

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**  
7-03-15  
04:59 PM

Application of SAN DIEGO GAS & ELECTRIC COMPANY (U902E) for Approval of its Electric Vehicle-Grid Integration Pilot Program.	Application 14-04-014 (Filed April 11, 2014)
And Related Matter.	Rulemaking 13-11-007

**THE OFFICE OF RATEPAYER ADVOCATES' COMMENTS  
ON THE PROPOSED SETTLEMENT AGREEMENT RELATING TO  
SAN DIEGO GAS & ELECTRIC COMPANY'S VEHICLE-GRID  
INTEGRATION PILOT PROGRAM APPLICATION**

**IRYNA A. KWASNY**  
Attorney

Office of Ratepayer Advocates  
California Public Utilities Commission  
505 Van Ness Avenue, 4th Floor  
San Francisco, CA 94102  
Phone: (415) 703-1477  
Facsimile: (415) 703-4592  
Email: [iryna.kwasny@cpuc.ca.gov](mailto:iryna.kwasny@cpuc.ca.gov)

**ANAND DURVASULA**  
Analyst

Office of Ratepayer Advocates  
California Public Utilities Commission  
505 Van Ness Avenue, 4th Floor  
San Francisco, CA 94102  
Phone: (415) 703-2765  
Email: [Anand.Durvasula@cpuc.ca.gov](mailto:Anand.Durvasula@cpuc.ca.gov)

**RAJAN MUTIALU**  
Analyst

Office of Ratepayer Advocates  
California Public Utilities Commission  
505 Van Ness Avenue, 4th Floor  
San Francisco, CA 94102  
Phone: (415) 703-2039  
Facsimile: (415) 703-2905  
Email: [rajan.mutialu@cpuc.ca.gov](mailto:rajan.mutialu@cpuc.ca.gov)

**JOSE ALIAGA-CARO**  
Utilities Engineer

Office of Ratepayer Advocates  
California Public Utilities Commission  
505 Van Ness Avenue, 4th Floor  
San Francisco, CA 94102  
Phone: (415) 703-2338  
Facsimile: (415) 703-2905  
Email: [Jose.Aliaga-Caro@cpuc.ca.gov](mailto:Jose.Aliaga-Caro@cpuc.ca.gov)

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## **I. INTRODUCTION**

Pursuant to Rule 12.2 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) offers these comments on the Settlement Agreement Regarding San Diego Gas & Electric Company's (SDG&E) Vehicle-Grid Integration Pilot Program (VGI Program) Application, A.14-04-014 (Settlement Agreement).

The Settling Parties<sup>1</sup> ask the Commission to approve the Settlement Agreement arguing that it "would resolve issues raised in the ... application."<sup>2</sup> Yet the Settlement Agreement fails to resolve issues of program size, program cost, and utility ownership, so the organizations representing ratepayers uniformly oppose the Settlement Agreement. The Settlement Agreement is not supported by ratepayer representatives and as explained below, is not reasonable in light of the record, is inconsistent with the law and is not in the public interest. The Commission should therefore reject it.

ORA conducted discovery on the Settlement Agreement. Although SDG&E served a timely response, ORA believes hearings are necessary to clarify implementation issues. If the Commission does not reject the Settlement Agreement outright, then ORA requests it hold hearings on the Settlement Agreement before considering whether to adopt it.

## **II. THE COMMISSION SHOULD REJECT THE PROPOSED SETTLEMENT AGREEMENT**

The Joint Motion states "the Settling Parties' testimony and briefing,<sup>3</sup> together with the Settlement Agreement and this Joint Motion, contain the information necessary for the Commission to find the Settlement Agreement reasonable in light of the record."

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<sup>1</sup> San Diego Gas & Electric Company, Environmental Defense Fund, Coalition of California Utility Employees, Natural Resources Defense Council, The Greenlining Institute, ChargePoint, Inc., Plug In America, Smart Grid Services, Siemens AG, Green Power Institute, American Honda Motor Co., Inc., General Motors LLC, NRG EV Services LLC, Sierra Club, Alliance of Automobile Manufacturers, KnGrid, LLC, Center for Sustainable Energy, and CalStart.

