

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**ITEM 40
AGENDA I.D. # 12180
RESOLUTION E-4591 (Rev. 1)
June 27, 2013**

RESOLUTION

Resolution E-4591. Pacific Gas and Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric Company (SDG&E) filed amended tariffs to incorporate the Electric Service Provider (ESP) financial security provisions and re-entry fee provisions adopted in Decision (D.) 11-12-018. Resolution E-4591 replaces and supersedes Resolution E-4479 in its entirety.

PROPOSED OUTCOME: This Resolution re-adopts the ESP financial security calculation methodology and security amounts for each ESP to cover administrative costs of the involuntary return of DA customers to bundled service, pursuant to D.11-12-018 and Public Utilities Code Section¹ 394.25(e). There were inadvertent omissions from Resolution E-4479 that previously adopted these provisions. This resolution replaces and supersedes Resolution E-4479 in its entirety.

SAFETY CONSIDERATIONS: This Resolution is limited to approving the ESP financial security calculation methodology and as such has no incremental impact on safety.

ESTIMATED COST: No impact on utilities' authorized revenue requirements.

By PG&E Advice Letter (AL) 3983-E/E-A, filed on December 29, 2011 and February 3, 2012 respectively; SCE AL 2687-E/E-A, filed on January 6, 2012 and February 14, 2012 respectively; and SDG&E AL 2324-E, filed on January 3, 2012.

¹ Unless otherwise stated, all code section references are to the California Public Utilities Code.

SUMMARY

This Resolution adopts the Electric Service Provider (ESP) financial security calculation methodology to cover the administrative costs in case of an en masse involuntary return of an ESP's customers to bundled utility service, pursuant to D.11-12-018 and Section 394.25(e). The ESP security requirements prescribed in Section 394.25(e) address the risk of cost shifting in the event of an involuntary return of Direct Access (DA) customers, by assigning responsibility to the ESP for any resulting re-entry fees. The Commission in D.11-12-018 defined an involuntary return of a DA customer to utility bundled service to be when the investor-owned utility (IOU or utility) has initiated the Direct Access Service Request process to return a customer to IOU bundled service due to any of the following events:

- a. The Commission has revoked the ESP's registration;
- b. The ESP-IOU Agreement has been terminated; or
- c. The ESP or its authorized California Independent System Operator (CAISO) Scheduling Coordinator (SC) has defaulted on its CAISO SC obligations, such that the ESP no longer has an appropriately authorized CAISO SC.

The following situations do not qualify as an involuntary return:

- a. A customer's contract with an ESP has expired; or
- b. An ESP discontinues service to a customer due to that customer's default under its service agreement with the ESP.

The Energy Division's ESP Registration unit has updated the utilities' calculations of the financial security amounts applicable for each ESP operating in the utility's service territories. Since the number of customers an ESP has is confidential information, the total financial security amount applicable to that specific ESP is also confidential. ESPs shall be required to adjust the amount of financial security held by the Commission within 30 days of the final notice of the adopted security amount provided by the Energy Division's ESP Registration unit.

Because Resolution E-4479 contained inadvertent omissions, Resolution E-4591 replaces and supersedes Resolution E-4479 in its entirety.

BACKGROUND

Public Utilities Code Section² 394(b)(9) requires ESPs to post financial security so that residential and small commercial customers have recourse in the event of fraud or nonperformance. The Commission currently holds security in the form of bonds and cash deposits that ESPs have posted to meet these previously-established financial security requirements.

Section 394(b)(9) requires as a precondition to registration, among other things, proof of financial viability. Section 394(b)(9) states in relevant part, “In determining the financial viability of the electric service provider, the commission shall ... ensure that residential and small commercial customers have adequate recourse in the event of fraud or nonperformance.” The Commission proposed interim ESP registration requirements applicable to ESPs serving residential and small commercial customers in D.98-03-072 and confirmed those requirements in D.99-05-034. The financial security requirements adopted in these decisions addressed the Section 394(b)(9) requirement for residential and small commercial customers to have recourse in the event of an ESP’s fraud or nonperformance. The amount of this security requirement, ranging from \$25,000 to \$100,000, varies depending on the number of customers the ESP serves. These financial security requirements remain in effect, unaltered by D.11-12-018.

