

Decision 13-01-021 January 24, 2013

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)

DECISION REGARDING ELECTRIC SERVICE PROVIDER FINANCIAL SECURITY REQUIREMENTS FOR INCREMENTAL PROCUREMENT COSTS

TABLE OF CONTENTS

Title	Page
DECISION REGARDING ELECTRIC SERVICE PROVIDER FINANCIAL SECURITY REQUIREMENTS FOR INCREMENTAL PROCUREMENT COSTS	1
1. Introduction	2
2. Procedural Background.....	3
3. Legal and Factual Framework.....	6
4. Defining Small DA Commercial Customers for Purposes of ESP Financial Security Requirements	9
5. Determining if a Small Customer is Affiliated with a Large Customer	14
5.1. Parties' Positions	15
6. Section 394.25(e) Requirements for Procurement Costs.....	19
7. Period for Measuring Procurement Costs	21
8. Frequency Interval for Posting Financial Security Calculation Updates	23
9. Use of System-Average versus Weighted-Average Generation Rate.....	25
10. Posting Security Deposits with the IOU versus with the Commission	26
11. Timing for Demanding Payment of Reentry Fees.....	29
12. Netting of Negative Procurement Costs and Administrative Costs	30
13. Categorization and Assignment of Proceeding.....	31
14. Comments on Proposed Decision.....	32
Findings of Fact	32
Conclusions of Law	35
ORDER.....	37

Appendix 1 - Electric Service Provider Financial Security and Re Entry Fees:
Incremental Procurement Costs for Direct Access Small
Commercial and Residential Customers

DECISION REGARDING ELECTRIC SERVICE PROVIDER FINANCIAL SECURITY REQUIREMENTS FOR INCREMENTAL PROCUREMENT COSTS

1. Introduction

In this decision, we determine and implement financial security and reentry fee requirements applicable to Electric Service Providers' (ESP) provision of Direct Access (DA) to residential and small commercial and industrial customers.¹ ESP responsibility for reentry fees and financial security requirements cover the risks of an involuntary return of DA customers to bundled utility service² as prescribed by Pub. Util. Code § 394.25(e).³ As previously determined in D.11-12-018, ESP financial security requirements are to include incremental procurement cost risks for involuntary returns involving DA residential and small commercial customers not affiliated with a large

¹ DA offers eligible retail customers the option to purchase electric power from a competitive provider. See Decision (D.) 95-12-063, as modified by D.96-01-009 (1995) 64 Cal. PUC 2d 1, 24, and codified in Assembly Bill 1890 (Stats. 1996, ch. 854).

² As defined in D.11-12-018, an involuntary return of a DA customer to bundled service occurs when the utility initiates a DA service request process to return a customer to bundled service due to: (a) ESP registration revocation; (b) ESP-Utility Agreement termination; or (c) ESP default on its obligations. An involuntary return of a DA customer to bundled service has not occurred when a customer's contract with an ESP expires, or when an ESP discontinues service due to customer default under an ESP service agreement. All subsequent uses of the term "involuntary return" in this decision, unless expressly noted otherwise, refer to an en masse involuntary return as defined in D.11-12-018.

³ Unless otherwise specified, subsequent statutory references herein pertain to the Public Utilities Code Section 394.25(e), which provides that if a customer of an ESP is involuntarily returned to utility bundled service due to the fault of the ESP, any reentry fee imposed by the utility, as deemed necessary to avoid imposing costs on other customers, must be paid by the ESP.

customer. We also determined in D.11-12-018, however, that large commercial and industrial (C&I) customers (as well as small residential and commercial customers affiliated with a large customer) bear their own risks for increased procurement costs, if any, in the event of an involuntary return to bundled service. ESP requirements include no provision for incremental procurement costs for such customers.

In D.11-12-018, we deferred the determination of the methodology to cover ESP financial security and reentry fee provisions for incremental procurement costs for DA residential and small commercial customers. In the instant decision, in order to implement § 394.25(e), we adopt a methodology to determine financial security amounts and reentry fees necessary to ensure bundled service customer indifference in the event of an involuntary return of such customers. For this purpose, we limit the calculation to include only DA residential and small commercial customers (i.e., those having load of less than 20 kilowatts (kW), and not affiliated with a large customer). Medium and large DA C&I customers (i.e., those with loads 20 kW and above) shall bear their own procurement cost risks in the event of an involuntary return. We adopt, as set forth in Appendix 1 herein, a methodology to derive incremental procurement costs for the financial security requirement and reentry fees for an involuntary return of DA residential and small commercial customers. In connection with this determination, we also provide clarification on certain related implementation issues for administering the ESP requirements, as discussed below.

2. Procedural Background

This decision resolves designated Phase III issues in this proceeding. By ruling dated November 18, 2009, Phase III of the proceeding was amended to

address certain provisions of Senate Bill (SB) 695 (Stats. 2009, ch. 337).⁴ SB 695, signed into law on October 11, 2009, added § 365.1(b) to the Public Utilities Code, which among other things, allowed for certain prescribed DA load growth. An amended scoping memo, issued April 19, 2010, set forth remaining Phase III issues. By ruling dated, November 22, 2010, Phase III was amended to consider modifications to DA ratemaking methodologies and other updates to the DA program.

In Decision (D.) 11-12-018, issued on December 1, 2011, we addressed certain issues regarding Electric Service Provider (ESP) financial security requirements to cover the risk of an en masse involuntary return of DA customers to bundled service. We determined ESP obligations for reentry fees and financial security requirements for involuntarily returned DA customers should include a provision for incremental procurement costs applicable only to small commercial customers and residential customers subscribing to DA.⁵ The instant decision addresses how to determine the ESP financial security and related reentry fee requirements applicable to such categories of customers.

The record supporting this decision consists of written pleadings. No evidentiary hearings were held. The investor-owned utilities submitted a joint proposal for ESP financial security requirements for residential and small

⁴ Phase I of this proceeding examined whether or how the suspension of Direct Access (DA) could be lifted. Phase II examined the feasibility of early termination of California Department of Water Resources power supply contracts. With the passage of SB 695, Phase II was discontinued. Phase III was amended to focus on implementing SB 695 provisions.

⁵ This latter requirement excludes residential and small commercial DA customers affiliated with a large DA customer.

commercial and industrial (C&I) customers on March 16, 2012. The joint proposal was sponsored by: Pacific Gas and Electric Company (PG&E), Southern California Edison Company, and San Diego Gas & Electric Company. A response to the proposal was filed on April 6, 2012, by the City and County of San Francisco (CCSF) and by a group representing DA and ESP interests (the Joint DA Parties). The Joint DA Parties consist of the Alliance for Retail Energy Markets (AReM),⁶ Commerce Energy, Commercial Energy, DA Customer Coalition (DACC),⁷ Retail Energy Supply Association, and School Project for Utility Rate Reduction (SPURR).⁸

The Joint DA Parties oppose certain aspects of the Investor-owned Utilities (IOUs) proposal, arguing that it would unduly increase the number of DA customers for whom a much higher ESP financial security requirement would be required. CCSF focuses its comments on limiting any requirements adopted in this proceeding to apply only to ESPs, but not to Community Choice Aggregators (CCAs).

⁶ AReM is a California mutual benefit corporation formed by ESPs active in California's DA market. The positions of AReM in this proceeding do not necessarily reflect views of its individual members or affiliates of members.

⁷ DACC is a regulatory alliance of educational, commercial, industrial and governmental end-use customers that utilize DA for some or all of their electricity load requirements.

