 Motion is both procedurally and substantively flawed. Not only does it fail to comply with Commission rules, but it would create a damaging and

[7] Decision (D.) 06-06-066, at pp. 41-43.

unsupported precedent for treatment of confidential information by the Commission. For those reasons, the Joint DR Parties respectfully request either that ORA's March 3 Motion not be accepted for filing or that its actual requested relief (making public information that is appropriate treated as confidential by PG&E and SCE) be summarily denied.

Respectfully submitted,

March 13, 2014

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