

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



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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)

**COMMENTS OF THE CALIFORNIA ALLIANCE FOR CHOICE IN ENERGY  
SOLUTIONS AND THE ALLIANCE FOR RETAIL ENERGY MARKETS  
ON ASSIGNED COMMISSIONER'S RULING  
ON PROCEDURES TO ADDRESS SENATE BILL 695 ISSUES  
RELATING TO DIRECT ACCESS TRANSACTIONS**

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](mailto:douglass@energyattorney.com)

Attorney for the  
*California Alliance for Choice in Energy Solutions*  
and the  
*Alliance for Retail Energy Markets*

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In accordance with the directions provided in the *Assigned Commissioner's Ruling on Procedures to Address Senate Bill 695 Issues Relating to Direct Access Transactions* ("ACR"), which was issued on November 18, 2009, the California Alliance for Choice in Energy Solutions<sup>1</sup> and the Alliance for Retail Energy Markets ("AReM")<sup>2</sup> respectfully submit the following comments on procedural issues pertaining to the implementation of Senate Bill ("SB") 695.<sup>3</sup> The ACR notes that "the Commission must adopt and implement a reopening schedule by April 11, 2010, to phase in authorized increases in the allowable direct access transactions over a period of not less than three years, and not more than five years. The scope for this initial sub-phase is limited only to those issues that must be decided within the initial six-month time limit mandated by SB 695."<sup>4</sup>

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<sup>1</sup> CACES (previously the California Alliance for Competitive Energy Solutions) is the successor organization to the parties who filed and/or supported the original December 6, 2006 Petition filed asking that the Commission open an investigation into restoring customer access to the competitive retail market.

<sup>2</sup> 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 and its members, but not necessarily the affiliates of its members with respect to the issues addressed herein.

<sup>3</sup> Chapter 337, Statutes of 2009.

<sup>4</sup> ACR, at p. 6.

## I. INTRODUCTION AND SUMMARY OF COMMENTS

The ACR carefully and comprehensively lays out the issues that must be addressed for the transitional reopening of Direct Access (“DA”) to proceed in an orderly manner, and pursuant to market rules that will promote competition and assist customers in making very important electric retail choice decisions. The correct focus here is on what must be done to comply with the April 11, 2010 implementation date. Any extraneous issues that need not be resolved in order to reopen the market can be deferred.

The Commission has requested that parties submit procedural comments “as to the appropriate scope of issues for this sub-phase. Parties should comment on whether the preliminary list of issues identified above should [be] modified, either with additions or deletions of issues, for purposes of completing this sub-phase by April 11, 2010. If parties believe evidentiary hearings are required, they shall identify the specific issues for which hearings would cover.”<sup>5</sup>

CACES and AReM generally concur that the ACR sets forth an appropriate schedule and scope for the issues that must be addressed in this proceeding, with the following requested modifications, which are addressed in more detail below:

1. The Commission must provide an early ruling on customers’ obligations with respect to the current direct access switching rules that require eligible direct access customers who have returned to the utility and served their required three-year minimum stay, to give a six month notice to return to Direct Access. The issues at hand that must be addressed as soon as possible is the applicability of this six-month notice requirement to the newly direct access eligible customers under SB 695, and whether the requirement should be waived for customers who were eligible for DA prior to the passage of SB 695.

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<sup>5</sup> Id.

2. The scope of this proceeding must address the current meter installation requirements that are applicable to all DA customers whose peak load exceeds 50kW.
3. CACES and AReM request the inclusion of specific issues relative to the data submitted by the IOUs on December 3, 2009 supporting the calculation of the DA cap.
4. The scope of the proceeding must ensure that the remaining phases of the DA OIR proceed, even though the requirement for DWR contract novation Working Group reports is suspended.
5. CACES and AReM note that several issues contained in the ACR are not necessary for inclusion in the scope of this proceeding.
6. CACES and AReM request a change to the date of the Workshop for Consensus on Substantive Issues from January 13, 2010 to January 11, 2010.