<sup>2</sup> A July 1, 2015 e-mail sent by Gregory E. Barnes to ALJ Wong stated that the "settlement agreement, which, if approved by the Commission, would resolve all issues in the above proceeding." This statement is erroneous. Not "all" issues have been resolved.

<sup>3</sup> By email Order dated June 1, 2015, ALJ Wong suspended the briefing schedule. No briefs were submitted in this proceeding.

But a careful examination of the record belies this assertion. Over the six days of hearings on SDG&E's VGI Program, the parties examined issues of program size, program cost and ownership structure. The evidence showed that (1) an actual pilot program much smaller and less costly than SDG&E's VGI program could produce data to evaluate if the VGI rate effectively manages load; and (2) utility ownership of the charging infrastructure is not necessary to an effective program.

The Settling Parties represent a variety of voices in California's growing electric vehicle industry. Markedly absent from this chorus are the organizations representing the ratepayers who will actually pay for the VGI Program in their monthly utility bills. Although the Settlement Agreement addresses some parties' concerns about the VGI Program's effect on customer choice and market innovation, the fundamental characteristics of the program remain unchanged: if the Commission approves the Settlement Agreement, SDG&E will own, operate and maintain 5500 electric vehicle chargers at multi-unit dwellings and workplaces at a cost of \$103 million to be recovered from ratepayers until 2037. Based on its size, cost and utility ownership of the charging infrastructure, the Settlement Agreement is not in the public interest.

#### **A. Standard of Review**

The Commission will not approve a settlement "unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest."<sup>4</sup> The proponents of the settlement have the burden of proof.

To evaluate a settlement agreement affecting all of a utility's ratepayers, the Commission applies the same factors courts consider in approving class action settlements.<sup>5</sup> To decide if the settlement is fair, adequate, and reasonable, courts consider the strength of the applicant's case; the risk, expense, complexity, and likely duration of further litigation; the amount offered in settlement; the extent to which discovery has been completed so that the opposing parties can gauge the strength and weakness of all

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<sup>4</sup> Commission Rules of Practice and Procedure 12.1(d).

<sup>5</sup> Order Instituting Rulemaking to Examine the Commission's Energy Efficiency Risk/Reward Incentive Mechanism, D.09-12-045 (December 29, 2009) p. 33-34 citing *Re Pacific Gas and Electric Company* (1988) D.88-12-083 30 CPUC 2d 189, 220.

parties; the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement; and whether the major issues are addressed in the settlement.<sup>6</sup>

In Decision (D.) 09-12-045 the Commission rejected a settlement relating to the 2006-2008 energy efficiency program cycle proposed by Pacific Gas and Electric Company (PG&E), SDG&E, Southern California Gas Company (SoCalGas) and the Natural Resources Defense Council (NRDC). In considering the merits of the settlement, the Commission assessed whether the settlement serves the broad public interest at issue in the rulemaking and applied the class action settlement factors.<sup>7</sup> Like the Settlement Agreement here, the energy efficiency settlement was contested. Thus, the Commission weighed the relevant objections and concerns of opposing parties.<sup>8</sup> Also, like the Settlement Agreement here, no party representing the ratepayers sponsored the energy efficiency program settlement.<sup>9</sup> Thus, the Commission found the settlement's sponsors did not represent all affected interests.<sup>10</sup> The Commission decided that the energy efficiency settlement was not reasonable in light of the whole record as a basis for authorizing incentive awards, and was not in the public interest.<sup>11</sup>

**B. The Settling Parties Have Not Shown that the Settlement Agreement is Reasonable, Consistent With Law and in the Public Interest**

**1. The Settlement Agreement Does Not Resolve Issues Regarding the VGI Program Size and Cost**

Applying the class action settlement factors shows that the Settlement Agreement does not address significant issues regarding cost, size, duration, and competitive impacts. Thus, it is not reasonable.

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<sup>6</sup> D.09-12-045 p. 34.

<sup>7</sup> Id.

<sup>8</sup> Id. p. 33.

<sup>9</sup> Id. p. 34-35.

<sup>10</sup> Id. p. 35

<sup>11</sup> Id. p. 34.

