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Cc: 'Sara Steck Myers' (ssmyers@att.net)

Bcc:

Subject: R13-09-011 (DR) JDRP Request Re ORA Arguments on ORA Exhibit Admission

Dear ALJ Hymes:

Cc: R13-09-011 (DR) Service List (Sent by Multiple Transmissions)

In your E-Mail Ruling dated August 13, 2014, you provided guidance on testimony, with the last category being "Testimony not previously served, marked, identified or received into evidence." Only one party's "testimony" fell into this category – the Office of Ratepayer Advocates (ORA). Your ruling specifically referenced ORA's intention "to serve additional testimony in regards to the new aspect of the Demand Response Auction Mechanism that parties will include in briefs." ORA was instructed to file a motion by August 18 "requesting to identify, mark, and admit into evidence the new testimony."

On August 18, ORA filed such a motion and sought admission into evidence of "exhibits marked for identification" by ORA as Exhibits ORA-4, ORA-4c, ORA-5, and ORA-5c. It should be noted that ORA moved only for admission into evidence of these exhibits and never requested that they first be identified and marked, which they never had or have been. (ORA Motion, at p. 5.)

As of the due date of Opening Briefs on August 25, no action had been taken on this Motion. Thus, the items in question had never been identified, marked for identification, or, in turn, admitted into the record of this proceeding as evidence.

Yet, on August 25, ORA filed an Opening Brief that relies extensively on these 4 “exhibits” in supporting ORA’s principal recommendation of limiting participation in the DRAM Pilot, especially excluding any solicitation for Aggregator Managed Program (AMP) contracts. The brief also greatly expands on ORA’s use and purpose for these exhibits that was not in their original motion.

Further, earlier that day (August 25), you granted ORA’s request to file a Reply to the Joint Demand Response (DR) Parties’ response in opposition to ORA’s Motion. On August 27, ORA filed a Reply not only to the Joint DR Parties’ response, but also to one filed by PG&E and makes new arguments regarding these exhibits.

Because the ORA testimony at issue had not even been identified or marked as part of the formal record nor admitted as of the due date of briefs (August 25), no other party, including the Joint Demand Response (DR) Parties, referenced these exhibits in their Opening Briefs. In fact, as the Joint DR Parties’ Response makes clear, there has never been an opportunity to cross examine ORA on the foundation, basis, or preparation of these exhibits in the first place. Yet, with the filing of ORA’s Reply on Wednesday, ORA will have addressed and relied on these items in at least two pleadings in addition to ORA’s original August 18 motion (ORA’s August 25 Brief and its August 27 Reply) before any action has been taken to even identify these exhibits.

For these reasons, the Joint DR Parties request that no ruling on the admission of the items identified by ORA in its August 18 Motion be made until and after Reply Briefs are filed on September 8. This request is made on the basis that the Reply Briefs will represent the first opportunity that the Joint DR Parties, or any other party, would have to address any of the claims now made by ORA regarding these exhibits in either ORA’s August 25 Brief or ORA’s August 27 Reply.

Thank you.

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