⁸ SPURR is a joint powers authority, a membership organization that aggregates utility services purchasing power and expertise for over 200 California public K-12 school districts, county offices of education, and community college districts.

3. Legal and Factual Framework

We first note the legal and factual framework upon which we base our findings and conclusions concerning the ESP financial security requirements to cover procurement cost risks for involuntarily returned small C&I and residential DA customers pursuant to § 394.25(e). Assembly Bill (AB) 117 (Stats. 2002, ch. 838) amended § 394.25 by adding subdivision (e). The statute provides that if a customer of an ESP is involuntarily returned to utility bundled service due to the fault of the ESP, any reentry fee imposed by the IOU, as deemed necessary by the Commission to avoid imposing costs on other customers of the utility, must be paid for by the ESP. The ESP must post a bond or demonstrate insurance sufficient to cover the reentry fees as a condition of registration.

In March 1998 (in D.98-03-072), the Commission adopted initial requirements for registration of ESPs, including preliminary requirements to furnish security deposits with the Commission. In D.99-05-034 the Commission finalized these ESP registration requirements, and required that the ESP post security with the Commission as proof of financial viability, based on the number of customers served, ranging from a minimum deposit of \$25,000 to \$100,000.⁹

In D.03-12-015, the Commission expanded the applicability of the ESP registration and security requirements to include all entities offering electric service to customers within the service territory of an electric corporation. Prior

⁹ Section 394.25(e) regarding financial security requirements in this decision replace the security amounts adopted in D.03-12-015 except for the requirement to post the initial \$25,000 in registering as an ESP.

to that time, only ESPs serving residential and small commercial customers had been subject to those requirements.

The security deposit requirements established in D.99-05-034 prior to AB 117 were not intended to satisfy the requirements of § 394.25(e), but did establish a means for ESPs to demonstrate financial viability to the satisfaction of the Commission. After AB 117 was enacted, the Commission expressed uncertainty as to whether the maximum \$100,000 security deposit level established in D.99-05-034 was sufficient to cover the reentry fees required by § 394.25(e). In D.03-12-015, the Commission asked for comments on the issue. Responsive comments indicated that it was difficult to address the issue without an adopted means of calculating reentry fees.

We subsequently addressed this issue in D.11-12-018, concluding that residential and small commercial customers subscribing to DA may not possess the same degree of business sophistication as do large commercial customers to protect themselves in the event of a breach of service obligation by their ESP. Accordingly, in D.11-12-018, the Commission determined that such customers should be limited to paying the bundled procurement service rate in the event of an involuntary return. Any additional procurement cost risks for such customers were to be covered by the ESP as reentry fees with financial security posted to cover that potential liability while avoiding cost shifting to bundled customers in conformance with § 394.25(e).

As sophisticated businesses with experience in obtaining goods and services via contracts, however, we concluded that involuntarily returned large DA customers should not return directly to bundled portfolio service (BPS), but should instead be placed on the Temporary Bundled Service (TBS) rate schedule during the transitional period before either returning to DA or entering into a

BPS commitment. The TBS rate was originally designed for DA customers that elect to return to bundled IOU procurement service, and to apply during the 60-day safe harbor and while serving out the six-month advance notice period before returning to the BPS rate. The TBS rate covers the incremental costs in excess of the BPS rate incurred to provide procurement service to returning DA customers during this transitional period.

The Commission concluded in D.11-12-018 that large DA customers should be able to negotiate contractual provisions with their ESP to protect themselves in event of an ESP breach, recognizing the potential that they could incur higher incremental procurement costs if they were involuntarily returned to the IOU. Charging the TBS rate to such involuntarily returned customers protects bundled customers from cost shifting.

3.1. CCA Issues are deferred to Rulemaking 03-10-003

We affirm that a Commission decision on ESP financial security requirements does not prejudge whether or how financial security requirements and reentry fee obligations may apply for CCAs, which issues are pending in Rulemaking (R.) 03-10-003. In its comments, CCSF highlights certain differences between CCAs and ESPs including the customer protections inherent in the CCA structure. CCSF claims these differences obviate the need to apply to CCAs many of the financial security provisions as are proposed for ESPs.

CCSF argues that there is no legislative direction to use the same financial security methodology for CCAs and ESPs, and that this is an issue within the Commission's discretion. CCSF argues that there are substantial policy reasons for treating CCAs and ESPs differently. CCAs are accountable to public bodies whose activities are subject to open government laws. Public meeting laws

applicable to local governments ensure that no CCA program will launch without significant public debate and review.

CCSF argues that in the context of an involuntary return and related financial security issues, public scrutiny, oversight, and accountability of CCAs provides the necessary assurances that CCAs will be prudently managed and that there will be significant advance notice to the public (and utilities) of any CCA financial difficulties and efforts to address them. CCSF believes the oversight of CCAs significantly mitigates the risk that a CCA might fail and that bundled customers might incur costs as a result, which in turn, tempers the basis and need for financial security requirements for CCAs.

We affirm that the instant decision addresses only the reentry fee and financial security requirements for ESPs. We make no determination or prejudgment concerning how § 394.25(e) may apply to CCAs. Such issues will be addressed in R.03-10-003.

4. Defining Small DA Commercial Customers for Purposes of ESP Financial Security Requirements

In D.11-12-018, the Commission determined that ESP financial security requirements for incremental procurement costs should apply to small commercial customers. We did not specifically define what load demand threshold constitutes a small commercial customer, however, for purposes of applying ESP requirements. In order to determine the applicable ESP financial security amounts to cover incremental procurement costs, we herein clarify what customer size limits are to be included.

4.1. Parties' Positions

Under the IOUs proposal, ESP financial security requirements would include a provision for incremental procurement costs both for small customers

(i.e., those with demand below 20 kilowatt (kW)) and medium-sized customers (i.e., those with demand between 20-199 kW). The IOUs believe that small business customers (i.e., those under 20 kW in demand) would not likely possess the level of sophistication needed to protect themselves from the procurement risks of an involuntary return.

The IOUs further argue that ESP financial security requirements should include incremental procurement cost risks for medium sized customers (i.e., defined as those with demand between 20-199 kW). The IOUs claim that such medium-sized customers also lack the sophistication sufficient to bear responsibility for business risks associated with a potential ESP breach of service. The IOUs acknowledge that medium-sized customers may have more market sophistication than do small customers, but argue that medium-sized customers still may not possess the same sophistication as do large customers. The IOUs claim that customers with demands under 200 kW lack the sophistication necessary to appreciate the procurement risks of a stressed electricity market, and lack the ability to absorb or mitigate those risks as they materialize. Thus, the IOUs argue that procurement cost risks for both small and medium sized commercial customers should be included as part of the ESP obligations of § 394.25(e).

To determine whether a customer's demand meets or exceeds 200 kW for purposes of calculating ESP financial security amounts, the IOUs propose to use individually metered customer account usage data, not to exceed a 12-month historical period. The IOUs propose to determine customers' status on an annual basis in connection with the advice filings on ESP security amounts that are due in April of each year. Under the IOUs' proposal, if a commercial service

customer account showed demand of 200 kW or greater for three consecutive months, it would be considered “large” for purposes of ESP financial security.

