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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 Direct Access May Be Lifted Consistent with Assembly Bill 1X and Decision 01-09-060.	Rulemaking 07-05-025 (Filed May 24, 2007)

ASSIGNED COMMISSIONER'S RULING DENYING MOTION FOR AN ORDER TO SHOW CAUSE

This ruling addresses the Commercial Energy of California (Commercial Energy) motion, filed September 27, 2010, for an order to show cause why Pacific Gas & Electric Company (PG&E) should not be deemed out of compliance with Decision (D) 10-03-022. Commercial Energy claims that PG&E (1) improperly allowed Direct Access (DA)-eligible customers to submit 6-month notices to switch to DA between the effective date of D.10-03-022 and the effective date of the DA Open Enrollment Window (OEW); and (2) incorrectly calculated the amount of DA available for 2010. Commercial Energy argues that PG&E should thus be required to:

a. Disclose the number of customers allowed to enroll in DA between the effective date of D.10-03- 022 and the effective date of the OEW and the transaction volume associated with those customers;

b. Disallow the 6-month notices to switch received between the effective date of D.10-03-022 and the effective date of the Open Enrollment Window;

c. Recalculate the amount of DA available for 2010 by either, or both:

(i) disallowing 6-month notices submitted between the effective date of the D. 10-03-022 and April 11, 2010, and

(ii) counting such customers towards PG&E's baseline amount of DA.

d. Restore the DA queue consistent with the recalculation above and distribute expanded DA capacity to those who would otherwise have been able to enroll during the OEW if not for PG&E's continued acceptance of 6-month notices and PG&E's resulting calculation of available DA load for 2010; and

e. Reconfigure the enrollment queue for 2011 in a manner consistent with the revised OEW for 2010.

Commercial Energy acknowledges the practical difficulty of retroactively disallowing 6-month notices to switch received between the effective date of D.10-03-022 and the effective date of the OEW, and suggests as an alternative to accept in more customer load from the OEW period and grant the additional accepted customers an opportunity to enroll in DA. That additional load would be deducted from the remaining DA load balance available for the last two years of the phase-in.

PG&E filed a response on October 12, 2010, to the Commercial Energy motion, arguing that its 2010 load limit is consistent with D.10- 03-022. PG&E disputes Commercial Energy's claim that the DA baseline and annual DA load limits were incorrectly determined or should be recalculated using load data as of April 2010. PG&E believes that D.10-03-022 confirmed that the particular load data provided by PG&E should be used in calculating the DA annual load limits.

PG&E asserts that its Tariff Rule 22.1 supports its actions, permitting continued acceptance of 6-month notices through April 11, 2010. Commercial

Energy states that until PG&E filed its Advice Letter to implement Tariff Rule 22.1, it was not clear that PG&E was continuing to accept 6-month customer notices through April 11, 2010. The implications of PG&E's actions were not disclosed to other parties until the Energy Division's report on the utilities' implementation of Senate Bill (SB) 695 (Status Report) was released on August 2, 2010, which revealed that PG&E's load limit for 2010 was significantly lower than the level estimated in D.10-03-022

PG&E argues that the effective date for the reopening of DA under SB 695 was April 11, 2010. Commercial Energy responds that under PG&E's own argument, customers who enrolled in DA prior to April 11 should not have been counted toward the 2010 DA load limit because they enrolled prior to the reopening of DA. Commercial Energy argues that it is inconsistent for customers who enrolled *prior* to the DA reopening to be counted toward the DA load limit established in D.10-03-022. Commercial Energy argues that either (1) customers who enrolled prior to April 11 should have counted towards PG&E's baseline amount of DA *or* (2) all customers should have been prohibited from enrolling in DA except through the OEW and been counted towards the load available for 2010.

D.10-03-022 considered the phase-in of expanded DA and the annual percentages associated with each phase. Commercial Energy argues that PG&E significantly undermined this aspect of D.10-03-022 by calculating its load limit in a manner that substantially diminished the amount of load available for 2010.

Commercial Energy argues that if the SB 695 adopted DA protocols became effective on April 11, 2010, the load of the DA eligible customers permitted to file DASRs prior to April 11, 2010 cannot count toward the available DA load to be allocated during the first OEW. Based on that premise,

Commercial Energy believes that PG&E should have updated the DA load available for the OEW. However, if the SB 695 protocols went into effect when D.10-03-022 became effective, all DA eligible preferences were extinguished, and PG&E should not have allowed those customers to file DASRs in advance of the OEW. Whichever legal analysis of the implementation of SB 695 prevails, Commercial Energy argues that PG&E misapplied the statute and its own tariffs.

