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)

REPLY COMMENTS OF COMMERCIAL ENERGY OF CALIFORNIA IN RESPONSE TO ASSIGNED COMMISSIONER'S RULINGS OF NOVEMBER 18, 2009 AND DECEMBER 17, 2009 ON PROCEDURES TO ADDRESS SENATE BILL 695 ISSUES RELATING TO DIRECT ACCESS TRANSACTIONS

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For Commercial Energy of California

February 1, 2010

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 COMMERCIAL ENERGY OF CALIFORNIA IN RESPONSE TO ASSIGNED COMMISSIONER'S RULINGS OF NOVEMBER 18, 2009 AND DECEMBER 17, 2009 ON PROCEDURES TO ADDRESS SENATE BILL 695 ISSUES RELATING TO DIRECT ACCESS TRANSACTIONS

As directed in the November 18, 2009 Assigned Commissioner's Ruling ("ACR") on Procedures to Address Senate Bill 695 Issues Relating to Direct Access Issues, as subsequently amended in the December 17, 2009 ACR Amending Scope of Issues Relating to Direct Access Phase-In, Commercial Energy of California ("Commercial Energy") is pleased to submit the following Reply Comments on procedures and issues to be addressed as the Commission implements SB695 provisions that require the reopening of direct access.

I. INTRODUCTION

Commercial Energy is a privately held Montana corporation marketing energy and energy services to businesses since 1997. Commercial Energy sold electricity to clients in Montana from 1998 through 2004, then opened its Oakland, California office in December, 2004. Today, Commercial Energy provides the natural gas supply needs of over 2,000 businesses at over 6,000 locations, primarily in California. Commercial Energy looks to this proceeding implementing SB 695 as an opportunity to extend its successful natural gas marketing efforts to help its clients meet

their electricity needs, including accessing renewable energy and providing energy efficiency services.

Senate Bill 695 (Chapter 337, Statutes of 2009,) is the latest in a long line of measures introduced in the California Legislature to restore electricity customers' right to choose among electricity providers. Last year, facing a Commission led effort to restore customer choice through Rulemaking 07-05-025, a compromise was facilitated by leaders in the Legislature. The intent of the Direct Access component of the compromise was to recognize the pent-up demand for retail electricity options by allowing ***all*** commercial and industrial customers, irrespective of previous direct access status, to be allowed to choose among competitive suppliers up to the maximum amount of annual load that had exercised this choice previously. Commercial Energy believes that if and when this limited roll-out proves successful, California should expand choice to all customers in California, as it has already successfully done for natural gas customers. The ability of a customer to choose an alternative energy provider provides valuable information on the customer's view of the effectiveness of each utility's procurement process. The Commission should encourage extending the right to choose to more customers and carefully evaluate the market signals they provide through their procurement decisions.

II. ISSUES THAT MUST BE RESOLVED IMMEDIATELY TO FACILITATE THE REOPENING OF DIRECT ACCESS IN APRIL 2010

A. The Roll Out Schedule for Additional Direct Access Load

In the interests of market simplicity and consistency, Commercial Energy proposes the following Roll-Out schedule for PG&E and SCE. The key element of this proposal is a relatively level rollout over the initial three years of the program, commencing with a partial year from April to December of 2010, and then utilizing calendar years for 2011 and 2012. This also allows the market to build momentum over the first partial year of the re-opened Direct Access, which is important to encourage both customers and energy service providers to participate in the program.

1. Year One (from April to Dec 2010): Maximum additional direct access load is limited to 1,500 GWh/year plus any direct access load that is made available as a result of existing DA customers returning to bundled service (returning ESP load).
2. Year Two (from Jan. 1, 2011 for calendar year): 3,000 GWh/year in total plus any returning ESP load.
3. Year Three (from Jan. 1, 2012 for calendar year): 4,500 GWh/year in total plus any returning ESP load.
4. Year Four and Forward: All available load below the historic high volumes of direct access for each utility.

Commercial Energy proposes the same structure for SDG&E, with the annual eligible load adding 150 GWH/year on the same timeline as SCE and PG&E.

