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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Petition of the Direct Access Customer Coalition to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code § 1708.5.	Petition 18-09-001 (Filed September 4, 2018)

JOINT MOTION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E) SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E), AND THE DIRECT ACCESS CUSTOMER COALITION, FOR SETTLLEMENT OF PETITION 18-09-001

Stacy W. Walter

Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, CA 94105
Telephone: (415) 973-6611
Facsimile: (415) 973-0516
E-Mail: Stacy.Walter@pge.com

Attorney for
PACIFIC GAS AND ELECTRIC COMPANY

E. Gregory Barnes

San Diego Gas & Electric Company
8330 Century Park Court, CP32D
San Diego, CA 92123
Telephone: (858) 654-1583
Facsimile: (619) 699-5027
E-mail: gbarnes@semprautilities.com

Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY

Gregory S.G. Klatt

Douglass & Liddell
411 E. Huntington Drive, Suite 107-356
Arcadia, California 91006
Telephone: (626) 802-5733
Facsimile: (747) 222-1861
Email: klatt@energyattorney.com

Attorney for
DIRECT ACCESS CUSTOMER COALITION

Andrea Tozer

Southern California Edison Company
2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, CA 91770
Telephone: (626) 302-6713
Facsimile: (626) 302-1910
E-mail: Andrea.Tozer@sce.com

Attorney for
SOUTHERN CALIFORNIA EDISON COMPANY

February 8, 2019

BEFORE THE PUBLIC UTILITIES COMMISSION
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Pursuant to Commission Rule 12.1 and Administrative Law Judge Christine A. Powell's January 25, 2019 ruling,[1] San Diego Gas & Electric Company ("SDG&E") on behalf of itself, Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE") and the Direct Access Customer Coalition ("DACC") (together, the "movants") submits this motion[2] for the Commission to adopt and approve the settlement of the issues presented in the subject petition. For the reasons set forth below, movants ask the Commission to grant this motion.

I. PROCEDURAL BACKGROUND

DACC filed the above-captioned petition seeking revisions to the current form, timelines and tariff requirements that govern the processing of load relocation requests from existing electric service accounts served on Direct Access. The Joint Utilities (PG&E, SCE and SDG&E)

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[1] This email ruling provides, in pertinent part: "To the extent that the parties agree to settle on some or all the issues in the Petition, they shall file and serve, on or before February 8, 2019, a joint motion for the Commission to adopt a stipulated settlement."

[2] Pursuant to Commission Rule 1.8(d) SDG&E has been authorized by counsel for PG&E, SCE and DACC to submit and sign this filing on their behalf.

timely responded to the petition.[3] Their joint response (at page 4) proposed a workshop in November 2018 with DACC and other interested parties, with the goal to develop a joint proposal supported by all the parties on how best to update the current relocation process, or at minimum, identify areas of agreement and areas requiring further Commission guidance. DACC supported this approach, and, accordingly, on November 28, 2018, Commission Energy Division convened a workshop, with notice provided to the service list, to address the issues raised in the petition.[4]

While the workshop discussion was productive, the parties did not reach an agreement for a joint proposal. Parties continued discussions after the workshop to the end of reaching a joint proposal.

On December 13, 2018, Judge Powell issued a ruling requesting, among other things, that the parties provide information on whether they have "reached an agreement on any aspect of the Petition."[5] The movants responded jointly on January 17, 2019, providing a status matrix reporting substantial agreement in some areas, and ongoing discussions in other areas.[6] As noted above, Judge Powell's January 25, 2019 ruling directed parties to file a joint motion by February 8, 2019, submitting for Commission approval of those issues settled by the parties. Specifically, the January 25 ruling directed:

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3 *Joint Response of … [SCE, SDG&E and PG&E] to the Petition of … [DACC] to Adopt, Amend or Repeal a Regulation Pursuant to Pub. Util. Code § 1708.05* (October 4, 2018).

