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Subject: RE: R1309011 Email Ruling Denying ORA Motion

To all parties of Rulemaking 13-09-011:

To address the Office of Ratepayer Advocates (ORA) concern in its August 29, 2014 email (see below), I am providing the following clarification. My August 29, 2014 Ruling stating that, "all references to the proposed exhibits in ORA's August 25, 2014 briefs or in reply briefs shall be disregarded" means that the proposed exhibits cannot be used to justify ORA's policy positions in its opening brief. The policy positions in ORA's brief will be considered. Thus, it is not necessary for ORA to refile its August 25, 2014 opening brief.

Kelly A. Hymes

Administrative Law Judge

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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

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Cc: ALJ_Support ID; ALJ Process; ALJ Docket Office; Ebke, Maryam
Subject: RE: R1309011 Email Ruling Denying ORA Motion

Your Honor,

Pursuant to Rule 11.1, ORA moves to file an Amended Brief in light of the ruling made today. ORA is concerned that "all references to the proposed exhibits in ORA's August 25, 2014 briefs or in reply briefs shall be disregarded," may also disregard ORA's policy positions, which should still remain intact. ORA will remove all references to its exhibits, as specified below, in the hope to provide better clarity to the parties when preparing reply briefs.

Best regards,

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Cc: ALJ_Support ID; ALJ Process; ALJ Docket Office
Subject: R1309011 Email Ruling Denying ORA Motion

On August 18, 2014, the Office of Ratepayer Advocates (ORA) filed a motion to move new exhibits into the record of evidence. ORA's motion is denied based on the Commission's Rules of Practice and Procedure (Rule) 13.7(c), which requires that documentary exhibits be limited to those documents relevant and material to the proceeding. As discussed below, this Ruling finds that the exhibits proposed in ORA's motion do not meet the parameters of being relevant and material to the Phase Three issue of the Demand Response Auction Mechanism (DRAM) as the preferred demand response procurement mechanism.

ORA filed its motion to move new exhibits into the record of evidence in Rulemaking 13-09-011 based on three premises: 1) that ORA complied with Rule 12; 2) the evidence is relevant to

the Phase Three issues of Demand Response Auction Mechanism (DRAM) as the preferred demand response procurement mechanism; and 3) the evidence does not violate any party's right to due process.

On August 21, 2014, the Joint Demand Response Parties (*the Joint Parties are EnerNOC, Inc., Johnson Controls, Inc., and Comverge, Inc.*) and Pacific Gas and Electric Company (PG&E) each filed a response to the motion. The Joint Parties oppose the ORA motion stating that 1) the Motion mischaracterizes or ignores the Settlement Agreement, the Administrative Law Judge's Rulings in the proceeding, and the timing of its request; 2) ORA's motion does not establish the relevancy of the exhibits; and 3) All other parties' due process rights will be violated by admission of the exhibit. PG&E does not oppose the admittance of the exhibits but objects to the assertion that the exhibits would prove ORA's recommendations regarding making DRAM the preferred mechanism for procuring demand response. Pursuant to Rule 11.1(f), the Administrative Law Judge approved a request from ORA to reply to the responses of the Joint Parties and PG&E.

In its motion, ORA contends that the Aggregated Managed Portfolio (AMP) Program contracts are the closest potential alternative to procuring through the DRAM within the utilities' portfolio and that the exhibits show the overall poor performance in 2013, which supports ORA's argument that DRAM should be the preferred procurement mechanism. However, as argued by the Joint Parties and PG&E, the data provided in the proposed exhibits neither "explains how the isolated performance of the 2013 contract can be compared to the DRAM" (*see Joint Parties Response at 6*) nor, more convincingly, "conclude that the customers' responses would be different if they are in an aggregator's AMP portfolio as opposed to another [Demand Response] program" (*see PG&E Response at 2*).

After review of the aforementioned documents, including the proposed exhibits, I find that ORA's motion and reply fails to establish the relevancy of the proposed exhibits. The proposed exhibits pertain to one year of data (2013) in AMP contracts that are no longer relevant because they are currently being revised. Additionally, the data in the exhibits concern customer behavior not aggregator behavior and ORA fails to create a correlation to improved customer response in the DRAM as the preferred procurement mechanism. Thus, ORA's motion is denied; the proposed exhibits will not be admitted into the record of evidence for Rulemaking 13-09-011. Furthermore, all references to the proposed exhibits in ORA's August 25, 2014 briefs or in reply briefs shall be disregarded.

The Docket Office shall formally file this Ruling.

Kelly A. Hymes

Administrative Law Judge

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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