

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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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)

**SUBSTANTIVE COMMENTS OF PACIFIC GAS AND
ELECTRIC COMPANY (U 39 E) PURSUANT TO THE
ASSIGNED COMMISSIONER'S DECEMBER 17, 2009,
RULING**

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Dated: January 5, 2010

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I. INTRODUCTION

Pursuant to the December 17, 2009, *Assigned Commissioner's Ruling on Procedures to Amending Scope of Issues Relating to Direct Access Phase-In (December 17 Ruling)*, Pacific Gas and Electric Company (PG&E) submits substantive comments on the reopening of Direct Access (DA) pursuant to Senate Bill (SB) 695. As provided in the November 18, 2009 *Assigned Commissioner's Ruling on Procedures to Address Senate Bill 695 Issues Relating to Direct Access Transactions (November 18 Ruling)* as modified by the December 17 Ruling, PG&E provides comments on the following topics:

- PG&E supports a phase-in period as short as three years governed by a maximum cap of 1,500 GWh in new DA load per year.
- PG&E supports a one-time exception to the three-year commitment period for customers that previously returned to bundled service from DA service. This will give these customers a one-time opportunity to evaluate whether or not to participate in DA as the new rules established by SB 695 governing customer access to DA service go into place. Once the one-time exception period is complete, the three year commitment rule should be reinstated for all current DA eligible customers and future DA customers who return to bundled service.
- While the existing six month notice rules should be retained, PG&E supports a one-time exception to the six-month notice requirement for customers leaving bundled service and moving to DA service during an initial implementation period to be established for 2010. After that, all customers both "new prospective" and "existing direct access customers" should abide by the existing switching rules including the six month notice and three year commitment provisions.

- Progress toward the cap should be reported monthly and cap administration rules should be simple and clear.
- Customer communications regarding the reopening of DA should be explored in the upcoming workshop.
- Existing interval meter installations requirements for customers larger than 50 kW should be retained.
- The data submitted by PG&E on December 3 of 9,520,453,983 kWh is the proper DA load cap under SB 695.

The December 17 Ruling also invites comments on what issues remain to be addressed by the Commission, by implication after this sub-phase, in order to ensure that energy service providers (ESPs) are subject to procurement-related requirements on the same basis as the investor-owned utilities (IOUs). PG&E provides the following comments in response.

- The Commission should act on suitable bond requirements for ESPs as quickly as possible. If the anticipated ruling on the security requirements for Community Choice Aggregators (CCAs), currently being considered in Rulemaking (R.) 03-10-003 takes effect prior to the DA reopening in April, 2010, the Commission should extend the resulting bond requirements to ESPs, thereby clarifying the bond requirement for ESPs and setting this issue to rest prior to the reopening of DA.
- The Commission should consider revisions to the transitional bundled commodity cost tariff to ensure it protects bundled customers.
- The Commission should have, as a top priority in the upcoming long-term planning proceeding, ensuring a level playing field for all energy procurement requirements as required by SB 695.

II. DIRECT ACCESS PHASE-IN IMPLEMENTATION ISSUES

A. Phase-in Should Be Completed In As Little As Three Years With A Maximum Annual Cap And A One-time Exception To The Current Switching Rules In 2010

1. PG&E supports a three year phase-in schedule with an annual cap

The statute requires that the reopening schedule be phased in over a period of not less than three years and not more than five years.^{1/} PG&E believes that a three year phase-in period

^{1/} P.U. Code 365.1 (b)

is the most efficient and customer friendly approach which, when coupled with a reasonable annual cap, will address the long term procurement and resource planning needs of the utility.

