

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



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Order Instituting Rulemaking To Enhance  
the Role of Demand Response in Meeting  
the State's Resource Planning Needs and  
Operational Requirements.

Rulemaking 13-09-011  
(Filed September 19, 2013)

**COMPLIANCE LETTER FILING IN RESPONSE TO  
ORDERING PARAGRAPH 2 OF DECISION 14-12-024**

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DATED: December 22, 2014

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Order Instituting Rulemaking To Enhance  
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**COMPLIANCE LETTER FILING IN RESPONSE TO  
ORDERING PARAGRAPH 2 OF DECISION 14-12-024**

**I. INTRODUCTION**

The following parties named in Ordering Paragraph 2 of Decision (D.) 14-12-024 respectfully file this compliance letter as required by that Paragraph today December 22, 2014:<sup>1</sup> Alliance for Retail Energy Markets, The California Independent System Operator, California Large Energy Consumers Association, Clean Coalition, Comverge, Inc., Consumer Federation of California, Direct Access Customer Coalition, EnergyHub/ Alarm.com, EnerNOC, Inc., Environmental Defense Fund, Johnson Controls, Inc., Marin Clean Energy, Office of Ratepayer Advocates, Olivine, Inc., Pacific Gas and Electric Company, San Diego Gas & Electric Company, Sierra Club, Southern California Edison Company, and The Utility Reform Network. For the reasons detailed below, these parties, each of which was a signatory to a Settlement Agreement (Agreement) filed with a Motion for Adoption in this proceeding on August 4, 2014 (August 4 Motion), are hereinafter referred to as the "Joint Sponsoring Parties." To respect the sustained and conscientious work done and to preserve the progress made in achieving the Agreement, its signatories are committed to moving forward in good faith to comply with the orders contained in D.14-12-024. In order to do so, this Compliance Letter requests other relief

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<sup>1</sup> Ordering Paragraph 2 directed the signatories to the Agreement to file a "compliance letter electing to either accept the modifications herein or request other relief" within 15 days of the date of issuance (December 9, 2014) of D.14-12-024. (D.14-12-024, at p. 83.)

through modifications that are procedural in nature and intended to preserve the record on which D.14-12-024 is based, while respecting the rights of the signatories to the Agreement.

## **II. RESPONSE TO ORDERING PARAGRAPH 2**

### **A. Overview**

By D.14-12-024, the Commission made significant modifications to material terms of the Agreement. Because of these changes, by Ordering Paragraph 2, the parties named in that order, who had been signatories to the Agreement, were required to “elect” and confirm by this compliance letter one of the following two options only: (1) “accept the modifications herein” or (2) “request other relief.”<sup>2</sup> The Joint Sponsoring Parties, as signatories to the Agreement, have not reached consensus on whether the Commission’s changes to the material terms of the Agreement in D.14-12-024 are acceptable to each Joint Sponsoring Party. Therefore, the Joint Sponsoring Parties do not accept the modifications to the Agreement contained within D.14-12-024 and, therefore, request other relief.

The Joint Sponsoring Parties accept that D.14-12-024 represents the Commission’s resolution of the issues in Phase 3 of R.13-09-011 and thus are committed as Joint Sponsoring Parties to engage in best efforts to achieve the directives stated in that Decision, such as full demand response bifurcation implementation by 2018, and to engage in the Working Groups and reporting requirements identified therein.<sup>3</sup> However, since the Commission’s orders in D.14-12-024 did not adopt the Agreement as filed, the Joint Sponsoring Parties must “request other relief” since the parties cannot accept the material changes made to the Agreement by D.14-12-024.

This request for other relief will permit the Joint Sponsoring Parties to move forward consistent

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<sup>2</sup> D.14-12-024, at p. 83.

<sup>3</sup> The Joint Sponsoring Parties recognize that individual parties may not have the interest, ability, or resources to participate in some or all activities described in the Agreement or Joint Proposal going forward.

with the directions of D.14-12-024, while reserving their collective and individual rights to seek modification or rehearing of those aspects of the Joint Proposal, which the Commission altered in D.14-12-024. In sum, the Joint Sponsoring Parties request that D.14-12-024 be modified to treat the Agreement as a Joint Proposal of the Joint Sponsoring Parties, rather than a binding agreement among them, as discussed below.

### **B. Impact of D.14-12-024 on Agreement**

The Agreement provides that if the Commission Decision makes material changes to the Agreement, the Settling Parties may, as a group, accept the changes in writing, or if that did not happen, the Agreement would no longer be in effect. Specifically, Condition 10 at page 33 of the Agreement states:

“10. If a Commission Decision regarding this Settlement Agreement contains any material change to the Settlement Agreement, the Settlement Agreement shall be null and void, unless all of the Settling Parties agree in writing to such changes.”

Commission D.14-12-024 considered, but did not adopt the Agreement as written, and instead made very significant changes to material terms that had embodied negotiated concessions and substantial compromises among the signatories to the Agreement. In making these material changes, which not all signatories clearly understand or presently accept, D.14-12-024 has altered the Agreement in such a material way that it no longer represents the commitment and concessions made by its signatories. Under Condition 10 of the Agreement, this renders the Agreement null and void.

### **C. Request for Other Relief**

Under these circumstances, the Joint Sponsoring Parties are not able to elect to “accept the modifications herein” as set forth in Ordering Paragraph 2, but are left to elect the only other option offered there, i.e. “to request other relief.”

As stated above, to respect the sustained and conscientious work done and to preserve the progress made in achieving the Agreement, its signatories (now the Joint Sponsoring Parties), are committed to moving forward in good faith to comply with the orders contained in D.14-12-024, to the extent that the Commission can promptly issue a further order modifying D.14-12-024 as requested below. These requested modifications are procedural in nature and intended to preserve the record on which D.14-12-024 is based, while respecting the rights of the signatories to the Agreement. Unless the Commission orders these modifications, the Agreement is inadmissible under Commission Rule 12.6. However, if it adopts them the Agreement would be admissible as a Joint Proposal by the Joint Sponsoring Parties.

