BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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 (Filed September 19, 2013)

JOINT REPLY BRIEF OF SOUTHERN CALIFORNIA EDISON COMPANY, PACIFIC GAS & ELECTRIC COMPANY, THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION AND ENERNOC, INC., JOHNSON CONTROLS, INC., COMVERGE, INC., (JOINT DR PARTIES) (COLLECTIVELY, SUPPORTING PARTIES) ON IDENTIFIED PHASE TWO AND PHASE THREE ISSUES

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SUMMARY OF RECOMMENDATIONS

Rule 13.11 of the Commission's Rules of Practice and Procedure requires a "summary of the briefing party's recommendations following the table of authorities." To this end, the Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), EnerNOC, Inc, Comverge, Inc., Johnson Controls, Inc. (Joint DR Parties), and the California Large Energy Consumers Association (CLECA) (together, the Supporting Parties) provide the following summary of their recommendations on two of the issues included for briefing in Phase Two and Phase Three of this proceeding. The Supporting Parties respectfully request that the Commission's decision in Phase Two and Phase Three of this proceeding resolve these issues as recommended in this Joint Reply Brief and summarized as follows:

Use of Fossil Fueled Backup Generation Systems (BUGS) in Demand Response (DR) Programs:

- The Commission should clarify its policy and compliance requirements related to use of BUG by DR participants;
- The Commission should also acknowledge jurisdictional constraints and conflicts and revise its policy statement accordingly;
- The Commission should focus its efforts on maximizing DR in California rather than an environmental issue that is regulated by other agencies; and
- The Commission should acknowledge that there is a lack of data to definitively support whether the use of BUG by DR participants is a serious issue.

Participation in Demand Response Auction Mechanism (DRAM) Pilot:

- The Commission should not impose a limit on other forms of DR solicitations while the DRAM Pilots are administered according to the terms of the Settlement Agreement.
- It would be premature to establish any limits on other forms of DR solicitations until the results of the DRAM are fully evaluated.

- Caps on other forms of DR procurement will limit the ability of the Investor-Owned Utilities (IOUs) to secure other forms of DR resources than Resource Adequacy (RA) tags.
- Caps on other forms of DR procurement may frustrate the ability to maintain and grow DR relative to existing levels.
- Caps on other forms of DR procurement may frustrate the ability to achieve the DR Goals contained in the Settlement Agreement.
- Therefore, the Commission should reject the proposals of both the Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) to establish limits on other forms of DR Solicitations until the results of the DRAM Pilots are evaluated.
- ORA's attempts to diminish the value of existing Aggregator Managed Portfolio (AMP) contracts lacks the support of record evidence, is unsubstantiated or false, and should be disregarded or given no weight by the Commission.

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The Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), EnerNOC, Inc, Comverge, Inc., Johnson Controls, Inc. (Joint DR Parties), and the California Large Energy Consumers Association (CLECA) (together, SUPPORTING PARTIES) jointly submit this Joint Reply Brief in Phase Two and Phase Three in this Rulemaking (R.) 13-09-011 (Demand Response (DR)). This Joint Reply Brief is timely filed and served pursuant to the Commission's Rules of Practice and Procedure (Rule 13.11) and the Administrative Law Judge's (ALJ's) Email Ruling served on August 13, 2014 (August 13 ALJ's Ruling). Each Supporting Party has authorized CLECA to sign this reply brief on its behalf.

I.
USE OF FOSSIL-FUELED BACK-UP GENERATORS IN DR PROGRAMS: THE COMMISSION SHOULD DEFER TO AIR QUALITY DISTRICTS TO REGULATE BACK-UP GENERATION

The Commission's policy statement in D. 11-10-003 regarding the use of Back-Up Generators (BUGs) by DR participants has not imposed specific compliance obligations.[1] In this Rulemaking, the Commission's goal is to maximize the use of demand response (DR) in California. The Commission should focus its efforts on that goal and not on a possible

1 DACC/AReM Opening Brief, p. 17-18; Joint DR Parties Opening Brief, p. 12; See also, Exhibit CLE-02, Witness Barkovich, p. 3; Exhibit PGE-01, Witness Tougas, pp. 7-1 – 7-3; Exhibit SCE-01, Witness Wood, pp. 46-47.

environmental impact that is regulated by other agencies. In any event, there is a lack of data to definitively support whether the use of BUG by DR participants is a serious issue. If the Commission decides to examine BUG use during DR events, it needs to develop a record to determine whether there is a problem to be solved and should first initiate a collaborative process that includes the air quality agencies that have jurisdiction over air emissions.

