BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies and Protocols for Demand Response Load Impact Estimates, Cost-Effectiveness Methodologies, Megawatt Goals and Alignment with California Independent System Operator Market Design Protocols	Rulemaking 07-01-041 (Filed January 25, 2007)

JOINT MOTION OF CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION, DIVISION OF RATEPAYER ADVOCATES, ENERNOC, INC., PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E), SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), AND THE UTILITY REFORM NETWORK FOR ADOPTION OF SETTLEMENT; SETTLEMENT ATTACHED

SHIRLEY A. WOO
Attorneys
PACIFIC GAS AND ELECTRIC COMPANY
77 Beale Street
San Francisco, CA 94105
415/973-2248 (Tel); 415/973-5520 (Fax)
saw0@pge.com

STEVEN D. PATRICK
Attorney
SAN DIEGO GAS & ELECTRIC COMPANY
555 West 5th Street, Suite 1400
Los Angeles, CA 90013-1011
213/244-2954 (Tel); 213/629-9620 (Fax)
spatrick@sempra.com

WILLIAM H. BOOTH
Attorney, Law Offices of William H. Booth
CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION
67 Carr Drive
Moraga, CA 94556
925/376-7370 (Tel); 925/376-9685 (Fax)
wbooth@booth-law.com

JENNIFER T. SHIGEKAWA
JANET S. COMBS
Attorneys
SOUTHERN CALIFORNIA EDISON COMPANY
2244 Walnut Grove Avenue
Rosemead, CA 91770
626/302-1524 (Tel); 626/302-7740 (Fax)
janet.combs@sce.com

MICHEL PETER FLORIO
Attorney
THE UTILITY REFORM NETWORK
115 Sansome Street, Suite 900
San Francisco, CA 94104
415/929-8876 x 302 (Tel); 415/929-1132 (Fax)
mflorio@turn.org

LISA MARIE SALVACION
Attorney
DIVISION OF RATEPAYER ADVOCATES
505 Van Ness Avenue
San Francisco, CA 94102-3298
415/703-2069 (Tel)
lms@cpuc.ca.gov

SARA STECK MYERS
Attorney
ENERNOC, INC.
122-28th Avenue
San Francisco, CA 94121
415/387-1904 (Tel); 415/387-4708 (Fax)
ssmyers@att.net

BALDASSARO DI CAPO
Attorney
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORP.
151 Blue Ravine Road
Folsom, CA 95630
916/608-7152 (Tel); 916/608-7222 (Fax)
bdicapo@caiso.com

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JOINT MOTION OF CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION, DIVISION OF RATEPAYER ADVOCATES, ENERNOC, INC., PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E), SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), AND THE UTILITY REFORM NETWORK FOR ADOPTION OF SETTLEMENT; SETTLEMENT ATTACHED

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Pursuant to Rule 12.1 *et seq.* of the California Public Utilities Commission's (Commission) Rule of Practice and Procedure, the California Independent System Operator Corporation (ISO), California Large Energy Consumers Association (CLECA), Division of Ratepayer Advocates (DRA), EnerNOC, Inc. (EnerNOC), Pacific Gas And Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and The Utility Reform Network (TURN) (collectively, the Settling Parties) request that the Commission adopt and find reasonable the settlement regarding the integration and operation of the emergency-triggered demand response (DR) programs of the investor-owned utilities (IOUs) in the wholesale electricity market ("Settlement"), which is attached hereto as **Exhibit A**. The Settling Parties comprise representatives from five groups of active parties in Phase 3 of this proceeding: wholesale market interests (ISO), bundled ratepayer interests, including residential and small business customers (DRA, TURN), representatives of large customers participating in the IOU emergency-triggered DR programs (CLECA), third-party DR providers (EnerNOC), and the IOUs (PG&E, SCE and SDG&E). One other party in this Phase, Alliance for Retail Energy Markets (AReM) did not join the Settlement, but has indicated it does not oppose the Settlement.

This motion seeks Commission approval of the Settlement as presented herein and without revision.

I. BACKGROUND

The Commission opened this rulemaking on January 31, 2007 as part of a "continuing effort to develop effective demand response (DR) programs" and identified consideration of "modifications to DR programs needed to support the [ISO's] efforts to incorporate DR into market design protocols"[1] as an objective of the rulemaking.

Phases 1 and 2 were initiated to address DR program cost-effectiveness, load impacts, and goals.[2] One specific issue that arose in Phase 2 was whether existing emergency-triggered DR programs should be modified to facilitate their integration into the ISO's Market Redesign and Technology Upgrade (MRTU). Comments on this issue were requested by a Ruling issued June 9, 2008.[3] In response, the ISO provided its rationale for reducing the amount of emergency-triggered DR in the IOUs' service areas.[4] The IOUs and other parties provided their reasons for maintaining the level of emergency-triggered DR.[5]

On July 18, 2008, the Commission initiated Phase 3 of this rulemaking to address the "operation of the IOUs' emergency-triggered DR programs in the future electricity wholesale

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1 *See* Order Instituting Rulemaking Regarding Policies and Protocols for Demand Response Load Impact Estimates, Cost-Effectiveness Methodologies, Megawatt Goals and Alignment with California Independent System Operator Market Design Protocols, effective January 25, 2007, p. 1.

2 A decision on DR load impact protocols was issued on April 24, 2008 (D.08-04-050). Resolution of other matters in Phases 1 and 2 is pending.

3 *See* Administrative Law Judge's Ruling Requesting California Independent System Operator Information On Emergency-Triggered Demand Response, issued June 9, 2008.

4 *See* Comments of the ISO, filed June 25, 2008, in which the ISO's analysis led it to conclude that between 1 to 2 percent of peak system load is an appropriate quantity of emergency-triggered DR.

5 *See e.g.*, Reply Comments on SCE, filed July 9, 2008; *also* Reply Comments of PG&E and Reply Comments of CLECA.

market.[6] Parties were asked to file pre-hearing statements on nine questions regarding the emergency-triggered DR programs, as follows:

1. Can any of the existing emergency-triggered programs be used prior to a CAISO declared stage 1, 2 emergency?
2. How are emergency-triggered programs useful for resource adequacy purposes?
3. What is the effect and usefulness of the emergency triggered DR programs to mitigate scarcity pricing under MRTU?
4. Should the emergency-triggered DR programs, as currently configured, be counted toward the Commission's Planning Reserve Margin? Why? or Why not?
5. Should the Commission direct the utilities to close existing Resource Adequacy (RA)-qualifying emergency-triggered DR programs to new entrants? Why or Why not?
6. Should the Commission direct the utilities to transition customers on these emergency programs to price-responsive DR programs? In what time period should this happen?
7. Should there be an option for existing and new customers to provide non-RA qualifying emergency responsive DR? What would the attributes be fore such a product?
8. How should the current IOU emergency-triggered DR programs be changed, if at all, to integrate better with MRTU? What changes might be appropriate?
9. How should utility emergency-triggered DR programs be changed, if at all, to help with the integration of intermittent renewable resources?[7]

Pre-hearing statements were filed on July 27, 2008, and a pre-hearing conference was held on August 20, 2008, during which the ISO, the IOUs and other parties largely reiterated their positions as stated in their filings on July 9 and July 27, 2008.[8] Thereafter, Phase 3 was informally suspended pending the operation of MRTU Subsequently, the IOUs, working in collaboration with the ISO and other stakeholders, proposed to modify their Base Interruptible Programs (BIP) by adding a new trigger condition to the program: a Warning notice issued by the ISO along with a determination by the ISO that a Stage 1 emergency is imminent, consistent with ISO operating procedure E-508B. The IOUs, the ISO and other stakeholders agreed to

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6 *See* Assigned Commissioner's and Administrative Law Judge's Amended Scoping Memo and Ruling, issued July 18, 2008.

7 *See* Assigned Commissioner's and Administrative Law Judge's Amended Scoping Memo and Ruling, dated July 18, 2008, pp. 6-7.

8 *See generally* Reporter's Transcript, Pre-Hearing Conference, August 20, 2008 in this proceeding.

continue to pursue efforts to voluntarily transition emergency-based DR program participants to price-responsive DR. The proposed modifications were approved in Resolution E-4220 on January 29, 2009. Shortly thereafter, SCE modified its other emergency-based DR programs to include the same "Stage 1 Imminent" trigger.[9]

On June 30, 2009, a proposed decision (PD) was issued in Application (A.) 08-06-001 *et al.* (regarding the IOUs' 2009 – 2011 DR program portfolios), recommending an interim cap on the emergency-triggered DR programs at then-current enrollment levels. The PD explained:

> "Currently, these [emergency-triggered DR] programs account for approximately 2,000 megawatts. In this and other proceedings, CAISO has sought access to these resources prior to a Stage 2 emergency. In 2008, the Commission initiated Phase 3 of R.07-01-041 to examine more closely the amount and type of emergency-triggered demand response that is needed for system reliability and may appropriately be triggered in response to a system Stage 1, 2, or 3 emergency, and the amount that can or should be transitioned to price-responsive triggers more integrated with the [ISO's] new markets.[10] Phase 3 of R.07-01-041 is intended to determine the direction of emergency-triggered programs, such as the appropriate amount of capacity (in megawatts) to enroll in these programs, and how to transition any excess capacity to non-emergency programs with price responsive triggers integrated with the CAISO's new markets. . . . In recognition of the ongoing examination of the appropriate size and role of emergency programs in R.07-01-041 Phase 3, we decline to expand existing emergency triggered programs or adopt new emergency programs with similarly limited triggers. Instead, we cap these programs at their current enrollment (in megawatts) and funding levels pending the resolution of R.07-01-041 Phase 3, with a limited exception for the PG&E SmartAC program. . . . [E]xpansion or replacement of these programs is postponed until the underlying policy issues are addressed in R.07-01-041."[11]

The final decision (D.09-08-027) was adopted August 20, 2009, imposing the interim caps on the IOUs' emergency-triggered DR programs.

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[9] *See* SCE's Advice 2325-E, proposing "Stage 1 Imminent" triggers for SCE's Summer Discount Plan and the Agricultural and Pumping Interruptible programs, approved effective March 29, 2009.

[10] The PD (at p. 32) noted that the BIP program "is not well integrated with MRTU, though the recent change that allows it to be called in advance of a Stage 1 emergency does increase the flexibility of the program."

[11] *See* PD, pp. 26-27.

Following the issuance of the PD in A.08-06-001 *et al.*, Phase 3 was re-activated on July 8, 2009 to hold workshops on the emergency-triggered DR programs.[12] Three workshops were scheduled to examine the optimal size of the emergency-triggered DR programs, consider alternatives to the emergency-triggered DR programs, and address implementation and transition issues for any alternatives identified in Workshop 2.[13]

Workshop 1 was held on August 10, 2009, and addressed the optimal size for emergency-triggered DR programs in each IOU's service area to maintain grid reliability. Stakeholders participated in panels to discuss positions and address questions. As documented in the Workshop Report[14] and the post-Workshop comments,[15] filed August 20, 2009 and August 27, 2009, respectively, parties engaged in vigorous debate on whether the emergency-triggered DR programs should be reduced from their current size, and little party consensus was achieved.

On September 23, 2009, ALJ Sullivan issued a Ruling summarizing parties' positions on the Workshop 1 issues, and providing additional guidance on Workshop 2:

> "SCE, SDG&E, and PG&E advocated for no cap on emergency-triggered DR programs. . . . SCE, SDG&E, PG&E and CLECA asserted that Commission Resolution E-4220, which added a pre-Stage 2 trigger to the affected programs, resolved all issues associated with emergency-triggered DR programs. Furthermore, PG&E and SCE viewed emergency-triggered DR programs as a cost-effective alternative to traditional supply resources (generators) and argued that the programs should be uncapped. . . . And PG&E, SCE, SDG&E and CLECA argued that emergency-triggered programs are also needed for local transmission and distribution emergencies.
>
> The CAISO advocated a cap on emergency-triggered programs of from 500 MWs to 1,000 MWs and further proposed allocations to each IOU consistent with this cap and based on the CAISO's Emergency Operating Procedure E-508A Load Shedding Guide. . . . The CAISO further maintained that Resolution E-4220 did not

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12 *See* Assigned Commissioner's Ruling Amending the Scoping Memo and the Schedule of Phase 3 of this Proceeding (the Amended Scoping Memo), issued July 8, 2009.

