



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

FILED

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

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

Order Instituting Rulemaking to Implement
Portions of AB 117 Concerning Community
Choice Aggregation.

NOT CONSOLIDATED

Rulemaking 03-10-003
(Filed October 2, 2003)

**OPENING BRIEF OF THE CITY AND COUNTY OF SAN FRANCISCO
ON LEGAL ISSUES PERTAINING TO THE ELECTRIC SERVICE PROVIDER AND
COMMUNITY CHOICE AGGREGATION BONDING REQUIREMENT**

In accordance with the *Amended Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge Amending the Scoping Memo and Reopening the Record* issued in Rulemaking (“R.”) 03-10-003 on January 14, 2011 (“Amended Scoping Memo”), and the *Administrative Law Judge’s Ruling Amending Procedural Schedule* issued in R.07-05-025 on January 7, 2011, the City and County of San Francisco (“CCSF”) submit this opening brief on legal issues pertaining to the Electric Service Provider (“ESP”) and Community Choice Aggregation (“CCA”) bonding requirement under Pub. Util. Code § 394.25(e). CCSF’s interest in these issues relates to its plan to begin offering services under its CCA program in 2011.

The Amended Scoping Memo (p. 3) poses the following question: “Although the methodology for calculating the bond/re-entry fee for CCAs and ESPs may differ, parties are

asked to brief whether the legal obligations arising under [Public Utilities Code] § 394.25(e) would apply differently to these two entities.”¹

In terms of legal obligations, the first two sentences of Section 394.25(e) treat ESPs and CCAs the same. The first sentence states that, in the event of an involuntary return of a customer to the utility, both ESPs and CCAs are responsible for any re-entry fees necessary to avoid imposing costs on the bundled customers of the utility.² The second sentence states that both ESPs and CCAs are required to post a bond or demonstrate insurance as a condition of registration. Thus, the statute makes no distinctions between ESPs and CCAs with respect to either of these two obligations. That said, the statute does not require the Commission to make re-entry fee and bond methodologies and amounts the same for ESPs and CCAs. Neither does the statute prohibit the Commission from determining that the re-entry fee and bond methodologies should be the same for the two types of entities.

The only distinction between ESPs and CCAs in the language of Section 394.25(e) relates to the last sentence, which applies only to ESPs and not CCAs. That sentence states that, in the event an ESP becomes insolvent and cannot pay the required re-entry fees, such fees are to be allocated to the returning customers. In contrast to the previous two sentences, the last sentence notably excludes CCAs. In R.03-10-003, CCSF has already provided extensive legal

¹ Section 394.25(e) provides:

If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electrical corporation shall be the obligation of the electric service provider or a community choice aggregator, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.

² The first sentence makes an exception, equally applicable to ESPs and CCAs, for customers returning to the utility because of the customer’s default in payment or other actions by the customer.

argument explaining that the omission of CCAs in the last sentence demonstrates that the legislature intended returning customers to bear residual responsibility for unpaid re-entry fees only in the case of ESPs, and not CCAs. Rather than repeat those extensive arguments here, we refer the Commission to those previous briefs.³

CCSF appreciates the opportunity to respond to the legal question posed by the Amended Scoping Memo.

Dated: January 24, 2011

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³ *Joint Comments of the Designated Local Government Parties on Settlement-Related Issues*, pp. 4-13; *Joint Reply Comments of the Designated Local Government Parties on Settlement-Related Issues*, pp. 4-11; *Comments of the City and County of San Francisco on the Proposed Decision of Administrative Law Judge Yip-Kikugawa*, pp. 14-15.

CERTIFICATE OF SERVICE

I, KIANA V. DAVIS, declare that:

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action. My business address is City Attorney's Office, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102; telephone (415) 554-4698.

On February 3, 2011, I served:

**OPENING BRIEF OF THE CITY AND COUNTY OF SAN FRANCISCO
ON LEGAL ISSUES PERTAINING TO THE ELECTRIC SERVICE PROVIDER AND
COMMUNITY CHOICE AGGREGATION BONDING REQUIREMENT**

by electronic mail on all parties in CPUC Proceeding Nos. R.07-05-025 and R.03-10-003 on the attached email service list.

The following addresses without an email address were served:

- BY UNITED STATES MAIL: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 3, 2011, at San Francisco, California.

/s/

KIANA V. DAVIS

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