**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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| 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<br><br>(Filed September 19, 2013) |

# REPLY BRIEF OF THE SIERRA CLUB AND THE NATURAL RESOURCES DEFENSE COUNCIL


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September 8, 2014

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# REPLY BRIEF OF THE SIERRA CLUB AND THE NATURAL RESOURCES DEFENSE COUNCIL

The Sierra Club and the Natural Resources Defense Council (NRDC) respectfully submit the following reply brief in response to the opening briefs filed by various parties on August 25, 2014. The Sierra Club and NRDC's joint initial brief addressed only the issue of the participation of stationary fossil-fueled back-up generators (BUGs), a phase 2 "foundational" issue identified by the Commission.[1] Similarly, in this joint reply, Sierra Club and NRDC will only respond to the arguments raised in the opening briefs regarding the participation of stationary BUGs.

In their initial brief, the Sierra Club and the NRDC recommended that the Commission adopt a rule requiring utility contracts governing demand response (DR) resources to simply state whether the potential DR provider has a fossil-fueled back-up generator and to provide the make, model, and location of that BUG if they do own or operate this type of generator. With regard to aggregators or third parties, these entities should be directed to provide this information to the utility. The third parties or aggregators may collect this information in any reasonable

[1] Joint Assigned Commissioner and Administrative Law Judge Ruling and Scoping Memo, R.13-09-011 (issued November 14, 2013) ("Scoping Ruling").

manner, including the contractual provisions described above. As explained more fully below, none of the arguments raised by the other parties should dissuade the Commission from adopting this proposal.

## I. Argument

### A. For over a decade, this Commission has expressly prohibited BUG use in DR programs.

The Joint Demand Response Parties and the Direct Access Customer Coalition (DACC) both incorrectly assert that that the Commission has not adopted a BUGs "policy."[2] To the contrary, in our initial brief, the Sierra Club and NRDC demonstrated that for over ten years the Commission has consistently held it is inappropriate to use fossil-fueled back-up generation for DR.[3]

Moreover, the Joint Demand Response Parties also misinterpret D.11-10-003. In that decision, the Commission was simply applying its long-stated policy prohibiting the use of BUGs in the resource adequacy proceeding, stating "we have consistently stated that demand response programs that rely on using back-up generation were contradictory to our vision for demand response and the Loading Order."[4] The Joint Demand Response Parties' reliance on the Commission's statement that BUGs resources should not be allowed as part of a DR program

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[2] Joint Demand Response Parties Opening Brief at 10-12; DACC at 17-18 .

[3] Initial Brief of Sierra Club and NRDC at 6-7, *citing* California Demand Response: A Vision for the Future (2002-2007). R.02-06-001; D.03-06-032, Attachment A at 2 ("(t)he Agencies' definition of demand response does not include or encourage switching to use of fossil-fueled emergency backup generation, but high-efficiency, clean distributed generation may be used to supply on-site loads."); D. 05-01-056, pp. 47-49; D.06-11-049 at 58,; State of California, *Energy Action Plan, 2008 Update* (Feb. 2008); D.09-08-027 at 164-166.

[4] D.11-10-003. The Commission expressly noted that back-up generation typically uses high-emitting fossil fuels, which is far below DR according to the Loading Order, which "established that the state, in meeting its energy needs, would invest first in energy efficiency and demand-side resources, followed by renewable resources, and only then in clean conventional electricity supply." See D.11-03-001, citing 2008 Updated Energy Action Plan at 1.

for resource adequacy purposes "subject to rules adopted in future RA proceedings" is clearly misplaced.[5] Read in context, the Commission, in recognition of the parties' concerns regarding lack of data or analysis to the extent that customers use their BUGs for DR, was delaying the implementation of its BUGs policy, not stating an intention to reconsider this long-held policy position in a future proceeding.

Moreover, the Commission's BUGs policy is not contrary to its goal of enhancing DR.[6] In a 2002 DR rulemaking, the Commission developed a vision statement[7] which listed three main objectives for DR, one of which was environmental protection.[8] In 2003, the Commission adopted an Energy Action Plan[9] that proposed specific actions to ensure that adequate, reliable, and reasonably priced electrical power and natural gas supplies are achieved and provided through policies, strategies, and actions that are cost-effective and **environmentally sound**. Clearly, the Commission does not support enhancing DR programs at the expense of the environment.

Thus, the Commission should reject the Joint Demand Response Parties and the DACC's contention that the Commission needs to address the issue of BUG use by stating what the Commission policy on DR was in D.11-10-003.[10] The Commission also should reject both DACC's request that the Commission include a commitment to address the appropriate use of BUGs in DR and California Large Energy Consumers Association's (CLECA) request that the

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[5] Joint Demand Response Parties at 11, *citing* D.11-10-003 at 33.
[6] *See, e.g.,* DACC at 18.
[7] R.02-06-001. This vision statement is entitled California Demand Response: A Vision for the Future (2002-2007).
[8] The other two main objectives were: reliability and lower power costs.
[9] State of California, Energy Action Plan,(emphasis added) available at http://docs.cpuc.ca.gov/published/REPORT/28715.htm.
[10] Joint Demand Response Parties at 10; DACC at 17-18.