Depending on the demand to enroll onto DA service, it is possible that the entire allowable increase in DA load will be fully subscribed in each phase-in year. It is equally possible that there will be no demand for DA enrollment in any given year of the phase-in and significant demand in a subsequent year. This uneven scenario would present difficulties for PG&E in making adjustments to existing resource commitments. To alleviate this possible problem, PG&E recommends an annualized usage cap increment of 1,500 GWh/year for each year of the phase-in period. If additional DA load is fully subscribed each year, then the phase-in will be complete in three years. If however the demand for DA waxes and wanes from one year to the next, then the cap would limit load changes for any one year from being extreme and could extend the phase-in period to up to the five years allowed under the statute.

2. The three year bundled service requirement for return to bundled utility service should be retained with a one-time exception

In order to avoid any concerns over the new SB 695 rules “disadvantaging” existing bundled portfolio service (BPS) customers (also described as “existing DA eligible customers”), PG&E proposes that the current three-year minimum bundled service commitment for customers now on BPS be waived for an initial implementation period, described below, starting on the date established by the Commission and extending for sixty days. Absent such a waiver, existing BPS customers may be precluded from switching to DA service if the maximum load cap in DA is reached before these customers complete their three year commitment period. Once this one-time waiver period is over, PG&E proposes that existing BPS requirements continue to apply to any subsequent returns to bundled service by existing or new DA customers on a going forward basis.

In addition to waiving the three year commitment period, PG&E would support giving BPS customers a higher priority to return to DA than “new prospective” DA customers. Likewise this preference period would be limited to the initial implementation period, after

which all customers would receive “first come, first served” treatment under the cap.

3. The six month notice requirement to depart bundled utility service should be retained with a one-time exception

In order to effectuate an orderly process to switch customers to DA service, it is of paramount importance that customers submit advance notice to PG&E prior to any Direct Access Service Request (DASR) submittal by an ESP. This is critical whether the notice is coming from an existing DA eligible customer or a new prospective DA customer. As established by Decision (D.)03-05-034, and restated in the November Ruling, the existing six month notice requirements were developed to give utilities minimal advance notice of impending departures to DA service and returns to bundled service to allow appropriate adjustments in procurement activities and to minimize stranded costs.

Contrary to the California Alliance for Choice in Energy Solutions’ (CACES) and the Alliance for Retail Energy Market’s (AREM) comments, the investor owned utilities (IOUs’) awareness of the level of the DA load cap created by SB 695 does not eliminate the need for customer notice. Knowing the level of the cap does not provide sufficient certainty regarding the IOUs’ procurement obligations. The IOUs need notice from both existing DA eligible customers as well as new prospective DA eligible customers in order to plan their short-term procurement activities. CACES/AREM’s argument that customer advance notice requirements are not applicable to new prospective DA customers just because it is not specifically stated in D.03-05-034 or the utilities’ DA tariffs ignores the fact that SB 695 was enacted years after the Commission’s decision and resulting utility tariffs creating the rules that provide advance notice of DA service switches to the IOUs.

PG&E proposes to utilize the same rules and process for the reopening of DA that currently exist for DA eligible customers that complete their three year bundled service commitment and now request a return to DA. Currently a six month notice is required (Rule 22.1.B.2), and for the most part, this six months notice should apply to new prospective DA accounts as well. This will provide for similar treatment between existing DA and new

prospective DA customers alike. It will also help PG&E implement the new statute with minimal process/system changes, provide reasonable notice for utility procurement adjustments and planning, and allow for proper vintage designation of the Power Charge Indifference Adjustment^{2/}. It will also provide sufficient time for PG&E to determine whether requests to return to DA will fit within the cap, providing certainty to ESPs and customers that their subsequent DASR will be accepted.

While the six month notice should be the norm, PG&E is sensitive to the anticipation by customers of the limited DA reopening enacted by SB 695. In order to minimize the waiting time normally required for switching to DA service, PG&E would support a one time reduction in the notice period from six months to ninety days. This reduction would only be available during an initial implementation period of sixty days anticipated to start in April, 2010. Thereafter, the notice period would revert back to the current six month advance notice requirement.