D.03-12-015 issued pursuant to Assembly Bill (AB) 117,³ imposed a new financial security requirement on all ESPs, not just those serving residential and small commercial customers.

The Commission issued D.03-12-015 pursuant to Assembly Bill (AB) 117,⁴ which imposed a new financial security requirement. The impact of adding subdivision (e) to Section 394 was to require ESPs to post security to cover re-entry fees in the event an ESP returns its customers involuntarily to bundled service. D.03-12-015

² Unless otherwise stated, all code section references are to the California Public Utilities Code.

³ Assembly Bill (AB) 117 (Stats. 2002, Ch. 838), among other things, also amended Section 394 to expand the ESP registration requirement to include all ESPs, not just those offering service to residential and small commercial customers.

⁴ Ibid.

did not define re-entry fees. Instead this decision applied the security requirements existing at the time for ESPs serving residential and small commercial customers to all ESPs.

D.11-12-018 requires financial security to cover re-entry fees and prevent cost-shifting in the event an ESP returns its customers involuntarily to bundled service.

In D.11-12-018, the Commission, in re-evaluating the rules applicable to DA, considered the financial security requirements for ESPs pursuant specifically to Section 394.25(e).⁵ This section provides that in the event an ESP returns customers involuntarily to utility bundled service, the ESP is responsible for any re-entry fees necessary to avoid imposing costs on other customers of the utility. Therefore, the statute requires that the ESP post a bond or demonstrate insurance sufficient to cover those re-entry fees as a condition of its registration.

The Commission in D.11-12-018 interpreted the scope of re-entry fees as covering a different range of costs for residential and small commercial, in contrast to the re-entry fees for large commercial and industrial DA customers. The re-entry fee applicable to the involuntary return of any customer account necessarily entails the administrative cost of switching the customer account to bundled service. In addition to those administrative costs, the Commission determined that the re-entry fees applicable to residential and small commercial DA customer accounts (that are not affiliated with large customer accounts) include incremental procurement costs of serving those accounts. Involuntarily returned large commercial and industrial DA customers, in contrast, bear the risk for increased procurement costs through payment of the Transitional Bundled Service rate, an incremental rate that reflects the utilities' procurement costs at the time. The methodology to calculate incremental procurement costs relating to the

⁵ Section 394.25(e) states in relevant part, "If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electrical corporation shall be the obligation of the electric service provider or a community choice aggregator, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. ..."

involuntary return of residential and small commercial DA customers was subsequently decided in D.13-01-021.

To quantify the administrative costs of switching DA customer accounts en masse to utility bundled service, the Commission designated as proxy the administrative fees included in the respective retail utility tariff for returning Community Choice Aggregator customers. The re-entry fee applicable to large commercial and industrial customers is limited to these administrative costs. Residential and small commercial accounts affiliated with a large commercial or industrial DA customer are treated as large customer accounts, not as residential and small commercial customers.

The utilities filed ALs to amend their tariffs to incorporate the ESP financial security provisions and re-entry fee provisions to cover administrative costs applicable to the involuntary return of DA customers and to set forth the calculations of security applicable to each ESP.

Pursuant to OP 14 of D.11-12-018, PG&E, SCE, and SDG&E timely filed AL 3983-E, AL 2687-E, and AL 2324-E respectively, to amend their tariffs to incorporate the ESP financial security and re-entry fee provisions to cover administrative costs applicable to the involuntary return of an ESP's customers to bundled service.

Pursuant to OP 16 of D.11-12-018, the utility advice letters also set forth the calculation of the financial security amount applicable for each ESP operating in the utility's service territory. Since the number of customer accounts served by an ESP is confidential, the utilities redacted the amount of security applicable to each ESP from the public AL filings. Each utility submitted its computations in unredacted form to the Energy Division.

To determine the amount of financial security applicable to each ESP operating in its service territory, each utility multiplied the number of customer accounts of the ESP by the currently applicable "per customer account administrative fee" of \$3.94 for PG&E; \$1.54 for SCE; and \$1.12 for SDG&E.