13 *See id.,* Section 3.2.

14 *See* Report of SCE on Workshop 1 of Phase 3, filed August 20, 2009 in this proceeding.

15 *See generally* comments of SCE, PG&E, SDG&E, CAISO, CLECA, TURN, and DRA on the Workshop 1 Report, filed August 27 and 28, 2009 in this proceeding.

> resolve the issue of double procurement. DRA supported the CAISO concerns and the need to reevaluate emergency-triggered DR programs and the use of the 500 MW-1000 MW cap. . . .
>
> The Amended Scoping Memo explicitly states that this proceeding will focus on 'the amount of emergency-triggered DR that is needed, by IOU service territory, to maintain grid reliability.' The argument that emergency-triggered DR programs provide local transmission and distribution benefits is a relevant issue that is within the scope of this proceeding. It is reasonable to conclude that emergency-triggered DR programs may provide transmission and distribution benefits on constrained circuits. However, the information provided by the IOUs to date is insufficient to determine the amount of emergency-triggered DR that should be maintained to support that purpose.
>
> The Amended Scoping Memo also explicitly states regarding the CAISO-proposed optimal size of emergency-triggered programs: '[i]f there are no alternatives submitted, then the Commission may assume that the recommendations made by CAISO are valid and proceed towards an emergency-triggered DR that resolves the issues raised by CAISO.'"[16]

While making no final determination regarding a cap on the emergency-triggered DR programs, the Ruling directed parties to assume for purposes of Workshop 2 a cap on the emergency-triggered DR programs of 1,000 MW statewide, allocated based on the ISO's Emergency Operating Procedure E-508A Load Shedding Guide.[17]

Pre-workshop comments were filed on October 12, 2009, and Workshop 2 was held on October 20, 2009 to examine alternatives to emergency-triggered DR programs. Parties discussed, among other issues, the merits of a 1,000 MW statewide cap and allocation as proposed by the ISO; however little consensus was reached, as documented in the Workshop 2 Report, filed October 30, 2009.[18]

At the conclusion of Workshop 2, parties requested additional time prior to Workshop 3 to work together to explore possible resolutions for proposal to the Commission. In a November

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[16] *See* September 23, 2009 Administrative Law Judge's Ruling Regarding Workshop 2, pp. 3-4, 8 (footnotes omitted).

[17] *See* September 23, 2009 Administrative Law Judge's Ruling Regarding Workshop 2, p. 10.

[18] *See* Report of PG&E on Workshop 2 of Phase 3, filed October 30, 2009 in this proceeding.

4, 2009 e-mail ruling, ALJ Sullivan granted the parties' request, removing Workshop 3 from the Commission's calendar to allow time for settlement discussions.[19]

Subsequent to Workshop 2, the Settling Parties met on numerous occasions to explore settlement. These efforts eventually resulted in a settlement in principle among the Settling Parties. On January 20, 2010, the Settling Parties noticed a settlement conference pursuant to Rule 12.1 of the Commission's Rules of Practice and Procedure. A settlement conference was convened on January 29, 2010. Participating parties were the Settling Parties and AReM. After the settlement conference, the Settling Parties worked to finalize their settlement efforts, resulting in the Settlement attached hereto as **Exhibit A**.

Although AReM did not join the Settlement, it has indicated it does not oppose the Settlement.

In recognition of the foregoing, and to fully resolve the issues in Phase 3 of this rulemaking, the Settling Parties jointly support and recommend adoption of the Settlement, which is summarized below.

II. SUMMARY OF THE SETTLEMENT

A. The Settlement Resolves All Issues in Phase 3

The Settlement resolves all material issues identified in the July 8, 2009 Amended Scoping Memo regarding the integration and operation of the IOUs' emergency-triggered DR in the wholesale electricity markets.

B. Summary of the Material Provisions of the Settlement

The material provisions of the Settlement are summarized below; however the Settlement is the governing document over this summary in case of any unintended inconsistency.

[19] ALJ Sullivan's e-mail to the parties on the service list for R.07-01-041, issued November 4, 2009.

1. Applicability

The Settlement applies to all IOU emergency-triggered DR programs, which are referred to in the Settlement as "emergency-based" or "reliability-based DR programs," and are described as "programs in which customer load reductions are triggered only in response to abnormal and adverse operating conditions, such as imminent operating reserve violations or transmission constraint violations (i.e., emergencies)."[20] The reliability-based DR programs subject to the Settlement are:

- Base Interruptible Program (BIP):
- Air Conditioning Cycling programs of PG&E and SCE (A/C Cycling);[21]
- Agricultural and Pumping Interruptible Programs of SCE (AP-I); and
- Any future reliability-based DR program offered by an IOU.

DR programs that are not triggered strictly for emergencies are not considered by the Settlement to be "emergency-based" or "reliability-based," even if they include emergency-based (or reliability-based) triggers.

2. The ISO Wholesale Reliability DR Product

Section A of the Settlement describes the ISO's development of a wholesale reliability DR product (the "RDRP") that will be compatible with the IOUs' reliability-based DR programs and enable those programs to be bid into the RDRP product. The key features of the RDRP product are:

- Its design will accommodate the primary features of the existing IOU reliability-based DR programs;
- RDRP capacity will count for RA, subject to a MW limit specified in Section C of the Settlement.

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20 Settlement, Exhibit A, pp. 1-3.

21 SDG&E's A/C Cycling program (called Summer Saver) is already price-responsive, and is not considered a reliability-based DR program.

- The amount of RDRP capacity will not be limited; however, the amount of RDRP capacity that can count for RA will be limited, as specified in Section C of the Settlement (summarized below).
- RDRP can be triggered at the point immediately prior to the ISO's need to canvas neighboring balancing authorities and other entities for available exceptional dispatch energy or capacity. Once triggered, RDRP will be economically dispatched by location and quantity through the ISO's Automated Dispatch System (ADS).
- RDRP will not preclude the IOUs' use of the RDRP capacity for transmission and local distribution purposes;
- RDRP will allow for an annual test event; however an actual event in a given year is expected to eliminate the need for a test event for that year.
- RDRP will be open to all qualified DR providers.[22]

The Settlement requires the ISO to develop a stakeholder process in 2010 to develop RDRP, with the objective of obtaining the ISO board approval in the fourth quarter of 2010, so that RDRP can be incorporated into the IOUs' 2012 – 2014 DR program cycle applications in January 2011.

3. Reliability-Based DR Program Transition

Section B of the Settlement requires the IOUs to implement and promote price-responsive options for reliability-based DR program participants, as follows:

- SDG&E's A/C Cycling program (called Summer Saver) is already price-responsive, and is not considered a reliability-based DR program.
- PG&E has proposed to transition customers on its existing reliability-based A/C Cycling program (called SmartAC™) to a program that includes a price trigger in Application (A.) 09-08-018. PG&E will begin the transition SmartAC™ to the price-responsive option upon the Commission's approval of A.09-08-018.

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[22] The Settlement does not address how the allocation of RDRP RA-eligible capacity might be shared among the IOUs and other qualified DRPs in the future.

- SCE will propose a voluntary, price-responsive option for its A/C Cycling program (called Summer Discount Plan (SDP)) by the end of the second quarter 2010, including an option to allow SDP to be bid into the ISO market. Implementation of transition is expected to occur over the 2011-2014 timeframe. SCE agrees to actively promote customer transition to the price-responsive option through customer communications and by decreasing incentives from current levels for reliability-based MW.

To the extent a customer participating in a reliability-based DR program also participates in a price-responsive program/option, the MW from such customer's participation in the price-responsive program/option will not be considered to be reliability-based DR MW subject to the MW limit specified in Section C of the Settlement (as summarized below), to extent that the MW from these dual participation customers can be identified and measured in accordance with the DR load impact protocols established by the Commission in D.08-04-050.

If the Commission does not authorize PG&E or SCE to incorporate a price trigger into their A/C Cycling programs, it would be considered a fundamental change in regulatory conditions under the Settlement, triggering the right of a Settling Party to seek reconsideration of the Settlement.

4. Reliability-Based DR Program Caps

Section C of the Settlement recommends the removal, by May 2010, of the existing MW enrollment caps on the IOUs' reliability-based DR programs adopted in D.09-08-027, and the imposition of specific, annual limits on these programs starting in 2012. The annual limits apply to the total MW in the IOUs' reliability-based DR programs, and are expressed as percentages of the ISO's recorded all-time coincident peak demand (currently 50,270 MW),[23] as follows:

- In 2012, the limit will be 3%;
- In 2013, the limit will be 2.5%;

[23] The MW limits are subject to upward revision if a new recorded ISO all-time coincident peak demand is set. For example, the 2% limit is currently 1005 MW, but would be adjusted upward if a new recorded ISO all-time coincident peak demand is set.

- In 2014 and beyond, the limit will be 2%.

The timing and size of the annual limits on the reliability-based DR MW are intended to allow sufficient time for the IOUs to develop, propose and implement price-responsive options for reliability-based DR participants and reasonably promote transition to such options, while also ensuring reasonable progress toward to final, agreed-upon 2% limit.

The IOUs will report compliance with the annual limits in their DR load impact reports, due April 1 of each year pursuant to D.08-04-050. The reliability-based DR MW quantities counted toward the annual limits will be determined using the load impact protocols adopted in D.08-04-050 and will exclude any price-responsive DR MW. **Attachment 1** of the Settlement includes details on the process for measuring, reporting and acting on performance to meet the annual limits.

A 10% tolerance band will be used for enforcement of the annual limits through 2015, after which no further tolerance band will apply.

To the extent the total IOU reliability-based DR MW do not achieve any of the annual limits – as determined by the load impact protocols – plus a tolerance band of 10% through 2015 and 0% thereafter the responsibility for the resulting "oversupply" will be determined based on whether each IOU's share of the total reliability-based DR MW exceeds the following proportional allocation:

- PG&E: 400 MW
- SCE: 800 MW
- SDG&E: 20 MW

In addressing a condition of any IOU oversupply, the Settlement provides that the Commission would determine the appropriate remedial action for any IOU oversupply, including (i) eliminating the RA counting for the oversupply; and/or (ii) ordering program modifications to reduce participation in one or more of the IOU's reliability-based DR programs.

The Settling Parties also agree that any reconsideration of the 2% limit or the IOU-specified MW limits in the Settlement would benefit from inputs such as (i) a properly structured resource planning analysis, and (ii) consideration of whether the 2% limit should be formalized as part of the approach for counting limited-use resources for RA and whether the limit value should be modified. However, the Settling Parties agree that no Settling Party would seek such reconsideration for any compliance year prior to 2014. The Settling Parties also agree that any party seeking reconsideration would bear the burden of proof if it sought change of either (i) the 2% limit on what counts for RA; or (ii) the allocation method for allocating the specific MW to each IOU based on applying the limit to each IOU individually. Once approved by the Commission, parties may seek reconsideration of the Settlement in the event of (i) the inability of the ISO to establish the agreed-upon RDRP product by the end of 2011; or (ii) major changes in load, resource, regulatory or economic conditions from those anticipated at the time of the Settlement.

5. Regulatory Approval

The Settling Parties agree that the Settlement should be approved in its entirety and without modification. Any Settling Party may withdraw from the Settlement if the Commission modifies it, subject to good faith negotiations to try to restore the balance of benefits and burdens of any modified settlement adopted by the Commission.