## **II. EARLY GUIDANCE REQUIRED ON THE SIX MONTH NOTICE PROVISIONS.**

Under current market rules, former DA customers who are currently on bundled utility service must provide six months notice to leave utility service. This rule was put in place pursuant to what are referred to as the “switching exemption decisions.”<sup>6</sup> D.03-05-034 provided that if a DA customer returned to bundled service, it was required to stay for a minimum three-year period.<sup>7</sup> It also adopted a proposal “for a six-month advance notice as an initial requirement for DA customers returning to bundled service before they can receive the bundled portfolio rate,”<sup>8</sup> as well as finding it, “reasonable also to apply the same six-month notice requirement for such customers that seek to switch back to DA.”<sup>9</sup> These requirements have been included in the utilities’ respective Rules, which generally provide that customers switching to or from bundled service (with the exception of

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<sup>6</sup> See D.03-05-034 and D.03-06-035 (regarding rehearing of the earlier decision).

<sup>7</sup> D.03-05-034, at pp. 12-13, “If grandfathered DA customers elect to remain on bundled service, they will pay the bundled procurement rate and shall be required to make a minimum commitment as a bundled customer for a three-year minimum period before having the option of returning to DA.”

<sup>8</sup> Id at pp. 39-40.

<sup>9</sup> Id at p. 40.

Transitional Bundled Service) are required to notify the IOU six months in advance of their intent to switch.

It is important to note that these rules are not applicable to any bundled customers who are electing DA service for the first time as new DA customers are governed by each utility's Rule 22. The switching exemption decision D.03-05-034 makes it clear that the six-month notice applies to "such customers that seek to switch back to DA," with the phrase "such customers" referring to customers that had been on DA, subsequently returned to bundled service and served out their three-year stay requirement. This is reinforced in the utilities' respective Rules. For example, the Southern California Edison ("SCE") Rule 22.1 states that, "The following Rule implements the Switching Exemption Decision (D.) 03-05-034, which adopted guidelines regarding the rights and obligations of DA Customers who return to Bundled Service and subsequently switch back to DA service."<sup>10</sup> Further, the ACR also specifies that, "Six-month notice requirements were developed to govern the switching of customers who were returning to bundled service or returning to DA after serving out their three-year minimum stay."<sup>11</sup>

So that the process of enrolling new customers may proceed in an orderly fashion, the Commission should quickly clarify that new customers who have not been direct access since the suspension and new DA customers – i.e., those customers who were never on Direct Access service prior to the suspension, are under no obligation to comply with the six-month notice rule.

In addition, for bundled customers who are DA eligible because they had taken Direct Access service prior to the suspension, and are therefore subject to the six month notice, CACES and AReM request that the six month notice requirement should be waived as the cap provides the

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<sup>10</sup> See SCE Rule 22.1, at Sheet 1. Substantially identical wording is used in PG&E's Rule 22.1 and SDG&E's Rule 25.1.

<sup>11</sup> ACR, at p. 5. CACES and AReM believe that the ACR has also correctly teed up the issue of whether the notice rules should be "waived for bundled customers who are eligible and subject to the six month notice since the utilities will have knowledge as to maximum DA load to guide their procurement planning under SB 695 rules?" ACR, at pp. 5-6.

utilities sufficient certainty as to their procurement obligations without layering on an additional six-month notice provision. Moreover, unless the six-month notice requirement is waived, it will not be possible to comply with the statutory requirement that the reopened direct access market must commence within six months of the passage of the bill, which is on or before April 11, 2010.

**III. METER INSTALLATION ISSUES MUST BE INCLUDED WITHIN THE SCOPE OF THIS PROCEEDING**

Under current rules, which are prescribed in each of the utilities’ ESP Handbooks and respective Rules 22, any customer with a peak load that is greater than 50kW is required to install an approved interval meter. Interval meters allow customers better access and control to their load consumption and are a step in the process of getting us to a smarter more efficient grid. As shown in the table below, the Commission has authorized the Advanced Meter Initiative (“AMI”) that will deploy advanced meters to residential and commercial/industrial customers. That deployment is already underway, and is being paid for by both bundled and direct access customers through transmission rates.