Commission revise its 2011 policy statement.[11] The Commission has repeatedly reiterated its policy that BUGs should not participate in DR programs and no party offers any argument which would justify the Commission's reconsideration of this policy. Importantly, the Scoping Memo did not ask parties to address whether this policy should be reconsidered. To the contrary, the Commission clearly asked the parties to address how this long-standing policy should be implemented. Finally, none of the arguments put forth by other parties supports the Commission's abandonment of this policy.

### B. This Commission has the authority to determine who may participate in California's DR programs.

Some parties contend that the use of BUGs is outside of the Commission's jurisdiction and instead the direct responsibility of the Environmental Protection Agency, the California Air Resources Board (CARB), and local air quality management districts.[12] As noted in the Sierra Club and NRDC's initial brief, the Commission's BUGs policy is not designed to infringe on other agencies' jurisdiction over air emissions. California's DR programs are clearly within the jurisdiction of this Commission. The Commission has the authority to create a DR program designed to meet the criteria set forth in the policy statement and is authorized to determine who should receive payments under that program. The Commission is not restricting when an owner can operate a BUG, the Commission is simply setting forth a policy that the owner will not be paid for operating that BUG under its jurisdictional DR programs. A claim that the Commission has limited jurisdiction as to the DR programs it oversees stands counter to well-established law and policy.

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[11] DACC at 20; CLECA at 8.
[12] See, Joint Demand Response Parties at 15-17; Southern California Edison Company at 7-8; CLECA at 4-8.

### C. The Commission Should Require DR Participants to Provide Information Regarding Their Ownership or Operation of BUGs

Importantly, despite the fact that the Commission's BUG policy has been in effect for over a decade, no action has been taken to implement this policy. Contrary to the utilities' assertions, the Commission did mandate that those companies identify data on how customers intend to use BUGs, and identify the amount of DR provided by BUGs when enrolling new customers in the DR programs or renewing DR contracts.[13] Despite the Commission's explicit directive that the utilities should determine how to collect the information necessary to implement this policy, no sufficient tracking mechanism was established to determine the extent to which BUGs are currently being used, either directly or indirectly, as part of the DR programs. The utilities contend that maintaining records of BUGs and their usage is not directly within a utility's mandate.[14] However, this Commission, in D.11-10-003, placed the collection of that information squarely with the utilities' mandate.[15]

The Commission should note that the some of the parties opposing action on the BUGs policy assert that the use of BUGs in DR programs is rare.[16] However, the parties do not provide their factual basis for reaching this conclusion. Moreover, if so few DR participants actually use BUGs, the collection of this data regarding the BUGs in use should not be burdensome. Finally,

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[13] D.11-10-003 at p. 30, referring to A.11-03-001 et al.
[14] *See, e.g.,* PG&E Comments at 17; SCE Comments, at A9; and SDG&E Comments, at 10. See also Olivine Comments, at 3 ("Maintaining records of BUGs and or their usage is not directly within a utility's mandate").
[15] *See* D.11-10-003 at 30. ("We will require the IOUs work with Energy Division to identify data on how customers intend to use BUGs, and to identify the amount of DR provided by BUGs when enrolling new customers in the DR programs or renewing DR contracts").
[16] *See,* Joint Demand Response Parties at 14; Southern California Edison Company at 9.

the contention that BUG usage is rare counters other parties' contention that allowing these BUGs to participate in DR is necessary to avoid a "catastrophe."[17]

Only by following through on its commitment to collect information on BUGs can the Commission determine the extent of the problem and the best methods to implement its policy. Some parties have suggested that the Commission form a Working Group to address these issues.[18] This collection of data should not be delayed.[19] Moreover, the collection of this data will help the Commission to determine whether a Working Group is necessary and what specific issues that Working Group should consider.

## II. Conclusion

For over a decade, this Commission's policy has been to prohibit the use of BUGs as a DR resource. However, the Commission thus far has been unable to implement this policy due to a lack of information. To rectify this issue, and better facilitate the achievement of the Commission's long-standing policy goals, the Commission should direct utilities and third parties or aggregators to add a provision to their contracts asking the potential participant if they own or operate a BUG and, if yes, the make and model of that BUG as well as its location. This simple provision will not be burdensome and will enable the Commission to gather the information necessary to begin implementing this important policy and fulfill the goal of scaling DR in an environmentally responsible manner.

Continued for Signature:

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[17] *See, e.g.,* Joint Demand Response Parties at 17; DACC at 18; CLECA at 6.
[18] *See, e.g.,* Joint Demand Response Parties at 5; DACC at 20.
[19] The Commission should note that Southern California Edison Company expressly states that the Commission could require that DR customers who own fossil-fueled BUGs self-certify or self-report with the Commission. *See* Southern California Edison Company at 11.

Respectfully submitted,

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## VERIFICATION

I am the attorney for Sierra Club in this proceeding. Neither Sierra Club nor the Natural Resources Defense Council is located in Washington, DC, where I have my office, so I make this verification for that reason.

The foregoing:

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has been prepared and read by me and its contents are true of my own knowledge and based on information furnished by my client and the Natural Resources Defense Council which I am informed and believe to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 8, 2014, at Washington, DC.

Susan Stevens Miller
Counsel for Sierra Club