On February 3 and 14, 2012, PG&E and SCE filed Supplemental AL 3983-E-A and AL 2687-E-A respectively to add the Joint Protestors' suggested tariff language distinction regarding small customer accounts not affiliated with the load of a large commercial or industrial customer account.

This is explained in the Protest Section below. In replies to the Joint Protestors, PG&E, SCE, and SDG&E indicated that the Joint Protestors' suggested tariff

language is acceptable to them. However, SDG&E has not yet supplemented its AL.

The Energy Division's ESP Registration unit, in conjunction with the Commission's Fiscal Office, administers the ESP financial security requirements.

Discussion in D.11-12-018 specified that, other than revisions in the amount or form of ESP financial security based on the results of R.07-05-025, previously established administrative procedures for the posting of ESP financial security deposits with the Commission shall continue to apply.

NOTICE

Notice of PG&E AL 3983-E, SCE AL 2687-E, and SDG&E AL 2324-E was made by publication in the Commission's Daily Calendar. Each of the utilities stated in their ALs that a copy of the AL was served in accordance with Section 4 of General Order 96-B and to parties on the service list to R.07-05-025.

Pursuant to OP 16 of D.11-12-018,⁶ PG&E and SDG&E in their ALs stated that they were concurrently serving by electronic mail on each applicable ESP: (1) a copy of the advice letter with the relevant supporting data; and (2) calculations of each respective ESP's financial security amount provided confidentially only to that specific ESP in complete and unredacted form. SCE confirmed to the Energy Division by electronic mail on September 12, 2012 that it had done likewise.

PROTESTS

The one issue raised by the Joint Protestors applicable to all three utilities was that the proposed tariff revisions do not adequately address a distinction the Commission made in D.11-12-018 about small customer accounts.

PG&E AL 3983-E, SCE AL 2687-E, and SDG&E AL 2324-E were separately protested on January 18, 26, and 23, respectively by Alliance for Retail Energy Markets, the Direct Access Customer Coalition, the Retail Energy Supply

⁶ OP 16 states in relevant part, "... Concurrently with submitting the advice letter to the Energy Division, the utility shall serve by electronic means on each applicable ESP a copy of the advice letter, with the relevant supporting data and calculations of each respective ESP's financial security amount provided confidentially only to that specific ESP in complete and unredacted form."

Association, the Energy Users Forum and the School Project for Utility Rate Reduction (Joint Protestors).⁷ The Joint Protestors object that the utilities' proposed tariff language is not explicit that the financial security requirement approved for ESPs in D.11-12-018 treats a residential or small commercial account that is affiliated with the load of a large commercial or industrial customer as a large customer account. Thus, the Joint Protestors recommend specific corrective language.

PG&E on January 25, 2012, SCE on February 2, 2012, and SDG&E on January 30, 2012, replied to the Joint Protestors' protest, stating that they would file a Supplemental Advice Letter to clarify their respective tariffs as requested by the Joint Protestors.

In addition, the Joint Protestors raised an issue specific to SCE AL 2687-E, namely that the re-entry fee of \$1.54 does not comport with the \$1.49 figure referenced on Page 70 of D.11-12-018, and that SCE did not explain this discrepancy.

In its reply, SCE explained that the re-entry cost figure of \$1.54 submitted in Advice Letter 2687-E complies with D.11-12-018, because it reflected the then-current fee approved for inclusion in Schedule CCA-SF, Section E.2. In D.11-12-018, OP 20, the Commission directed the utilities to use as a proxy for the administrative cost of the involuntary return of an ESP's customers, the tariffed administrative fee for returning CCA customers. SCE explained that the fee applicable to returning CCA customers was \$1.49 for years, but pursuant to D.09-03-025 and AL 2336-E, the then-current \$1.54 figure was incorporated into SCE's Schedule CCA-SF. Accordingly, as the CCA fee was modified to reflect SCE's administrative costs to return CCA customer accounts to bundled service, the proxy applicable to involuntary returns of ESP customer accounts should likewise be adjusted.

DISCUSSION

ESPs shall adjust the amount of their posted financial security within 30 days of final notice from the Energy Division's ESP Registration unit.