<b>FACTS</b>	<b>PG&amp;E D.06-07-027 D.09-03-026</b>	<b>SDG&amp;E D.07-04-043</b>	<b>SCE D.08-09-039</b>
<b>Scope</b>	5.1 million electric; 4.2 million gas meter modules	1.4 million electric; 0.9 million gas meter modules	5.3 million electric
<b>Approved Cost</b>	\$2.4 billion	\$0.6 billion	\$1.7 billion
<b>Deployment Timeline</b>	2007-2012	2008-2011	2009-2012

CACES and AReM believe that the requirement for DA customers to install interval meters in order to receive DA service should be modified to allow a customer to choose whether or not they want to install such a meter in advance of the AMI deployment so as to avoid a circumstance where customers are required spend money to install an interval meter that will soon be replaced with an AMI meter that they are already paying for pursuant to the AMI cost allocation provisions.

While all customers with load greater than 200 kW already have interval meters, this choice should be applicable to any commercial/industrial customers whose peak load is between 50 kW and 200 kW. If a customer whose load is between 50 kW and 200 kW is approved for DA service, but does not have an interval meter in place, and an AMI meter cannot be installed before the next meter read cycle, load profiles should be used for settlement purposes, trued up by actual meter reads, as is done for customers less than 50 kW.

CACES and AReM respectfully request that consideration of waiver of the interval meter requirement be included in the scope of this proceeding. Moreover, this issue will need early guidance from the Commission as well because the current rules that require interval meter installation to be completed before direct access service can commence for any newly enrolled customers. A determination of waiver after the enrollment process will be too late.

**IV. COMMENTS ON THE DATA SUBMITTED BY THE IOUS SUPPORTING THE CALCULATION OF THE CAP.**

CACES and AReM are still reviewing the data submitted by the IOUs on December 3, and will submit a supplemental filing if there are additional questions about them that should be raised.

**V. WITH THE SUSPENSION OF THE WORKING GROUP REPORTS, THE COMMISSION SHOULD ACCELERATE THE REMAINING PHASES OF RULEMAKING 07-05-025.**

With the passage of SB 695, the statutory imperative that DWR cease supplying electricity before DA can fully reopen has been eliminated. Therefore, neither CACES nor AReM necessarily objects to the ruling in the ACR that stays the schedule for Working Group progress reports pursuant to D.08-11-056. However, both CACES and AReM note that the Assigned Commissioner's Ruling Providing Modified Scoping Memo and Schedule for the Proceeding, issued on March 2, 2009, says that the remaining phases of the Rulemaking (Phase II.b and Phase

III) will commence in sequence after the novation process is completed.<sup>12</sup> So that this proceeding moves forward expeditiously, CACES and AReM request that, in addition to implementing a stay with respect to the Working Group progress reports, the subsequent scoping ruling to be issued on December 14, 2009, make it clear that the remaining phases of the Rulemaking will proceed even while the suspension is in place, and that a future ruling will provide a revised schedule that initiates those remaining phases upon the completion of the transitional reopening of direct access.

#### **VI. CERTAIN ISSUES CONTAINED IN THE ACR NEED NOT BE INCLUDED WITHIN THE SCOPE OF THIS PROCEEDING**

Under the category of Monitoring and Administration, the ACR includes the following issue: “What applicable non-bypassable charges are involved?”<sup>13</sup> The current rules for imposition of non-bypassable charges have been clearly established in D.08-09-012<sup>14</sup> and there is no need for non-bypassable charges to be further reconsidered in this limited proceeding to implement SB 695. Any re-look at those rules and processes is likely to be time consuming and potentially contentious. Therefore, CACES and AReM respectfully request that this issue be deleted in subsequent scoping ruling to be issued on December 14, 2009.