A. The Commission Should Clarify The Policy Statement Regarding BUG Use By DR Participants

As the Joint DR Parties explained, the Commission's policy statement was incorrectly identified in both scoping memos issued in this proceeding and has caused NRDC, Sierra Club, and ORA to erroneously assert that the Commission has already adopted and must now enforce a policy that either prohibits BUG use for DR or disallows BUG use for RA purposes.[2] To correct the record, the Commission should do the following:

- Confirm that Ordering Paragraph (OP) 3 of D.11-10-003 does not refer to or adopt a policy governing the use of BUG by DR participants.[3]
- Confirm that OP 3 directs the IOUs to work with the Energy Division to identify data on how customers intend to use BUG and the amount of DR provided by BUG.[4]
- Acknowledge that the policy statement identified in Conclusion of Law 5 of D.11-10-003 is limited to the use of BUG for RA purposes and is dependent upon rules yet to be adopted in a future RA proceeding.[5]
- Acknowledge that compliance obligations related to whether a DR program that includes participants that use BUG should count toward RA obligations do not yet exist.[6]

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2 Joint DR Parties Opening Brief, pp. 8-9.
3 Joint DR Parties Opening Brief, p. 10.
4 Id.
5 Joint DR Parties Opening Brief, p. 11.
6 Ex. SCE-01, at p. 47 (SCE (Wood)).

B. The Commission Should Acknowledge the Jurisdictional Conflict Caused By Its BUG Policy Statement and Focus its Efforts on Maximizing DR

In their Opening Brief, NRDC and Sierra Club try to draw a clear line between the Commission having jurisdiction over the DR programs that are clearly within its purview and air quality agencies having jurisdiction over air emissions.[7] However, to the extent that the Commission enacted rules that contradict air quality regulations that permit limited use of back-up generation (BUG) during a DR event, that line gets blurred. CLECA and the Joint DR Parties have presented thorough discussions of the existing air quality regulations with which implementation of the Commission's policy statement would be in conflict.[8] Any such conflict in policy would be subject to interpretation by the courts, which have previously concluded that "the Legislature has delegated enforcement of these emission controls to air pollution control districts."[9] As the Commission itself recognized, "[W]e recognize that our inherent and broad authority is limited when the Legislature acts to impose a specific limit on that authority or otherwise provides explicit direction regarding a particular matter."[10] Therefore, the Commission should create a policy statement that clarifies what was said in D.11-10-003 and acknowledges regulation by the federal, state, and local air quality agencies that permits the use of BUG and to acknowledge the authority of those agencies to regulate air emissions.[11]

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7 Sierra Club and NRDC Initial Brief, p. 10; *but see* NRDC Comments, dated Dec. 13, 2013, at 7-8 (describing state Air Resources Board and local air quality agency regulations that explicitly and specifically permit the use of back-up generation in connection with certain emergency and reliability demand response programs).

8 CLECA Opening Brief, pp. 4-8; Joint DR Parties Response to Phase 2 Foundational Questions, pp. 13-15.

9 CLECA Opening Brief, p. 7.

10 D.08-11-060, at 4-5 (vacating prior order establishing the California Institute for Climate Science due to lack of jurisdiction). In connection with that failed attempt at ultra vires regulation, the Legislative Counsel of California wrote to Senator Perata, "Because the public utilities are subject to control by the Legislature, the commission may not exercise its general rulemaking and rate-fixing authority in a manner that is inconsistent with the statutory scheme adopted by the Legislature." (citing Utility Consumers' Action Network v. Public Utilities Com. (2004) 120 Cal.App.4th 644, 655 : "Despite its broad discretion in ratemaking and matters of energy policy, the PUC cannot change state law"). See Attachment to Application for Rehearing of TURN, DRA, UCAN of D.08-04-039, as modified by D.08-04-054, filed May 21, 2008 in R.07-09-008.