⁷ Pursuant to OP 17 of D.11-12-018, the Commission provided the ESPs an opportunity to protest within 20 days of the advice letter filing if they believed that the financial security amount had been calculated inaccurately by the utility or in conflict with the adopted processes. The Energy Division received no protests from ESPs.

The financial security computations addressed in this Resolution are limited to the administrative costs of switching accounts returned involuntarily to bundled service.⁸

To compute the financial security applicable to each ESP, the utilities multiplied the “number of customer accounts” served by the ESP times the “currently applicable per customer account administrative fee” of \$3.94 for PG&E; \$1.54 for SCE; and \$1.12 for SDG&E. Due to the timing involved, the utilities used ESP customer account numbers from the end of November 2011. Meanwhile, ESPs had the opportunity to gain customers as the load allowable under the 2012 and 2013 DA load caps became available.

Energy Division updated the utility computations with customer account numbers from the January 31, 2013 Direct Access Service Request Reports provided by the utilities to the Energy Division. The Energy Division also updated the applicable administrative fees from the utilities’ CCA tariffs. The update results in a \$1.37⁹ fee for SCE based on the current CCA tariff. Finally, Energy Division summed the amounts applicable to each ESP for all three utilities. Because an ESP’s number of customer accounts is confidential, the amount of security to be posted by each ESP for administrative costs is also confidential and thus not provided in this resolution.

The Energy Division’s ESP Registration unit will provide each ESP with a notice of the amount of financial security due on an aggregate-statewide basis. Within 30 days of this notice, the ESP shall post the requisite financial security.

Within 30 days of the effective date of this Resolution, the utilities need to supplement their advice letters to update their tariffs as directed in Ordering Paragraph 3.

The tariffs to which the utilities added language about the new ESP financial security requirements need to be updated.

⁸ The financial security requirement related to procurement costs that is applicable only to ESPs serving residential and small commercial customer accounts not affiliated with a large DA customer was addressed separately in D.13-01-021.

⁹ Pursuant to D.12-11-051

References to an ESP registration requirement for ESPs serving residential or small commercial customers should be corrected to indicate that all ESPs regardless of customer classes they serve are required to register with the Commission.

Pursuant to Public Utilities Code Section 394(b), each ESP, as defined, is required to register with the CPUC, without regard to whether the ESP offers service to residential and/or small commercial customers. Utility tariff language should reflect that all ESPs are required to register with the CPUC (PG&E, Rule 22.C.1.b, 22.D.2; SDG&E Rule 25.C.1.b and Rule 25.D.2).

The list of ESPs updated daily is posted on the Commission's web page; utility tariff language should refer to that list.

The Commission maintains the list of registered ESPs. The list of Registered ESPs is posted on the Commission's web page, with the date of the last update. Pursuant to Section 392.1(a), "The commission shall maintain and make generally available a list of entities offering electrical services operating in California. ... The commission shall, upon request, make this information available at no charge. ..." Thus utility tariffs should reference this posted list (PG&E, Rule 22.C.1.b and SDG&E Rule 25.C.1.b).

COMMENTS

Public Utilities Code section 311(g)(1) generally requires that resolutions must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, on March 19, 2013, the draft of Resolution E-4479¹⁰ was mailed to parties for comments. Only Southern California Edison Company (SCE) submitted comments on the draft Resolution E-4479 on April 8, 2013. This section explains the limited changes made as a result of the issues SCE raised in those comments.

Resolution E-4479 inadvertently omitted the revisions that were made in response to SCE's comments on the draft resolution. Resolution E-4591 has

¹⁰ Resolution E-4479-E was signed out on April 18, 2013 with the Comments Section inadvertently omitted. This resolution reflects the comments received on Draft Resolution (DR) E-4479.

been drafted to correct that inadvertent error, and also to include a date by which the utilities must submit their supplemental compliance advice letters.

SCE did, in fact, submit Supplemental AL 2687-E-A on February 14, 2012 in response to language suggested in a protest with which the utilities agree. The DR has been corrected accordingly.

Customer accounts affiliated with a large customer are those accounts that are part of a contract between an ESP and a large customer.