III. REQUEST FOR ADOPTION OF THE SETTLEMENT

The Settlement is submitted pursuant to Rule 12.1 *et seq.* of the Commission's Rules of Practice and Procedure (Rules). The Settlement is consistent with Commission decisions on settlements, which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.[24] This policy supports many worthwhile goals, including conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.[25] This strong public policy favoring settlements also

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[24] *See, e.g.,* D.88-12-083 (30 CPUC 2d 189, 221-223) and D.91-05-029 (40 CPUC 2d, 301, 326).

[25] D.92-12-019, 46 CPUC 2d 538, 553.

weighs in favor of the Commission resistance to altering the results of the negotiation process. As long as a settlement taken as a whole is reasonable in light of the record, consistent with the law, and in the public interest it should be adopted without modification.

The Settlement complies with Commission guidelines and relevant precedent for settlements. The general criteria for Commission approval of settlements are stated in Rule 12.1(d), which states:

> The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

The Settlement meets the criteria for a settlement pursuant to Rule 12.1(d), as discussed below.

A. The Settlement is Reasonable In Light of the Record as a Whole

The Settling Parties have reached the Settlement after filing numerous comments and reply comments in Phases 2 and 3 of this proceeding, as well as in A.08-06-001 *et al.*, setting forth their legal and policy arguments on the issues within the scope of this Phase 3 proceeding, participating in the August 20, 2008 pre-hearing conference, conducting discovery, participating in two full-day workshops to present and discuss their positions, having the opportunity to evaluate their respective positions on the issues, and after having many informal discussions regarding the merits of the issues. Each Settling Party has obtained substantial information on the other Settling Parties' positions on the issues. Armed with that information, the Settling Parties strongly believe that the Settlement accomplishes mutually acceptable outcomes regarding the integration and operation of the IOUs' emergency-triggered DR programs in the wholesale electricity market.

The Settling Parties are reflective of the affected interests in Phase 3 of this proceeding. The ISO represents wholesale market interests; DRA and TURN represents bundled ratepayer interests, including residential and small business customers; CLECA represents the interests of large customers participating in the IOUs' emergency-triggered DR programs; EnerNOC represents the interests of third-party DR providers; and PG&E, SCE and SDG&E represent their interests as IOUs offering DR programs to their customers.

The Settlement reasonably enables the integration and operation of the IOUs' reliability-based DR programs in the wholesale electricity market because:

- The Settlement establishes a process for the development of a wholesale product that will allow for the participation of reliability-based DR in the wholesale market and maintain an appropriate level of reliability-based DR for grid reliability and RA purposes. The RDRP product design reasonably recognizes the value of service of the participating reliability-based DR MW and the need to trigger such resources after conventional supply-side resources. RDRP enables all DR providers to bid in capacity, with no limits on the amount of RDRP capacity (limits are on the amount of RDRP capacity that can count for RA), and allows the IOUs to continue to use the RDRP capacity for local transmission and distribution needs.

- The Settlement limits the amount of reliability-based DR that will count for RA, and reasonably commits the IOUs to implement and promote price-responsive options for reliability-based DR program participants, while appropriately mitigating concerns over removal of customers from reliability-based DR programs in the absence of reasonable alternatives and sufficient transition time. The Settlement provides adequate time and incentive for the IOUs to implement price-responsive transition efforts to effectively reduce reliability-based DR participation to the 2% limit by 2014, and for creation of remedial measures for failure to do so. The final 2% limit on the reliability-based DR sufficiently addresses the ISO's concerns over the level of statewide emergency DR MW, while accommodating the current IOU BIP enrollment of large interruptible customers for whom price-responsive options may not be feasible.

- The Settlement provides a reasonable measure of stability to BIP participants and mitigates the uncertainty that they have faced in the last several years about the continued nature of the BIP program.

- The Settlement reasonably resolves a variety of transitional issues for the reliability-based DR programs during a period of considerable change in the DR landscape, including the installation of advanced metering and implementation of dynamic pricing for residential and small commercial customers; the integration and operation of DR into the new wholesale market design; and the development of scarcity pricing. The Settlement provides a reasonable means of addressing the reliability-based DR programs while DR developments are in flux and until advanced metering, dynamic pricing, and scarcity pricing are in place.
- The Settlement advances the Commission's objectives for expanding use of price-responsive DR by committing SCE to introduce a price-responsive option in its A/C Cycling program, the largest such program in the State; and by using the Commission's rules on dual participation to help maximize participation on price-responsive DR options. Specifically to the latter point, the Settlement does not limit reliability-based MW that dual-participate in a price-responsive program/option as long as the dual MWs can be identified and measured in accordance with the DR load impact protocols established by the Commission in D.08-04-050. The current caps on the reliability-based DR programs preclude any MW above the caps irrespective of whether such MW dual-participate in a price-responsive program/option.
- The Settlement provides a reasonable process for modifying the reliability-based DR programs while seeking to preserve existing participation levels in the IOU DR programs.
- The Settlement recognizes the contribution of the reliability-based DR programs to local reliability value.
- The Settlement provides the opportunity to reexamine the limit on reliability-based DR programs as well as the IOU allocation (beginning in compliance year 2014) as circumstances may change in the future.

The Settlement addresses all material issues in Phase 3 of this proceeding, and represents a reasonable compromise of the Settling Parties' positions. The filings of the parties in Phases 2 and Phase 3 of this proceeding, as well as in A.08-06-001 *et al.*, the pre-hearing conference transcript, the workshop reports, the Settlement itself, and this motion provide the necessary record for the Commission to find the Settlement reasonable.

B. The Settlement is Consistent with Law and Prior Commission Decisions

The Settling Parties represent that Settlement is fully consistent with law and prior Commission decisions. The Settling Parties are not aware of any basis on which it could be alleged that the Settlement is not consistent with law. The Settling Parties reached agreement in accordance with Rule 12.1 of the Commission's Rules of Practice and Procedure.

The Settlement is consistent with the Commission's and the State's objectives to encourage participation in preferred price-responsive DR programs, and integrate DR into the wholesale electricity markets to promote cost-effective DR as a priority resource, as articulated in numerous prior Commission decisions issued in various DR-related proceedings.

C. The Settlement is in the Public Interest

The Settlement is a reasonable compromise of the Settling Parties' respective positions. The Settlement is in the public interest because it enables the integration and operation of the IOUs' reliability-based DR programs in the wholesale electricity market in a manner that ensures the continued availability of reliability-based DR for grid reliability and RA purposes while encouraging the transition of IOU customers to preferred price-responsive DR options.

The Settlement, if adopted by the Commission, will reduce the Commission resources that must be devoted to resolving the issues in Phase 3 of this proceeding. The saved resources of the Commission may then be devoted to matters than involve greater cost or policy issues. Given that the Commission's workload is extensive, the impact on Commission resources is doubly important.

Each portion of the Settlement is dependent upon the other portions of the Settlement. Changes to one portion of the Settlement would alter the balance of interests and the mutually agreed upon compromises and outcomes contained in the Settlement. As such, the Settling Parties request that the Settlement be adopted as a whole and without modification by the Commission, as it is reasonable in light of the whole record, consistent with law, and in the public interest.

* * *

For the foregoing reasons, the Commission should find that the Settlement is a reasonable resolution of the disputes regarding the integration and operation of the IOUs' reliability-based DR programs in the wholesale electricity market in light of the whole record; is consistent with law and prior Commission decisions, and in the public interest.

D. The Settling Parties Have Complied with the Requirements of Rule 12.1(b)

The Settling Parties noticed the convention of a settlement conference on January 20, 2010, and convened a settlement conference on January 29, 2010 in San Francisco to describe and discuss the terms of the Settlement. The settlement conference was attended by representatives of Settling Parties as well as by AReM. The Settlement was executed after the settlement conference held on January 29, 2010.

E. The Settlement is Not Opposed by any Active Party in this Proceeding

The Settlement is not opposed by any active party in this proceeding. Although AReM did not sign the Settlement, it has indicated that it does not oppose the Settlement.

IV. EXPEDITED CONSIDERATION OF THE SETTLEMENT IS WARRANTED

Expedited consideration and adoption of this Settlement is warranted to ensure sufficient time for the ISO to develop a stakeholder process in 2010 to develop RDRP and obtain ISO board approval in the fourth quarter of 2010, so that RDRP can be incorporated into the IOUs' 2012 – 2014 DR program cycle applications in January 2011. In this regard, the ISO process generally involves such steps as issuance of issue papers or straw proposals for comment and refinement, workshops and/or stakeholder meetings or conference calls to refine policy and refine iterations for product design, board approval, followed by tariff amendment development involving further stakeholder review and tariff amendment filing to Federal Energy Regulatory Commission (FERC). For the ISO's proxy demand resource product, the time needed for this process has been more than nine (9) months.

Accordingly, the Settling Parties request that the comment period for the Settlement, as provided under Rule 12.2, be shortened from 30 days to 15 days, with reply comments due 5 days thereafter; and that the Commission act promptly at the conclusion of the comment period to grant this Motion and approve the Settlement by no later than April 30, 2010.

V. CONCLUSION

WHEREFORE, the Settling Parties respectfully request that the Commission grant this motion and:

1. Suspend the procedural schedule in this proceeding, shorten the comment period for the Settlement from 30 days to 15 days, with 5 days for reply comments, and give expeditious consideration to the Settlement;
2. Issue a final decision by no later than April 30, 2010 adopting the attached Settlement in its entirety and without modification as reasonable in light of the record, consistent with law, and in the public interest; and
3. Order the IOUs to file advice letters within 20 days of the issuance of the Commission's final decision approving the Settlement to modify their reliability-based DR program tariffs in compliance with that decision.

Respectfully submitted,

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

By: /s/ Baldassaro "Bill" Di Capo
BALDASSARO "BILL" DI CAPO

PACIFIC GAS AND ELECTRIC COMPANY

By: /s/ Shirley A. Woo
SHIRLEY A. WOO

SAN DIEGO GAS & ELECTRIC COMPANY

By: /s/ Steven D. Patrick
STEVEN D. PATRICK

CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION

By: /s/ William H. Booth
WILLIAM H. BOOTH

DIVISION OF RATEPAYER ADVOCATES

By: /s/ Lisa Marie Salvacion
LISA MARIE SALVACION

ENERNOC, INC.

By: /s/ Sara Steck Myers
SARA STECK MYERS

THE UTILITY REFORM NETWORK

By: /s/ Michel Peter Florio
MICHEL PETER FLORIO

SOUTHERN CALIFORNIA EDISON COMPANY

By: /s/ Janet S. Combs
JANET S. COMBS

Dated: February 22, 2010

Exhibit A

SETTLEMENT

Reliability-Based Demand Response Settlement
(CPUC Rulemaking 07-01-041, Phase 3)

This settlement (Settlement) in Phase 3 of the Demand Response rulemaking (DR OIR) proceeding (R.07-01-041 or this Rulemaking) is entered into by the undersigned Parties in fulfillment of the objective of this proceeding phase to address the operation of investor-owned utilities' emergency triggered DR programs in the wholesale electricity market and the integration of emergency triggered DR into wholesale market design.[1]

PARTIES

The parties to this Settlement are Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas and Electric Company (SDG&E), the California Independent System Operator (CAISO), the California Large Electricity Consumers Association (CLECA), the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), and EnerNOC, Inc. (collectively, the Parties).

PG&E, SCE, and SDG&E are investor-owned utilities (collectively, the Utilities or IOUs) and are subject to the jurisdiction of the California Public Utilities Commission (CPUC) with respect to providing electric service to their CPUC-jurisdictional retail customers.

CAISO is the systems operator of the bulk power electrical system with the CAISO balancing area. This area includes the bulk transmission systems owned by the three IOUs (PG&E, SCE, and SDG&E). The CAISO also administers California's wholesale electricity markets pursuant to the CAISO tariff.

CLECA is an organization of large, high-voltage industrial customers of PG&E and SCE, most of whom take interruptible service.

DRA is an independent division of the CPUC that advocates solely on behalf of utility ratepayers.

TURN is an independent, non-profit consumer advocacy organization that represents the interest of residential and small commercial utility customers.

EnerNOC is a demand response aggregator operating in one or more of the IOUs' service areas.