Commercial Energy also believes that the utilities should provide some flexibility in implementing these program limits for each of the first three years of the program. Specifically, Commercial Energy recommends that the utilities use a "soft cap" to accept the full load request of the last customer or account that puts the direct access load over cap limitation in the given year. SCE and SDG&E have suggested the use of a soft cap as a means of avoiding difficulties if the load of the "last" customer to take up the available space in a given year does not match the remaining capacity exactly. Commercial Energy agrees that this is a practical solution. If the last customer has a single meter, or multiple meters with a total load that exceeds the cap by less than 100 Gwh annually (7%) that customer and all of its accounts/meters would be permitted to switch to Direct Access. If the customer's load exceeds the cap by more than 100 GWh, the customer should be given the choice to delete accounts or meters to get below the cap, be listed on the next year's queue, or stay with bundled service for all the meters that were in the Notice of Intent (NOI) to switch to Direct Access.

B. Queue Management

Commercial Energy strongly recommends that the program be based upon the principle of first come, first served, and that the Commission establish no preference for DA-Eligible customers (i.e., those customers/meters that previously exercised choice but returned to bundled service) or new DA customers (i.e., those customers/meters that never took service from an ESP in the past). Senate Bill 695 contains no language which grants any preference or special rights to the DA-Eligible customers who have exercised the right to take Direct Access at some point during the past seven years. The Commission should not attempt to insert such a preference or privilege when the Legislature has elected not to do so. Moreover, the Legislature's approval of the reopening of Direct Access with a relatively restrictive limitation on the total Direct Access load to be served argues for the adoption of program rules which will encourage, not restrict, new customers from utilizing Direct Access, so that they can evaluate its benefits and challenges. A preference for DA Eligible customers of any sort would make it harder for new customers to have the opportunity to elect Direct Access service.

Once the First Year Queue is filled, those customers/accounts seeking to switch to Direct Access who did not submit their request soon enough will automatically be placed in line in the order received for the Year Two queue. The only exception would be a Customer/ESP that chooses to start in the Second Year queue even though the first year queue is still unfilled. If that request is received before the Year One queue is filled, and is the first request received for Year Two, then that customer should be the first in line for Year Two. A customer/account can be on only one queue at a time, and must designate which year or queue it is requesting when it sends its NOI to the Utility.

C. Switching Rules and Proposed Exemptions

The Utilities' initial comments were premised on applying the existing Switching Rules to new Direct Access customers in addition to the DA-Eligible customers.[1] Commercial Energy initially commented that it sees no justification in changing the existing rules, including both the basic Direct Access Tariff Rule 22 and the Switching Exemption Rule 22.1. This reasoning is based on both legal interpretation of the existing tariffs and appropriate ratemaking policy.

Referring to the PG&E Direct Access Tariff Rules for purposes of illustration (although SCE and SDG&E Tariff Rules are similar), the Switching Exemption Rule 22.1 is very specific in its application, "The following rules implement 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." This language clearly does *not* supersede Rule 22 which outlines the process for bundled customers that have never left Bundled Service to elect Direct Access. Commercial Energy believes that Bundled Service customers that never left Bundled Service cannot be bound by the Switching Exemption rules until they have become DA customers. Opponents of this position will point to the third paragraph on Sheet 1 of Rule 22.1, "Customers switching to or from bundled service shall notify PG&E six (6) months in advance of their intent to switch." But the prior paragraph of Rule 22.1 was clear in its intent to apply such switching ONLY for those customers that had already exercised choice. Logically, the six month notice should clearly not apply to new DA customers, since, by law, new DA customers have not been permitted for several years. Thus, there would be no rationale for a customer to provide a six month notice for a service that it did not believe it could lawfully receive.