B. Progress Toward The Cap Should Be Reported Monthly

In order to facilitate SB 695 implementation by April 2010 and avoid shifting costs to bundled customers, the Commission should strive to keep to a minimum new processes, and the complexity associated with these processes. Consistent with this general principle, PG&E envisions the general cap administration process as outlined in the following sections.

1. Monitoring of the cap would be reviewed as each customer request to switch is received and would be reported on a monthly basis

Updates to the current DA load level would continue to occur monthly, using the current, established monthly report from the utilities to the Commission. The updated monthly DA load level would be posted on PG&E's website or communicated to interested stakeholders like Commission staff and ESPs via email.

^{2/} Resolution E-4226 provides for the designation of the vintage year of the PCIA to be based upon the date the customer submits its advance notice to switch to direct access service.

Using the DA cap set for the year, all requests to switch to DA will be evaluated by taking the customer's incremental annualized load and comparing it with the load available under the cap at the time the customer submits its advance notice requesting a switch. This load review will take into account all load growth among existing DA customers at that point in time as well as any previously DA load that has returned to bundled service.

If the annual cap is not reached in any given year, "excess" capacity will not be lost but will be transferred to the subsequent year. All DA requests will be reviewed in light of the cumulative cap for any given year, subject to the annual 1,500 GWh/year limit PG&E proposes in Section A.1. above. As a practical matter, actual DA load in any given month may exceed the cap due to normal load variation and load growth allowed under the existing DA rules.

If the annual cap is reached in any given year, requests will be treated as discussed in Section 2. below.

Once the three to five year phase-in period is complete, monitoring of load will continue. To the extent the cap is not exceeded, new requests to switch to DA will be accepted, again subject to an annual cap of 1,500 GWh/year.

2. Customer requests to switch to DA would be handled in an ongoing manner consistent with current practices as much as practicable

To request DA service, a customer would submit a six month notice (or a ninety day notice as proposed above during the initial implementation period) of the proposed switch. Consistent with existing DA switching rules, these notices would be irrevocable after a three day rescission period. These notices would be date/time stamped to determine the order of receipt by PG&E. Upon receipt by PG&E, the customer's twelve month historical usage would be compared to the current monthly DA load and determine whether its load fits within the cap.

- If the customer fits within the cap, an acceptance letter from the utility is sent to the customer with instructions (to be relayed to their ESP) for submission of DASRs.
- After acceptance, the customer's account status is changed to DA Eligible in PG&E system, allowing a DASR to be submitted.

- If the customer’s request exceeds the cap, an acknowledgement letter is sent to the customer informing the customer that there is currently not enough space under the cap and the customer will be placed on a waiting list for the next year’s allocation of increased DA load. Customers will be provided a thirty day period to request that they be removed from the waiting list. Otherwise, customers on the waiting list will be committed to receiving DA service when it becomes available.
- After the cap is reached during any year of the phase-in period, DA service will likely not be available to additional customers until the subsequent year’s allocation becomes available. However, PG&E supports monthly checks on whether or not DA availability opens up throughout the year for customers on the waiting list. This could happen if for instance customers on DA service closed their accounts or returned to bundled service.

3. With some minor revisions, other rules governing DA administration should remain in place

Except as proposed above, all existing DA rules and requirements would remain in place including those covering relocation/replacement and assignment. However, PG&E proposes that these forms and processes be reviewed and updated in a subsequent phase of this proceeding.

C. Customer Communications Regarding the Reopening of DA Should Be Explored In The Upcoming Workshop

DA is an optional service available to eligible customers. Unlike optional “rates,”^{3/} PG&E has no current obligation to inform customers of changes to optional “services.” The new rules associated with the limited DA reopening will be available to customers via tariff updates on PG&E’s website. PG&E’s Energy Choice section of the website will also be updated to describe the limited DA reopening in more detail and provide information for customers interested in taking DA service. Utilities could post monthly updates on current DA load and progress toward the cap on their websites. The website could also include links to forms needed to provide notice to the utility that the customer has decided to take DA service.