RECITALS

PG&E, SCE and SDG&E manage emergency-based (also described as reliability-based) demand response (DR) programs under the authority of the CPUC. These programs are the Base

[1] See Assigned Commissioner's and Administrative Law Judge's Amended Scoping Memo and Ruling, July 18, 2008, R.07-01-041, page 1. See also Assigned Commissioner's Ruling Amending the Scoping Memo and the Schedule of Phase 3 of this Proceeding, July 8, 2009, page 1.

Interruptible Program (or BIP), the air conditioning cycling programs (A/C Cycling), and the agricultural pumping-interruptible program (AP-I), which are offered by one or more of the IOUs. The IOUs call their air conditioning cycling programs by different names:

PG&E: SmartAC™
SCE: Summer Discount Plan (SDP)
SDG&E: Summer Saver

The SDG&E Summer Saver program is price-responsive and thus not considered emergency-based. PG&E has proposed to add a price trigger to its existing SmartAC™ program in Application 09-08-018.

In A.08-06-001 et. al. (the DR Cycle Applications), the CPUC capped emergency triggered demand response programs (as therein defined) at their current levels of enrolled MW, with a limited exemption for PG&E's SmartAC™ program, pending resolution in this Rulemaking proceeding. (See D.09-08-027, Ordering Paragraph 11).

The CPUC opened this Rulemaking on January 31, 2007 as part of a "continuing effort to develop effective demand response (DR) programs" and identified consideration of "modifications to DR programs needed to support the California Independent System Operator's (CAISO) efforts to incorporate DR into market design protocols" as an objective of the rulemaking.

Subsequently, on July 18, 2008 the CPUC issued an amended scoping memo opening Phase 3 of this proceeding and a subsequent ruling (on July 8, 2009) scheduling workshops.

As part of Phase 3, the CPUC held two workshops on August 10, 2009 and October 20, 2009 to discuss a cap on emergency-triggered DR and alternatives to current IOU emergency-triggered DR programs, respectively. A third workshop to address implementation/transition concerns was taken off the CPUC's calendar at the request of the parties participating in the second workshop in order to facilitate settlement efforts.[2].

In recognition of the foregoing, and in order to resolve the issues extant in the R.07-01-041, Phase 3, the Parties jointly support and recommend adoption of the following Agreement.

<u>AGREEMENT</u>

The reliability-based DR programs subject to this Settlement are the Base Interruptible Program (or BIP), the air conditioning cycling programs of PG&E and SCE (A/C Cycling[3]), the agricultural pumping-interruptible program (AP-I) and any future reliability-based program offered by one or more of the IOUs (provided that those programs are consistent with the terms of this Settlement). For the purposes of this Settlement, reliability-based DR programs refer to programs in which customer load reductions are triggered only in response to abnormal and adverse operating conditions, such as imminent operating reserve violations or transmission

[2] ALJ Sullivan e-mail to the parties, November 4, 2009
[3] SDG&E's air conditioning cycling program is not included because it is already price responsive.

constraint violations (i.e., emergencies). Programs that are triggered for reasons not exclusively limited to emergencies, which may include prices (or implied market heat rates), temperature, or system load, and "at utility discretion" programs triggered for such reasons, are not considered to be reliability-based programs even if they include an emergency-based (aka reliability-based) trigger.

A. CAISO WHOLESALE RELIABILITY DEMAND RESPONSE PRODUCT

1. The CAISO will initiate a stakeholder process in 2010, with the objective of developing a wholesale reliability demand response product (RDRP) that is compatible with IOU reliability-based demand response programs, generally referred to as BIP, A/C Cycling and AP-I.

2. The intended timeframe for CAISO board adoption of the RDRP will be fourth quarter 2010 (with a CAISO tariff filing with FERC shortly thereafter), so that information on the RDRP can be incorporated into IOU DR Cycle applications for 2012-2014, which are expected to be filed in January 2011.

3. To the extent the timing of CAISO's RDRP development and approval process permits, the IOUs will address transitional issues associated with integrating their reliability-based DR programs into the RDRP in their DR Cycle applications. To the extent that timing does not allow transitional issues to be addressed in IOU DR Cycle applications, IOUs and the CAISO will jointly seek an alternative forum to resolve such transitional issues, such as a request for the opportunity to submit supplemental testimony or a subsequent phase of the DR Cycle proceeding.

4. The RDRP will be designed to support demand response products with the following attributes:

   a. For CPUC jurisdictional entities, there will be a MW limit on the amount of RDRP (or other reliability based DR Programs if RDRP does not capture them) that qualifies for RA, as specified in Section C of this Agreement.

   b. Subject to the MW limit of RA that will be accepted from the RDRP (as specified in Section C of this Agreement), the MW offered into this product category will qualify as RA capacity, in accordance with the RA counting rules of the applicable local regulatory authority. There is no limit on the MW amount of RDRP, only on the amount that counts for RA as determined by the CPUC. IOUs may develop new forms of reliability-based DR that will count towards the MW caps described in Section C if the IOUs seek to count them for RA. The CAISO RDRP product will be designed to accommodate the primary features (such as notice period and number/duration of program calls) of the existing BIP, reliability-based SDP, and AP-I programs.

c. Utilities are not precluded from developing and seeking CPUC approval for new types of reliability-based DR programs that may or may not be appropriate for RDRP and may or may not count for RA. In particular, utilities are interested in preserving an option to offer reliability-based programs that compensate participating customers on a per event basis and programs that would be called as a last resort prior to rotating outages. Any such new reliability based DR program would count toward the MW caps described in Section C if it counts for RA and is integrated with the CAISO. Utilities recognize that it may be appropriate to place an additional MW cap on such programs if they count for RA, and that these additional MW would be a subset of the 2% overall Limit (as defined below).

d. RDRP resources must meet minimum operating requirements, and also must meet certain technical requirements developed in the CAISO's stakeholder process. RDRP also may have maximum availability limitations.

e. RDRP is not "price responsive", but will be economically dispatched once triggered.

f. CAISO dispatch of RDRP will recognize that participating customers have a high "strike price" that is well above the running cost of conventional supply-side resources

g. Participating RDRP MW may have multiple reliability-only uses (system, transmission and local reliability), and may be triggered by IOUs for reasons other than CAISO needs, such as IOU-controlled distribution circuit operations. IOUs will work with the CAISO to establish procedures to 1) provide timely notice of when these participating RDRP MW are triggered for non-CAISO needs and 2) allow for potential dispatch by the CAISO for purposes of recognition within the CAISO systems.

h. RDRP will help mitigate, or limit the duration of, Scarcity Pricing events.

i. RDRP will allow up to one test event each year to ensure compliance and performance. This limitation does not preclude an RDRP provider from scheduling additional test events in coordination with the CAISO. Parties expect that actual events would normally, under most circumstances, eliminate the need for a test. Parties expect there will be at least one event per year.

j. All qualified Demand Response Providers (DRPs) will be allowed to participate in supplying RDRP. Providers will be subject to certain performance and compliance requirements. Aggregation of customers under a DRP will be subject to the rules established by the Local Regulatory Authority (LRA), if any.

k. Payments associated with the RDRP will be settled through the CAISO settlement system; any additional incentives or payments, if appropriate, will be the prerogative of the LRA and handled outside the CAISO.

l. The RDRP product design will modify the existing system trigger from pre-Stage 1 imminent to the point immediately prior to the CAISO need to canvas neighboring balancing authorities and other entities for available exceptional dispatch energy/capacity. That is, the DR resource will be eligible for dispatch once the CAISO has issued a Warning Notice under its Emergency Operating Procedures and immediately prior to the CAISO need to canvas neighboring balancing authorities and other entities for available exceptional dispatch energy/capacity. Parties will not propose to change this RDRP trigger for any year prior to 2015. When RDRP is eligible for dispatch by the CAISO, notification will take place through normal CAISO notification channels, i.e. Automated Dispatch System (ADS) to the responsible Scheduling Coordinator.

m. Once triggered, MWs under this product will be dispatchable by location and quantity.

n. Use of the RDRP product will be formally incorporated and documented into CAISO processes and operating procedures.

B. RELIABILITY-BASED DR PROGRAM TRANSITION

1. Upon CPUC approval of its pending Application 09-08-018 filing, PG&E will begin transitioning its existing reliability-based SmartAC™ customers to a program that adds a price trigger as directed in the CPUC Decision. PG&E's application proposed a target date of summer 2012 for this additional trigger that includes bidding into CAISO markets. This settlement does not prevent parties to the A.09-08-018 proceeding from advocating for an alternative price responsive trigger implementation in the A.09-08-018 proceeding, or subsequent application addressing SmartAC™ or its successor.

2. SCE will submit an Application to create a price-responsive option for its SDP (SCE's AC Cycling program) by the end of the second quarter of 2010 that will modify the program to include a proposal to allow SDP to be bid into CAISO markets. SCE will make participation in the price-responsive option voluntary to customers, and will actively promote customer transition to the price-responsive option through customer communication and by decreasing current incentives for customers who chose to stay on the reliability-based option. This Agreement does not restrict SCE from making the price-responsive option mandatory for its customers.

3. Upon CPUC approval of the request in the filing referenced in Section B.2 above, SCE will begin a multi-year transition effort and process that takes into consideration the roll-out of SmartConnect™ metering and potential replacement of customer premises hardware devices with new technology that enables a price-responsive program offering that can be bid into CAISO markets. The anticipated time period of this transition will be 2011-2014.

4. PG&E, SDG&E and SCE may continue to offer dual participation options to BIP A/C Cycling and AP-I customers who are willing to participate in a price-responsive DR program (e.g. Demand Bidding Program, Peak Day Pricing, CPP, etc.) where such dual participation is allowed by the CPUC. Megawatt quantities from such dual-participation-

customers will not be considered to be supplying reliability-based DR MWs, as determined in the Load Impact Protocol Compliance filing, to the extent that the protocol identifies the MW quantities from such dual participation customers that participate in a price responsive program.

C. RELIABILITY-BASED DEMAND RESPONSE PROGRAM CAPS

1. The freeze on IOU DR reliability–based program participation that was adopted in D.09-08-027 will be removed by May 2010 and replaced with the CPUC enforced annual limit designed to limit reliability-based demand response program capacity to a specified percent of the CAISO's all-time coincident peak demand, which is currently 50,270 MW. Currently, IOU reliability-based DR programs are about 3.5% of the CAISO all-time peak load. (This calculation omits capacity in PG&E's A/C Cycling program, since PG&E has sought CPUC approval to transition this program to fully price-responsive.) The annual limits are as follows:

    a. For 2012 the limit will be 3%.

    b. For 2013 the limit will be 2.5%

    c. For 2014 and forward, the limit will be set at 2% of the recorded all-time coincident CAISO peak load (the "2% Limit"), unless revised as discussed in item 6 below.

    The 2012 and 2013 limits are above the 2% limit which the parties recognize as the CAISO's determination of the optimal level of reliability based DR resources from an operating standpoint but the Parties also recognize the IOU's desire to accommodate concerns that removing customers from the existing programs without developing a reasonable alternative and transition time is problematic.