11 CLECA Opening Brief, p. 7.

Because the Commission does not have jurisdiction over third-party DR providers when they are not operating under contract to the IOUs, the Commission would not be able to address the concerns raised by NRDC and Sierra Club as the air quality districts could. NRDC and Sierra Club acknowledge that the authority to regulate air pollution lies with the air quality agencies and state that "the Commission has the authority and responsibility to enforce *D.11-10-003* and the Loading Order, and should follow through on implementing this policy with enforceable measures aimed at ensuring that DR in California remains clean."[12] However, as NRDC acknowledges, the Commission does not have jurisdictional authority over DR participants enrolled in a third-party DR provider's (DRP's) DR program that is bid directly into the CAISO market.[13] Thus, the Commission would not be able to prevent fossil-fueled BUG from being used by all DR participants and, if the Commission adopts NRDC and Sierra Club's proposal to require all DR participants to provide information regarding any BUG they may possess, that proposal would only be achievable for participants in IOU DR programs. This limited jurisdiction makes it impossible for the Commission to effectively regulate BUG use by all DR participants. The broad jurisdiction of the federal, state, and local air quality agencies makes them the appropriate bodies to regulate air emissions from BUG.

NRDC and Sierra Club state that "California's DR programs are clearly within the jurisdiction of this Commission."[14] This is true for IOU-managed DR programs. It is also within the Commission's authority, and one of its goals, to "increase the penetration of [DR] programs by doing a close examination of how we frame the programs, how they are offered, procured, and reduce barriers to entry for new customer participation."[15] While there is not a clear picture of how prevalent BUG use is by DR participants, one of two scenarios likely exists: either BUG use is so small that it does not have a significant impact on air emissions[16] or there

12 Sierra Club and NRDC Initial Brief, p. 10.
13 PG&E Opening Brief, pp. 21-22.
14 Sierra Club and NRDC Initial Brief, p. 10.
15 R.13-09-011, p. 15.
16 Joint DR Parties Response to Phase 2 Foundational Questions, p.13.

are a large number of DR participants who use BUG.[17] If the first scenario exists, the Commission's policy statement may not be necessary. If the second scenario exists, excluding customers who use BUG within the rules of federal, state, and local air quality agencies may severely impact DR participation.[18] The Commission should focus on increasing DR in the state and defer the regulation of air emissions from BUG to the air quality agencies.

C. The Commission Does Not Have a Sufficient Record To Create Rules Around BUG Use

The record in this proceeding is insufficient to enable the Commission to implement a policy that would prevent DR participants from using BUG when that use would otherwise comply with all existing air quality regulations. NRDC and Sierra Club's Opening Brief uses outdated and unsubstantiated information as support for their recommendation that the Commission should mandate activities with regard to BUG use. First, NRDC and Sierra Club cite to a study on BUGs conducted at University of California (UC) Berkeley.[19] The referenced study is not contained in the record and not included in either party's testimony.[20] Thus, the information provided should be disregarded as a basis for creating new Commission policy on BUGs. Second, NRDC and Sierra Club cite to a 2010 KEMA process evaluation study that involved only two of the IOUs' demand response programs.[21] Contrary to NRDC and Sierra Club assertions, it was not a comprehensive study. Contained in the 2010 study was a set of questions asking participating customers whether they had BUG onsite and whether they had used BUG to respond to a DR event. The Commission should not use the results of the 2010 study as a basis for determining BUG policy because, at a minimum, it: (1) is not a comprehensive assessment of all DR participants; (2) does not clarify the type of BUG a customer may have had on-site; (3) does not identify the extent to which BUG actually supported

17 Sierra Club and NRDC Initial Brief, p. 5.
18 DACC / AReM Opening Brief, p. 18; PG&E Opening Brief pp. 23-24.
19 The referenced study is titled, "Not All DR Created Equal: Assessing the Role of Backup Generation in Demand Response."
20 Although NRDC included the citation to the UC Berkeley study in their December 13, 2013 comments to foundational questions, it did not include the actual study.
21 NRDC and Sierra Club Opening Brief, p. 6.