4 Representatives from the following entities attended the workshop: DACC, PG&E, SCE, SDG&E, and from the Commission, Energy Division, Administrative Law Judge Division, and Commissioner Picker's Office.

5 *Administrative Law Judge's Ruling Directing the Parties to File Additional Information* (December 13, 2018) at 2. Judge Powell's December 18, 2018 email ruling granted an extension to January 17, 2019 to file the information requested by the December 13 ruling.

6 *Joint Response of … [SCE, SDG&E DACC and PG&E] to the Administrative Law Judge's December 13, 2018 Ruling.* The referenced status matrix was Attachment A to this joint response.

1. To the extent that the parties agree to settle on some or all the issues in the Petition, they shall file and serve, on or before February 8, 2019, a joint motion for the Commission to adopt a stipulated settlement.

2. As part of the stipulation, the parties shall state that, if the Commission approves the stipulation, a rulemaking is no longer necessary.

This motion is submitted in compliance with the January 25 ruling, and, as discussed below, movants are pleased to report a settlement of all issues raised by the petition.

II. DESCRIPTION OF THE SETTLEMENT AGREEMENT

Movants' agreement resolving all substantive issues raised by the petition is reflected in the stipulated matrix that is Attachment A to this motion. This matrix, if approved by the Commission, would resolve all issues raised by the petition. In terms of substance, Attachment A is self-explanatory, and this attachment represents the entire substance of movants' settlement agreement. In addition to approving the matrix, as part of the settlement, movants request the following procedural relief to facilitate settlement implementation and to comply with the January 25, 2019 ruling:

1. that the Commission order the utilities to file advice letters containing relocation forms and tariff modifications that embody the settlement within forty-five days of the Commission's decision approving this settlement; and

2. that the Commission find that the rulemaking requested by the petition is no longer necessary.

III. THE SETTLEMENT IS REASONABLE IN LIGHT OF THE WHOLE RECORD, CONSISTENT WITH LAW, AND IN THE PUBLIC INTEREST

Commission Rule 12.1(d) states that the Commission will not approve a settlement "unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest."[7] The Parties believe that the agreed-upon items appropriately balance customer

[7] *See also* D.09-10-017, 2009 WL 3374041 (Oct. 15, 2009) (applying Rule 12.1(d) criteria).

convenience and administrative burden, as well as update the direct access relocation rules to reflect operational experience, and as such are reasonable in light of the whole record. In addition, all of the agreed-upon items are consistent with law.

Other factors that the Commission considers in reviewing settlements include: (1) whether the settlement negotiations were at arms-length; (2) whether major issues were addressed; and (3) whether the parties were adequately represented.[8] The settlement meets these criteria. The settling parties – movants - are represented by experienced Commission practitioners and are well-resourced and sophisticated entities. Movants believe they represent all active parties, and that all potentially interested stakeholders have received notice of the petition and of the subsequent settlement negotiations as discussed in more detail in below.[9] Movants negotiated in good faith, bargained aggressively, and, ultimately compromised. The result is a comprehensive settlement of the all issues raised by the petition. The settlement allows parties to reduce the risk that litigation will produce unacceptable results.[10] As such, approval of the settlement would be in the public interest.

IV. THE SETTLEMENT COMPLIES WITH COMMISSION RULE 12.1

Commission Rule 12.1(a) provides that parties may propose settlements by written motion "any time after the first prehearing conference and within 30 days after the last day of hearing." Of course, a prehearing conference has not yet been convened in response to the petition, nor have hearings been held. Rule 12.1(b) requires parties to provide a notice of a settlement conference at least seven days before a settlement is signed. Although there has been

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[8] *See, e.g.*, D.91-05-029, 40 CPUC 2d 301, 326; D.88-12-083, 30 CPUC 2d 189, 221–23.

[9] Movants provided a settlement update in the January 19, 2019 joint filing. For citation, *see* footnote 6, *supra*.

[10] D.92-12-019, 46 CPUC 2d 538, 551.

no formal notice specifically referencing Rule 12.1(b) issued in response to the petition, under Commission precedent, the circumstances surrounding the workshop and settlement process herein substantially comply with Rule 12.1.