2. In their annual April 1st Load Impact Compliance Protocol reports, the IOUs will include, in a discrete section, a summary of BIP, A/C Cycling and AP-I capacity (ex-post and ex-ante) categorized between reliability-based and price-responsive, and will compare the reliability-based capacity to each IOU's share of the overall limit (plus tolerance), as determined in Section C.4.a.v.

    a. MW quantities will be determined using CPUC-adopted load impact protocols as established in D.08-04-050 for counting both reliability and price based DR.

    b. For PG&E and SDG&E, A/C Cycling MW will not be counted towards the limit, because these MWs are programs that are considered to be price responsive. For SCE, only the reliability-based portion of A/C Cycling MW will be counted towards the limit. If the CPUC does not approve a price trigger in PG&E's pending application A.09-08-018 (as described in Section B.1) or SCE's planned SDP application (as described in Section B.2) the parties recognize this as a fundamental change in the regulatory conditions as described in Section C.7.

    c. RA MW from customers also participating in price-responsive DR programs (e.g., BIP customers participating in DBP, PDP, CPP etc.) will not be counted against the limit as determined by the Load Impact Protocols developed in the Load Impact Protocol Compliance filing, to the extent that the protocol identifies the MW quantities from such dual participation customers that participate in a price responsive program.

d. For illustration, the following represents utilities' expectations of MW enrollment level in reliability-based DR programs in comparison to the 2% of peak load limit:

   i. **Starting situation is 1721 MW of reliability-based DR (2010-2011). Note that this number would be higher if PG&E and SDG&E A/Cycling programs were included.**

      1. PG&E: BIP = 300 MW
      2. SCE: BIP + AC Cycling + AP-I = 1414 MW
      3. SDG&E: BIP = 7 MW

   ii. **In 2014 with SCE's roll out of price-responsive A/C Cycling, reliability-based DR declines to between 1032 and 1220 MW**

      1. PG&E BIP = 300- 400 MW
      2. SCE BIP and AP-I adjusted for DBP= 650 MW
      3. SCE reliability-based DR (assumes 10- 20 % of existing SDP customers stay on reliability-based program) = 75 - 150 MW
      4. SDG&E BIP = 7 -20 MW
      5. Total = 1032 - 1220 MW

   iii. **The 2% limit is currently 1005 MW, but subject to upward revision if a new all-time peak is set.**

      1. 2% of CAISO all time peak (50,270 MW) = 1005 MW

   iv. **Also a 10 % "tolerance band" will be utilized for enforcement purposes.**

      1. With consideration of a 10% tolerance band, the level of IOU MW that would count for RA is 1.1(1005) = 1106 MW
      2. The tolerance band will decline after 2015 as follow:

         a. 2015 – 10%
         b. 2016 and beyond – 0%

Note: The actual IOU MW will be determined in the Load Impact Protocol Compliance Filing made April 1 of each year. See Attachment 1 to the Agreement for details on the process for measuring, reporting and acting on performance to meet these limits. Also, if the CAISO all-time peak is higher, then the limit will be proportionally higher

3. The Utilities shall undertake reasonable efforts to promote customer participation in price-responsive demand response programs consistent with 1) the CPUC policy stated in D.09-08-027 (pages 30 to 31) to increase price-responsive demand response that aligns with the CAISO wholesale markets and 2) the limits and transition period described in Section C. 1 above. In upcoming 2012 to 2014 DR cycle applications, the Utilities will address and seek approval for their program marketing efforts and funding associated with these efforts for the 2012 to 2014 period.

4. To the extent that the reliability–based MW do not achieve the annual limit described in Section C.1, the CPUC will take remedial action in RA or other appropriate proceedings as described below in C.4.b. The process, options and considerations for the remedial action are described below:

   a. The parties agree the following processes are appropriate for CPUC consideration of how to address an "oversupply" of the reliability-based program MWs

      i. The total amount of BIP, SDP and AP-I MW that are identified in the Load Impact (LI) Protocol Compliance filing made April 1 of each year (as subject to adjustment by the CPUC, as noted in Attachment 1) will be summed for each IOU and totaled for all IOUs.

      ii. The amounts in C.4.a.i will then be reduced by the amount of non-reliability based DR MW that are provided by the customers in BIP, SDP and AP-I that are also in non-reliability based DR programs (e.g. DBP, CPP, etc.). These MW reductions will also come from the LI Protocol Compliance filing made on April 1.

      iii. The parties recognize that a "Tolerance Band" of 10% is reasonable to allow for a variety of uncertainties in achieving the MW limit shown in Section C.1, including uncertainty in the rate of economic rebound from the current recession, and (for SCE) the degree and timing of customer acceptance of SDP transitioning to price-responsive demand response. In addition, the parties recognize that a "tolerance band" (or deviation from reaching limit) of 10% is reasonable in measuring the utilities' performance limit in transitioning customers to price responsive programs, and that such tolerance band would be considered appropriate for enforcement purposes. The tolerance band concept applies between years 2012 and 2015. By the year 2016, the tolerance band would terminate, as the utilities should have completed the transition of existing customers.

      iv. To the extent that the total MW from C.4.a.ii for all IOUs combined exceeds the limit plus tolerance band from C.4.a.iii, an "oversupply" is identified.

v. If an "oversupply" has been identified, responsibility for the "oversupply" will be allocated to the IOUs as follows:

1. The annual limit in Section C.1 plus the tolerance band amount in Section C.4.a.iii will be allocated in proportion to the following[4]:

    a. PG&E: 400 MW

    b. SCE: 800 MW

    c. SDG&E: 20 MW

2. The individual IOU total from C.4.a.ii will be compared to the individual IOU limit from C.4.a. v. 1. This will establish the "oversupply" (if any) attributed to each IOU.

vi. CPUC will provide details on any RA adjustment due to "oversupply" for each IOU.

b. The CPUC will then determine the appropriate action to take with regards to the "oversupply" for each individual IOU. The CPUC would have several options to address an "over supply" of reliability based DR including the following:

1. The CPUC could eliminate the counting for RA of MW of reliability-based DR that is determined to be "oversupply", while allowing the "oversupply" to be used for its additional reliability value including local distribution needs, and/or

2. The CPUC could order the IOU to modify the program (BIP, SDP and AP-I) so as to reduce participation (e.g. lower incentives, increase requirements like calls per year, etc.).

See Attachment 1 for a flow diagram on how the CPUC could deal with the "oversupply".

5. Any A/C Cycling program where a price trigger proposal that has been filed with the CPUC will not be restricted in actively recruiting customers. This settlement does not prevent parties to the A.09-08-018 proceeding from advocating for a limit on the size of PG&E's A/C Cycling program in the A.09-08-018 proceeding, or subsequent application addressing SmartAC™ or its successor. Also participation in both a reliability and price-responsive program will be encouraged where such dual participation is allowed.

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[4] This settlement does not address how this allocation might be shared between IOUs and other qualified Demand Response Providers in the future. Resolution of this issue, with respect to CPUC-jurisdictional end-use customers, is the responsibility of the CPUC.

6. The parties agree that any re-consideration of the 2% reliability-based DR limit and the IOU specific limit MW (per Section C.4.a.v.1) in any future proceeding (e.g. CPUC RA or Planning Reserve Margin (PRM)) would benefit from the following inputs:

    a. A properly structured resource planning analysis submitted to a formal regular CPUC proceeding (such as RA, LTPP, PRM, DR, etc.)

    b. Consideration of (1) whether the limit should be formalized as part of the maximum cumulative capacity (MCC) "buckets" approach for counting limited use resources for RA; and (2) whether the limit value should be modified.

    c. The burden of proof for changing the 2% of all-time system coincident peak limit for reliability-based demand response program capacity that counts for RA would be on the party advocating for the change.

    d. A party advocating an allocation method that is not based on the application of the 2% Limit (or revised limit) to each IOU individually to set the IOU specific MW allocations would bear the burden of proof. If no party seeks reconsideration of the IOU allocation described in Section C.4.a.v, then the IOU allocation described in Section C.4.a.v will remain in effect as currently stated in this Settlement

    e. Any such reconsideration would not take place before a proceeding covering compliance year 2014, except as provide in Section 7.

7. Parties are not precluded from seeking reconsideration of the terms of this Settlement in an appropriate CPUC proceeding prior to 2014 in the event of either (1) failure of the CAISO to establish a CAISO Board approved final design proposal for RDRP consistent with the attributes specified above by the end of 2011; or (2) major changes in load, resource, regulatory or economic conditions from those anticipated at the time of this Settlement.

8. The primary operational features of the reliability-based programs covered by this settlement (set forth in Section A.4) will be maintained through at least 2014 in a manner that preserves their ability to count for resource adequacy and to participate in RDRP. Parties will not oppose reliability-based programs that qualify as RDRP from counting for RA, as long as the MW limits are not exceeded.

<u>REGULATORY APPROVAL</u>

The Parties shall use their best efforts to obtain CPUC approval of this Settlement and shall jointly request that the CPUC adopt this agreement in its entirety as reasonable in light of the record, consistent with law, and in the public interest.

It is the intent of the Parties that the CPUC adopt this Settlement in its entirety and without modification. This Settlement is to be treated as a complete package and not as a collection of separate agreements on discrete issues. To accommodate the interests related to various issues, the Parties acknowledge that changes, concessions or compromises by a Party or Parties in one section of this Settlement resulted in changes, concessions or compromises by a Party or Parties in other sections. Consequently, the Parties agree to oppose any modification of this Settlement not agreed to by all Parties. Any Party may withdraw from this Settlement if the CPUC modifies it. The Parties agree, however, to negotiate in good faith with regard to any CPUC-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful. The terms and conditions of this Settlement may only be modified in writing subscribed to by the Parties.

NON PRECEDENTIAL

Consistent with Rule 12.5 of the CPUC's Rules of Practice and Procedure, this Agreement is not precedential in any other proceeding before this Commission, except as provided in this Settlement or unless the Commission expressly provides otherwise.

PREVIOUS COMMUNICATION

This Settlement contains the entire agreement and understanding between the Parties as to the subject matter of this Settlement, and supersedes all prior agreements, commitments, representation, and discussions between the Parties. In the event there is any conflict between the terms and scope of the Agreement and the terms and scope of the accompanying joint motion, this Settlement shall govern.

NON-WAIVER

None of the provisions of this Settlement shall be considered waived by any Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Settlement or to take advantage of any of their rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

SUBJECT HEADINGS

Subject headings in this Settlement are inserted for convenience only, and shall not be construed as interpretations of the text.

GOVERNING LAW

This Settlement shall be interpreted, governed and construed under the laws of the State of California, including CPUC decisions, orders and rulings, as if executed and to be performed wholly within the State of California.

[continued on next page]

NUMBER OF ORIGINALS

This Agreement is executed in counterparts, each of which shall be deemed an original. The undersigned represent that they are authorized to sign on behalf of the Party represented.

ENERNOC, INC.

By: Mona Tierney-Lloyd
Mona Tierney-Lloyd

Title: Senior Manager, Western Regulatory Affairs

Date: 2-3, 2010

CALIFORNIA INDEPENDENT SYSTEM OPERATOR

By:____________________
Keith Casey, Ph.D.

Title: Vice President, Market & Infrastructure Development

Date: ________________, 2010

DIVISION OF RATEPAYER ADVOCATES

By:____________________
Dana Appling

Title Director

Date: ________________, 2010

SAN DIEGO GAS & ELECTRIC COMPANY

By:____________________
Hal D. Snyder

Title: Vice President, Customer Solutions

Date: ________________, 2010

CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION

By:____________________
William H. Booth

Title: Counsel for CLECA

Date: ________________, 2010

THE UTILITY REFORM NETWORK

By:____________________
Michel Peter Florio

Title: Senior Attorney

Date: ________________, 2010

PACIFIC GAS AND ELECTRIC COMPANY

By:____________________
Steven McCarty

Title: Director

SOUTHERN CALIFORNIA EDISON COMPANY

By:____________________
Lynda R. Ziegler

Title: Senior Vice President, Customer Service

Date: ________________, 2010

NUMBER OF ORIGINALS

This Agreement is executed in counterparts, each of which shall be deemed an original. The undersigned represent that they are authorized to sign on behalf of the Party represented.

ENERNOC, INC.

By:______________________
Mona Tierney-Lloyd

Title: Senior Manager, Western Regulatory Affairs

Date: ________________, 2010

CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION

By:______________________
William H. Booth

Title: Counsel for CLECA

Date: ________________, 2010

CALIFORNIA INDEPENDENT SYSTEM OPERATOR

By:______________________
Keith Casey, Ph.D.