A response to the motion was also filed by the Direct Access Customer Coalition (DACC). DACC does not challenge the facts alleged in the motion, nor oppose the idea that some remedy may be appropriate. DACC argues, however, that granting the relief sought would effectively cause DA customers that had submitted notices to switch, had them accepted by PG&E, and consequently entered into contracts to purchase electricity from alternate suppliers, to have those contracts nullified by Commission action. DACC believes that the grandfathered DA customers acted in good faith in accordance with the rules as they understood them, and that seeking to abrogate and reverse those actions would be counter-productive and distract from the resolution of Phase 3 issues that are currently being examined by parties to this proceeding.

DACC believes that taking away DA rights from customers to whom they have been granted would set a bad precedent for the commercial stability that is needed in the marketplace. DACC further believes that such an action would be disruptive from a commercial perspective, and likely cause disputes between those customers and their suppliers, likely leading to legal challenges of the Commission's actions.

Discussion

I conclude that PG&E's actions were consistent with the directives in D. 10-03-022, regarding its acceptance of six month notices from non-residential

customers planning to switch to DA service between March 15, and April 11, 2010. Moreover, all three IOUs have consistent tariff language governing both 1) acceptance of non-residential six months notices until April 11, 2010 and 2) the method for calculating the 2010 load limits. Accordingly, there is no basis to apply a different set of rules to PG&E, or to grant the motion for an order to show cause as requested by Commercial Energy.

D.10-03-022 states that "DA remains suspended, *except as provided by this decision implementing SB 695*. Existing rules and processes currently in place for DA service shall remain in place, except for changes specified herein as necessary to implement the provisions of SB 695.[1] PG&E's continued acceptance of 6-month notices to switch during the period between March 15, 2010 (the effective date of the D.10-03-022) and April 11, 2010 (the effective date of the OEW) is consistent with this language.

Based on the baseline and overall load cap established, the Commission explained how the four year phase-in should be calculated. "We shall therefore adopt annual DA caps of up to 35% in the first year, up to 70% in the second year, up to 90% in the third year, and up to 100% in the fourth year. . . . Each individual year's DA limit shall stand alone, and not be dependent on the amount of annual migration in prior years of the phase-in." These percentages appear in Appendix 2 of D.10-03-022.

PG&E administered the 2010 OEW using the 2010 DA Load Cap provided for in D.10-03-022 and calculated as provided in its tariffs. The Commission's

[1] See D.10-03-022 at 2.

Energy Division reviewed and confirmed PG&E's compliance with Commission requirements.[2]

The Energy Division Status Report includes the following note describing PG&E's results.

> "PG&E's April 2010 Baseline DA Load was lower than the Existing Baseline DA Load reported in Appendix A of Decision 10-03-022. Consequently, PG&E states that it increased the 2010 Annual Limit to fully subscribe the 2010 Load Cap. Grandfathered DA-Eligible customers were not prohibited from submitting six-month notices to switch to DA service prior to April 11, 2010. The load associated with those customers reduced the amount of space available for new load under the 2010 Load Cap by approximately 569 GWH."

Granting the relief sought by Commercial Energy would be inappropriate also to the extent it would result in the impairment of contracts of DA customers who entered into those contracts in good faith. There is also no basis to require a recalculation of the adopted DA baseline amounts. In D.10-03-022, the Commission confirmed the data to be used in calculating the DA annual load limits based on the utilities' reported load figures. The Commission adopted those figures for use in implementing the SB 695 caps. I find no valid basis to call for a recalculation of the previously adopted annual DA limits adopted in D.10-03-022.

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[2] See *Status Report on the Results of Energy Division's Review of the Utilities' Senate Bill 695 Implementation for 2010 per D.10-03-022 (updated August 2, 2010)*

IT IS RULED that the motion of Commercial Energy for an order to show cause is hereby denied.

Dated December 23, 2010, at San Francisco, California.

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

INFORMATION REGARDING SERVICE

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Dated December 23, 2010, at San Francisco, California.

/s/ ANTONINA V. SWANSEN
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N O T I C E

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