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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking regarding whether, or subject to what Conditions, the suspension of DA may be lifted consistent with Assembly Bill 1X and Decision 01-09-060.

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

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE RULING
CLARIFYING SCOPE AND SCHEDULING FURTHER PROCEEDINGS**

On April 19, 2010, an amended scoping memo was issued in this proceeding, soliciting comments on issues remaining to be resolved. This ruling further clarifies the procedural scope and provides a plan for addressing issues remaining in this rulemaking.

This proceeding was originally initiated to consider whether, or subject to what conditions, the Direct Access (DA) suspension may be lifted. On November 18, 2009, an Assigned Commissioner's Ruling (ACR) designated this proceeding to address the implementation of Senate Bill (SB) 695 (Stats. 2009, ch. 337). SB 695 added § 365.1(b) to the Public Utilities Code¹, which prescribed limited increases in DA load. In all other respects, DA remains suspended. Decision (D.) 10-03-022, issued on March 11, 2010, addressed SB 695 implementation measures that required the most immediate attention. Other SB 695 implementation issues were deferred. Based on the comments filed on

¹ Subsequent section references in this ruling apply to the California Public Utilities Code.

May 7, 2010, with replies on May 21, 2010, this ruling adopts a schedule for workshops and comments to resolve remaining issues in view of the SB 695 provisions.

1. Disposition of the Remainder of the Proceeding

Parties' comments addressed whether, or subject to what considerations, any Phase II issues remain pending after resolving SB 695 implementation issues. Phase II was designated to address the merits of reinstating DA, and conditions warranting any reinstatement. In D.08-02-033, the Commission determined that DA suspension was required by statute as long as Department of Water Resources (DWR) supplied power. Phase II was bifurcated to facilitate the novation of contracts to terminate DWR's role of supplying power. A Working Group was established to develop protocols and strategies for this purpose. The Working Group Progress Reporting schedule was stayed by ruling dated November 18, 2009, pending further notice.

Under § 365.1, the DA suspension is no longer linked to DWR contract duration. SB 695 provides for a limited modification of the existing DA suspension. Any further modification of the suspension can only be done by legislation. Accordingly, Phase II (a) of the proceeding regarding DWR contract novation will not be pursued further. While the Investor-owned Utilities (IOUs) may independently choose to continue with efforts to novate DWR contracts, where deemed beneficial, this proceeding will not be used as a vehicle to monitor or approve those efforts. Accordingly, the working group process established to support DWR contract novation efforts is permanently discontinued.

Similarly, Phase II(b), initiated to consider the public policy merits of lifting the DA suspension, is moot since § 365.1(a) provides that further lifting can only be authorized by statute, prescribed as follows:

Except as previously authorized by this section, and subject to the limitations in subdivisions (b) and (c), the right of retail end-use customers pursuant to this chapter to acquire service from other providers is suspended until the Legislature, by statute, lifts the suspension or otherwise authorizes direct transactions.

Accordingly, the remainder of this proceeding will be devoted to what was originally designated as Phase III issues, namely, the manner in which the DA market will function in terms of entry, exit, and default arrangements.

2. Phase III Workshop Sessions

The Phase III issues set forth below shall be addressed further through a two-day session of technical workshops to be scheduled for July 12, 2010, starting at 9:30 a.m., and continuing on July 13, 2010. Depending on the progress made in addressing these issues through the workshop sessions, further subsequent direction will be provided concerning the next steps involved in resolving these issues. The workshops shall address each of the technical issues set forth below.

2.1. Switching Rules

The workshop will address possible changes to the current rules in D.03-05-034 governing the switching of customers between bundled and DA service. Current rules as set forth in D.03-05-034 prescribes requirements for advance notice and minimum commitment period for bundled service upon switching from DA. Current rules require a six-month advance notice for customers seeking to return to DA or bundled service and a three-year minimum bundled service commitment for returning customers. D.10-03-022 addressed

whether a one-time exception to the three-year minimum commitment period and six-month notice period under the switching rules was appropriate for the partial reopening of DA to become effective on April 11, 2010. The workshop will address whether to retain or change existing switching rules for the long term. Changes in switching rules will be considered with respect to:

- a. Advance Notice to Switch to DA from Bundled Service.
- b. Advance Notice to Return to Bundled Service from DA.
- c. Minimum commitment Period after returning to Bundled Service.