The Joint DA Parties oppose setting the customer account threshold at 200 kW for purposes of defining the ESP’s obligation for procurement costs as part of the § 394.25(e) requirements. The Joint DA parties argue that such a threshold for calculating procurement cost obligations will unduly burden the ESP. The Joint DA Parties propose that a threshold of only 20 kW customer load be applied for purposes of applying the § 394.25(e) requirements for incremental procurement costs. The Joint DA Parties argue that a 20 kW threshold is consistent with past Commission policy with respect to how § 394.25(e) requirements have been administered. The Joint DA Parties argue that the Commission has previously determined that customers needing consumer protection (because they are presumably less sophisticated) are those with demand of less than 20 kW. For example, in D.99-05-034, the Commission determined that ESP customer notice requirements could be waived for service to medium and large commercial customer accounts, stating:

We believe that an exception to the Section 394.5 notice requirement should be created for those ESPs who only serve medium to large commercial customers and industrial customers. If the ESP negotiates a contract to serve this kind of customer with electricity, and as part of that contract, the parties negotiate to include one or more small commercial accounts (**less than 20 kilowatts**) as part of this contract to supply electricity, the ESP should not have to register with the

Commission under Section 394, and should not have to provide this large customer with the Section 394.5 notice.¹⁰

In similar fashion, the Commission website contains a section entitled “How to Register as an ESP,” providing that:

The Commission implemented the framework for ESP registration, specifically applying these requirements to ESPs serving residential and small commercial (**maximum peak demand less than 20 kilowatts**) in Decision No. (D.) 99-05-034 and (D.) 98-03-072. In (D.) 03-12-015, the CPUC extended these requirements to ESPs not previously required to register, as applicable.” [emphasis added]

In Application 06-03-005, the Commission issued D.08-07-045 pertaining to PG&E’s dynamic pricing proposals, adopting PG&E’s recommendation that the 20 kW level be the dividing line between small and medium commercial customers.

Accordingly, the Joint DA Parties propose limiting the ESP financial security requirements for incremental procurement costs only to include small customer accounts (i.e., those with demand below 20 kW).

4.2. Discussion

For purposes of determining the ESP financial security requirements for incremental procurement costs, we shall limit such requirements to cover small commercial customers (defined as those having load demand of under 20 kW). For customers with load demand of 20 kW or greater, the applicable

¹⁰ D.99-05-034 at 76 (emphasis added). Section 394 has since been amended to require all ESPs, regardless of the size of customers served, to register with the Commission.

ESP financial security requirements shall be limited to administrative costs only, as previously specified in D.11-12-018.

For purposes of measuring customer load demand to implement this requirement, the customers' status shall be determined on an annual basis in connection with the advice filings on ESP security amounts that are due in May of each year. If a commercial service customer account showed demand of less than 20 kW for three consecutive months, it would be considered small for purposes of ESP financial security requirements for incremental procurement costs.

Adopting a 20 kW limit is consistent with how the Commission has previously defined small commercial customers. We find no factual basis to warrant a higher load limit for purposes of defining customers subject to the ESP requirements of § 394.25(e). Accordingly, we expressly adopt the 20 kW limit as the basis to define a small customer for purposes of ESP financial security requirements.

We thus reject the IOUs' argument that ESPs should bear the same financial security requirements for incremental procurement costs for medium-sized customers as for small customers. In D.11-12-018, we determined that ESP security requirements for incremental procurement costs should apply to small commercial customers. The IOUs claim, however, that the ESP financial security requirements applicable to small customers should also apply to medium-sized commercial customers with load demand between 20 kW-199 kW. In support of their claim, the IOUs cite Finding of Fact 48 of D.11-12-018, which reads in part:

Because residential and small commercial customers subscribing to direct access may not possess the same business

sophistication as large commercial and industrial customers in terms of protecting themselves in the event of a breach by their ESP, additional measures are appropriate to protect residential and small commercial customers from the risk of higher procurement costs resulting from an involuntary return to bundled service.

The language cited expressly references “small commercial” customers, but makes no reference to “medium-sized” commercial customers. Although the IOUs infer that the references to “small” commercial customers should also apply to medium-sized customers, the IOUs identify no valid basis or evidence to justify such inference. There is no language or reference in D.11-12-018 where the Commission concluded that medium-sized commercial customers lack sufficient business sophistication to bear responsibility for procurement cost impacts resulting from an involuntary return to bundled service.

The Commission likewise made no finding in D.11-12-018 that the financial security protections applicable for small commercial customers were intended to apply also for medium-sized commercial customers. The IOUs present no evidence to support an assumption that medium-sized customers lack business sophistication sufficient to bear the responsibility for potential procurement cost impacts in the event of an involuntary return to bundled service. Accordingly, ESP financial security requirements for incremental procurement costs shall not apply to either medium or large commercial customers (i.e., those with load demand of 20 kW or greater).

5. Determining if a Small Customer is Affiliated with a Large Customer

As determined in D.11-12-018, small commercial accounts affiliated with a large customer are to be treated the same as large C&I customers in determining ESP financial security requirements. Accordingly, ESP requirements do not

include incremental procurement costs for small accounts if they are affiliated with a large C&I customer. In this decision, we provide guidance as to how a small customer's affiliation is to be determined for purposes of applying § 394.25(e).

5.1. Parties' Positions

The IOUs propose to rely on a customer's federal tax identification (FTID) numbers (also known as employer identification numbers) to determine whether customers are affiliated. The IOUs claim that the FTID number provides a readily available, consistent and objective means of verifying if customers are affiliated. In determining whether different service accounts can be listed on the same *Six Month Notice of Intent to Transfer to Direct Access Service* form, the IOUs look to the FTID. The FTID is also used in establishing credit for affiliated customers.

Under the IOUs' proposal, if a small C&I customer has the same FTID as a large C&I customer, the small customer would be deemed affiliated with the large customer. If the IOU did not have an FTID on file for a small commercial customer's account or if the FTID on file did not match an FTID on file for a large C&I customer, the customer would be deemed not affiliated. The only exception would be if the customer or its ESP provided an FTID to the IOU demonstrating its affiliation with a large C&I customer.

The Joint DA Parties oppose relying on the FTID number for purposes of determining a small customer's affiliation with a large customer. The Joint DA Parties argue that while it may seem administratively convenient, such an approach does not reflect commercial realities of how customers manage their businesses, and would increase costs for more DA customers. The Joint DA Parties argue that corporations use a variety of ownership structures for

differing operations. Affiliates, subsidiaries, and individual facilities may be set up as separate entities that do not share the same FTID.

The Joint DA Parties claim that only a customer can know all of its affiliations. IOUs do not share customer data. Small sites in one IOU service territory would not necessarily be known to be affiliated with large sites in another service territory. Accounts under one FTID may be affiliated with accounts under another FTID.

The Joint DA Parties argue that eligible small customers should simply be required to self-certify their affiliation with a medium or large commercial or industrial customer. The Joint DA Parties suggest that self-certification could initially be required by a date certain (such as 30 days) following a final Commission decision. The procedure would need to encompass new accounts set up in the future, for example, by requiring the same customers to make a similar certification (e.g., within 90 days) following commencement of service to the new account.

The Joint DA Parties argue that customer self-certification would (1) be easily implemented; and (2) comport with commercial realities. They claim that it places the bulk of the administrative burden on the customer, rather than on the utilities.

5.2. Discussion

For purposes of calculating the ESP Financial Security Requirements in compliance with D.11-12-018, it is necessary to identify those customer accounts (and associated load) relating to small DA customers (i.e., demand of less than 20 kW) that are not affiliated with a large customer (i.e., demand of 20 kW or more). We find problems with both proposals offered by the IOUs and the DA parties for identifying applicable data to address this issue.