Title: Vice President, Market & Infrastructure Development

Date: Feb 3, 2010

THE UTILITY REFORM NETWORK

By:______________________
Michel Peter Florio

Title: Senior Attorney

Date: ________________, 2010

DIVISION OF RATEPAYER ADVOCATES

By:______________________
Dana Appling

Title Director

Date: ________________, 2010

PACIFIC GAS AND ELECTRIC COMPANY

By:______________________
Steven McCarty

Title: Director

SAN DIEGO GAS & ELECTRIC COMPANY

By:______________________
Hal D. Snyder

Title: Vice President, Customer Solutions

Date: ________________, 2010

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Date: __________________, 2010

THE UTILITY REFORM NETWORK

By:____________________
Michel Peter Florio

Title: Senior Attorney

Date: __________________, 2010

DIVISION OF RATEPAYER ADVOCATES

By: Dana Appling
Dana Appling

Title Director

Date: 2-2-2010, 2010

PACIFIC GAS AND ELECTRIC COMPANY

By:____________________
Steven McCarty

Title: Director

SAN DIEGO GAS & ELECTRIC COMPANY

By:____________________
Hal D. Snyder

Title: Vice President, Customer Solutions

Date: __________________, 2010

SOUTHERN CALIFORNIA EDISON COMPANY

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William H. Booth

Title: Counsel for CLECA

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PACIFIC GAS AND ELECTRIC COMPANY

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CALIFORNIA INDEPENDENT SYSTEM OPERATOR

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Keith Casey, Ph.D.

Title: Vice President, Market & Infrastructure Development

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DIVISION OF RATEPAYER ADVOCATES

By:_______________________
Dana Appling

Title Director

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SAN DIEGO GAS & ELECTRIC COMPANY

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Hal D. Snyder

Title: Vice President, Customer Solutions

Date: ____________________, 2010

CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION

By: William H. Booth
William H. Booth

Title: Counsel for CLECA

Date: 2/2/, 2010

THE UTILITY REFORM NETWORK

By:_______________________
Michel Peter Florio

Title: Senior Attorney

Date: ____________________, 2010

PACIFIC GAS AND ELECTRIC COMPANY

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Steven McCarty

Title: Director

SOUTHERN CALIFORNIA EDISON COMPANY

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Date: ____________________, 2010

CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION

By:________________________
William H. Booth

Title: Counsel for CLECA

Date: ____________________, 2010

CALIFORNIA INDEPENDENT SYSTEM OPERATOR

By:________________________
Keith Casey, Ph.D.

Title: Vice President, Market & Infrastructure Development

Date: ____________________, 2010

THE UTILITY REFORM NETWORK

By: MPFlorio
Michel Peter Florio

Title: Senior Attorney

Date: Feb. 3, 2010

DIVISION OF RATEPAYER ADVOCATES

By:________________________
Dana Appling

Title Director

Date: ____________________, 2010

PACIFIC GAS AND ELECTRIC COMPANY

By:________________________
Steven McCarty

Title: Director

SAN DIEGO GAS & ELECTRIC COMPANY

By:________________________
Hal D. Snyder

Title: Vice President, Customer Solutions

Date: ____________________, 2010

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Mona Tierney-Lloyd

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Date: ___________________, 2010

CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION

By:________________________
William H. Booth

Title: Counsel for CLECA

Date: ___________________, 2010

CALIFORNIA INDEPENDENT SYSTEM OPERATOR

By:________________________
Keith Casey, Ph.D.

Title: Vice President, Market & Infrastructure Development

Date: ___________________, 2010

THE UTILITY REFORM NETWORK

By:________________________
Michel Peter Florio

Title: Senior Attorney

Date: Feb. 4, 2010

DIVISION OF RATEPAYER ADVOCATES

By:________________________
Dana Appling

Title Director

Date: ___________________, 2010

PACIFIC GAS AND ELECTRIC COMPANY

By: Steve McCarty
Steven McCarty

Title: Director

SAN DIEGO GAS & ELECTRIC COMPANY

By:________________________
Hal D. Snyder

Title: Vice President, Customer Solutions

Date: ___________________, 2010

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Lynda R. Ziegler

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Date: ____________________, 2010

CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION

By:________________________
William H. Booth

Title: Counsel for CLECA

Date: ____________________, 2010

CALIFORNIA INDEPENDENT SYSTEM OPERATOR

By:________________________
Keith Casey, Ph.D.

Title: Vice President, Market & Infrastructure Development

Date: ____________________, 2010

THE UTILITY REFORM NETWORK

By:________________________
Michel Peter Florio

Title: Senior Attorney

Date: ____________________, 2010

DIVISION OF RATEPAYER ADVOCATES

By:________________________
Dana Appling

Title Director

Date: ____________________, 2010

PACIFIC GAS AND ELECTRIC COMPANY

By:________________________
Steven McCarty

Title: Director

SAN DIEGO GAS & ELECTRIC COMPANY

By:________________________
Hal D. Snyder

Title: Vice President, Customer Solutions

Date: ____________________, 2010

SOUTHERN CALIFORNIA EDISON COMPANY

By:________________________
Lynda L. Ziegler

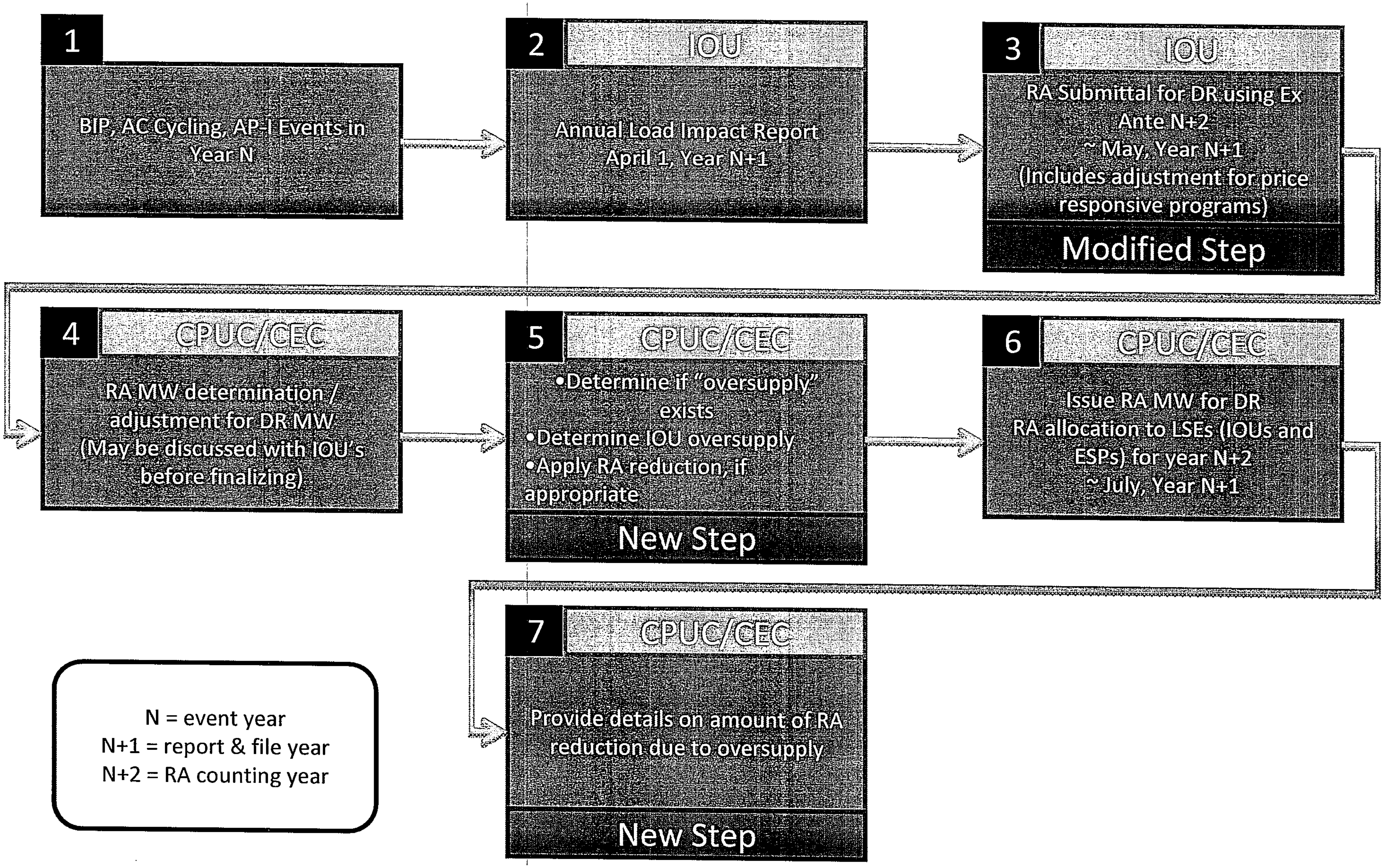
Title: Senior Vice President, Customer Service

Date: Feb 8, 2010

ATTACHMENT 1

MEASURING & ENFORCING COMPLIANCE

Attachment 1: MEASURING & ENFORCING COMPLIANCE



2010/01/12 Ken Abreu

LAW #1705255

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of JOINT MOTION OF CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION, DIVISION OF RATEPAYER ADVOCATES, ENERNOC, INC., PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E), SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), AND THE UTILITY REFORM NETWORK FOR ADOPTION OF SETTLEMENT; SETTLEMENT ATTACHED on all parties identified on the attached service list(s).

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **22nd day of February 2010**, at Rosemead, California.

/s/ Melissa Schary
Melissa Schary
Project Analyst

CPUC Home

CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists

PROCEEDING: R0701041 - CPUC-PG&E, SDG&E, ED
FILER: CPUC-PG&E, SDG&E, EDISON
LIST NAME: LIST
LAST CHANGED: FEBRUARY 17, 2010

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Parties

SCOTT H. DEBROFF
RHOADS & SINON LLP
ONE SOUTH MARKET SQUARE, PO BOX 1146
HARRISBURG, PA 17108-1146
FOR: ELSTER INTEGRATED SOLUTIONS; CELLNET & TRILLIANT NETWORKS, INC.; CONSUMER POWERLINE AND ANCILLIARY SERVICES COALITION.

KEITH R. MCCREA
ATTORNEY AT LAW
SUTHERLAND, ASBILL & BRENNAN, LLP
1275 PENNSYLVANIA AVE., N.W.
WASHINGTON, DC 20004-2415
FOR: CA MANUFACTURERS & TECHNOLOGY ASSN.

KEN SKINNER
VICE PRESIDENT, COO
INTEGRAL ANALYTICS, INC
312 WALNUT STREET, SUITE 1600
CINCINNATI, OH 45202

JAMES R. METTLING
BLUE POINT ENERGY LLC
20 INDUSTRIAL PARKWAY
CARSON CITY, NV 89706
FOR: BLUE POINT ENERGY

STEVEN D. PATRICK
ATTORNEY AT LAW
SEMPRA ENERGY
555 WEST FIFTH STREET, STE 1400
LOS ANGELES, CA 90013-1011
FOR: SAN DIEGO GAS & ELECTRIC

GREGORY KLATT
ATTORNEY AT LAW
DOUGLASS & LIDDELL
411 E. HUNTINGTON DRIVE, STE. 107-356
ARCADIA, CA 91006
FOR: DIRECT ACCESS CUSTOMER COALITION

DANIEL W. DOUGLASS
ATTORNEY AT LAW
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367
FOR: ALLIANCE FOR RETAIL ENERGY MARKETS/WESTERN POWER TRADING FORUM

JANET COMBS
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY

DONALD C. LIDDELL

DOUGLAS A. AMES

ATTORNEY AT LAW
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO, CA 92103
FOR: WAL-MART STORES, INC./ICE ENERGY/KINDER MORGAN / CALIF. ENERGY STORAGE ALLIANCE

ATTORNEY AT LAW
TRANSPHASE SYSTEMS, INC.
4971 LOS PATOS AVENUE
HUNTINGTON BEACH, CA 92649
FOR: TRANSPHASE

NORA SHERIFF
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO, CA 94015
FOR: ENERGY PRODUCERS & USERS COALITION

JACK ELLIS
PRINCIPAL CONSULTANT
RESERO CONSULTING
490 RAQUEL COURT
LOS ALTOS, CA 94022
FOR: ENERGY CONNECT, INC.