Workshop questions to be addressed include:

1. Do the current switching rules adequately account for all costs determined to be non-bypassable? (e.g., stranded resource adequacy/renewable portfolio standard cost)? If not, what changes in the switching rules (or cost recovery mechanisms) may be appropriate? Should the commitment period when switching to bundled service be modified in view of the IOUs' obligations to follow the State loading order rules?
2. What risks, if any, are associated with adjusting the six-month notice requirements or modifying other processes to mitigate identified risks that may not already be covered?
3. What limits, if any, should be placed on the amount of load allowed to transfer into or out of DA within a given year, in addition to or instead of the existing advance notice requirements?
4. If the compensation through the transitional bundled service (TBS) rate and the vintaged new generation charge are fully compensatory, is an advance notice requirement for transfers into or out of DA still necessary?

2.2. ESP Financial Security Requirements

Issues relating to the financial security requirement for Electric Service Providers (ESPs) pursuant to Public Utilities Code § 394.25(e) are being taken up in this phase of the proceeding pursuant to D.10-03-022. The workshop will provide the opportunity for parties to discuss and seek consensus as to the appropriate financial security requirements to be applied to ESPs pursuant to § 394.25(e). The relevant statutory requirement states:

“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 electric 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.”

For purposes of developing recommendations on security requirements for ESPs, pursuant to § 394.25(e), parties should consider the proposed settlement for CCAs in Rulemaking (R.) 03-10-003 as a starting point for discussion, and address any relevant differences in the context of ESPs in determining an appropriate method for determining security requirements applicable to ESPs and re-entry fees applicable to ESPs and/or their customers. In any event, issues relating to bond requirements for CCAs addressed in R.03-10-003 will not be relitigated in this proceeding.

Specific questions to be addressed in the workshop include:

1. What cost exposure does each IOU face with respect to returning load previously served by an ESP that requires a bond?
2. What forms of ESP collateral are appropriate and subject to what qualification and documentation procedures?
3. How frequently should the ESP financial security requirement be revisited in view of ESP potential load fluctuations over time?
4. To what extent does the proposed settlement in R.03-10-003 applicable to CCA bonding requirements provide a framework for ESP security requirements? Identify any pertinent differences between ESPs and CCAs that warrant different treatment with respect to security requirements.

2.3. Transitional Bundled Service Rate Update

The workshop shall address whether the TBS rate accurately compensates for the incremental cost to serve customers switching from (or to) DA, and to ascertain that the TBS rate serves neither as a barrier to customers making the decision to return to bundled service or as a competitive tool by which IOUs may seek to attract customers back to bundled service. A customer may also be served on the TBS rate at the end of his six-month notice, if the ESP has not submitted a Direct Access Service Request to switch the customer.

D.03-05-034 provided that DA customers that only seek bundled service as a temporary 'safe harbor' before moving to a new ESP may do so, but shall be required to pay the incremental short-term power costs incurred on their behalf, and must continue to pay any applicable DA Cost Responsibility Surcharge (CRS). (D.03-05-034 at 18). The TBS rate is intended to compensate for the added portfolio costs that that returning DA customers place on the system when returning on a temporary basis.

The workshop will address the following issues:

1. Does the TBS rate fully account for the incremental costs imposed on the IOU system due to additional short-term supplies procured to serve customers returning to bundled service from DA pursuant to D.05-03-034?
2. Should the TBS rate be adjusted to account for procurement obligations for RA and RPS for bundled load served on the TBS tariff? If so, how?

2.4. Ensuring Uniform Compliance With Resource Requirements

The workshop shall consider what if, any, additional measures are necessary to ensure ESPs are subject to same requirements as IOUs regarding resource adequacy (RA), renewable portfolio standards (RPS) and AB 32 requirements. Pursuant to § 365.1(c)(1) and (2), the Commission must ensure that ESPs and CCAs are subject to the same requirements as the IOUs with respect to RA, RPS, and AB 32 compliance. Subdivision (C)(2) requires that the costs of resources acquired by the IOU to meet system and local reliability needs for the benefit of all customers be allocated to all benefitting customers, including DA and CCA customers, along with associated RA credits. Unless CCAs and ESPs are subject to similar environmental and reliability standards as the IOUs, electric markets may be less stable, causing reliability and environmental goals to be jeopardized.

Issues associated with level-playing-field procurement of generation resources using renewable sources of energy are being addressed in R.08-08-009. This proceeding shall address what actions are needed in the near term to ensure

compliance with § 365.1(c)(1) and (2). Relevant requirements to be addressed include:

- a. Potential obligations to purchase from Qualifying Facilities (QFs), including combined heat and power;
- b. Greenhouse gas “cap-and-trade” and program measures pursuant to AB 32 implementing regulations or federal legislation;
- c. Costs from Commission-mandated new generation resources needed for system reliability;
- d. Multi-year requirements to procure Combined Heat and Power generation and renewables under feed-in tariffs.