DR;[22] and (4) does not consider that changes to emissions standards have since been made by the Environmental Protection Agency (EPA) which now requires annual reporting and the use of cleaner fuel, among other requirements.[23]

II.
LIMITED BRIEFING ISSUE ON DRAM PILOT

A. ORA's and TURN's Briefs Inappropriately Propose a Limitation on Other Forms of DR Procurement to Encourage Participation in the DRAM.

In their Opening Briefs, the Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) each argue that the Demand Response Auction Mechanism (DRAM) should be the preferred means of procuring Demand Response (DR) resources.[24] ORA and TURN both assert that the DRAM may fail to attract participants, not because the mechanism is ineffective, but because customers and aggregators will have other options for DR participation, some of which may be more attractive than participating in the DRAM.[25] In order to encourage participation in the DRAM, ORA and TURN ask that the Commission direct that other means of soliciting DR resources be limited by either a cap being placed on the amount of capacity that can be accessed through Investor Owned Utility (IOU) Requests for Offers (RFOs),[26] or that the Commission set-aside a specific local area, a specific customer type or a specific end use whose DR will be procured exclusively through the DRAM.[27]

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22 For example, in its Opening Brief, CLECA states, "Consider a customer with a 300 kW emergency back-up generator to meet safety requirements that could offer 10 MW of demand response. It would be illogical to disallow the customer's potential demand response because of that emergency back-up generation." (CLECA Opening Brief, p. 8.)

23 Joint DR Parties Opening Brief, p. 13. See also EPA fact sheet on final amendments: http://www.epa.gov/ttn/atw/icengines/docs/20130114overviewfs.pdf

24 ORA Opening Brief, at pp. 4-5; TURN Opening Brief, at pp. 7-10.

25 ORA Opening Brief, at pp. 8-10; TURN Opening Brief, at pp. 7-8.

26 ORA Opening Brief, at pp. 10-11.

27 TURN Opening Brief, at pp.7-10.

ORA and TURN are among the Settling Parties, which jointly moved for the adoption of a Settlement Agreement on Phase Three Issues on August 4, 2014. Pursuant to the Settlement Agreement, ORA and TURN joined with other Settling Parties in agreeing that implementation of the DRAM must begin with two (2) DRAM "pilot" auctions. One of the pilot auctions is to be held in 2015 for system resources that are deliverable in 2016 and beyond;[28] and the other is to be held in 2016 for system, local and flexible resources that are deliverable in 2017 through 2019.[29] A minimum of 22 MW (10 for SCE, 10 for PG&E and 2 for SDG&E)[30] was identified to test the DRAM. The DRAM design will be to procure resource adequacy (RA) "tags" for specific RA products that the benefitting load-serving entities (LSEs) can count toward their RA requirements (RAR).[31] The design of the DRAM, and the associated standard contract that will describe the obligations of the parties buying and selling RA "tags" that result from the DRAM, will be developed through a soon-to-be initiated process.[32]

Based on the terms of the Settlement Agreement, including the significant fact that the DRAM Pilot auctions have yet to be designed, the Supporting Parties share the strongly held position that limitations on other DR solicitations or participation during the development and pendency of the DRAM pilot auctions are wholly premature and unnecessary to encourage participation in these pilot auctions.[33] At this point in time, it is unreasonable to impose limits of any kind on other forms of DR procurement until the DRAM pilots have been conducted and parties can assess the success of the design and determine where modifications will be needed.

