

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

Rulemaking Regarding Whether, or Subject to
What Conditions, the Suspension of Direct Access
May Be Lifted Consistent with Assembly Bill 1X
and Decision 01-09-060.

Rulemaking 07-05-025
(Filed May 24, 2007)

**REPLY COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS,
DIRECT ACCESS CUSTOMER COALITION, RETAIL ENERGY SUPPLY
ASSOCIATION, SCHOOL PROJECT FOR UTILITY RATE REDUCTION AND
COMMERCIAL ENERGY TO THE PROPOSED DECISION OF
ADMINISTRATIVE LAW JUDGE THOMAS R. PULSIFER**

Daniel W. Douglass
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, California 91367
Telephone: (818) 961-3001
Facsimile: (818) 961-3004
Email: douglass@energyattorney.com

Counsel for the
**ALLIANCE FOR RETAIL ENERGY MARKETS
DIRECT ACCESS CUSTOMER COALITION**

AND ON BEHALF OF THE JOINT PARTIES

December 17, 2012

SUBJECT INDEX AND RECOMMENDATIONS OF THE JOINT PARTIES

1. The Financial Security Requirement should apply only to direct access customers with demand of less than 20 kilowatts that are not affiliated with a large customer with demand of 20 kW or more.
2. Subject to the minor technical corrections described herein, the proposed decision should be adopted as written.

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In accordance with California Public Utilities Commission Rule 14.3, the Alliance for Retail Energy Markets (“AReM”),¹ Direct Access Customer Coalition (“DACC”),² Retail Energy Supply Association (“RESA”),³ School Project for Utility Rate Reduction (“SPURR”)⁴ and Commercial Energy, (hereafter collectively referred to as the “Joint Parties”) submit these reply comments on the proposed *Decision Regarding Electric Service Provider Financial Security Requirements For Incremental Procurement Costs* (“PD”) issued on November 20, 2012. The Joint Parties reply herein to the joint comments filed by the investor-owned utilities (“IOUs”).⁵

¹ AReM is a California mutual benefit corporation formed by electric service providers that are active in California’s direct access market. The positions taken in this filing represent the views of AReM but not necessarily individual members or the affiliates of its members with respect to the issues addressed herein.

² DACC is a regulatory alliance of educational, commercial and industrial customers that utilize direct access for all or a portion of their electrical demand. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage.

³ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

⁴ SPURR is a joint powers authority, a membership organization that aggregates utilities services purchasing power and expertise for over 200 California public K-12 school districts, county offices of education, and community college districts.

⁵ See, December 10, 2012, Joint Opening Comments of Southern California Edison Company (U 338-E), Pacific Gas and Electric Company (U 39-E) and San Diego Gas & Electric Company (U 902 M) on Proposed Decision Regarding Electric Service Provider Financial Security Requirements for Incremental Procurement Costs.

As noted in opening comments, the Joint Parties do not believe there are any factual or legal errors in the PD and urge its adoption by the Commission largely as written, subject to the minor technical clarifications as discussed in our opening comments. By comparison, several of the IOUs' recommended modifications would essentially reverse most of its major findings, or impose unnecessary burdens on electric service providers ("ESPs") who must meet the small customer financial security requirements, and Joint Parties urge the Commission to reject those proposed modifications. Specifically, of the IOUs' ten recommendations,⁶ Recommendations 1-5 and a portion of Recommendation 10 should be rejected outright. The other recommendations made by the IOUs are inconsequential, and as such, Joint Parties do not object to them and offer limited comments herein. The Joint Parties' response to each IOU recommendation follows.

A. The IOUs' Recommendations 1-5 should be Rejected

The IOUs first argue in Recommendation 1 that the PD should be modified to include medium-sized customers in the category of customers that are entitled to receive the protections of Section 394.25(e) because they do not meet the standard adopted in Decision (D.)11-12-018 to be excepted from the protections of Section 394.25(e). This recommendation is factually incorrect and should be summarily rejected. The IOUs contend that the small customer for Section 394.25(e) purposes should be distinguished from a large customer based solely on the fact that D.11-12-018 noted that small customers may not have "the *same degree* of business sophistication" as large commercial and industrial customers. The IOUs concede, of course, that the traditional uses of the term "small customer" is counter to their position but argue nevertheless that the traditional use of the term is overturned by the wording in D.11-12-018. Given such a bad hand to work with, perhaps it is understandable that this is the best argument the IOUs could come up with. However, it is flawed and extracts from D.11-12-018 a standard that does not in fact exist.

In support of this flawed contention, the IOUs present a series of statistics (at p. 5) to support their contention that small customers do not have the same degree of sophistication as larger customers. In doing so, the IOUs seek to introduce evidence in their PD comments that is not part of the record in the proceeding and thus not subject to cross-examination or discovery. Therefore, it must be disregarded. Moreover, their argument makes no sense. Medium

⁶ See, the Joint IOU opening comments, at pp. 2-3.

commercial customers purchase a significant amount of power and of necessity will pay attention to such a significant purchase. The PD has correctly determined that the medium commercial customers at or above 20 kW possess the requisite sophistication and its conclusion is correct. There is simply no reason and no evidence to support the expansion of the traditional definition of small customers for purposes of calculating required financial security.