Consistent with Commission precedent that treats a contested settlement as the “joint position of the sponsoring parties” (see, e.g., D.11-12-053, at p. 75), the Joint Sponsoring Parties request that D.14-12-024 be modified as follows:

1. To state that, as a contested settlement and with the material modifications made by D.14-12-024, the Agreement cannot be considered a binding settlement, but instead is to be treated as a Joint Proposal of the Joint Sponsoring Parties.
2. To reflect this treatment in the Commission’s discussion of the Agreement and to add a Finding of Fact and a Conclusion of Law to confirm this treatment.
3. To replace the words “Settlement” or “Settlement Agreement” in the discussion following identification of this treatment and in any Finding of Fact, Conclusion of Law, and in all Ordering Paragraphs with the term “Joint Proposal.”
4. To modify Ordering Paragraph 1 of D.14-12-024 to include two subparts to read as follows, with changes shown in bold or bold strike-through:

**~~1 a. Pursuant to Commission Rules of Practice and Procedure 12.4(c)~~ Based on the Motion for Adoption of Settlement Agreement filed on August 4, 2014, the Commission considered the Agreement appended to that Motion ~~as modified in Ordering Paragraphs 3, 4, 5, and 6,~~ between and among the following parties (in alphabetical order):- Alliance for Retail Energy Markets, The**

California Independent System Operator, California Large Energy Consumers Association, Clean Coalition, Comverge, Inc., Consumer Federation of California, Direct Access Customer Coalition, EnergyHub/Alarm.com, EnerNOC, Inc., Environmental Defense Fund, Johnson Controls, Inc., Marin Clean Energy, Office of Ratepayer Advocates, Olivine, Inc., Pacific Gas and Electric Company, San Diego Gas & Electric Company, Sierra Club, Southern California Edison Company, and The Utility Reform Network. **However, because the Agreement, while signed by most but not all active parties to the proceeding, was a contested agreement and because we order modifications to several material terms of the Settlement Agreement and because the signatories did not accept the modifications but asked that we admit the terms of the proposed settlement in the record pursuant to Rule 12.6, the Settlement Agreement shall be treated as a Joint Proposal of the sponsoring parties and not an agreement binding on its signatories or this Commission.**

**1.b. The terms of the Joint Proposal shall be admitted into evidence and its terms shall be adopted by the Commission for purposes of resolving issues identified in Phase 3 of this proceeding, except as otherwise modified in Ordering Paragraphs 3, 4, 5, and 6.**

5. To add the following Conclusion of Law: “It is reasonable and consistent with Commission precedent to characterize and treat the Settlement Agreement as a Joint Proposal and to admit the Joint Proposal into evidence in order to augment the record in this proceeding.”
6. To add the following Conclusion of Law: “The treatment of the Settlement Agreement as a Joint Proposal preserves any rights the parties may otherwise have to petition for clarification of D.14-12-024, or modification or rehearing of those aspects of the Joint Proposal which the Commission altered in D.14-12-024.”

The Joint Sponsoring Parties submit the following additional requests and comments to expedite their efforts to meet the Commission’s goals and expectations in D.14-12-024:

- We respectfully request a timely public meeting noticed in the Commission’s Daily Calendar, with Commission staff and appropriate decision-makers, to discuss the modifications adopted in D.14-12-024 to improve understanding of the Commission’s directions. To support the Commission’s desire to move forward expeditiously, we recommend that such a public meeting be held as early in January 2015 as possible.

- At the November 19, 2014 all-party meeting, one Commissioner gave his personal assurances that he and his advisor would be directly involved in meetings and efforts to implement the Commission's directions in a timely manner. However, due to the specific ex parte limitations imposed on PG&E in Decision No. 14-11-041, PG&E may not be able to fully participate in a working group meeting if a Commissioner or Commissioner's advisor were to attend. Therefore, the Joint Sponsoring Parties request that the Commission issue a ruling in the proceeding or direction in a decision that all working group meetings will be noticed in the proceeding, consistent with rules regarding communications in Rule 8.1 (c) (3) of the Commission's Rules of Practice and Procedure.

The Joint Sponsoring Parties are committed to moving forward in good faith with all working groups and timetables now established by D.14-12-024, and therefore urge that the Commission issue a decision modifying D.14-12-024 as requested herein as soon as possible.

### **III. CONCLUSION**

In "requesting other relief" pursuant to Ordering Paragraph 2 of D.14-12-024, the Joint Sponsoring Parties believe that the modifications to that decision proposed as Items 1 through 6 of this letter above, will provide the necessary procedural foundation for D.14-12-024 to include in the record the Joint Proposal, and to enable all parties involved in this OIR to refocus on achieving the Commission's objectives in the desired timeframe. We believe that the relief requested herein will allow the Commission to avoid revisions that may otherwise be needed to support the Commission's findings, since the Agreement's content is inadmissible unless our proposal is accepted.

We also understand that time is of the essence, and believe that modifying the Agreement to be admissible as a Joint Proposal, and holding the public, appropriately notice meeting, will be the speediest path to implementing the substance of the Commission's decision. Therefore, the Joint Sponsoring Parties request a Commission decision accepting this Compliance letter and making the requested modifications by the end of February 2015.

San Diego Gas and Electric Company (SDG&E) is authorized by each of the Joint Sponsoring Parties to file this Compliance Letter on their behalf.

Dated: December 22, 2014

Respectfully submitted on behalf of the Joint Sponsoring Parties,

*/s/ Thomas R. Brill*

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