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28 August 4 Motion for Adoption of Settlement Agreement, Appendix A (Settlement Agreement), at p. 27.
29 Id.
30 August 4 Motion for Adoption of Settlement Agreement, Appendix A (Settlement Agreement), at p. 26.
31 Id.
32 Id., at pp. 24-25.
33 CLECA Opening Brief, at p. 21; SCE Opening Brief, at pp. 16-17; SDG&E Opening Brief, at pp. 3-4; Joint DR Parties Opening Brief, at pp. 24-26; PG&E Opening Brief, at pp. 30-31.

While the Supporting Parties are committed to working in good faith to develop a workable DRAM pilot design, it is reasonable to expect that future, and potentially significant, refinements may be necessary for future auctions to be successful.

In these circumstances, if the initial DRAM design is not successful and the Commission, as requested by ORA and TURN, has instituted caps on other forms of DR procurement, there is a significant risk that overall DR levels will be reduced and the IOUs' ability to achieve the goals established for DR in the Settlement Agreement will not be achieved.[34] In addition, the IOUs' RFO procurement may be for DR resources that go beyond the product definition for RA tags that will be procured through the DRAM. The IOUs should have the ability to procure resources to meet their needs and to meet changing conditions and requirements, some of which may be met through RA tags and some of which may be met through other products procured in the RFOs. Finally, ORA makes no suggestion for what would happen to the balance of customers in a "set-aside funnel" for the DRAM that are unable to participate in the DRAM – regardless of the reason. ORA has no proposal to enable such customers to otherwise participate in DR. The Commission should not approve ORA's request and "leave" that potential DR on the table.

B. ORA's Claims in its Opening Brief Regarding Existing AMP Contracts and Solicitation Processes Are Incorrect, Irrelevant and Should be Rejected.

In its Opening Brief, ORA also argues that a large customer base will need to be set aside to ensure that a minimum of 22 MW can participate in the DRAM.[35] As explained above, it is simply too soon to definitively state at this point what may or may not be required for the DRAM. Further, ORA wrongly contends that Aggregator Managed Portfolio (AMP)

34 Joint DR Parties Opening Brief, at pp. 24-25.
35 ORA Opening Brief, at p. 9.

aggregators do not need such a large funnel[36] for their programs because AMP does not require integration into the wholesale market.[37] In fact, AMP programs are designed to be compatible with bidding into CAISO markets.[38] Late last year, PG&E and its aggregators actually revised the delivery point and commitment level in their AMP contracts to the SLAP level instead of the LCA level to obtain more experience with the SLAP level which is required by the CAISO for bidding into its wholesale market. The Commission approved that change, noted the reason, and cited its commitment to having more demand response bid into the CAISO wholesale market.[39] Thus, PG&E's AMP contracts per se are compatible with being bid into the CAISO market, and must perform on that basis when the CAISO accepts a bid of PG&E's AMP load.

ORA also mischaracterizes the funnel on page F-8, PG&E-02, Appendix F. This is a "PDR 2014: Process Funnel" which reflects the various factors or barriers that limit the amount of MW of PG&E's existing DR portfolio that can feasibly be integrated into the CAISO market. The challenges reflected in this process funnel are from the CAISO requirements (i.e., compatibility with becoming a CAISO resource), Direct Access Impacts (i.e., lack of ESP obligation to enable its customers to bid into the CAISO market), and Operational Manageability (i.e., automated registration processes).[40] Those process limitations are the reasons 230 MW of program participation at the top of the funnel becomes 10-20 MW of Integration Potential. Thus ORA completely misreads the Process Funnel if it thinks that PG&E's AMP contracts do not involve integration into the CAISO market. Moreover, PG&E has been bidding AMP load into the CAISO market this summer, as PG&E witness Abreu testified was PG&E's plan:

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36 A funnel is a term used to illustrate the difference between the number of customers contacted versus the number of customers that result in a sale.
37 ORA Opening Brief, at p. 9.
38 *C.f.*, PGE-02, Appendix F, at F-6.
39 D.14-02-033, page 9, and Finding of Fact 16.
40 Spence, PGE-02, p. B-10, II. 15-21, p. B-11, II, 23-32.