We decline to rely upon the FTID number as the sole criterion to determine if a small customer account is affiliated with a large customer for purposes of applying the ESP financial security requirements. We conclude that reliance solely on matching FTID numbers will not necessarily provide a valid indication of company affiliation for purposes of applying the financial security requirements. As noted by the Joint DA Parties, companies may have multiple FTIDs for different business entities even though they are all owned by the same corporate parent. Likewise, franchise companies that may have sophisticated energy procurement on a collective basis for all of their franchisees will still have each individual franchisee have its own FTID.

The proposal for customer self-certification also is not the most administratively efficient solution. Implementing such a proposal would require measures to develop and serve notice on customers, and to advise them of the appropriate requirements, including the form and wording of an affidavit for self-certification of the customer's affiliation status. In addition to the administrative burdens of notifying and advising customers, there would be the additional burden of receiving, compiling, reviewing, and processing customers' self-certification through affidavits.

We conclude that a less administratively cumbersome approach to identify requisite data regarding unaffiliated small DA customers is to place the responsibility on the ESP to certify the applicable information for its customers. For this purpose, the ESP can utilize data filed with the Commission as part of each ESP's Standard Service Plan (SSP) submission. The SSP, as originally adopted in D.98-03-072, is a report submitted annually by ESPs to the Commission's Energy Division. The SSP provides information about the ESP's standard service plan offerings pursuant to requirements of § 392.1(a). The SSP

includes information regarding the number of customers served that can be used to identify the number of DA residential and small commercial customers served, and their related load and energy usage.

We conclude that ESPs, in their SSP filings, should be able to identify and certify the customer accounts and related energy usage that apply to small DA customers that are not affiliated with a large customer, (a large customer being one with demand of 20 kW or more). Large DA customers typically have a number of customer accounts, some of which potentially include small residential and small commercial accounts. Thus, those affiliated small customer accounts would be classified with the large commercial customer contract, and thus not included in the small customer account categories. We believe, therefore, that by segregating the large customers (which include small affiliated customer accounts), the ESP can identify the remaining small customers not affiliated with large customers and their related energy usage. The most recent round of SSP filings were due to be received by January 2, 2013.

Accordingly, we shall permit the ESPs to rely upon the information in the SSP report filings for calculating the applicable energy usage data and for certifying the applicable data regarding small DA customers not affiliated with a large customer. Since the SSP reports for 2013 have already been filed, and to the extent that supplemental SSP report data or further clarifying information may be necessary in order to determine the unaffiliated small DA customer load for purposes of ESP financial security requirements, Energy Division staff will notify the ESPs and provide further direction regarding the procedures for supplying the requisite supplemental information and provide the due date for ESPs to make the requisite certifications for 2013.

6. Section 394.25(e) Requirements for Procurement Costs

The IOUs propose a methodology to calculate incremental procurement costs for residential and small commercial customers for purposes of § 394.25(e) ESP financial security and reentry fee requirements, as summarized below.

In their previous proposals for ESP financial security requirements to include incremental procurement costs, as considered in D.11-12-018, the IOUs sought to include a factor for stressed market conditions. The stressed market factor was intended to reflect a likelihood that an involuntary return would occur when markets are stressed and wholesale prices are high. For purposes of DA residential and small commercial customers' procurement costs in the current proposal, however, the IOUs eliminate any recognition of "stressed market" conditions, market volatility, and related confidence intervals. To mitigate the risks associated with market fluctuations, however, the IOUs propose to recalculate the ESP financial security amount on a monthly basis, rather than annually.

For purposes of establishing reentry fees in an involuntary return of DA customers to IOU bundled service, the IOUs propose to calculate the incremental procurement costs in the same manner as ESP financial security amounts, using the latest market prices at the time the calculation is run. As directed in D.11-12-018, reentry fees are to be calculated within 60 days of the initiation of the involuntary return or receipt of the ESP's advance written notice thereof (whichever comes first), and will be a binding estimate (i.e., not subject to true up) of the IOUs' incremental administrative costs, and incremental procurement costs, as applicable.

The ESP financial security amount is designated to cover reentry fees. To the extent an ESP cannot pay the full amount of the reentry fees through its

posted financial security amount by the date it becomes due and payable, however, the IOU will determine the unrecovered reentry fees and charge that amount to the involuntarily returned DA customers either on a one-time basis or over a reasonable period not to exceed the bundled portfolio service (BPS) commitment period. If the IOU subsequently recovers additional reentry fees from the ESP, a refund up to the recovered amount will be provided to the involuntarily returned DA customers.

The Joint DA Parties agree with the simplification to eliminate forecasts of stressed market conditions, including market volatility and confidence intervals.

The IOUs' proposed methodology for calculating incremental procurement cost includes components for energy, Resource Adequacy (RA) and a Renewables Portfolio Standard (RPS). The IOUs seek authority to update the calculation, as necessary, to include any future costs required in discharging the obligation to serve, such as for greenhouse gas emission reductions.

The Joint DA Parties generally support the IOUs' proposed sources and load-shaped weightings of the "brown power" component and use of the RA and RPS adders from the Market Price Benchmark. The Joint DA Parties propose that if an IOU requests a waiver with respect to RPS compliance for involuntary returned load, the RPS adder in the calculation be reconsidered. The Joint DA Parties otherwise do not object to the IOUs' methodology for calculating reentry fees to cover incremental procurement costs.

6.1. Discussion

We shall adopt the IOUs' proposed methodology for calculating ESP financial security requirements for incremental procurement costs for residential and small commercial DA customers, adjusted for the modifications specified below. In particular, we limit the calculation to cover an eight-month period,

rather than a six-month period. We adopt the uncontested proposal to simplify the calculation by eliminating stressed market factors and related confidence interval calculations. Simplifying the calculation in this manner reduces controversy and uncertainty as to the appropriate ESP financial security and reentry fee amounts. We adopt the formulas for calculating incremental procurement costs applicable to ESP financial security amounts and reentry fees as set forth in Appendix 1 of this decision, which incorporates the IOUs' proposed methodology, as modified to reflect our adopted outcomes to the extent they differ from the IOUs' methodology, as discussed below. We also address and clarify additional issues relating to the calculation of ESP requirements, as discussed below.

7. Period for Measuring Procurement Costs

Parties disagree concerning the length of time to be covered for purposes of calculating incremental procurement costs for inclusion in the ESP Financial Security Requirements. As background, we note the applicable service commitment periods as prescribed in D.11-12-018. An involuntarily returned customer has an initial 60-day safe harbor period in which to find a new ESP and submit a Direct Access Service Request (DASR). If the returned customer fails to find a new ESP and to execute a DASR during the 60-day safe harbor period, the following rules apply to the small DA customer. The customer would continue to pay the BPS rate for the next six months. During that time, the ESP would cover reimbursement of the customer's incremental procurement costs. After that, all remaining involuntarily returned DA customers would pay the BPS rate and must remain on BPS service for a minimum period of 18-months.

As originally determined in D.03-05-034 and as reaffirmed in D.11-12-018, we concluded that a six-month notice period would allow sufficient time for the

IOU to adjust its procurement portfolio to accommodate the additional bundled load due to returning DA customers. Thus, no cost shifting would occur thereafter as a result of serving the returning DA customers.

7.1. Parties' Positions

The IOUs propose to calculate the risk exposure duration for incremental procurement costs included in the ESP financial security requirements to cover an eight-month period. The IOUs claim that an eight-month period aligns with the reentry fee recovery period adopted in D.11-12-018. The eight-month period includes the six-month period for notice to return to bundled service, plus the initial 60-day safe-harbor period, as adopted in D.11-12-018, that allows involuntarily returned DA customers to resume DA service with a new ESP upon executing a DASR within the first 60 days of returning to the IOUs.