Beyond the website, PG&E looks forward to the workshop process to further inform how best to provide customers with information regarding the reopening of DA pursuant to SB 695.

^{3/} See PG&E Electric Rule 12.D.

D. Existing DA Customer Interval Meter Requirements Should Be Retained

CACES and AReM request consideration of a waiver of the existing interval meter requirement for customers whose demand is greater than 50 kW. They seek to avoid the additional cost of installing an interval meter since they argue that the utilities may soon be installing interval meters under their Advanced Metering Initiatives. PG&E agrees that the metering and billing rules under DA deserve a new look from the Commission given the experiences and developments in the past decade. However PG&E does not think that this one waiver item should be considered or adopted without such a comprehensive review. Since time is of the essence in this initial phase of the proceeding, this item should be deferred until there is time for full consideration of metering and billing rules. Also, under current PG&E policies, ESPs can elect to utilize an existing PG&E owned interval meter for use in serving customers under direct access, so customers may already take advantage of utility interval meters already in place. As a practical matter, to allow a total waiver of the interval meter requirement until a utility AMI meter is installed would necessitate reprogramming of PG&E's DASR processing system to permit affected accounts to switch to DA service without the current "meter investigation" process. Depending on when the Commission reaches a final decision, reprogramming such a change would likely take additional time beyond April, 2010. This is particularly true since PG&E will be devoting significant resources toward implementation of the Peak Day Pricing program in that same time frame.

E. The Data Provided By The IOUs on December 3, 2009 Define The New DA Cap Under SB 695

PG&E's December 3, 2009 filing identified 9,520,453,983 kWh as the maximum cap on DA load in PG&E's service territory under SB 695. PG&E also filed on December 29, 2009 its current level of direct access load in the latest available recorded month^{4/}. While most parties are generally focused on the available capacity for increasing direct access load, Commercial Energy of Montana specifically questioned how the load numbers compare with the monthly reports the

^{4/} PG&E reported 5,574,241,258 kWh as its current DA load for November, 2009.

utilities file with the CPUC on direct access activity.

First, the basis for the DA cap number is taken directly from the statute. SB 695 establishes the maximum allowable total kilowatt-hour limit for DA as "...the maximum total kilowatt-hours supplied by all other providers to distribution customers of that electrical corporation during any sequential 12 month period between April 1, 1998, and the effective date of this section."^{5/} To calculate this number for each month, PG&E used the actual amount of direct access load supplied by ESPs in each month using usage data for direct access accounts from PG&E's billing system.

The regular monthly reports are calculated differently. As directed by D.97-05-040 and D. 97-12-088, the IOUs submit a monthly report of DA activity in their respective service territories. These reports are submitted on the 15th day of each month for the previous calendar month's activity. These reports include the number of DASRs received and processed; the number of switches from Utility to ESP, ESP to ESP, and ESP to Utility; and annualized load information regarding accounts that have switched to direct access service.

To prepare the load information for these reports PG&E first identifies all accounts that are on direct access service, and then extracts the historical 12 month usage associated with those accounts. It is important to note that if an account has not been on direct access service for a full 12 months, then the load information provided contains usage that occurred while the account was on bundled service (up to 11 months if the account had just switched to direct access service) as well as usage supplied by "other providers." The current DA load number of 5,574,241,258 kWh provided by PG&E in its December 29, 2009 filing is consistent with the numbers provided by PG&E in its most recent monthly report.^{6/}

While the statute clearly describes how the cap is set, PG&E supports using the monthly report calculation methodology for tracking monthly progress toward the cap and availability for

^{5/} P.U. Code Section 365.1 (b)

^{6/} Based on November 2009 data.

additional customer load under the cap.

III. PROCUREMENT RELATED ISSUES

In the December 17 Ruling, the Commission also invites comments on additional issues that should be addressed “in order to ensure that energy service providers of direct access are subject to procurement-related requirements on the same basis as the IOUs.”^{7/} The following sections respond to this invitation.

