



# ORA

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August 4, 2014

**\*\*\*PUBLIC\*\*\***

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**Subject: PUBLIC Response Of the Office of Ratepayer Advocates to Southern California Edison Company's Re-Negotiated Aggregator Managed Portfolio Program Contracts in Compliance With Decision 14-05-025. (AL 3078-E)**

## **INTRODUCTION**

Pursuant to the California Public Utilities Commission's ("Commission") General Order ("GO") 96-B, Section 7.4, the Office of Ratepayer Advocates ("ORA") hereby submits this protest to 3078-E, *Re-Negotiated Aggregator Managed Portfolio Program Contracts in Compliance With Decision 14-05-025* ("AL 3078-E"), mailed on July 15, 2014. The Advice Letter is submitted in compliance to Ordering Paragraph ("OP") 19 of Commission Decision ("D.") 14-05-025 ordering Southern California Edison Company ("SCE") to file a Tier Two AL for approval of 2015-2016 re-negotiated Aggregator Managed Portfolio (AMP) program agreements.

SCE seeks approval of four AMP program agreement amendments with Constellation Newenergy, Inc. ("Constellation"); Energy Connect, Inc. ("ECI"); EnerNOC, Inc. ("EnerNOC"); and North America Power Partners ("NAPP") for 2015-2016 for the Bridge funding years.

SCE claims each of the executed amendments contains confidential, market sensitive information for the individual aggregator involved, and seeks protection under PUC Section 583.

ORA recommends this Advice Letter should be suspended for the following reasons:

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*Ratepayer Advocates in the Gas, Electric, Telecommunications and Water Industries*

- AL 3078-E should be considered in conjunction with the Settlement or Resolution of Litigation in Phase 3 of R.13-09-011
- SCE’s AL is deficient as it lacks 2013-2014 DR Contract performance data that is necessary to determine if it would be reasonable to extend these submitted DR contracts.
- SCE’s AL is deficient as it lacks DR Aggregator current Megawatt (MW) customer enrollment levels and 2013-2014 DR Contract performance data that is necessary to determine if the proposed commitment levels are reasonable.

**BACKGROUND**

Ordering Paragraph 18 of D.14-05-025 (the “Bridge Funding Decision”) directed SCE to continue to negotiate in good faith with its AMP program contractors to extend the agreements through 2016. SCE and its AMP program contractors were also encouraged to consider the changes approved by the Commission in the Pacific Gas and Electric Company (“PG&E”) AMP agreement improvements approved in Decision 14-02-033 as well as the changes recommended by ORA in Rulemaking (R.) 13-09-011.

In that same decision, the Commission issued OP 19, which required SCE to file a Tier 2 Advice Letter for approval of 2015-2016 re-negotiated AMP program agreements.

In compliance with OP 19, SCE met the timing requirement by filing the Advice Letter on July 15, 2014. SCE also attached copies of its AMP agreements in compliance with OP 19.<sup>1</sup> However, Tier 2 Advice letters are not granted automatically—Energy Division reviews and subsequently make a disposition through Commission resolution, which must contain findings of reasonableness pursuant to Public Utilities Code Section 451.<sup>2</sup> SCE proposes four AMP contract amendments for the 2015-2016 Bridge funding year. Pursuant to 7.4.2 of General Order 96-B, ORA bases its protest on the grounds that at this time, the

- (6) relief requested in the advice letter is unjust, unreasonable, or discriminatory and further review may be needed.

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<sup>1</sup> ORA does not take a position on SCE’s request for confidential treatment.

<sup>2</sup> All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

## **DISCUSSION**

### **The Advice Letter Needs to Be Considered in Conjunction with the Settlement or Resolution of Litigation in Phase 3 of R.13-09-011**

In Phase 3 of R.13-09-011, some parties plan to file a Motion to adopt a Settlement<sup>3</sup> and a Status Conference will be held on August 11, 2014 to provide an overview of the settlement.<sup>4</sup> AL 3078-E should be considered in conjunction with the Settlement and the connections and effects of both should be clearly understood before a decision is made. ORA does not believe that a short delay would prejudice any party and given the fact that the contract amendments do not begin until January 1, 2015, a brief suspension in the advice letter until any issues arising in connection with the Settlement are resolved would not adversely impact the parties.