> [I]n recognition of the expressed desire of the Commission and CAISO to have more DR bid into the CAISO market as Supply Resource DR, PG&E has committed to integrating approximately 10-20 MW of its DR, consisting of subsets of its Capacity Bidding Program (CBP) and Aggregator Managed Portfolio (AMP) Program, as Supply Resource DR in 2014 and will increase that amount in 2015 and 2016 to the extent it is feasible and practical to do so[41]

In other words, the limitations on bidding into the CAISO market arise from the operational and technical challenges that will be tackled by the working groups pursuant to the Settlement Agreement.

The record in this proceeding demonstrates that DR providers require access to large pools of customers. At the Workshops held during the week of June 9, 2014, EnerNOC described why the current local delivery requirements, together with local settlement, limit the customers that EnerNOC would invite to participate in its portfolio to good performers in order to minimize performance risk.[42] That condition, which is similar to the delivery and settlement requirements in the wholesale market, requires a relatively large funnel for AMP contracts.

ORA's brief includes numerous, irrelevant claims regarding what they regard as inadequate performance of utility AMP contracts. The performance of AMP contracts is not within the scope of this proceeding, and the relevant issue is whether participation in existing DR programs should be reduced to support participation in DRAM. Thus, using DRAM to mount a collateral attack on one form of DR program is inappropriate, and ORA's claims are irrelevant to this issue.

Nevertheless, the Supporting Parties provide a response to ORA's unsupported allegations to clarify the record of this proceeding.[43] First, ORA alleges that AMP contracts are

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41 Abreu, PG&E-01, p. 4-3, l. 34 to p.4-4, l. 4.)

42 Workshop Report, at p. 8.

43 On August 29, 2014, ALJ Hymes issued an Email Ruling denying a motion filed by ORA on August 18, 2014, to move new exhibits into evidence. These proposed exhibits related to the performance of

the most likely candidate for integration into the wholesale market.[44] While AMP contracts are certainly "a" potential candidate, they are not the exclusive candidates. The capacity bidding program (CBP) is another potential candidate.[45]

ORA's exclusive focus on AMP as the primary driver in somehow limiting participation in the DRAM is, therefore, completely misplaced.

Second, ORA also discounts the value of AMP contracts based on the claim that AMP contracts are not required to meet the stringent requirements of bidding into the CAISO market, meeting a must-offer obligation (MOO).[46] To begin with, several existing AMP contracts are designed so that they can be bid into the wholesale market because they are required to be deliverable on a sub-LAP (load aggregation point) basis. In fact, the Commission required local delivery in order for DR to count for local RA purposes in D.11-10-003. Some of these resources can deliver with 30 minutes notice. At this point in time, a MOO has been proposed by CAISO to the Federal Energy Regulatory Commission (FERC) for flexible capacity resources, but it has not been approved. A MOO for local and system RA is also currently under development in the CAISO's Reliability Services Initiative (RSI), but has not been submitted to FERC for approval. Therefore, at present, no MOO has been approved for purposes of wholesale market participation by DR.

2013 AMP contracts. In denying this motion, the ALJ's 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." The ALJ's Ruling, in turn, orders that the proposed exhibits will not be admitted, and all references to the proposed exhibits in ORA's August 25, 2014 briefs or in reply briefs shall be disregarded. The Supporting Parties fully support this well-reasoned ruling. While the proposed exhibits have no relevancy and are not part of the record, ORA's Opening Brief nevertheless makes other unsupported arguments regarding the existing AMP contracts and solicitation processes that still warrant a full reply here, especially given a further email communication from ORA, sent to the ALJ and parties on August 29, which indicates that ORA will continue to pursue these arguments in its Reply Brief.

44 ORA Opening Brief, at p. 5.

45 SCE-01, at 17-18.

46 ORA Opening Brief, at p.5.

ORA's statements in its Opening Brief appear to reflect a desire to have DR meet requirements that are not fully in place and a belief that somehow participation in the DRAM will allow DR to achieve these new functionalities. However, the Settlement Agreement clearly states that participation in the DRAM is also impacted by, and dependent on, other issues and conditions unrelated to AMP contracts.[47] Among them are the IOUs' Rule 24/32 applications for facilitating third-party participation in the wholesale market (A.14-06-001, et al.), the approval by FERC of MOO for DR resources, and the resolution of the market integration barriers that will be addressed through the Supply Resource DR Integration Working Group.