The Joint DA Parties recommend limiting the time over which the incremental procurement costs are calculated to cover only six months. The IOUs proposal also assumes that no customers return to DA service during the safe-harbor period. Based on customers' behavior in the months following the 2000-2001 power crisis, however, the Joint DA Parties believe that involuntarily returned customers will likely retain their DA rights and enter into a contract with a new ESP. However, rather than attempting to make an explicit assumption concerning what fraction of involuntarily returned customers would remain indefinitely on bundled service, the Joint DA Parties recommend setting the time over which the incremental procurement costs are calculated to six months (rather than eight).

7.2. Discussion

We shall set the time period for calculating incremental procurement costs included in the ESP financial security requirements to cover a period of eight

months, the longer of the two time periods proposed. An eight-month period aligns with the duration of time during which the IOUs could potentially incur incremental costs on behalf of the involuntarily returned customers prior to the customers' return to an 18-month bundled service commitment. The eight months consists of the initial 60-day safe harbor plus the subsequent six-month notice preceding the return to a minimum 18-month BPS commitment. By including incremental costs in the ESP financial security requirement to cover this eight-month period, no costs are shifted to bundled customers. We conclude that an eight-month period reasonably covers the likely risk exposure for incremental procurement costs for the affected involuntary returned customers. By requiring the ESP to cover the risk of incremental procurement costs for an eight-month period, the IOUs and its bundled service customers are protected as required by Section 394.25(e) without unduly burdening the small DA customers.

8. Frequency Interval for Posting Financial Security Calculation Updates

8.1. Parties' Positions

In D.11-12-018, the Commission directed that the ESP financial security amount be calculated annually and posted by June 30 of each year. The IOUs propose to modify this directive so that the ESP financial security amount would be recalculated monthly, with the monthly update to be provided by the 10th day of each month. The IOUs argue that monthly recalculation mitigates the risks associated with market fluctuations, which are not otherwise factored into the incremental procurement cost exposure calculation.

The IOUs suggest that the monthly calculations in a calendar year be submitted in the annual April advice filings adopted in D.11-12-018. (For example, the monthly calculations for 2012 would be submitted to the

Commission in the April 2013 advice filing.) The IOUs argue that the ESP can request Energy Division's review of an IOUs' monthly calculation if the ESP believes the financial security amount is inaccurate or conflicts with adopted processes.

The IOUs propose to update each ESP's load forecast and customer service account numbers on an annual basis in connection with the advice filings on ESP financial security amounts in April of each year. Subsequent to the April advice filing, if the ESP's load increases by more than 25%, the IOUs propose that the ESP be required to inform the IOU with new load data and number of accounts. If the load forecast provided by an ESP is more than 20% below historical figures for the ESP's customer service accounts, the IOUs propose that an average of the past two years of actual historical usage (sales) data be used to establish the ESP's load for calculating the financial security amount.

The IOUs propose also to apply a deadband of 10% for purposes of updating the ESP's posted financial security amount. If the recalculated ESP amount equals at least 90% of the original amount, the financial security amount would not be adjusted. Likewise, an ESP posted financial security amount that represents no more than 110% of the monthly recalculated financial security amount would not be adjusted. Only if the posted ESP amount were less than 90% or more than 110% of the recalculated amount, would it be reset upward or downward to the recalculated amount.

The Joint DA Parties claim that a monthly recalculation for each ESP would be administratively burdensome. The required steps to implement such revisions would have to happen in well under 30 days each month to be meaningful. The Joint Parties express doubt that the steps could be timely

completed in a way that is not burdensome to the IOUs, Commission staff and ESPs. The Joint DA Parties recommend that the financial security requirements be recalculated only twice each year, in November and May, with any adjustments implemented on January 1 or July 1, respectively. Instead of a 10% deadband, the Joint DA Parties propose a 20% deadband for purposes of making any adjustments to the ESP posted amount.

The Joint DA Parties believe that a 20% deadband is sufficient to protect bundled customers in the event of involuntarily returns. The Joint Parties believe this recommendation is not inconsistent with the elimination of the stress test, as discussed above.

8.2. Discussion

We shall modify the directive in D.11-12-018 to call for the ESP security amount to be recalculated twice each year, in November and May, by the tenth day of each month, and with any adjustments to the security amount implemented on the following January 1 or July 1, respectively. We conclude that more frequent updating could prove to be administratively burdensome without offsetting benefits in terms of increased accuracy or timeliness. We shall also adopt a 10% deadband for purposes of requiring any adjustments to the ESP posted amounts. A 10% deadband will avoid undue frequency in administering changes to the posted amounts, while providing reasonable safeguard against insufficiency in the level of ESP posted amounts.

9. Use of System-Average versus Weighted-Average Generation Rate

9.1. Parties' Positions

In order to measure the incremental revenue that the IOU would collect as reentry fees for involuntarily returned customers, the IOUs propose using the

system-average generation rate (multiplied times the kilowatt-hours used by the involuntarily returned customers during an eight-month period).

The Joint Parties suggest that rather than the system-average generation rate, the weighted-average generation rate be used for the customer mix being served by the ESP. They argue that the actual weighted-average customer mix will more accurately reflect any potential liability for incremental procurement costs in the event of a mass involuntary return.

9.2. Discussion

We conclude that while use of the actual weighted customer mix offers a somewhat more accurate measure of customer cost, imposing such a requirement would burden the IOUs with administrative costs to modify their systems to accommodate the additional weighted-average cost measurements. We conclude that use of the system-average generation rate, as proposed by the IOUs, offers reasonable accuracy, and is a readily available measure that avoids the additional administrative burdens involved in calculating a separate weighted-average customer mix. Accordingly, we shall adopt the use of the system-average generation rate, as proposed by the IOUs, for purposes of calculating the ESP financial security requirements.

10. Posting Security Deposits with the IOU versus with the Commission

In D.11-12-018, the Commission required that the ESP post the designated financial security amount with the Commission within 30 days of the initial calculation.

10.1. Parties' Positions

The IOUs propose that instead of requiring the ESP financial security amount to be posted with the Commission, the ESP should be required to

designate the IOU as beneficiary of the ESP's financial security instrument, and to post the ESP financial security amount with the IOU, rather than the Commission. The IOUs argue that in this manner, each IOU will be in the position to call on the instrument within 15 days should the ESP fail to pay the reentry fees upon IOU demand.

The IOUs claim that failure to timely call on the ESP instrument will likely result in the IOUs' being unable to collect any reentry fee from the ESP in an involuntary return. An involuntary return of DA customers to IOU procurement service would likely be considered an "event of default" under the financial security instrument, which would trigger the creditor's right to terminate the credit line within 90 days of the default. The IOUs argue that they must be in a position to promptly call the security instrument before the credit line terminates. As the beneficiary of the financial security instrument, the IOU can assess whether a third party, such as a bank, surety company or guarantor, poses any counter party risk to the IOU and establish appropriate collateral arrangements with the third party.

The Joint DA Parties oppose designating the IOU as the beneficiary, arguing that it provides the IOUs too easy of an access to the posted financial security amount. The Joint DA parties believe that posted amounts should be controlled by the Commission and released to the IOUs only after the Commission deems it appropriate. The Joint Parties claim that allowing the IOUs to access the ESP funds 15 days after a claimed trigger event would grant more discretion to the IOUs than is appropriate.

10.2. Discussion

We conclude that customer interests are best served by maintaining existing requirements to post ESP security amounts with the Commission rather

than to delegate this responsibility for custodianship of such funds or financial instruments to the IOUs.