#### **VII. PROPOSED SCHEDULE**

CACES and AReM respectfully request that the Workshop for Consensus on Substantive Issues be changed from January 13, 2010 to January 11, 2010. Otherwise, except as noted above with respect to the need to address the six month switching rule and the meter installation rules, CACES and AReM believe that the procedural schedule contained in the ACR is comprehensive and reasonable. CACES and AReM do not believe that hearing should be necessary.

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<sup>12</sup> Assigned Commissioner’s Ruling Provision for Modified Scoping Memo and Schedule for the Proceeding, dated March 2, 2009, at p. 4.

<sup>13</sup> ACR, at p. 5.

<sup>14</sup> Decision on Non-Bypassable Charges for New World Generation and Related Issues, issued September 5, 2008.

## VIII. CONCLUSION

CACES and AReM appreciate the ACR's careful attention to the details associated with the implementation of SB 695, and with the modifications recommended herein believes that the proceeding will expeditiously accomplish the tasks associated with implementation in the time frame required by the statute.

Respectfully submitted,



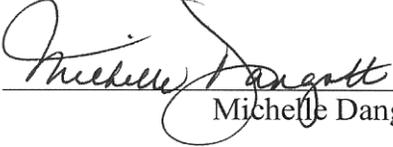
Attorney for the  
***California Alliance for Choice in Energy  
Solutions***  
and the  
***Alliance for Retail Energy Markets***

December 7, 2009

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the *Comments of the California Alliance for Choice in Energy Solutions and the Alliance for Retail Energy Markets on the Assigned Commissioner's Ruling on procedures to Address Senate Bill 695 Issues Relating to Direct Access Transactions* on all parties of record in **R.07-05-025**, by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on December 7, 2009, at Woodland Hills, California.

  
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Michelle Dangott

## SERVICE LIST – R.07-05-025

abb@eslawfirm.com  
achang@nrdc.org  
AdviceTariffManager@sce.com  
ako@cpuc.ca.gov  
am4@cpuc.ca.gov  
amber.wyatt@sce.com  
AndersonR@conedsolutions.com  
atrowbridge@daycartermurphy.com  
ayk@cpuc.ca.gov  
barmackm@calpine.com  
bcragg@goodinmacbride.com  
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crv@cpuc.ca.gov  
csandidge@rrienergy.com  
david.oliver@navigantconsulting.com  
dbr@cpuc.ca.gov  
Dcs4837@yahoo.com  
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ddavie@wellhead.com  
ddickey@tenaska.com  
debeberger@cox.net  
debra.gallo@swgas.com  
dhuard@manatt.com  
Diane\_Fellman@fpl.com  
dorth@krcd.org  
douglass@energyattorney.com  
ds1957@att.com  
dvidaver@energy.state.ca.us  
edd@cpuc.ca.gov  
etoppi@ces-ltd.com  
ewdlaw@sbcglobal.net  
gbawa@cityofpasadena.net

gblack@cwclaw.com  
gdixon@semprautilities.com  
george.waidelich@safeway.com  
gifford.jung@powerex.com  
gmorris@emf.net  
go'hara@sycr.com  
grehal@water.ca.gov  
hgolub@nixonpeabody.com  
HKingerski@mxenergy.com  
iibarguren@tyrenergy.com  
iryna.kwasny@doj.ca.gov  
jackson.isaacs@gmail.com  
james.schichtl@sce.com  
janet.combs@sce.com  
jarmstrong@goodinmacbride.com  
jcasadont@bluestarenergy.com  
jderosa@ces-ltd.com  
jeanne.sole@sfgov.org  
jeff.malone@calpeak.com  
jennifer.chamberlin@directenergy.com  
jgg@eslawfirm.com  
jkarp@winston.com  
jleslie@luce.com  
jleslie@luce.com  
john.holtz@greenmountain.com  
joseph.donovan@constellation.com  
joshdavidson@dwt.com  
joyw@mid.org  
jpacheco@water.ca.gov  
jscancarelli@flk.com  
jspence@water.ca.gov  
judypau@dwt.com  
julie.martin@bp.com  
jw2@cpuc.ca.gov  
karen@klindh.com  
Kcj5@pge.com  
kdw@cpuc.ca.gov  
keith.mccrea@sablaw.com  
kellie.smith@sen.ca.gov  
kenneth.swain@navigantconsulting.com  
kfoley@sempra.com  
khassan@sempra.com  
kjuedes@urmgroup.com  
KKloberdanz@semprautilities.com  
klatt@energyattorney.com  
kowalewskia@calpine.com  
kpp@cpuc.ca.gov  
lex@consumercal.org