PETER MALTBAEK
VICE PRESIDENT
CPOWER, INC.
1185 ELENA PRIVADA
MOUNTAIN VIEW, CA 94040
FOR: CONSUMER POWELINE

LISA-MARIE SALVACION
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4107
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DIVISION OF RATEPAYERS ADVOCATES

MARCEL HAWIGER
ENERGY ATTORNEY
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94104
FOR: TURN

MICHEL PETER FLORIO
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94104
FOR: TURN

RICHARD H. COUNIHAN
SR. DIRECTOR CORPORATE DEVELOPMENT
ENERNOC, INC.
500 HOWARD ST., SUITE 400
SAN FRANCISCO, CA 94105
FOR: ENERNOC, INC.

SHIRLEY WOO
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94105
FOR: PACIFIC GAS AND ELECTRIC

MARLO A. GO
GOODIN MACBRIDE SQUERI DAY & LAMPREY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
FOR: NORTH AMERICA POWER PARTNERS, LLC

JEFFREY P. GRAY
ATTORNEY AT LAW
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533
FOR: SOUTH SAN JOAQUIN IRRIGATION DISTRICT

IRENE K. MOOSEN
ATTORNEY AT LAW
CITY AND COUNTY OF SAN FRANCISCO
53 SANTA YNEZ AVE.
SAN FRANCISCO, CA 94112
FOR: CITY AND COUNTY OF SAN FRANCISCO

SARA STECK MYERS
ATTORNEY AT LAW
122 28TH AVENUE
SAN FRANCISCO, CA 94121
FOR: JOINT PARTIES

WILLIAM H. BOOTH
ATTORNEY AT LAW
LAW OFFICES OF WILLIAM H. BOOTH
67 CARR DRIVE
MORAGA, CA 94556
FOR: CLECA

AVIS KOWALEWSKI
CALPINE CORPORATION
4160 DUBLIN BLVD, SUITE 100
DUBLIN, CA 94568
FOR: CALPINE CORPORATION

ERIC C. WOYCHIK
STRATEGY INTEGRATION LLC
9901 CALODEN LANE
OAKLAND, CA 94605
FOR: COMVERGE, INC.

JAMES BOOTHE
THE ENERGY COALITION
9 REBELO LANE
NOVATO, CA 94947
FOR: THE ENERGY COALITION

RICH QUATTRINI

BOB HINES

VICE PRESIDENT - WESTERN REGION
ENERGYCONNECT, INC.
51 E. CAMPBELL AVENUE, SUITE 145
CAMPBELL, CA 95008
FOR: ENERGY CONNECT, INC.

ENERGY PROGRAMS
SILICON VALLEY LEADERSHIP GROUP
224 AIRPORT PARKWAY, SUITE 620
SAN JOSE, CA 95110
FOR: SILICON VALLEY LEADERSHIP GROUP

BARBARA R. BARKOVICH
BARKOVICH & YAP, INC.
44810 ROSEWOOD TERRACE
MENDOCINO, CA 95460
FOR: CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION

MARTIN HOMEC
ATTORNEY AT LAW
CALIFORNIANS FOR RENEWABLE ENERGY, INC.
PO BOX 4471
DAVIS, CA 95617
FOR: CALIFORNIA FOR RENEWABLE ENERGY, INC.

BALDASSARO DI CAPO
COUNSEL
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
FOR: CALIFORNIA INDEPENDENT SUSTEM OPERATOR

LAUREN NAVARRO
ATTORNEY
ENVIRONMENTAL DEFENSE FUND
1107 9TH STREET, SUITE 540
SACRAMENTO, CA 95814
FOR: ENVIRONMENTAL DEFINSE FUND

KAREN N. MILLS
ATTORNEY AT LAW
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO, CA 95833
FOR: CALIFORNIA FARM BUREAU FEDERATION

Information Only

EDWARD VINE
LAWRENCE BERKELEY NATIONAL LABORATORY
EMAIL ONLY
EMAIL ONLY, CA 00000

CLARK E. PIERCE
LANDIS & GYR
246 WINDING WAY
STRATFORD, NJ 08084

NICHOLAS J. PLANSON
CONSUMER POWERLINE
17 STATE STREET, SUITE 1910
NEW YORK, NY 10004
FOR: CONSUMER POWERLINE

GLEN E. SMITH
PRESIDENT AND CEO
ENERGY CURTAILMENT SPECIALISTS, INC.
PO BOX 610
CHEEKTOWAGA, NY 14225-0610

ALICIA R. PETERSEN
RHOADS & SINON LLP
ONE SOUTH MARKET SQUARE, PO BOX 1146
HARRISBURG, PA 17108

MONICA S. IINO
RHOADS & SINON LLP
M&T BUILDING
ONE SOUTH MARKET SQUARE, PO BOX 1146
HARRISBURG, PA 17108

CLINTON COLE
CURRENT GROUP, LLC
20420 CENTURY BOULEVARD
GERMANTOWN, MD 20874

GRAYSON HEFFNER
15525 AMBIANCE DRIVE
N. POTOMAC, MD 20878

STEPHEN D. BAKER
SR. REG. ANALYST, FELLON-MCCORD AND ASS.
CONSTELLATION NEW ENERGY-GAS DIVISION
9960 CORPORATE CAMPUS DRIVE, SUITE 2500
LOUISVILLE, KY 40223

TRENT A. CARLSON
RRI ENERGY, INC.
1000 MAIN STREET
HOUSTON, TX 77001

DANIEL M. VIOLETTE
SUMMIT BLUE CONSULTING
1722 14TH STREET, SUITE 230
BOULDER, CO 80302

KEVIN COONEY
PRINCIPAL/CEO
SUMMIT BLUE CORPORATION
1722 14TH STREET, SUITE 230

BOULDER, CO 80302

STUART SCHARE
SUMMIT BLUE CONSULTING
1722, 14TH STEET, SUIET 230
BOULDER, CO 80302
FOR: SUMMIT BLUE CONSULTING

LARRY B. BARRETT
CONSULTING ASSOCIATES, INC.
PO BOX 60429
COLORADO SPRINGS, CO 80960

WILLIAM D. ROSS
CONSTELLATION NEW ENERGY
520 SO. GRAND AVENUE SUITE 3800
LOS ANGELES, CA 90071-2610
FOR: CONSTELLATION NEW ENERGY

DAVID NEMTZOW
NEMTZOW & ASSOCIATES
1254 9TH STREET, NO. 6
SANTA MONICA, CA 90401

JAY LUBOFF
JAY LUBOFF CONSULTING SERVICES
1329 19TH ST, APT D
SANTA MONICA, CA 90404-1946

DAVID REED
SOUTHERN CALIFORNIA EDISON
6060 IRWINDALE AVE., STE. J
IRWINDALE, CA 91702

JOYCE LEUNG
SOUTHERN CALIFORNIA EDISON COMPANY
6060 J IRWINDALE AVE.
IRWINDALE, CA 91702

MARIAN BROWN
SOUTHERN CALIFORNIA EDISON
6040A IRWINDALE AVE.
IRWINDALE, CA 91702

MARK S. MARTINEZ
SOUTHERN CALIFORNIA EDISON
6060 IRWINDALE AVE., SUITE J
IRWINDALE, CA 91702

ANDREA HORWATT
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

CARL SILSBEE
SOUTHERN CALIFORNIA EDISON
GO1, RP&A
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
LAW DEPARTMENT, ROOM 370
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

JENNIFER TSAO SHIGEKAWA
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY

KA-WING MAGGIE POON
GO1, QUAD 2B
2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770

LARRY R. COPE
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON
PO BOX 800, 2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON

RUSS GARWACRD
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE
ROSEMEAD, CA 91770

DON WOOD
PACIFIC ENERGY POLICY CENTER
4539 LEE AVENUE
LA MESA, CA 91941

CARLOS F. PENA
SEMPRA ENERGY
101 ASH STREET, HQ12
SAN DIEGO, CA 92101

JOHN LAUN
APOGEE INTERACTIVE, INC.
1220 ROSECRANS ST., SUITE 308
SAN DIEGO, CA 92106

DAVID BARKER
SAN DIEGO GAS & ELECTRIC COMPANY
8306 CENTURY PARK COURT
SAN DIEGO, CA 92123

JOY C. YAMAGATA
SAN DIEGO GAS & ELECTRIC/SOCALGAS
8330 CENTURY PARK COURT, CP 32 D
SAN DIEGO, CA 92123

KATHRYN SMITH
ANALYST
SAN DIEGO GAS AND ELECTRIC COMPANY
8306 CENTURY PARK COURT
SAN DIEGO, CA 92123

LISA DAVIDSON
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32A
SAN DIEGO, CA 92123

CENTRAL FILES
REGULATORY AFFAIRS
SAN DIEGO GAS & ELECTRIC CO.
8330 CENTURY PARK COURT-CP31E
SAN DIEGO, CA 92123-1530

LINDA WRAZEN
REGULATORY CASE ADMINISTRATOR
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32D
SAN DIEGO, CA 92123-1530

DAVE HANNA
ITRON INC
11236 EL CAMINO REAL
SAN DEIGO, CA 92130-2650

GEOFF AYRES
THE ENERGY COALITION
15615 ALTON PARKWAY, SUITE 245
IRVINE, CA 92618

WARREN MITCHELL
THE ENERGY COALITION
15615 ALTON PARKWAY, SUITE 245
IRVINE, CA 92618

DAVID M. WYLIE, PE
ASW ENGINEERING
2512 CHAMBERS ROAD, SUITE 103
TUSTIN, CA 92780

JOEL M. HVIDSTEN
KINDER MORGAN ENERGY FORECASTER
1100 TOWN & COUNTRY ROAD, SUITE 700
ORANGE, CA 92868

SHAWN COX
KINDER MORGAN ENERGY FORECASTER
1100 TOWN & COUNTRY ROAD, SUITE 700
ORANGE, CA 92868

MONA TIERNEY-LLOYD
SENIOR MANAGER WESTERN REG. AFFAIRS
ENERNOC, INC.
PO BOX 378
CAYUCOS, CA 93430

PAUL KERKORIAN
UTILITY COST MANAGEMENT LLC
6475 N. PALM AVENUE, SUITE 105
FRESNO, CA 93704

CHRIS KING
EMETER CORPORATION
2215 BRIDGEPOINTE PARKWAY, SUITE 300
SAN MATEO, CA 94044

SUE MARA
RTO ADVISORS, LLC.
164 SPRINGDALE WAY
REDWOOD CITY, CA 94062

PAUL KARR
TRILLIANT NETWORKS, INC.
1100 ISLAND DRIVE, SUITE 103
REDWOOD CITY, CA 94065

SHARON TALBOTT
EMETER CORPORATION
ONE TWIN DOLPHIN DRIVE
REDWOOD CITY, CA 94065

THERESA MUELLER
DEPUTY CITY ATTORNEY
CITY AND COUNTY OF SAN FRANCISCO
CITY HALL, ROOM 234
SAN FRANCISCO, CA 94102

MASSIS GALESTAN
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

THOMAS ROBERTS
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS BRA
ROOM 4104
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SANDRA ROVETTI
REGULATORY AFFAIRS MANAGER
SAN FRANCISCO PUC
1155 MARKET STREET, 4TH FLOOR
SAN FRANCISCO, CA 94103