In D.98-03-072, the Commission adopted interim standards for ESPs' proof of financial viability and proof of technical and operational ability pending the adoption of permanent standards by the Commission. Included in D.98-03-072, we set forth a proposed requirement that the ESP post a financial security requirement with the Commission. We concluded in D.98-03-072 that a security deposit posted with an IOU (there referred to as a "utility distribution company") would not provide customers with adequate recourse should the ESP fail to provide service, but that the ESP should post its security deposit with the Commission.¹¹

Following an opportunity to comment on the proposed requirements, we adopted permanent standards for ESP financial, technical, and operational viability in D.99-05-034. The ESP registration form and procedures, and our discussion of the form and procedures in D.98-03-072 and in D.99-05-034, are integrally related to the standards adopted for proof of financial viability and proof of technical as well as operational ability. The standards adopted in D.99-05-034 included the requirement that the ESP post designated financial security amounts with the Commission. During the intervening years, the requirement for ESP financial security amounts to be posted with the Commission has remained in effect. Based on review of comments filed in this proceeding, we find no basis to modify our findings in D.98-03-072 regarding the merits of posting ESP security deposits with the Commission. Accordingly, we

¹¹ See Findings of Fact 31 and 32 of D.98-03-072; 79 CPUC2d, 239, 310.

reject the IOUs' proposal that we relinquish Commission custodianship of ESP security deposits, and respond to their concern about the possible termination of letters of credit before the IOU can recover in the next section of this Decision.

11. Timing for Demanding Payment of Reentry Fees

In D.11-12-018, the Commission required that reentry fees be calculated within 60 days of the initiation of the involuntary return or receipt of the ESP's advance written notice thereof (whichever comes first), as a binding estimate of the IOUs' incremental administrative costs, and incremental procurement costs, as applicable. However, reentry fees will be demanded from the ESP only after the involuntary return has been initiated.

The IOUs propose that any demand for the reentry fees be made no later than 60 calendar days after the start of the involuntary return of DA customers to IOU procurement service, and that such reentry fees be due and payable to the IOU within 15 calendar days after issuance of the demand.

The IOUs argue that this timeline will ensure that the financial security will be available to the IOU to cover the reentry fees should the ESP fail to pay the reentry fees upon the IOUs' demand. The IOUs claim that commercial instruments available to meet the financial security obligation often contain a 90-day notice of termination provision in the event of a default. An ESP's involuntary return of DA customers to IOU procurement service is likely to be considered an event of default, which would trigger the creditor's right to terminate the credit line within 90 days. Accordingly, the IOUs argue that the demand process should take no longer than 75 days to permit at least 15 days for the IOU to call on the letter of credit, surety bond, etc. to cover the reentry fees itself or to the extent the ESP is unable to pay the full amount of reentry fees

through its letter of credit, surety bond, etc., the IOUs propose to determine the reentry fees for the uncovered portion, and to charge the amount of unrecovered fees to the involuntarily returned DA customers either on a one-time basis or over some reasonable period not to exceed the BPS commitment period.

We find the IOUs proposal for repayment deadlines as described above to be reasonable. Accordingly, any demand for the reentry fees shall be made no later than 60 calendar days after the start of the involuntary return of DA customers to IOU procurement service, and that such reentry fees be due and payable to the IOU within 15 calendar days after issuance of the demand. If an ESP fails to pay the reentry fees within 15 days of the IOUs' demand, such failure will be an event of default under the ESP's financial security requirement, thereby entitling the IOU to immediately draw on the financial security instrument to recover the reentry fees. Any reentry fee not recovered from the ESP will be recovered from the involuntarily returned DA customers over a reasonable time, not to exceed the BPS commitment period. If the IOU subsequently recovers additional reentry fees from the ESP, a refund up to the recovered amount will be provided to the involuntarily returned DA customers.

12. Netting of Negative Procurement Costs and Administrative Costs

12.1. Parties' Position

The IOUs propose to set to zero any negative incremental procurement costs (i.e., if the forecast price of new power is lower than the system-average generation rate). This approach implicitly sets a floor on the ESP obligation at the incremental administrative costs of processing the involuntary returns.

The Joint DA Parties disagree with this adjustment and propose instead to set the floor on negative incremental procurement costs such that the net financial security amount is not less than zero. Given that the purpose of the

financial security amount is to provide protection against the costs that IOUs incur to service involuntarily returned customers, the Joint DA Parties argue that these two elements should be netted when incremental procurement costs are negative. In other words, any negative incremental procurement costs could offset up to 100% of the calculated incremental administrative costs. The Joint DA parties argue that otherwise, the costs of the ESP Financial Security Requirements are unnecessarily inflated.

12.2. Discussion

We shall permit the financial security amount to be calculated by netting any negative procurement costs against incremental administrative costs, with a floor of zero. The IOUs offers no convincing reason to support their opposition to treating both cost elements on a net basis.

We shall set the floor on negative incremental procurement costs such that the net financial security amount is not less than zero. The negative incremental procurement costs shall be allowed to offset up to 100% of the calculated incremental administrative costs. Since both administrative costs and procurement costs are incurred in connection with an involuntary return of DA customers to bundled service, it is reasonable to consider the net effect of both elements of costs in determining the amounts, if any, necessary to compensate the IOU and to avoid cost shifting to other customers.

13. Categorization and Assignment of Proceeding

This proceeding is categorized as ratesetting. The assigned Commissioner is Mark J. Ferron and the assigned Administrative Law Judge (ALJ) is Thomas R. Pulsifer.

14. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on December 10, 2012, and reply comments were filed on December 17, 2012, by the active parties. In response to the comments, we have made appropriate revisions, clarifications, and corrections to the Proposed Decision.

Findings of Fact

1. In D.11-12-018, the Commission determined that the ESP financial security requirements pursuant to § 394.25(e) were to include a provision for incremental procurement costs when a potential involuntary en masse return of DA customers to bundled utility service would involve residential and small commercial customers not affiliated with a large customer.

2. In D.11-12-018, the Commission determined that, as sophisticated businesses with the ability to protect themselves in negotiating contracts with ESPS, large commercial and industrial DA customers (and small commercial customers affiliated therewith) should not be able to return directly to BPS, but should instead be placed on the TBS schedule during the transitional period before either resuming DA or returning to an 18-month bundled service commitment.

3. The TBS rate was originally designed for DA customers that elect to return to the IOUs' procurement service for a transitional period (i.e., a 60-day safe harbor and while serving out the six-month advance notice period before returning to a minimum 18-month bundled service commitment. The TBS rate

includes incremental procurement costs in excess of the BPS rate incurred by the IOU to serve returning customers during this transitional period.

4. Because residential and small commercial customers subscribing to DA may not possess the same business sophistication as large commercial and industrial customers in terms of protecting themselves in the event of a breach by their ESP, the Commission determined in D.11-12-018 that such customers should be limited to paying the BPS rate in the event of an involuntary return and that any risk of higher procurement costs in excess of the BPS rate resulting from an involuntary return to bundled service should be covered by the ESP as reentry fees with financial security posted to cover the potential liability. Small commercial customers accounts affiliated with a large commercial or industrial customer, however, were to be treated the same as their large customer affiliate for purposes of ESP financial security.

5. Using the system-average generation rate, rather than a weighted-average generation rate to reflect the customer mix being served by the ESP, offers an administratively simpler approach, while still providing a reasonably accurate basis to calculate cost responsibility.

6. Reliance on a matching of FTID numbers will not necessarily provide a valid indication of company affiliation for purposes of identifying small customer accounts in applying ESP financial security requirements. Companies may use multiple FTIDs for different business entities though they are owned by the same corporate parent or are franchisees of the same corporation.