In its comments on draft Resolution E-4479, SCE requested a clarification on the meaning of “affiliated,” and suggested that the resolution select either the term “affiliated” as used on Page 6 or “associated” as used on Page 4. The term used in D.11-12-018 and D.13-01-021 is “affiliated”, and the reference on p. 4 has been corrected accordingly. Thus, the term, “affiliated” account in this resolution refers to a customer account that, as explained in D.99-05-034 (p. 76), is part of an ESP’s contract to serve a medium to large commercial or industrial customer with electricity.

Public Utilities Code section 311(g)(2) provides that the 30-day review and comment period may be reduced or waived upon the stipulation of all parties in the proceeding. The utilities and the protestant have all agreed to waive their right to a 30-day notice and comment period on this Resolution E-4591.

FINDINGS AND CONCLUSIONS

1. PG&E filed Advice Letter (AL) 3983-E; SCE filed AL 2687-E; and SDG&E filed AL 2324-E in compliance with Ordering Paragraph 14 of Decision (D.)11-12-018, which directed the utilities to file Tier 2 Advice Letters by January 6, 2012 to amend their tariffs to incorporate the Electric Service Provider (ESP) financial security provisions and re-entry fee provisions to cover administrative costs applicable to the involuntary return of Direct Access (DA) customers, as adopted in the decision. These advice letters were also to set forth the calculation of the financial security and reentry fee amount for each ESP to cover administrative costs applicable to the involuntary return of DA customers to utility bundled service.
2. The section 394(b)(9) ESP financial security requirement implemented by D.99-05-034 remains in effect for ESPs to post financial security to provide residential and small commercial customers with recourse in the event of an ESP’s fraud or nonperformance.

3. Discussion in Decision 11-12-018 provides guidance that administrative procedures for the posting of ESP financial security deposits with the Commission shall continue to apply, subject to any revisions in the amount or form of ESP financial security.
4. The term, “affiliated” account refers to a customer account that, as explained in Decision 99-05-034 (p. 76), is part of an ESP’s contract to serve a medium to large commercial or industrial customer with electricity.
5. A residential or small commercial account that is affiliated with a large commercial or industrial account is treated as a large account for purposes of establishing the ESP financial security requirement, pursuant to Section 394.25(e), to cover costs incurred when an ESP’s customers are returned involuntarily to bundled utility service.
6. ESPs will receive notices from the Energy Division’s ESP Registration unit about the financial security requirements applicable to each ESP specifically and any adjustments as required by the Commission in D.11-12-018.
7. All parties have waived their right to a review and comment period on this Resolution E-4591.

THEREFORE IT IS ORDERED THAT:

1. The request of PG&E in Advice Letter AL 3983-E/-E-A, SCE in AL 2687-E/E-A, and SDG&E in AL 2324-E, Pursuant to Ordering Paragraph 14 of Decision (D.) 11-12-018, for approval of amended tariffs to incorporate the Electric Service Provider (ESP) financial security provisions and re-entry fee provisions to cover administrative costs applicable to the involuntary return of Direct Access (DA) customers to bundled service and the calculation of the amount of financial security applicable for each ESP is approved as modified by Ordering Paragraph No. 3, below.
2. ESPs shall adjust the amount of their posted financial security within 30 days of notice from the Energy Division’s ESP Registration unit.
3. Within 30 days of the effective date of this Resolution, the utilities shall supplement their advice letters to update their tariffs as follows:
 - SDG&E shall revise its tariffs as suggested by the Joint Protestors to clarify that residential and small commercial accounts affiliated with large commercial and industrial customer accounts are treated as large customer accounts for purposes of establishing ESP financial security requirements.

- References in utility tariffs to an ESP registration requirement for ESPs serving residential or small commercial customers shall be corrected to indicate that all ESPs are required to register with the Commission (PG&E, Rule 22.C.1.b, 22.D.2; SDG&E Rule 25.C.1.b and Rule 25.D.2).
 - Utility tariffs shall refer to the list of registered ESPs on the Commission's web page (PG&E Rule 22.C.1.b and SDG&E Rule 25.C.1.b).
4. This Resolution replaces and supersedes Resolution E-4479 in its entirety.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on June 27, 2013; the following Commissioners voting favorably thereon:

Paul Clanon
Executive Director