The Commission highlighted the issues of cost, size, duration and competitive impacts in the *Joint Assigned Commissioner and Administrative Law Judge's Scoping Memo and Consolidation Ruling* dated September 29, 2014 (Scoping Memo). The Scoping Memo recognized that the SDG&E VGI Program resembled a full scale utility program rather than a pilot and would require extended review.<sup>12</sup>

The Commission based its conclusion on three defining characteristics of the VGI Program:

- The size of the estimated cost is over \$103 million, of which \$55 million represents a potential capital investment for which SDG&E seeks ratebase treatment. SDG&E's request represents a significant infrastructure investment incremental to the distribution infrastructure cost and programs recently authorized in SDG&E's 2013 GRC. It is also on par with the size of a fully developed utility program, not an experimental pilot.<sup>13</sup>
- The SDG&E Application requests authority to own charging infrastructure raising the issue of whether utility ownership of electric vehicle service equipment may be appropriate given the Commission's initial assessment that, in general, third party competitive market participants should develop and own such infrastructure...<sup>14</sup>
- SDG&E's Application proposes to implement the new program over ten years and collect the costs in rates until 2037.<sup>15</sup>

The Settlement Agreement has not altered these characteristics. Further, the Settling Parties' testimony, the Settlement Agreement and the Joint Motion do not

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<sup>12</sup> Joint Assigned Commissioner and Administrative Law Judge's Scoping Memo and Consolidation Ruling (Scoping Memo) dated September 29, 2014, p. 3.

<sup>13</sup> Scoping Memo p. 3.

<sup>14</sup> Id. p. 3.

<sup>15</sup> Id. p. 4.

contain the information necessary for the Commission to find the size and utility ownership aspects of the SDG&E VGI Program reasonable.

SDG&E acknowledged that the Scoping Memo “expressed concern about the size of SDG&E’s program and its characterization as a ‘pilot.’”<sup>16</sup> SDG&E attempted to allay this concern by asserting that due to its “experimental nature” and the “limits and focus of its scope” the VGI Program should be considered a pilot.<sup>17</sup>

SDG&E claims that the proposed quantity of VGI systems and VGI chargers is necessary to ensure that the results will have sufficient statistical validity to “see whether hourly variant pricing influences charging decisions, with the aid of enabling technology.”<sup>18</sup> SDG&E also argues that the VGI rate has “prices granular to each hour of the day and for each of SDG&E’s more than 1,000 distribution circuits. Therefore, a sufficiently large number of electric vehicle (EV) Chargers and charging events are required to provide sufficient statistical validity to draw inferences on how the VGI rate influences EV charging behavior each hour and on the various types of SDG&E Distribution circuits.”<sup>19</sup>

To justify deploying 550 charging stations, SDG&E utilized an illustrative sampling methodology based upon obtaining data from 48 sample cells that reflect varying levels of load factor, solar penetration on the circuit, peaking hours and distribution circuit type (i.e. residential, commercial, and industrial).<sup>20</sup> Based upon SDG&E’s analysis, achieving a 90% confidence level with a 10% sample error can be achieved by deploying 550 VGI Systems, through the use of a 30-circuit cell sample and a pilot charger utilization of 0.5.<sup>21</sup>

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<sup>16</sup> Prepared Supplemental Testimony of SDG&E, ST-45.

<sup>17</sup> Id.

<sup>18</sup> Supplemental Testimony, (Schmika and Martin), Chapter 3, Appendix A, p. 1.

<sup>19</sup> Id. p. 2.

<sup>20</sup> Supplemental Testimony, (Schmika and Martin), Chapter 3, Appendix A, Figure A-1.

<sup>21</sup> Supplemental Testimony, (Schmika and Martin), Chapter 3, Appendix A, Table A-1.

However, based upon ORA's assessment of the VGI Pilot-Illustrative Sample Frame Example,<sup>22</sup> SDG&E might be able to reduce the number of required circuit cells and still achieve a 90% confidence level with at most a 10% sample error with a smaller-sized pilot.<sup>23</sup> For example, SDG&E could collapse the Hour 16 thru 20 and Hour 21 distribution circuit cells. Given this suggestion, SDG&E could rearrange the distribution circuit peaking hour categorization in a more meaningful fashion.