7. Requiring the ESP to certify the applicable information regarding unaffiliated small DA customers is a reasonable way to identify small customers affiliated with a large commercial customer for purposes of applying § 394.25(e) requirements. The ESP SSP filings should provide the requisite data

for this purpose, subject to any supplemental or clarifying information for 2013 that Energy Division may require of the ESP.

8. Since the SSP reports for 2013 have already been filed, it is reasonable for Energy Division to provide ESPs with further direction regarding the due date for making certification for 2013 based on SSP report data, and regarding the procedures for supplying any further supplemental or clarifying information that may be necessary to determine the unaffiliated small DA customer accounts for purposes of calculating ESP financial security requirements.

9. Customer interests are best served by maintaining existing requirements to post ESP security amounts with the Commission rather than to delegate this responsibility for custodianship of such funds or financial instruments to the IOUs.

10. An eight-month period reasonably covers the risk exposure for incremental procurement cost provision of the ESP Financial Security Amount while protecting the IOU and its bundled customers from cost shifting in accordance with § 394.25(e) and without unduly burdening the small DA customers.

11. Requiring semi-annual updating of the ESP Financial Security Amount provides a reasonable balance between timeliness and administrative efficiency. More frequent updating could prove to be administratively burdensome without offsetting benefits in terms of increased accuracy or timeliness.

12. Allowance of a 10% deadband for purposes of requiring any adjustments to update ESP posted amounts will avoid undue frequency in administering changes to the posted amounts, while providing a reasonable safeguard against insufficiency in the level of ESP posted amounts.

13. Making demand for payment of reentry fees no later than 60 calendar days after the start of the involuntary return of DA customers to IOU procurement service is a reasonable time limit. Making reentry fees due and payable to the IOU within 15 calendar days after issuance of the demand also offers a reasonable time limit.

14. It is reasonable to require that any reentry fees not recovered from the ESP, or its financial security, be recovered over a reasonable period from the DA customers that are involuntarily returned by the ESP. A period not to exceed the bundled portfolio service commitment period constitutes a reasonable recovery period. For any additional reentry fees subsequently recovered from the ESP, it is reasonable to require the IOU to provide the involuntarily returned DA customers with refunds of any such recovered amounts.

15. Since both administrative costs and procurement costs are incurred in connection with an involuntary return of DA customers to bundled service, it is reasonable to consider the net effect of both elements of costs in determining the amounts, if any, necessary to compensate the IOU and to avoid cost shifting to other customers.

16. Given that the ESP financial security amount is intended to protect against the costs that IOUs incur to service involuntarily returned customers, the netting of incremental procurement costs and administrative costs, such that the net financial security amount is not less than zero, will result in no cost shifting, and will provide fair compensation to the IOU.

Conclusions of Law

1. Under § 394.25(e), the ESP is responsible for procuring a bond or related evidence of insurance to cover reentry fees imposed due to the ESP's customers that are involuntarily returned to bundled service. The ESP is not obligated for

any reentry fees, however, if a DA customer returns to the IOU due to default in payment to the ESP or other contractual obligations, or because the DA customer's contract with the ESP has expired.

2. A Commission decision regarding ESP financial security and reentry fee requirements pursuant to § 394.25(e) does not prejudice whether or how financial security and reentry fee requirements may apply for CCAs, which issues are pending in R.03-10-033.

3. Section 394.25(e) gives the Commission discretion to determine reentry fees deemed necessary to avoid imposing costs on other customers of electrical corporations.

4. Under Section 394.25(e), any reentry fee imposed on an involuntarily returned customer that the Commission deems is necessary to avoid imposing costs on other customers of the electrical corporation is the obligation of the ESP.

5. Limiting the ESP Financial Security Requirements and reentry Fee provisions for incremental procurement costs adopted in this decision to apply only to small customers (defined as those with demand of less than 20 kW over three consecutive months) is consistent with past Commission precedent.

6. The ESP Financial Security Requirements and reentry Fee provisions applicable to small commercial and residential customers subscribing to DA service set forth in Appendix 1 appropriately satisfy the requirement of § 394.25(e) and avoid burdening ESPs with unnecessary obligations.

7. It is reasonable to rely upon the certification of the ESP, through submission of annual SSP filings, together with any additional or supplemental SSP filing information that the Energy Division may require, to identify small customers affiliated with a large customer for purposes of calculating ESP financial security requirements.

O R D E R

IT IS ORDERED that:

1. For purposes of identifying Electric Service Provider reentry fee and financial security amounts to cover incremental procurement costs for Direct Access (DA) small commercial customers set forth in Appendix 1 of this decision, the calculation shall apply only to those DA customers with demand less than 20 kilowatts (kW) over three consecutive months and that are not affiliated with a large customer (i.e., a customer with demand of 20 kW or more).

2. For purposes of identifying small Direct Access customer accounts not affiliated with a large customer in calculating Electric Service Provider (ESP) financial security requirements, each ESP shall be responsible for certifying the applicable information for its customers. For this purpose, the ESP shall utilize the applicable data filed with the Commission as part of each ESP's Standard Service Plan submission.

3. Since Standard Service Plan (SSP) reports for 2013 have already been filed, and to the extent that supplemental SSP data or further clarifying information may be necessary in order to determine unaffiliated small Direct Access customer accounts for calculating Electric Service Providers (ESP) financial security requirements, Energy Division staff will notify the ESPs, and provide further direction regarding the procedures for supplying any requisite supplemental information, and the due date for ESP to make certification of the applicable customer information for 2013.

4. A deadband of 10% shall apply for purposes of updating the Electric Service Providers (ESP) posted financial security amount. Accordingly, if the posted ESP amount is less than 90% or more than 110% of the recalculated

amount, the ESP amount shall be reset upward or downward to the recalculated amount.

5. Upon Commission approval of the incremental Electric Service Provider (ESP) financial security amounts, pursuant to the advice letter filings made in compliance with this decision, Energy Division shall notify each ESP of any additional financial security amounts due. Each ESP shall post any additional increases in the required financial security amount with the Commission within 30 days after Energy Division notification.

6. After the initial posting of additional Electric Service Provider (ESP) financial security amounts made pursuant to this decision, the applicable ESP financial security amount shall be subsequently updated semi-annually, with an updated calculation to be submitted to the Energy Division by Tier 2 Advice Letter by each utility (i.e., Pacific Gas and Electric Company, Southern California Gas Edison Company and San Diego Gas and Electric Company) by the 10th of May and November of each year, and with the updated amount posted by each ESP within 30 days of Energy Division Notice.

7. The time period for calculating incremental procurement costs covered under the Electric Service Provider Financial Security Obligations adopted in this decision shall be limited to cover procurement costs expected over an eight-month period.

8. The financial security requirements in this decision pursuant to Pub. Util. Code § 394.25(e) shall replace the security amounts which were based on the number of customers served, as adopted in Decision 99-05-034 as proof of financial viability. However, the minimum requirement to post an initial \$25,000 security deposit as part of registering as an Electric Service Provider shall remain in effect.

9. The required financial security amount shall be the higher of the amounts determined based on Pub. Util. Code § 394.5(e) determined in accordance with the Ordering Paragraphs of this decision or the \$25,000 minimum deposit required for Electric Service Provider registration pursuant to § 394(b)(9) to provide recourse for residential and small commercial customers in the event of fraud or nonperformance.