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[1] SCE Comments, page 2, "the same switching rules should apply to all DA-eligible customers," and page 6, "SCE interprets SB695 to ***expand*** [emphasis ours] the population of DA-eligible customers to all non-residential customers…" PG&E Comments, page 6, are a little more implicit, to wit, "To request DA service, a customer should submit a six month notice…of the proposed switch. ***Consistent with existing DA switching rules*** [emphasis ours], these notices would be irrevocable after a three day rescission period." Sempra Comments, page

From a policy position, distinguishing between "New DA" customers and "DA-Eligibles" with respect to the switching rules may also help the rollout of additional Direct Access succeed. Many parties have expressed concern about the quantity of Direct Access load that will be proposed in Year One during the initial 60 day exemption from all switching rules that is being proposed by the Utilities. If the queue for Year One does not fill in those 60 days, which period will expire on or about June 15th, all Direct Access service requests from DA Eligible customers after that time will be subject to the Switching Exemption Rule and will require a 6 month notice, effectively forcing those customers into the queue for Year Two. If, however, "New DA" is properly found to not be subject to the DA Eligible switching rules (including the 6 month notice provision), and can submit their requests for Direct Access service under Rule 22, these customers could continue to take up any available space remaining in Year One. This could avoid the possibility that the 6 month notice could create a capacity "gap" in Year One, thus wasting potential opportunities for Direct Access. By making Direct Access more readily accessible to customers who have never tried it before, and by avoiding wasteful unused capacity in the queue, continuing to exempt first time Direct Access customers from the Switching Exemption Rules will encourage new entrants to the market.

The Utilities have suggested that the purpose of the Switching Rules was to "protect bundled service customers from potential cost-shifting as the IOUs adjust their procurement to account for changing load." (SCE Comments, page 6). But these rules were adopted at a time when 14% of load had gone to Direct Access and other market changes were happening quickly. In SB 695, the Legislature eliminated the potential for substantial market upheaval by capping the load migration to Direct Access to the historical maximum of the annual Direct Access load. By imposing this limitation, the Legislature has placed a hard cap on the potential cost-shifting that any utility could face. Equally importantly, today the utilities can also rely on the PCIA Cost Recovery Surcharge to recover any costs that are created by migration to Direct Access, a surcharge which was not in

effect in 2003. Both of these protections against excessive cost shifting to bundled customers eliminate the need to impose the Switching Exemption Rules on new Direct Access customers as part of the rollout of Direct Access in April, 2010.

If the Commission retains the distinction between new Direct Access and DA Eligible rules, then a "New DA" customer need only submit a DASR while cap room exists during any year of the rollout. As specified in Rule 22, the customer/account will switch to Direct Access at the next available meter read date or the date specified on the DASR. Commercial Energy agrees that once a customer switches to Direct Access, they are then subject to the Switching Rules, including the six-month notice and a three year return period.

If the Commission alters the existing tariff rules and requires new DA customers to follow the Switching Exemption rules as DA Eligible customers, Commercial Energy agrees with the utilities and customer groups that a one-time waiver of the Switching Rules is appropriate for all customers from the reopening of Direct Access until June 30, 2010, (or 60 days after the reopening, whichever is later).[2] Upon submittal of the NOI and an acceptable DASR, the customer/account should go to Direct Access at the next available meter read date or the date specified on the DASR. As of July 1, 2010 (or the end of the 60 day period), the customer would have to wait six (6) months to move to DA, effectively placing the customer in the Year 2 queue.

D. NOI Submission Rules

Commercial Energy finds no reference to a customer NOI in the existing Direct Access Tariff Rules. This concept was introduced by PG&E and SCE in their opening comments as a means of managing the approval process in each year's queue. Commercial Energy agrees with a NOI process wherein the IOU reviews the request for Direct Access service and then notifies both the customer and the ESP whether space is available under the applicable cap. Commercial Energy

is concerned, however, that a gold rush mentality may cause congestion in the queue if a customer uses the simplified NOI process to take up a spot in the Direct Access queue when that customer is not sincerely interested in exploring Direct Access or may not have the ability to attract an ESP at a price that is acceptable. In such a case, a liberal NOI process would create an administrative burden for the utilities, result in wasted space in the Direct Access queue, and create a perception that the new Direct Access program is not working as it was intended.