ORA does not propose a specific redesign of SDG&E's VGI Pilot- Illustrative Sample to estimate the number of EV charging stations to be deployed in the VGI Program at this time. Instead, ORA recommends the development of an initial, small-scale pilot utilizing a reduced number of EV charging stations that would provide the Commission with statistically significant near-term (i.e. prior to two years after VGI Program deployment) data. An initial phased deployment would inform the Commission if early VGI Program milestones have been achieved (e.g., number of VGI installations as highlighted in Appendix B).<sup>24</sup> This information would help the Commission evaluate the success of the pilot. Data obtained from an initial phase would help the Commission decide whether to continue the VGI Program before SDG&E files the Interim Progress Report two years after the program begins.<sup>25</sup> This strategy would allow the Commission to evaluate the preliminary results and effectiveness of the VGI Program prior to authorizing the expenditure of \$55 million dollars of VGI Program infrastructure costs that SDG&E proposes to ratebase until 2037 and is therefore preferable to SDG&E's reference to a balancing account mechanism and the Commission's authority to modify, suspend or terminate the VGI Program.<sup>26</sup>

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<sup>22</sup> Supplemental Testimony, (Schmika and Martin), Chapter 3, Appendix A, Figure A-1.

<sup>23</sup> Supplemental Testimony (Schmika and Martin), Chapter 3, Appendix A, p. 4.

<sup>24</sup> Joint Motion for Adoption of Settlement Agreement, Appendix B.

<sup>25</sup> Joint Motion for Adoption of Settlement Agreement, p. 12.

<sup>26</sup> Prepared Rebuttal Testimony of J.C. Martin, JCM 21.

## **2. SDG&E Does Not Need to Own Electric Vehicle Supply Equipment (EVSE) to Offer a VGI Rate to Customers**

Another issue that the Settlement Agreement fails to address is utility ownership of the EVSE. In Decision (D.) 14-12-079, the Commission cautiously endorsed an expanded role for utility activity in developing and supporting PEV charging infrastructure.<sup>27</sup> The Commission decided to evaluate utility proposals on a case-specific basis according to the balancing test applied in D.11-07-029: the benefits of utility ownership must be balanced against the competitive limitation that may result from that ownership.<sup>28</sup> In reviewing IOU applications, the Commission will consider:

- The nature of the proposed utility program and its elements, including whether the utility proposes to own or provide charging infrastructure, billing services, metering, or customer information and education.
- Examination of the degree to which the market into which the utility program would enter is competitive, and in what level of concentration.
- Identification of potential unfair utility advantages, if any.<sup>29</sup>
- If the potential for the utility to compete is identified, the Commission will determine if rules, conditions or regulatory protections are needed to effectively mitigate the anticompetitive impacts or unfair advantages held by the utility.<sup>30</sup>

In the Scoping Memo, the Commission stated that “...(t)he SDG&E Application requests authority to own charging infrastructure raising the issue of whether utility ownership of electric vehicle service equipment may be appropriate given the

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<sup>27</sup> Decision (D.) 14-12-079 Phase 1 Decision Establishing Policy to Expand the Utilities’ Role in Development of Electric Vehicle Infrastructure p. 5.

<sup>28</sup> Id. p. 5.

<sup>29</sup> D.14-12-079, p. 9.

<sup>30</sup> Id.

Commission’s initial assessment that, in general, third party competitive market participants should develop and own such infrastructure...<sup>31</sup>

Under the Settlement Agreement as under the Application, SDG&E would own, install and maintain EVSE. To support its proposal to offer a VGI rate to EV drivers/customers and own EVSE, SDG&E claimed that: “unless the EVSE, and corresponding price signal provided to the EV driver/customer is managed by the utility, there is no assurance to all ratepayers that the facility will provide benefits directly to all ratepayers.”<sup>32</sup> SDG&E asserts that only the utility can ensure that grid-integrated charging with pricing that incentivizes the EV driver/customer to charge during off peak periods will remain used and useful. Therefore, SDG&E contends that “without utility management, the risk of avoidable system upgrades and the addition of new fossil generation is increased.”<sup>33</sup>

Under the Settlement Agreement, however, SDG&E will now offer an additional VGI Rate-to-Host option (Settlement Agreement Provision A) that provides the VGI rate to the site host.<sup>34</sup> The Settlement Agreement does not prohibit the site owner from passing the VGI rate through to drivers. Conversely, the site host is not required to pass the rate on to the EV driver. If the site host does not pass the rate on, then the EV driver may not be aware of rate and may have no incentive to charge his/her vehicle to benefit the grid.