### **SCE Must Provide Proposed DR Contracts 2013-2014 Performance which is Necessary to Determine Whether it is Reasonable to Extend These Contracts**

The DR contracts that are the subject of this AL were approved for the 2013-2014 time period. Thus, SCE's AL 3078-E must provide the 2013-2014 performance data of the proposed DR contracts, as information on their performance is necessary to determine whether it is in the public's interest to extend these contracts. It is also necessary for SCE to supplement this AL with the confidential 2013 and 2014 (to-date) performance for each proposed DR contract as SCE has the burden of proof to demonstrate the reasonableness of their request.<sup>5</sup> It is necessary that Commission Staff (including ORA) review the 2013-2014 AMP performance data to determine if it is in the public's interest to extend those proposed DR contracts.

ORA recommends the Commission only extend the contracts that have demonstrated good performance over the 2013-2014 time period. In reviewing the performance of the contracts in 2013, NAPP and Constellation in particular have shown poor performance that does not warrant an extension of their contracts or certainly not at the contract commitment levels proposed in the contract extensions.<sup>6</sup> However, available information on 2014 performance may lead to additional recommendations. ORA reserves the right to supplement this protest at a later date with further recommendations after SCE provides the AL supplement as specified.

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<sup>3</sup> Motion anticipated to be filed August 4<sup>th</sup>. July 31, 2014 ALJ Hymes E-mail Ruling Revising Schedule, p.6.

<sup>4</sup> July 31, 2014 ALJ Hymes E-mail Ruling Revising Schedule, p.6.

<sup>5</sup> See attachment for proposed template with regards to how the IOUs should consistently report the 2013-14 DR performance

<sup>6</sup> July 24, 2014 SCE Response to data request ORA-DR\_SCE002(2014), attached

## **Whether the Proposed Commitment Levels Are Reasonable is Dependent on the 2013-2014 DR Contract Performance**

The Commission's obligation to ensure just and reasonable rates are not exempted with regard to contract amendments and extensions. SCE proposes four contract amendments to extend contracts with Constellation, ECI, EnerNOC and NAPP. SCE's contract amendments propose the following MW level commitments:

***Table 1:***  
**Constellation MW Commitment Levels**

**\*\*\* TABLE 1 REDACTED \*\*\***

***Table 2:***  
**ECI MW Commitment Levels**

**\*\*\* TABLE 2 REDACTED \*\*\***

***Table 3:***  
**EnerNOC MW Commitment Levels**

**\*\*\* TABLE 3 REDACTED \*\*\***

***Table 4:***  
**NAPP MW Commitment Levels**

**\*\*\* TABLE 4 REDACTED \*\*\***

A determination of whether the proposed commitment levels are reasonable depends on both whether each DR Contract has sufficient customer enrollments to justify the proposed commitment levels and whether the 2013-2014 contract performance justifies extending the contracts at the proposed commitment levels. SCE should provide Commission Staff (including ORA) with confirmation from each proposed DR Contract which specifies how many Megawatts (MWs) are currently available, with subscribed customers to provide that response, and how many MWs of the contracted commitment

still require additional subscriptions in 2015. In addition, the 2013-2014 DR Contract performance data is also necessary as specified above in order to determine whether it is in the public's interest to extend the contracts at the proposed commitment levels. ORA reserves the right to supplement this protest at a later date with further recommendations after SCE provides the AL supplement as specified.

## **CONCLUSION**

The Commission should consider ORA's issues before issuing a disposition on the advice letter, and allow ORA additional time to submit supplemental information in regards to this protest. Please contact Lisa-Marie Salvacion at (415) 703-2069 ([lms@cpuc.ca.gov](mailto:lms@cpuc.ca.gov)) if you have any questions about this response.

Sincerely,

/s/ Michael Campbell

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R.13-09-011 Service List

**ATTACHMENT CONFIDENTIAL**