Resolution of these issues is needed before any resource can participate in an auction administered through the DRAM. For this reason, reducing or capping the ability for other DR solicitations can reduce DR participation in the state in two ways: by forcing resources to participate as a supply resource in a mechanism that is not fully formed and by reducing the ability to participate as a load-modifying resource.

Third, ORA states in its Opening Brief that the current RFO solicitation process is not competitive, does not provide price transparency, and does not result in the lowest costs for ratepayers.[48] ORA attempts to support its claim by stating that the IOUs do not have specific amounts of MW for which they are soliciting.[49]

However, ORA fails to state why the identification of a specific amount of DR capacity (MW) makes any difference as to whether the solicitation is competitive or not. The IOUs are

47 August 4 Motion for Adoption of Settlement Agreement, Appendix A (Settlement Agreement), at pp. 27-28.
48 ORA Opening Brief at p. 6.
49 Id.

required to procure all cost-effective, feasible and reliable DR and EE by statute[50] and by policy of the Joint Energy Agencies.[51]

ORA also fails to describe how a limit on DR solicitations is copacetic with the statute or state policy or how procurement of DR resources that are cost effective is inconsistent with the interests of ratepayers. Since the RFO contracts are submitted for review to the Procurement Review Group (PRG), in which both TURN and ORA are participants, before they are submitted to the Commission for approval, ORA has not supported its assertion that this process results in a lack of price transparency related to these contracts. Further, since most RA contracts are negotiated bilaterally, how is the procurement of DR resources any different from other means of procuring RA capacity? ORA's criticisms lack the support of factual evidence, are inconsistent with law and state policy, and should be rejected by the Commission.

Fourth, ORA's Opening Brief also claims that AMP programs have not passed the cost effectiveness test,[52] referencing D.12-04-045. The claim fails to acknowledge and account for the recognized deficiencies of the cost effectiveness methodology[53] which are expected to be remedied in a future phase of this proceeding.[54] Furthermore, the Commission has made clear that cost effectiveness measurements inform, but do not dictate, its decision making process.[55] Additionally, the current AMP contracts in place are not the same as those that were examined in D.12-04-045. PG&E's current AMP contracts are the result of a competitive solicitation and PRG deliberation, a process which the Commission found to be appropriately competitive to

50 PU Code §454.5(b)(9)(C).
51 Energy Action Plan (EAP) I (2003); EAP II (2005); EAP Update (2008).
52 ORA Opening Brief, at p. 7.
53 D.12-04-045, at pp.45-47; Finding of Fact 13, at p. 207.
54 D.12-04-045, at pp. 32-33.
55 D.12-04-045, at pp. 41-42.

determine cost effectiveness, enabling these contracts to be approved by the Commission.[56] Since then, PG&E received Commission approval to amend its AMP contracts for 2014[57] and to extend the contracts over the bridge period (2015-2016).[58] SCE was encouraged to work with aggregators and ORA to amend its AMP contracts in a manner comparable to PG&E's contracts,[59] and submit its amended contracts via a Tier 2 advice letter.[60]

Fifth, ORA also states that the AMP contracts include ineffective penalty mechanisms, particularly in SCE's service territory, which ORA claims do not adequately encourage good performance.[61] This is inaccurate. Regardless, it is ratepayers, if anyone, who have benefitted the most from the penalty systems used to manage DR resources.[62] Perhaps more importantly, the revised payment structure in the approved bridge contracts attempt to provide a more linear scale of payment for delivered capacity within reasonable ranges, while ensuring that performance is maintained at acceptable levels.[63]

ORA has failed to demonstrate how ratepayers are harmed through the current solicitation of AMP contracts, by the penalty structure, by acquiring cost effective DR resources or by demonstrating how the DRAM will be an improvement relative to these existing processes. ORA's arguments on this point, like their other statements regarding the AMP contracts described above, again are false, misleading, and unsupported and must be rejected by the Commission.