Under the VGI Rate-to Host option, SDG&E will:

- Permit site hosts to select a SDG&E pre-qualified third-party vendor of EV supply equipment services (Settlement Agreement Provision F),<sup>35</sup>

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<sup>31</sup> Scoping Memo p. 3.

<sup>32</sup> Prepared Rebuttal Testimony of James P. Avery, JPA 4-5.

<sup>33</sup> Id.

<sup>34</sup> Joint Motion for Adoption of Settlement Agreement, Attachment A, p. 4.

<sup>35</sup> Id. p. 5.

- Coordinate with third party vendors, pre-qualified by SDG&E, to market and sign up potential VGI program site hosts (Settlement Agreement Provision G);<sup>36</sup>
- Require site hosts to submit a Load Management Plan (LMP) that is consistent with the Settling Parties Guiding Principles including requirements to provide net benefits to ratepayers and ensure that assets are used and useful;<sup>37</sup> and
- Monitor site usage patterns and track site host determined prices or fees that will be levied on VGI Rate-to-Host customers.<sup>38</sup>

The details of the VGI Rate-to-Host option demonstrate that SDG&E need not own the EV charging stations to offer a VGI rate to customers; ensure that assets are used and useful; and provide net benefits to ratepayers. Thus, SDG&E has not met the balancing test of D.11-07-029.

An alternative to SDG&E ownership of the charging stations that would ensure that EV charging stations are used and useful would require site hosts to sign contracts with SDG&E pre-qualified third party vendors that includes a VGI rate for EV drivers. In addition, regardless of whether or not SDG&E owns the EV charging stations, data will need to be collected to verify if the VGI Program provides net benefits to ratepayers. Although the Settlement Agreement anticipates providing the Commission with an Interim Progress Report (Settlement Provision P)<sup>39</sup> two years after program deployment,<sup>40</sup> ORA recommends that SDG&E submit a near-term report (e.g., one year after program deployment and after an initial number of charging stations have been

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<sup>36</sup> Id. p. 5.

<sup>37</sup> Id. p. 3

<sup>38</sup> Id. p. 4.

<sup>39</sup> Id. p. 3.

<sup>40</sup> Joint Motion for Adoption of Settlement Agreement, p. 12.

installed) that details VGI Program performance data as detailed in Settlement Agreement Appendix B.<sup>41</sup>

### **III. IF IT DOES NOT REJECT THE SETTLEMENT AGREEMENT, THE COMMISSION SHOULD HOLD HEARINGS ON THE SETTLEMENT AGREEMENT**

As stated earlier, the Joint Motion argues that “...(t)he Settling Parties’ testimony and briefing, together with the Settlement Agreement and this Joint Motion, contain the information necessary for the Commission to find the Settlement Agreement reasonable in light of the record.”<sup>42</sup> ORA disagrees with this assertion not only because the Settlement Agreement raise many of the same problematic issues as the Application, but also raises new issues. Below is a list of issues that should be considered in a hearing on the Settlement Agreement:

- The Settlement Agreement does not provide for Commission review of the VGI Program before SDG&E submits a program effectiveness report two years after the program begins. An early program assessment would help the Commission determine if the program is meeting its objectives. In addition, the Settlement Agreement does not include a provision for suspension or off-ramping if the VGI Program falls short of program objectives, including incentivizing EV adoption.
- Although the Settlement Agreement includes a VGI Rate-to-Host option that offers customer choice in the selection of an electric vehicle service provider (EVSP) vendor, how will the VGI Program impact competition in the EVSP market in the San Diego area? How will SDG&E measure the impact of the VGI Program on non-utility EVSE installations according to the balancing test reaffirmed in Decision (D.) 14-12-079?<sup>43</sup>

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<sup>41</sup> Id. Appendix B.