10. Decision 11-12-018, reentry fees will be calculated within 60 days of the initiation of the involuntary return or receipt of the Electric Service Provider's (ESP) advance written notice thereof (whichever comes first), and will be a binding estimate (i.e., not subject to true up) of the Investor-owned Utilities' (IOU) incremental administrative costs, and incremental procurement costs as applicable. Reentry fees are due and payable within 15 days of the IOUs' issuance of its demand to the ESP for payment of reentry fees. For purposes of establishing reentry fees in an involuntary return of Direct Access customers to bundled utility service, the incremental procurement costs will be calculated using the same steps as outlined in Appendix 1, but using the latest market prices at the time the calculation is run.

11. An involuntary return by an Electric Service Provider (ESP) of its customers to Direct Access service, and the failure to pay reentry fees within 15 days of Investor-owned Utilities' (IOU) demand, will be events of default under the ESP's financial security requirement, entitling the IOU to immediately draw on the financial security instrument to recover the reentry fees.

12. Any reentry fees not recovered from the Electric Service Provider (ESP) or its financial security will be recovered from Direct Access (DA) customers the involuntarily returned by the ESP over a reasonable period of time not to exceed the bundled portfolio service commitment period. If the Investor-owned Utility

subsequently recovers additional reentry fees from the ESP, a refund of any recovered amounts already collected from those customers will be provided to the involuntarily returned DA customers.

13. The methodology in Appendix 1 of this decision is adopted for the purposes of deriving incremental procurement costs applicable to Electric Service Provider Financial Security and Reentry Fee requirements to cover the involuntary return to bundled service for Direct Access small commercial and residential customers pursuant to Decision 11-12-018 and Pub. Util. Code § 394.25(e).

14. For purposes of measuring customer load demand limits to implement Electric Service Provider (ESP) financial security requirements, customer size shall be determined on an annual basis in connection with the advice filings on ESP security amounts due in May of each year. If a commercial service customer account shows demand of less than 20 kilowatts for three consecutive months, and is not affiliated with a large customer (i.e., a large customer being one with demand of 20 kW or more), the customer will be considered small for purposes of ESP financial security requirements for incremental procurement costs.

15. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must each file separate Tier 2 Advice Letters within 60 days of the effective date of this order:

- (a) To amend their tariffs as necessary to incorporate the adopted methodologies for determining Electric Service Provider financial security, reentry fees, and related provisions applicable to the involuntary return of Direct Access customers, as directed by the Ordering Paragraphs above; and

(b) To modify specific amounts of financial security amounts required to be posted by ESPs pursuant to the revised methodologies adopted in this decision.

16. Rulemaking 07-05-025 is closed.

This order is effective today.

Dated January 24, 2013, at San Francisco, California.

MICHAEL R. PEEVEY
President
CATHERINE J.K. SANDOVAL
MARK FERRON
CARLA J. PETERMAN
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO
Commissioner

APPENDIX 1

Electric Service Provider Financial Security and Reentry Fees: Incremental Procurement Costs for Direct Access Small Commercial and Residential Customers

The following steps shall apply for purposes of determining Electric Service Provider (ESP) Financial Security Requirements and reentry fees for incremental procurement costs associated with the involuntary return to bundled service of Direct Access (DA) small commercial customers and residential customers in accordance with Public Utilities Code Section 394.25(e).

Step 1: Forecast Energy Price

To forecast incremental energy procurement costs for the ESP financial security requirement, a forward price shall be calculated using the same forward pricing data source that the Energy Division uses to calculate the Market Price Benchmark. Forward prices shall use the average of daily peak and off-peak energy prices for all trading days in Month M-1 for Months M+1 to Month M+8, inclusive, where Month M denotes the month when the financial security amount is calculated.

The average of the most recent two years of historical usage data for DA customers to whom the ESP intends to offer services may be used if the ESP forecast is lower than the historical average by more than 10%, unless a collaborative load forecast has been established.

The forward price calculation will apply the following formulas:

- PF (\$/Megawatt-hours (MWh)) = Average of daily peak prices in month M-1 for Months M+1 to M+8, inclusive.
- OF (\$/MWh) = Average of daily off-peak prices in month M-1 for Months M+1 to M+8, inclusive.
- PL (MWh) = Estimated ESP customers' Peak Period usage for 8 forward months.

- OL (MWh) = Estimated ESP customers' Off-Peak Period Usage for 8 forward months.
- AF (\$/MWh) = Load Shape Adjusted Flat Forward Price = $[(PF*PL) + (OF*OL) / (PL+OL)]$.

Step 2: Resource Adequacy (RA) Adder

The Investor-owned Utility (IOU)-specific RA adder (in \$/MWh) shall be added, as derived from the revised Market Price Benchmark calculation for the IOUs' most recent Transitional Bundled Service (TBS) rate. This will take into account the appropriate weighting for RA capacity.

The calculation is:

- RA Adder = [RA adder in \$/MWh from the MPB for the IOUs' most recent TBS rate].

Step 3: Renewable Portfolio Standard Adder

The Renewable Portfolio Standard (RPS) adder (in \$/MWh) shall be used, derived from the revised Market Price Benchmark (MPB) calculation for the IOUs' most recent TBS rate. This will take into account the application of the appropriate weighting for RPS energy.

The calculation is:

- RPS Adder = [RPS adder in \$/MWh from the MPB for the IOUs' most recent TBS rate].

Step 4: Forecast Price of New Power to Serve Involuntarily Returned DA Customers

The Forecast Price of New Power to serve involuntarily returned DA customers is the total forecasted price of power (on a per-MWh basis) to be added to the IOUs' bundled portfolio to serve the involuntarily returned DA customers for a six-month period after an involuntary return. The IOU specific loss factor used in the MPB should be applied to all component parts.

The calculation is :

- Forecast Price of New Power = (AF + RA Adder + RPS Adder) * IOU Loss Factor.

Step 5: IOU System-Average Bundled Generation Rate

Determine the IOU system-average Bundled Generation Rate by using the system-average bundled generation rate in the most recent rate change filing.

Step 6: Incremental Procurement Cost Exposure

The forecasted exposure to incremental procurement costs, to be covered by the ESP financial security, is equal to the IOU system-average Bundled Generation Rate subtracted from the Forecast Price of New Power, and multiplied by the annual ESP load (in MWh). For purposes of calculating the incremental procurement cost exposure, only customers with load equal to or less than 20 kW shall be included. Customers with load equal to or greater than 20 kW (and small customers affiliated with large customers) shall not be included in the calculation of incremental procurement cost exposure.

Assumptions for the calculation:

- ESP load from Step 1 should be used.
- Negative incremental costs (net of positive administrative costs) are set to zero. (i.e., if the Forecast Price of New Power is lower than the IOU system-average Bundled Generation Rate, after netting of positive administrative costs then there is zero incremental procurement cost exposure).

The calculation is:

- Incremental Procurement Cost Exposure = MAX [(Forecast Price of New Power - IOU system-average Bundled Gen Rate)* ESP Load in MWh, 0].

Step 7: ESP Financial Security Amount

To determine the ESP Financial Security Amount, add the Incremental Procurement Cost Exposure to the forecasted incremental administrative costs, calculated by multiplying the IOUs' tariffed administrative reentry fee by the number of small commercial and residential customer service accounts forecasted to be served by the ESP.

Assumptions for the calculation:

- ESP Financial Security Amount = Incremental Procurement Cost Exposure + Incremental Administrative Cost.
- A negative Incremental Procurement Cost Exposure will be netted against incremental administrative costs.
- Incremental Administrative Cost = [IOUs' tariff-authorized administrative reentry fee]*Forecasted number of ESP customer accounts.

(END OF APPENDIX 1)