The Commission has recognized that, in the context of petitions for modification, requiring strict compliance with Rule 12.1 is not appropriate. Decision ("D.") 10-12-035 reviewed and adopted a proposed settlement resolving outstanding issues and establishing a new QF Heat and Power program. A party (CARE) argued that because hearings in R.06-02-013 were held in 2007, the filing of the proposed settlement on October 8, 2010 violated the Rule 12.1(a) provision that settlements may be proposed within 30 days after the last day of hearing. D.10-12-035 found this to be an unreasonable, overly-restrictive application of Rule 12.1(a). The Commission noted there was no connection between the evidentiary hearings in 2007 and the petition for modification that would warrant the strict application of the rule. The decision (page 29) rejected CARE's argument, finding as follows:

> If we were to apply the rule as literally as CARE proposes in all circumstances, we would render the Commission's settlement process unavailable in many proceedings, including those where petitions for modification are involved, as well as proceedings where no evidentiary hearings are held. No purpose is served by such an outcome, and it would be contrary to our preference that parties have the opportunity to pursue settlements and other forms of alternative dispute resolution.
>
> The same considerations apply here.

The rationale of this decision reinforces that the process in this proceeding substantially complies with Rule 12.1(b). As discussed above, the utilities' joint response to the petition specifically requested the Commission to convene a workshop to discuss resolution of the issues raised in the petition. In addition, on November 1, 2018, Energy Division sent the requested workshop notice to the Commission's official service list. Separately, Judge Powell's December

13, 2018 ruling specifically references ongoing settlement discussions, and this ruling was similarly served on the service list. Therefore, all interested stakeholders had at least seven days' notice of settlement discussions. Finally, the utilities joint response to Judge Powell's January 25 ruling published to the service list a status report of the settlement discussions that clearly identified all issues under discussion. Therefore, all interested stakeholders had at least the seven days' prior notice of settlement discussions as contemplated by the rule. The fact that there was no notice issued that specifically referenced Rule 12.1(b) does not nullify tender of this settlement, especially given the rationale behind D.10-12-035.

V. CONCLUSION

Movants ask the Commission to grant this motion and approve the settlement proposed herein, including (1) the stipulation that is attachment A hereto, (2) issuing an order to file implementing advice letters 45 days after Commission approval of this settlement, and (3) that the Commission find that the rulemaking requested by the petition is no longer necessary.

Respectfully submitted,

/s/ E. Gregory Barnes

E. Gregory Barnes
Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY

8330 Century Park Court, CP32D
San Diego, California 92123
Telephone: (858) 654-1583
Facsimile: (619) 699-5027
Email: gbarnes@semprautilities.com

On behalf of Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Direct Access Customer Coalition, per Commission Rule 1.8(d).

February 8, 2019

ATTACHMENT A

DACC PETITION STIPULATION MATRIX

Direct Access Customer Coalition Petition 18-09-001 Stipulation

Direct Access Customer Coalition (DACC) Proposals:

Topic	DACC Proposal	Party Stipulation
1. Time Limit on Bundled Service at New Location (Options 4A, 4B and 4C)	Currently service to a new location cannot have been under the customer's name for more than 90-days. Eliminate 90-day limit for the "new" location.	DACC and the Joint IOU agree to extend the 90 calendar day limit for a new location to 120 calendar days.
2. Requirement to Terminate Service at Current Location (Option 4D)	Currently, Option 4D requires the customer to terminate the account ("current account") from which DA service is being transferred. Eliminate the termination requirement for the current account.	DACC and Joint IOUs agree to allow the current account to be terminated or returned to bundled service under Option 4.D. However, if the current account is being returned to bundled service it will be subject to the following provision: *"If the service account at the current location is being returned to bundled service, Customer warrants that the remaining load at the current location has been reduced consistent with the relocation of all or part of its business or operations from the Current Location to a New Location."*
3. Deadline For Submitting Relocation Declaration	Under Options 4A and 4B, a Relocation Declaration must be submitted within 60 days after the Current Location is closed or returned to bundled service for. Option 4C does not require the customers to take action on the Current Location (it may remain active and on DA). Under Option 4D, the Relocation Declaration must be submitted within 90 days of the Current Location closing or returning to bundled service. DACC proposes to eliminate the deadlines or, at a minimum, extend to the longer of 180 days or the start of the next annual DA lottery.	DACC and Joint IOUs agree to extend the deadline for the submittal of the Relocation Declaration from 60 days to 120 days for Options 4.A and 4.B and from 90 days to 120 days for Option 4.D. This will make the submittal deadline for all three options (4.A, 4.B, and 4.D) consistent.