The IOUs next argue in Recommendations 2 and 3 that a more specific definition of “affiliated” is required, that an officer of the ESP should be required to verify the accuracy of its affiliation determinations, and that the ESP’s Standard Service Plan Submission (“SSP”) should be served on the IOUs. Each of these recommendations is simply a reply of the IOUs’ tired attempts to burden their competitive service providers with unnecessary duties, obligations and costs and they should be rejected. As noted in the Joint Parties’ opening comments, we request that the Commission direct the appropriate staff of the Energy Division to confer with ESPs on (i) whether and how this approach will require changes to the current SSP reporting protocols, and (ii) how the SSP information will be translated into a specific financial security requirement. The information requested by the IOUs can be provided by Energy Division after it has reviewed each ESP’s SSP.

In Recommendation 4, the IOUs contend that the PD’s use of a weighted average generation rate to increase the accuracy of the incremental procurement cost forecast should be rejected in favor of a system average generation rate. This also should be rejected. The use of the weighted average generation rate in the financial security requirement calculation adds accuracy to the incremental procurement cost forecast at very little incremental effort. The financial security calculation supported by the IOUs throughout the proceeding was arbitrary, highly burdensome and administratively extremely complex, which is why it was rejected. To characterize the simple incremental improvement of reflecting the actual rates the IOU would collect from returning customers as arbitrary and burdensome is laughable. The PD as written achieves a reasonable balance between accuracy and implementability and should not be modified.

In Recommendation 5, the IOUs contend that the PD should be modified to find that incremental administrative costs are actual, known re-entry fee costs that will be incurred -- regardless of the procurement costs -- in an involuntary return. They argue, therefore, these costs are required to be sufficiently secured by the ESP under Section 394.25(e) and cannot be netted against the forecasted incremental procurement costs. To the contrary, while the incremental

administrative costs are actual and real, so are the procurement costs. If the involuntary return of customers to bundled service results in net revenue—rates exceeding the cost to serve—then the IOU will be collecting real incremental dollars. In the event that forecasted cost to serve is less than generation rates, netting the forecast administrative costs against forecast incremental procurement is consistent and reasonable. Furthermore, the arguments made by the IOUs concerning risk and price volatility were strenuously made in the proceeding, but rightly rejected by the PD. As such, these same arguments raised again, albeit in this smaller matter, must also be disregarded.

B. The Joint Parties do Not Object to Recommendations 6 through 9.

In recommendation 6, the IOUs suggest that the PD should be modified to eliminate what is described as the “erroneous conclusion that the Cost Allocation Mechanism (CAM) and Competitive Transition Charge (CTC) should be included in the bundled generation component of the incremental procurement cost calculation. Neither CAM nor CTC are unbundled generation components.”⁷ The Joint Parties can accept the IOUs’ proposal on this matter; the IOU collects the CTC and CAM charges from all customers, and as such they are not incremental. The Joint Parties nonetheless note that the CAM and CTC charges are related to generation procurement, but simply are not part of the generation rate. With respect to the IOU’s assertion that the CAM charge is not “generation” because it is in the delivery rates, the Joint Parties note that the CAM charge is collected in that fashion because it has been deemed a non-bypassable charge and not because it is inherently delivery-related.

The Joint Parties do not object to the proposals in Recommendations 7, 8 and 9 that the PD should include an ordering paragraph that directs the IOUs to recover the “residual” re-entry fees from the involuntarily returned DA customers; that the IOUs should be allowed sixty (60) days to amend their tariffs to incorporate necessary changes consistent with the final decision and that OP 4 should be modified to require the customer size for ESP financial security calculations to be determined in the advice filings on ESP security amounts due in May (not April), consistent with OP 6.

⁷ Ibid.

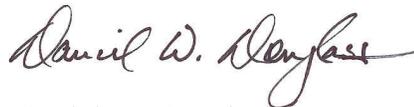
C. The Joint Parties Agree in Part and Object in Part to the IOUs' Recommendation 10.

Recommendation 10 states that Appendix 1 should be modified to correct for certain errors, include the calculation for re-entry fees. The Joint Parties do not object to the IOUs' recommended modifications to Steps 2 and 3 in Appendix 1, where they change the incorrect references from "PCIA vintage" to "TBS rate." However, the IOUs' recommended modifications to Steps 5 through 7 are not correcting errors but implementing their recommended changes concerning the size of small customers, the use of system average rates and the netting of administrative costs against negative increment procurement costs. As discussed above, these modifications should be rejected and thus Steps 5 through 7 remain as they appear in the PD.

III. Conclusion

The Joint Parties support adoption by the Commission of the proposed decision of ALJ Pulsifer, subject to the minor technical clarifications discussed in our opening comments and detailed in Appendix A thereto. The Joint Parties thank the Commission for its attention to these comments and request that the Commission adopt the foregoing recommendation as it approves the PD at the meeting of December 20, 2012.

Respectfully submitted,



Daniel W. Douglass
DOUGLASS & LIDDELL

Counsel for the
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