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Bcc:

Subject: RE: R.13-09-011 Demand Response: Workshops versus Evidentiary Hearings - Joint
DR Parties' Response

Dear ALJ Hymes:

The Joint Demand Response (DR) Parties (EnerNOC, Comverge, and Johnson Controls) wish to thank you for your email yesterday proposing to hold workshops, in lieu of or in combination with evidentiary hearings, to address the Phase 2 and Phase 3 issues in R.13-09-011 (DR).

The Joint DR Parties also appreciate the opportunity to respond to your proposal as follows:

(1) The use of workshops to reduce the Phase 2 and Phase 3 issues that require evidentiary hearings is an approach that the Joint DR Parties support. However, the Joint DR Parties believe that combining workshops with evidentiary hearings in the same week or basing the waiver of cross-examination now on workshops that have not yet been held is challenging for all parties, especially where the outcome of those workshops is not known today. In addition, the status of the testimony timely served on May 6 and May 22 (in terms of its admission into the record) should be confirmed, given the time and effort each party has expended to produce and timely serve this testimony.

(2) To that end, the Joint DR Parties respectfully propose an amendment to your proposal as follows:

- Workshops should be held on June 9 through June 11 to address the issues as you have proposed and listed for each day (morning and afternoon).

- At the conclusion of each Workshop, or section of each Workshop, a summary of the discussion that has transpired should be read/transcribed into the formal record of R.13-09-011 (DR).

- Support for and participation in the Workshops should not constitute a waiver of the parties' right to cross-examine witnesses on issues that are determined in the subsequent Prehearing Conference (PHC) (recommended below) to require evidentiary hearings.
- The afternoon session (PM) of Day 3 (June 11), which you have you have reserved for a ½ day evidentiary hearing, should instead be used to conduct a Prehearing Conference (PHC).
- At the PHC, all testimony that has been timely served should be identified. A discussion should be conducted regarding what issues still require evidentiary hearing. However, the actual evidentiary hearing on those issues should be continued to a future date to permit parties the opportunity to determine whether cross-examination remains on those issues, to provide cross estimates, and to schedule witnesses, as needed. That date for that continuation should be an agenda item for discussion at the PHC.
- At the time the evidentiary hearing resumes or at the conclusion of the PHC (if the parties and ALJ agree that evidentiary hearings are not required), all testimony for which there is no cross-examination should be admitted into the record by stipulation. Testimony that is the subject of cross-examination can be offered for admission following the conclusion of cross-examination.

Many thanks.

Sara Steck Myers

Attorney for the Joint DR Parties

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cc: R.13-09-011 Service List – sent electronically by multiple transmissions

From: Hymes, Kelly A. [mailto:kelly.hymes@cpuc.ca.gov]

Sent: Thursday, May 29, 2014 2:14 PM

To:

Subject: R.13-09-011 Demand Response: Workshops versus Evidentiary Hearings

After reviewing the lists of facts in dispute served by the parties in this proceeding, I am concerned that our time may be better spent in workshops as opposed to hearings.

I would like to propose to the parties that instead of holding hearings the week of June 9, we hold a series of workshops that address most, if not all, of the issues listed by the parties. As SCE has suggested, these matters may be more appropriate for workshop rather than hearings.

If parties are willing to waive cross-examination of the testimony, we could spend the time in workshops. Or, in the alternative, if parties are willing to waive cross-examination of part of the testimony, we could spend part of our time in workshops and part in hearings.

In my proposed schedule below, we would cancel the June 2 workshop and roll it into the workshops below. In my review of the lists provided by the parties, a tentative schedule could be as follows:

- Day 1 (June 9)
 - AM - Phase II issues including cost recovery, back up generation, and the cost effectiveness protocols.
 - PM - CAISO Market Integration costs with presentations by the three utilities. PG&E, SDG&E and SCE would be prepared to provide an overview of the proposed costs of the Rule 24 Implementation.
- Day 2 (June 10)
 - AM - Categorization of current demand response programs including the characteristics of load modifying resources and supply resources
 - PM - Setting future demand response goals
- Day 3 (June 11)
 - AM - Demand Response Auction Mechanism and Resource Adequacy Matters
 - PM - 1/2 day evidentiary hearing where parties cross examine witnesses on remaining issues
- Day 4 (June 12) -- One additional day of evidentiary hearings

I would like to make a final determination on this by noon tomorrow (Friday, May 30, 2014), so that we can reschedule the June 2 workshop, if appropriate. Parties should email me with their thoughts on this proposal as soon as possible (the earlier the better) and include a statement of whether they are willing to waive cross examination of any or all witnesses.

Thank you, Judge Hymes

Kelly A. Hymes

Administrative Law Judge

California Public Utilities Commission

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Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence. -- John Adams