THERESA BURKE
REGULATORY AFFAIRS ANALYST
SAN FRANCISCO PUC
1155 MARKET STREET, 4TH FLOOR
SAN FRANCISCO, CA 94103

DANIEL C. ENGEL
SENIOR CONSULTANT
FREEMAN, SULLIVAN & CO.
101 MONTGOMERY STREET, 15TH FLOOR
SAN FRANCISCO, CA 94104

ELAINE S. KWEI
PIPER JAFFRAY & CO
345 CALIFORNIA ST. SUITE 2300
SAN FRANCISCO, CA 94104

SNULLER PRICE
ENERGY AND ENVIRONMENTAL ECONOMICS
101 MONTGOMERY, SUITE 1600
SAN FRANCISCO, CA 94104

STEVE GEORGE
GSC GROUP
101 MONTGOMERY STREET, 15TH FLOOR
SAN FRANCISCO, CA 94104

BRUCE PERLSTEIN
PACIFIC GAS AND ELECTRIC COMPANY
245 MARKET STREET
SAN FRANCISCO, CA 94105

JOSEPHINE WU
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO, CA 94105

KAREN TERRANOVA
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO, CA 94105

KEN ABREN
245 MARKET STREET
SAN FRANCISCO, CA 94105

LISE H. JORDAN
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94105

MARY A. GANDESBERY
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, 77 BEALE B30A
SAN FRANCISCO, CA 94105

MICHAEL P. ALCANTAR
ATTORNEY AT LAW
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO, CA 94105

REGULATORY FILE ROOM
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO, CA 94105

STEVEN R. HAERTLE
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO, CA 94105

ALICE LIDDELL
ICF INTERNATIONAL
620 FOLSOM STREET, STE, 200
SAN FRANCISCO, CA 94107

STEVEN MOSS
SAN FRANCISCO COMMUNITY POWER
2325 THIRD STREET, STE 344
SAN FRANCISCO, CA 94107

AHMAD FARUQUI
THE BRATTLE GROUP
353 SACRAMENTO STREET, SUITE 1140
SAN FRANCISCO, CA 94111

BRAD MANUILOW
AMERICAN TECHNOLOGY RESEARCH
450 SANSOME ST., SUITE 1000
SAN FRANCISCO, CA 94111

BRIAN T. CRAGG
GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
FOR: NORTH AMERICA POWER PARTNERS LLC

BRYCE DILLE
CLEAN TECHNOLOGY RESEARCH
JMP SECURITIES
600 MONTGOMERY ST. SUITE 1100
SAN FRANCISCO, CA 94111

J. JOSHUA DAVIDSON
ATTORNEY AT LAW
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111

ROBERT GEX
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111

SETH D. HILTON
STOEL RIVES, LLP
555 MONTGOMERY ST., SUITE 1288
SAN FRANCISCO, CA 94111

SALLE E. YOO
ATTORNEY AT LAW
DAVIS WRIGHT TREMAINE
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533

CALIFORNIA ENERGY MARKETS
425 DIVISADERO STREET, SUITE 303
SAN FRANCISCO, CA 94117

CHARLES MIDDLEKAUFF
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY

CASE ADMINISTRATION
PACIFIC GAS & ELECTRIC COMPANY
PO BOX 770000; MC B9A

PO BOX 7442
SAN FRANCISCO, CA 94120
FOR: PACIFIC GAS AND ELECTRIC COMPANY

SAN FRANCISCO, CA 94177

MARK HUFFMAN
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
MC B30A PO BOX 770000
SAN FRANCISCO, CA 94177
FOR: PACIFIC GAS AND ELECTRIC COMPANY

HELEN ARRICK
BUSINESS ENERGY COALITION
MC B8R, PGE
PO BOX 770000
SAN FRANCISCO, CA 94177-0001

ROBIN J. WALTHER, PH.D.
1380 OAK CREEK DRIVE., 316
PALO ALTO, CA 94305

MICHAEL ROCHMAN
MANAGING DIRECTOR
SPURR
1430 WILLOW PASS ROAD, SUITE 240
CONCORD, CA 94520

JOE PRIJYANONDA
GLOBAL ENERGY PARTNERS, LLC
3569 MT. DIABLE BLVD., SUITE 200
LAFAYETTE, CA 94549

SEAN P. BEATTY
SR. MGR. EXTERNAL & REGULATORY AFFAIRS
MIRANT CALIFORNIA, LLC
696 WEST 10TH ST., PO BOX 192
PITTSBURG, CA 94565

MARK J. SMITH
CALPINE CORPORATION
4160 DUBLIN BLVD., SUITE 100
DUBLIN, CA 94568

PHILIPPE AUCLAIR
11 RUSSELL COURT
WALNUT CREEK, CA 94598

ALEX KANG
ITRON, INC.
1111 BROADWAY, STE. 1800
OAKLAND, CA 94607

JODY S. LONDON
JODY LONDON CONSULTING
PO BOX 3629
OAKLAND, CA 94609

TED POPE
PRESIDENT
ENERGY SOLUTIONS
1610 HARRISON STREET
OAKLAND, CA 94612

MRW & ASSOCIATES, INC.
1814 FRANKLIN STREET, SUITE 720
OAKLAND, CA 94612

DOCKET COORDINATOR
5727 KEITH ST.
OAKLAND, CA 94618

REED V. SCHMIDT
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
BERKELEY, CA 94703-2714

STEVE KROMER
3110 COLLEGE AVENUE, APT 12
BERKELEY, CA 94705
FOR: STEVE KROMER

GALEN BARBOSE
LAWRENCE BERKELEY NATIONAL LAB
MS 90-4000
1 CYCLOTRON RD.
BERKELEY, CA 94720

CARLOS LAMAS-BABBINI
COMVERGE, INC.
58 MT TALLAC CT
SAN RAFAEL, CA 94903

ALAN GARTNER
ENERGYCONNECT, INC.
51 E. CAMPBELL AVEUNE, 145
CAMPBELL, CA 95008

MAHLON ALDRIDGE
ECOLOGY ACTION
PO BOX 1188
SANTA CRUZ, CA 95061-1188

L. JAN REID
COAST ECONOMIC CONSULTING
3185 GROSS ROAD
SANTA CRUZ, CA 95062

ALAN GARTNER
1125 PHEASANT HILL WAY
SAN JOSE, CA 95120

JEFF SHIELDS
UTILITY SYSTEMS DIRECTOR
SOUTH SAN JOAQUIN IRRIGATION DISTRICT
11011 E. HWY 120

MANTECA, CA 95336

JOY A. WARREN
REGULATORY ADMINISTRATOR
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95354

ROGER VAN HOY
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95354

THOMAS S. KIMBALL
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95354

JAMES WEIL
DIRECTOR
AGLET CONSUMER ALLIANCE
PO BOX 1916
SEBASTOPOL, CA 95473

CLARK BERNIER
RLW ANALYTICS
1055 BROADWAY, SUITE G
SONOMA, CA 95476

GAYATRI SCHILBERG
JBS ENERGY
311 D STREET, SUITE A
WEST SACRAMENTO, CA 95605
FOR: TURN

JEFF NAHIGIAN
JBS ENERGY, INC.
311 D STREET
WEST SACRAMENTO, CA 95605

DOUGLAS M. GRANDY, P.E.
CALIFORNIA ONSITE GENERATION
DG TECHNOLOGIES
1220 MACAULAY CIRCLE
CARMICHAEL, CA 95608

RICHARD MCCANN
M.CUBED
2655 PORTAGE BAY ROAD, SUITE 3
DAVIS, CA 95616

DAVID MORSE
1411 W. COVELL BLVD., STE. 106-292
DAVIS, CA 95616-5934

JOHN GOODIN
CALIFORNIA ISO
151 BLUE RAVINE RD.
FOLSOM, CA 95630

MELANIE GILLETTE
SR MGR WESTERN REG. AFFAIRS
ENERNOC, INC.
115 HAZELMERE DRIVE
FOLSOM, CA 95630

LEGAL AND REGULATORY DEPARTMENT
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSON, CA 95630

BRIAN THEAKER
DYNEGY, INC.
3161 KEN DEREK LANE
PLACERVILLE, CA 95667

LON W. HOUSE, PH.D
ASSOCIATION OF CAL WATER AGENCIES
4901 FLYING C RD.
CAMERON PARK, CA 95682

MARY LYNCH
VP - REGULATORY AND LEGISLATIVE AFFAIRS
CONSTELLATION ENERGY COMMODITIES GRP
5074 NAWAL DRIVE
EL DORADO HILLS, CA 95762

CAROLYN KEHREIN
ENERGY MANAGEMENT SERVICES
2602 CELEBRATION WAY
WOODLAND, CA 95776
FOR: ENERGY USERS FORUM

DAVID HUNGERFORD
CALIFORNIA ENERGY COMMISSION
DEMAND ANALYSIS OFFICE
1516 NINTH STREET, MS-22
SACRAMENTO, CA 95814

MARGARET SHERIDAN
CALIFORNIA ENERGY COMMISSION
DEMAND ANALYSIS OFFICE
1516 NINTH STREET, MS-22
SACRAMENTO, CA 95814

RYAN BERNARDO
BRAUN BLAISING MCLAUGHLIN, P.C.
915 L STREET, SUITE 1270
SACRAMENTO, CA 95814

ANDREW B. BROWN
ATTORNEY AT LAW
ELLISON SCHNEIDER & HARRIS, LLP (1359)
2600 CAPITOL AVENUE, SUITE 400

TIMOTHY N. TUTT
SACRAMENTO MUNICIPAL UTILITIES DISTRICT
6201 S. STREET, M.S. B404
SACRAMENTO, CA 95817-1899

SACRAMENTO, CA 95816-5905

VIKKI WOOD
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6301 S STREET, MS A204
SACRAMENTO, CA 95817-1899

BARB BOICE
4309 NORWOOD AVENUE, APT. 160
SACRAMENTO, CA 95838

KAREN LINDH
CALIFORNIA ONSITE GENERATION
7909 WALERGA ROAD, NO. 112, PMB 119
ANTELOPE, CA 95843

ROGER LEVY
LEVY AND ASSOCIATES
2805 HUNTINGTON ROAD
SACRAMENTO, CA 95864

ANNIE STANGE
ALCANTAR & KAHL
1300 SW FIFTH AVE., SUITE 1750
PORTLAND, OR 97201

BENJAMIN SCHUMAN
PACIFIC CREST SECURITIES
111 SW 5TH AVE, 42ND FLR
PORTLAND, OR 97204

LAURA ROOKE
SR. PROJECT MANAGER
PORTLAND GENERAL ELECTRIC
121 SW SALMON ST.,
PORTLAND, OR 97204

JENNIFER HOLMES
ENERGY MARKET INNOVATIONS INC.
83 COLUMBIA STREET, SUITE 303
SEATTLE, WA 98104

TYLER BERGAN
POWERIT SOLUTIONS
114 ALASKAN WAY SOUTH, NO. 201
SEATTLE, WA 98104

State Service

DENISE SERIO
ENERGY CURTAILMENT SPECIALISTS, INC.
4455 GENESEE STREET, BLDG. 6
NEW YORK, NY 14225

ALOKE GUPTA
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ANDREW CAMPBELL
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
ROOM 5203
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

BRUCE KANESHIRO
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

CHRISTOPHER CLAY
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4300
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

CHRISTOPHER R VILLARREAL
CALIF PUBLIC UTILITIES COMMISSION
POLICY & PLANNING DIVISION
ROOM 5119
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

DARWIN FARRAR
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5041
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

DORRIS LAM
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ELIZABETH DORMAN
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4300

HAZLYN FORTUNE
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JENNIFER CARON
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JESSICA T. HECHT
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5113
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JOE COMO
CALIF PUBLIC UTILITIES COMMISSION
DRA - ADMINISTRATIVE BRANCH
ROOM 4101
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

KARL MEEUSEN
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MATTHEW DEAL
CALIF PUBLIC UTILITIES COMMISSION
POLICY & PLANNING DIVISION
ROOM 5119
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

PAMELA NATALONI
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 5124
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

REBECCA TSAI-WEI LEE
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS BRA
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SUDHEER GOKHALE
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
ROOM 4102
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

TIMOTHY J. SULLIVAN
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 2106
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

CLARE LAUFENBERG
STRATEGIC TRANSMISSION INVESTMNT PROGRAM
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 46
SACRAMENTO, CA 95814

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