<sup>42</sup> Joint Assigned Commissioner and Administrative Law Judge’s Scoping Memo and Consolidation Ruling dated September 29, 2014 p. 3.

<sup>43</sup> D.14-12-079, p. 5. “The benefits of utility ownership of PEV charging infrastructure must be balanced against the competitive limitation that may results from that ownership.”

- How will SDG&E measure how site hosts that have subscribed to the VGI Rate-to-Host option (e.g., be structured to provide net benefits to ratepayers) comply with load management tactics identified by the Settling Parties?
- The VGI Rate-to-Host Option implies that site hosts or third-party vendors may charge EV drivers any price or rate (i.e. a flat rate or no charge) for EV charging (Settlement Agreement Provision B).<sup>44</sup> In this instance, SDG&E's VGI Program customers are the site hosts, not EV drivers. This is a new VGI Program element introduced in the Settlement Agreement, and the parties should examine how SDG&E would work with site hosts and third party vendors to track prices or rates in relationship to VGI Program performance. The details of this process could be outlined in an initial pilot phase of the VGI Program, thus providing transparency and accountability to the stakeholders and the Commission.
- The Settlement Agreement proposes that the costs of additional services will not be borne by the VGI program unless they are complementary and are necessary to support VGI program objectives (Settlement Agreement Provision F).<sup>45</sup> Hearings are necessary to explore possible additional costs, how SDG&E proposes to determine if they are necessary to VGI Program function, and how SDG&E proposed to account for the costs in the VGI Program budget.
- The Settlement Agreement allows third party vendors to charge VGI Rate-to-Host customers a fee for EV charging services (Settlement Agreement Provision B).<sup>46</sup> How will SDG&E verify the impact of the additional fee on VGI Program enrollment? Will SDG&E moderate fees if they adversely affect the program's goals? As stated earlier, if the VGI

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<sup>44</sup> Joint Motion for Adoption of Settlement Agreement, Attachment A, p. 4.

<sup>45</sup> Id. p. 5.

<sup>46</sup> Id. p. 4.

program were preceded by an initial pilot phase, the details of this process could be studied, thus providing transparency and accountability to stakeholders and the Commission.

- According to the Settlement Agreement, VGI Program participants will be assessed a program participation payment (Settlement Agreement Provision D).<sup>47</sup> SDG&E will obtain feedback from the VGI Program Advisory Council (PAC) regarding the proposed program participation payment amount. To obtain authority to collect the payment, SDG&E intends to file a Tier 2 Advice Letter.<sup>48</sup> However, the Settlement Agreement does not contain information regarding the potential program participation payment range; if the payment will be a one-time or recurring payment; and what program costs the payment will defray. SDG&E did not include this VGI Program element in its VGI Program Application, so this new element has not been scrutinized.
- The Settlement Agreement provides that the VGI PAC will provide feedback to SDG&E regarding VGI Program design and modifications (Settlement Agreement Appendix A).<sup>49</sup> What is the scope of the VGI PAC's authority? How will it impact program modification?

#### IV. CONCLUSION

ORA recommends the Commission reject the proposed Settlement Agreement because it is not reasonable in light of the record, is inconsistent with the law and is not in the public interest. If the Commission rejects the Settlement Agreement, ORA recommends the Commission resume the briefing schedule on SDG&E's original VGI Program with the goal of adopting a VGI pilot that will benefit California ratepayers and provide critical near-term information on the EV market and deployment.

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<sup>47</sup> Id.

<sup>48</sup> Id. p. 5.

<sup>49</sup> Id.

If the Commission does not reject the Settlement Agreement outright, then ORA requests hearings on factual information introduced in the Settlement Agreement that was not vetted by stakeholders and the Commission. This should be done prior to any formal consideration of the Settlement Agreement.

Respectfully submitted,

/s/ IRYNA A. KWASNY

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Iryna A. Kwasny  
Attorney

Office of Ratepayer Advocates

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Phone: (415) 703-1477  
Facsimile: (415) 703-4592  
Email: [Iryna.Kwasny@cpuc.ca.gov](mailto:Iryna.Kwasny@cpuc.ca.gov)

July 3, 2015