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January 23, 2012

Mr. Honesto Gatchalian
Ms. Maria Salinas
CPUC Energy Division
Tariff Files, Room 4005
DMS Branch
505 Van Ness Avenue
San Francisco, California 94102

Re: Protest to SDG&E Advice Letter 2324-E

Dear Mr. Gatchalian and Ms. Salinas:

On January 3, 2012, SDG&E filed its advice letter 2324-E in compliance with Ordering Paragraphs 14, 15, 16 and 32 of California Public Utilities Commission's ("Commission") Decision ("D.") 11-12-018 with regard to the ESP Financial Security Requirement ("FSR").¹ The advice letter notes that, "SDG&E is submitting revisions to its electric Rule 25, *Direct Access Rules*, to incorporate the Electric Service Provider (ESP) financial security provisions and re-entry fee provisions applicable to an involuntary return of Direct Access (DA) customers, and its calculation of the financial security requirements applicable to the ESPs serving customers within SDG&E's service territory."

The following limited protest to the SDG&E advice letter is offered by the Alliance for Retail Energy Markets,² the Direct Access Customer Coalition,³ the Energy Users Forum⁴ the

¹ SDG&E Advice 2324-E is entitled "Revisions to Electric Rule 25 – Direct Access Rules and the Submittal of Electric Service Provider (ESP) Financial Security Requirements in Compliance With Decision (D.) 11-12-018."

² AREM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California's direct access market. This filing represents the position of AREM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

³ DACC is a regulatory alliance of commercial, industrial and governmental customers who have opted for direct access for some or all of their loads.

⁴ EUF is an ad hoc group that represents the interests of medium and large bundled service and direct access customers in California, with locations in either investor-owned utility and/or municipal utility service areas, primarily taking service on rate schedules for accounts with demand above 100 kW.

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Retail Energy Supply Association,⁵ and the School Project for Utility Rate Reduction⁶ (“Joint Protestors”). The advice letter contains multiple revisions to Rule 25 to implement the new requirements pertaining to the FSR. In general, the revisions proposed by SDG&E are appropriate. However, the utility’s proposed tariff revisions do not adequately address a distinction made by the Commission with regard to small commercial customers. Specifically, D.11-12-018 postponed a decision on the FSR that would be applicable to ESPs serving residential and small commercial customers and said that the reentry fee for ESPs serving these customers should include a provision to cover incremental procurement costs. At the same time, the decision clearly drew a distinction by excluding small commercial load that was affiliated with the load of large commercial or industrial customers:

However, we also determine that the re-entry fee and ESP financial security requirements for involuntarily returned small commercial and residential DA customers should include a provision to cover their incremental procurement costs. For this purpose, we intend to limit this latter requirement to exclude small commercial DA customers that are affiliated with a large DA customer. We defer to the next phase of this proceeding the specific process by which to define small commercial customers for purposes of calculating the ESP financial security requirement.⁷

SDG&E’s advice letter overlooks this distinction with regard to small commercial customers affiliated with large DA customers, noting solely that, “For large commercial and industrial customers (and smaller accounts associated with a large customer), involuntarily returned DA customers are placed on Transitional Bundled Service (SDG&E’s Schedule EECC-TBS), while involuntarily returned residential and small commercial customers are placed directly on the applicable Bundled Service commodity rate.”⁸ As noted in the decision excerpt above, this is inaccurate with regard to small commercial accounts that are affiliated with a large DA customer. In order to make this specifically clear, the Joint Protestors therefore recommend

⁵ 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 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.

⁶ 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.

⁷ D.11-12-018, at pp. 3-4 (emphasis added). See also pp. 69-70, Findings of Fact 27, 47 and 48 and Conclusion of Law 11.

⁸ SDG&E Advice Letter, at p. 2.

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that the following modification be made to SDG&E's proposed new language in Section Q of Rule 25:

Q. ESP Financial Security Requirements

As a described in Section D.3, all new and existing ESPs are required to post a bond or demonstrate insurance sufficient to cover the re-entry fees associated with the involuntary return of its DA customers to SDG&E's bundled service. The calculated bond amount will include the administrative costs related to switching a customer back to bundled service, and, subject to CPUC approval of a calculation methodology in a subsequent proceeding, the incremental procurement costs for involuntarily returned residential and small commercial customers accounts that are not affiliated with a large DA customer for a safe harbor period and then for an additional six-month period for those customers remaining on bundled service.

In the Draft Resolution to be issued in response to this advice letter, SDG&E should be directed to make the change recommended above. Such a change would reflect the clear direction in D.11-12-018 and avoid any possible confusion that might be caused in the future for parties unfamiliar with the full regulatory history attendant to this issue. Furthermore, the recommended change would not in any way predispose of issues that are to be considered in the next phase of R.07-05-025, as directed in D.11-12-018.

The Joint Protestors thank the Energy Division for its attention to this request.

Respectfully submitted,



Daniel W. Douglass
DOUGLASS & LIDDELL

Counsel for the
ALLIANCE FOR RETAIL ENERGY MARKETS
DIRECT ACCESS CUSTOMER COALITION
AND ON BEHALF OF THE JOINT PROTESTORS

cc: Edward Randolph, Director, Energy Division, Room 4004
Megan Caulson, Regulatory Tariff Manager
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