2.5. Addressing DA Process Improvement Issues

In D.08-05-003, Ordering Paragraph (OP) 14, the Commission stated that:

“SCE, AReM and CMTA shall submit a joint report that identifies specific potential process improvements, proposes recommendations for SCE’s DA process improvements, and recommendations for an ongoing process to consider possible future process improvements that reflect the needs and interests of all DA market participants in SCE territory. Participants may submit with the report their comments addressing any disagreements or reservations that participants may have with any recommendations or other aspects of the report. The report shall be submitted in R.07-05-025 for consideration if, and when, Phase III of that proceeding is commenced.”

Although the directive in D.08-05-003 to produce a report on potential process improvements applied only for SCE, similar improvements are relevant to the processes used by PG&E and SDG&E. No due date was set in D.08-05-003 for the report in view of the uncertainty at the time as to the schedule for

Phase III of R.07-05-025. Potential process improvements suggested by parties include:

- Updating and/or revision of customer forms and load-growth affidavits relating to DA services
- Updating of DA services and fees, including those deferred by D.08-05-003.
- Updating of DA metering and billing rules

A schedule needs to be developed for completion and filing of the report on DA Process Improvements pursuant to D.08-05-003, OP 14, expanded in scope to address process improvements for all three IOUs. The proposed schedule for completing and filing the report shall be discussed at the workshop. A schedule for the DA Process Improvement Report shall be established after parties formulate a proposed time table. Further substantive consideration of process improvements will follow after issuance of the report.

3. Proposals for Other Issues

Except for the issue areas identified above, proposals to address other issues will not be taken up at this time. Various parties propose that the Commission conduct a re-examination of non- bypassable charges that have been imposed on DA customers. They raise various concerns with the current charges, arguing among other things that charges are defined with great imprecision, do not account for departing customers' load profiles, and generally do not fairly reflect any reasonable concept of a "fair share."

Other parties oppose re-examination, arguing that the issue of non-bypassable charges has already been extensively litigated and that further litigation would be burdensome.

We understand that the concerns raised regarding the various non-bypassable charges involve important issues that could significantly impact the success or failure of DA in the longer term.

Given the immediate workload priorities for this phase of this proceeding, however, we will defer consideration of this issue at this time. We will re-evaluate how the DA non-bypassable charges are determined at a future time.

Issues relating to reforms of the utilities' procurement practices will not be considered in this proceeding. To the extent such issues were found to warrant consideration, a more suitable forum to consider them might be the Commission's Long Term Procurement Plan proceedings.

IT IS RULED that:

1. Any further modification of the DA suspension can only be done by legislation. Accordingly, Phase II (a) of the proceeding regarding DWR contract novation shall not be pursued further. While the IOUs may independently choose to continue with efforts to novate DWR contracts, where deemed beneficial, this proceeding shall not be used as a vehicle to monitor or approve such efforts.
2. The working group process established to support DWR contract novation efforts in this proceeding is permanently discontinued.
3. Phase II(b), initiated to consider the public policy merits of lifting the DA suspension, will not be pursued further. § 365.1(a) provides that further lifting of the DA suspension can only be authorized by legislation.

4. Phase III of the proceeding shall address the following issues, initiated through a series of workshops, to be scheduled starting at 9:30 a.m. on July 12, 2010, and continuing on July 13, 2010. The workshop sessions shall be held at the Commission's Auditorium, State Office Building, 505 Van Ness Avenue, San Francisco, California. Workshop participants may discuss the need, timing, and location for possible follow-up or continuation workshop sessions at the end of the scheduled workshops.
5. The workshop sessions shall address the topics of:
 - a. Changes in Switching Rules.
 - b. ESP Financial Security Requirements.
 - c. Transitional Bundled Service Rate Updates.
 - d. Uniform Compliance with resource requirements.
 - e. Schedule and process for addressing DA Process Improvements.
6. Other proposed issue areas will not be taken up at this time. We will consider re-evaluation of currently effective DA non-bypassable charges at a future time.

Dated June 15, 2010, at San Francisco, California.

/s/ MICHAEL R. PEEVEY
Michael R. Peevey
Assigned Commissioner

/s/ THOMAS R. PULSIFER
Thomas R. Pulsifer
Administrative Law Judge

INFORMATION REGARDING SERVICE

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Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated June 15, 2010, at San Francisco, California.

/s/ CRISTINE FERNANDEZ
Cristine Fernandez

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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