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56 D.13-01-024, at p. 13; Conclusion of Law 8, p. 33; Ordering Paragraphs 1 and 3, p. 34.
57 D.14-02-033, at p. 15-17.
58 D.14-05-025, Ordering Paragraph 6.a., at p. 50.
59 D.14-05-025, Ordering Paragraph 18, at p. 53.
60 D.14-05-025, Ordering Paragraph 19, at p. 53.
61 ORA Opening Brief, at p. 7.
62 The payment structure has been revised in the approved contracts for the bridge funding period; previously, however, if an aggregator provided 89 of 100 MW in one event, it would be paid for only 44.5 MW. The prior performance structure penalized the aggregator and its customers by paying for only half of the delivered capacity, rather than focusing on the actual 11 MW shortfall.
63 D.14-02-033, Finding of Fact 8, at p.13.

C. The Commission Should Adopt the Joint Recommendations of the Supporting Parties on DRAM Pilot Participation.

The Supporting Parties support the Settlement Agreement and do not support any limitation on any form of DR solicitation at this time. A limitation on other forms of DR solicitations, in an attempt to force DR solicitation through an untested DRAM mechanism, could be detrimental to attaining DR goals and to maintaining, and growing, DR relative to existing levels. Therefore, the Supporting Parties do not support the proposal to limit other DR solicitations as proposed by ORA and TURN.

Further, the Supporting Parties urge the Commission to reject and disregard ORA's attempt to diminish the value of AMP contracts and aggregators. ORA's statements are not supported by record evidence, are unsubstantiated and false, as described above and summarized in the conclusion.

III.
CONCLUSION

Based on the applicable law and record in this proceeding, the Supporting Parties respectfully request that the Commission's decision in Phase Two and Phase Three of this proceeding (1) adopt the multi-party Settlement Agreement, filed by Motion for Adopting on August 4, 2014, and (2) resolve the issues related to the use of fossil-fueled Back-Up Generators in DR programs and operation of the DRAM pilot as recommended herein and summarized below.[64]

Use of Fossil Fueled BUGS in DR Programs:

The Commission should:

- clarify its policy and compliance requirements related to use of BUG by DR participants;

[64] Each of the Supporting Parties has authorized CLECA to sign and file this reply brief on its behalf.

- acknowledge jurisdictional constraints and conflicts and revise its policy statement accordingly;
- focus its efforts on maximizing DR in California rather than an environmental issue that is regulated by other agencies; and
- acknowledge that there is a lack of data to definitively support whether the use of BUG by DR participants is a serious issue.

If the Commission decides to implement its conflicted policy, it should follow the recommendation of several parties in this proceeding and initiate a collaborative process that includes the air quality agencies that have jurisdiction over air emissions to determine whether there is a problem to be solved.[65]

Participation in DRAM Pilot

- The Commission should not impose a limit on other forms of DR solicitations while the DRAM Pilots are being administered according to the terms of the Settlement Agreement.
- It would be premature to establish any limits on other forms of DR solicitations until the results of the DRAM are fully evaluated.
- Caps on other forms of DR procurement will limit the ability for the IOUs to secure other forms of DR resources than RA tags.
- Caps on other forms of DR procurement may frustrate the ability to maintain and grow DR relative to existing levels.
- Caps on other forms of DR procurement may frustrate the ability to achieve the DR Goals contained in the Settlement Agreement.
- Therefore, the Commission should reject the proposals of both ORA and TURN to establish limits on other forms of DR Solicitations until the results of the DRAM Pilots are evaluated.

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[65] *See, e.g.*, SCE-01A, at 49, lines 11 to 15 (SCE/Wood).

- ORA's attempts to diminish the value of existing AMP contracts lacks the support of record evidence, is unsubstantiated or false, and should be disregarded or given no weight by the Commission.

Respectfully submitted,

Nora Sheriff
On Behalf of the Supporting Parties

September 8, 2014