February 8, 2019

Topic	DACC Proposal	Party Stipulation
4. Same Ownership Requirement	Currently under Option 4D transfers are allowed between service accounts that are either under the "same ownership" or are "wholly-owned subsidiaries of the same parent corporation. Change to requirement to "common ownership or control" and add a specific exemption to provide a similar option for public university systems and public school districts. In addition, expand the exemption from "same ownership" to the remaining three relocation options (Options 4.A, 4.B and 4.C).	DACC and Joint IOUs agreed to three changes to the same ownership requirement. 1. DACC and Joint IOUs agree to allow subsidiaries which are wholly-owned or "controlled" by the same parent corporation to qualify for the exemption. The revised language is as follows: *"Customer understands that the Current Location and New Location must be under the same ownership. For purposes of this requirement, "ownership" means holding a fee interest or leasehold interest in the real property that constitutes the Premises. In order to be considered under the same ownership, the Current Location and the New Location must meet one of the following criteria: (1) the locations are owned by the same company; (2) the locations are owned by companies that are wholly owned or controlled by the same parent company; or (3) one location is owned by a company that is wholly owned or controlled by the owner of the other location. For purposes of this section, "control" means owning 51% or more of the company. If a Customer is assigning DA eligibility and transferring its DA service between corporate entities with different Federal Taxpayer Identification Numbers, the Customer must complete the Affidavit in Attachment 2 and submit it with this request."*

Topic	DACC Proposal	Party Stipulation
4. Same Ownership Requirement (continued)		2. Add a new Section 13 to provide for a specific exemption for public university systems, community college district and public school systems. Section 13 will read as follows: *"Notwithstanding the requirements set forth in Section 12, a Customer may assign DA eligibility and transfer its DA service between campuses of the same public university system, community college district or public school district. In cases where the campuses have different Federal Taxpayer Identification Numbers, the Customer must complete the Affidavit in Attachment 2 and submit it with this request."* 3. DACC and Joint Utilities agree to extend the provisions of Sections 12 and 13 of the Relocation Declaration to all four relocation options listed on the Relocation Declaration.

Joint IOU Proposals:

Topic	Joint IOU Proposals	Party Stipulation
1. Revise existing Direct Access Monthly Reports	Currently the Direct Access Monthly Report being provided to the Commission and which is used to administer the Overall DA Load Cap does not include pending DA load from DA Replacements or Relocations, or Customer Assignment Notifications ("reserved DA load"). Joint IOUs propose to track and report the reserved DA load based upon historical usage at the current location, and count the reserved DA load towards the Overall DA Load Cap.	DACC and Joint IOUs agree to seek Commission approval to allow the Joint IOUs to track, report and count the "reserved" DA load towards the Overall DA Load Cap.
2. Revise Option 4C to Allow Relocation to Same Premise	Currently, Option 4C only allows for a relocation to New Location on a "different" premise. Joint IOUs are proposing to also allow a customer to relocate to a New Location on the "same" Premise. This will allow a customer more flexibility in their service arrangements for new facilities on an existing Premise.	DACC and Joint IOUs agree to seek Commission approval to revise Option 4C to allow for relocation to a New Location on the "same" or "different" Premise.