Therefore, Commercial Energy recommends that if a DASR is not submitted within twenty (20) days after the NOI is submitted, the customer would be switched to transitional rates (TBCC) rates. The customer would then have the next sixty (60) days to submit a DASR and would be subject to TBCC rates for that entire period unless it removed itself from the queue. If the customer fails to submit a DASR after this additional period and fails to remove itself from the queue, the customer should not be allowed to opt-in to another queue for at least twelve months, thereby providing room for those customers that have found a supplier and are more actively interested in being provided power through Direct Access.

E. IDR Meters required on less than 200kw loads

Commercial Energy notes that SCE and SDG&E have essentially agreed in principle to a waiver of the interval meter requirement for customers with less than 200 kW peak demand. PG&E has concerns that have not been clearly articulated in this regard. Given that PG&E is two years into its program of installing SmartMeters, Commercial Energy believes there is no reason to continue the wasteful interval meter requirement, and that all of the utilities, including PG&E, should be required to either waive the requirement or install a SmartMeter for a customer requesting Direct Access service in order to meet the requirement of the current rules.

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[2] PG&E seeks to require 90 days notice to switch, even in the beginning of the program. Commercial Energy believes this is too lengthy a notice period, which also conflicts with the 60 day exemption period proposed by the other utilities.

F. RA Cost Allocation

SB 695 imposes on ESPs the obligation to comply with the same resource adequacy requirements as the investor-owned electric utilities. Specifically, the statute creates Public Utilities Code Section 365.1, which states in part,

> (c) Once the commission has authorized additional direct transactions pursuant to subdivision (b), it shall do both of the following:
> (1) Ensure that other providers are subject to the same requirements that are applicable to the state's three largest electrical corporations under any programs or rules adopted by the commission to implement the resource adequacy provisions of Section 380, the renewables portfolio standard provisions of Article 16…and the requirements for the electricity sector adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006 ….

It is particularly important for the Commission to address the resource adequacy portion of this obligation at the same time it reopens Direct Access. If ESPs and their customers cannot determine the value of the capacity required to comply with resource adequacy obligations, it will create significant price uncertainty which could undermine the success of the program. However, it is possible to construct a simple and reasonable proxy for resource adequacy costs. Such a proposal has been suggested by TURN in its Reply Comments filed today. Commercial Energy supports the proposal of TURN for an interim proxy calculation for Local Resource Adequacy (RA) costs, which would be an option for an ESP (also a Load Serving Entity) that does not self procure its RA capacity. It is important for the Commission to clarify that an ESP who does self-supply its resource adequacy capacity does not have to reimburse the utility under the TURN calculation. Commercial Energy believes that the TURN proposal is a practical means of valuing the RA costs. In order for the Direct Access program to be reopened on the schedule envisioned by the Legislature, it is important that the Commission address the RA issue and adopt the TURN proposal so that ESPs and their customers have a readily accessible means to comply with the RA requirements of SB 695.

III. CONCLUSION

The parties' comments reflect that there is something approaching a consensus on how to allow a prompt rollout of Direct Access, and that is encouraging. However, Commercial Energy urges the Commission to address the specific points raised in these Reply Comments, particularly with respect to retention of the customer distinctions in the application of the existing tariff rules, waiver of the interval meter requirement, and the adoption of an RA proxy value, in order to avoid complications and unintended results that will discourage customer participation in Direct Access. There are other issues impacting both ESPs and Direct Access customers that will have to be considered by the parties and the Commission in the near future, but those issues discussed in these Reply Comments represent the critical path items that the Commission must address immediately in order to comply with the Legislature's direction to roll out additional Direct Access promptly. Commercial Energy, like many other parties, believes that other issues not addressed in these Reply Comments should be deferred until a subsequent phase of this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Linda Chaffee, certify that I have on this 1st day of February 2010 caused a copy of the foregoing

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to be served on all known parties to R. 07-05-025 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand delivered as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 1st day of February 2010 at San Francisco, California.

/s/ Linda Chaffee
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