lguliasi@rrienergy.com  
liddell@energyattorney.com  
lisa\_weinzimer@platts.com  
lisazycherman@dwt.com  
lmarshal@energy.state.ca.us  
los@cpuc.ca.gov  
lwhouse@innercite.com  
lwt@cpuc.ca.gov  
makens@water.ca.gov  
marcie.milner@shell.com  
martinhomec@gmail.com  
martinhomec@gmail.com  
mary.lynch@constellation.com  
mary.tucker@sanjoseca.gov  
mbyron@gwfpower.com  
mday@goodinmacbride.com  
mdjoseph@adamsbroadwell.com  
mflorio@turn.org  
michael.hindus@pillsburylaw.com  
michael.mcdonald@ieee.org  
michaelboyd@sbcglobal.net  
michelle.mishoe@pacificorp.com  
mike.montoya@sce.com  
mike@alpinenaturalgas.com  
millsr@water.ca.gov  
mjaske@energy.state.ca.us  
mjd@cpuc.ca.gov  
mmcclenahan@semprautilities.com  
mramirez@sfgwater.org  
mrh2@pge.com  
mrw@mrwassoc.com  
mshames@ucan.org  
myuffee@mwe.com  
norman.furuta@navy.mil  
ntreadway@defgllc.com  
nwhang@manatt.com  
omv@cpuc.ca.gov  
perdue@montaguederose.com  
phanschen@mofo.com  
phil@auclairconsulting.com  
philm@scdenergy.com  
pk@utilitycostmanagement.com  
plook@rrienergy.com  
pucservice@manatt.com  
pvhl@pge.com  
ralf1241a@cs.com  
ralphdennis@insightbb.com  
RegRelCpucCases@pge.com

rfg2@pge.com  
rhh@cpuc.ca.gov  
rkmoore@gswater.com  
rliibert@cfbf.com  
rob@teamryno.com  
rogerv@mid.org  
rshilling@krcd.org  
rwinthrop@pilotpowergroup.com  
Saeed.Farrokhpay@ferc.gov  
sas@a-klaw.com  
sbeserra@sbcglobal.net  
scarter@nrdc.org  
scr@cpuc.ca.gov  
sdhilton@stoel.com  
sean.beatty@mirant.com

Service@spurr.org  
shannonrmaloney@msn.com  
sjp@cpuc.ca.gov  
sliu@bear.com  
snelson@sempra.com  
srahon@semprautilities.com  
srantala@energymarketers.com  
stevegreenwald@dwt.com  
steven.huffman@morganstanley.com  
steven@iepa.com  
sue.mara@rtoadvisors.com  
szaminski@starwood.com  
tam.hunt@gmail.com  
tburke@sfwater.org  
tcarlson@rrienergy.com

tcorr@sempraglobal.com  
tdillard@sppc.com  
thomas.r.del.monte@qmail.com  
todd.edmister@bingham.com  
troberts@sempra.com  
trp@cpuc.ca.gov  
tsolomon@winston.com  
twertz@tyrenergy.com  
wamer@kirkwood.com  
wbooth@booth-law.com  
wdsmith@sempra.com  
westgas@aol.com  
wkeilani@semprautilities.com  
wtr@cpuc.ca.gov