A. ESP Bond Requirements Should Be Established As Quickly As Possible To Maintain Bundled Customer Indifference

The current “temporary” bond amount for ESPs is insufficient to cover the costs that utilities may be asked to bear should customers ever return en masse in a volatile market. The “temporary” \$100,000 bond level amount currently in place^{8/} is not sufficient to cover the costs that utilities may incur in the event of a major ESP breach and unplanned return of customers *en masse* to the utility.

Therefore, in order to protect bundled customers, the bond requirement should be examined, and a reasoned bond requirement established, as soon as possible, no later than the next phase of this proceeding.

In fact, ESPs should want certainty on the level and form of security that is needed and acceptable prior to starting or resuming their programs. Recently, the Commission has expended considerable effort and resources in evaluating the bond requirements for CCAs in R. 03-10-003.^{9/} A proposed decision is anticipated in that proceeding shortly. PG&E recommends that the CCA bond requirement be the model for the bond requirement in the ESP context. If the ruling on the security requirements for CCAs takes effect prior to the DA reopening in April,

^{7/} December 17 Ruling, p. 4.

^{8/} See D. 03-12-015

^{9/} See, e.g., June 24, 2009, Joint Motion Of City Of Victorville, Pacific Gas And Electric Company, San Diego Gas & Electric Company, San Joaquin Valley Power Authority, Southern California Edison Company, and The Utility Reform Network For Adoption Of Settlement Agreements in R.03-10-003.

2010, the Commission should extend that ruling to ESPs, thereby clarifying the bond requirement for ESPs and setting this issue to rest. Even if the CCA bond determination comes later, the Commission should quickly take steps to extend it to cover DA, as well.

B. The Commission Should Consider Revisions to the Transitional Bundled Commodity Cost Tariff to Ensure It Protects Bundled Customers

Another tool used to protect bundled customers is the transitional bundled commodity cost tariff, which is applicable to former direct access customers who return to bundled service prior to the end of the mandatory six-month notice period required to elect bundled service. The structure of that tariff should be re-examined, to ensure that it protects existing bundled customers from harm if direct access customers begin to take commodity service from the utility prior to the expiration of their six month notice-to-return period. This issue should also be addressed no later than the next phase of this proceeding.

C. Ensuring a Level Playing Field for all Energy Procurement Activities Should Be Considered In the Long-Term Plan Proceeding

As PG&E explained in its December 7, 2009, comments in this proceeding,

SB 695 evidences the legislature's intent that as a part of the reopening of direct access, direct access providers should be subject to the same requirements that apply to the three largest California electric utilities. As the [November 18, 2009, Ruling in this proceeding] notes, SB 695 explicitly identifies three areas, resource adequacy, renewable portfolio standards, and electricity sector requirements relating to carbon emission reductions. SB 695 also provides that direct access providers should share in the costs of generation resources obtained by a utility to meet system or local area reliability needs for all of the customers in the utility's distribution service territory.^{10/}

Each of these areas should be examined by the Commission to ensure that direct access providers are subject to the same requirements that apply to PG&E, Southern California Edison Company, and San Diego Gas & Electric Company. This examination should include procurement obligations placed on the utilities generally, as well as with respect to renewable

^{10/} PG&E December 7, 2009, Comments, p. 3 (footnotes omitted).

resources.

This examination should also include consideration of any potential obligations to purchase from qualifying facilities, including Combined Heat and Power (CHP), resulting from Commission decisions, including obligations that may arise from the global settlement negotiations among the IOUs, the California Cogeneration Council, (CCC), the Independent Energy Producers Association, the Cogeneration Association of California, Energy Users and Producers Coalition, The Utility Reform Network (TURN) and the Division of Ratepayer Advocates to resolve disputes regarding qualifying facilities.^{11/}

This examination should include greenhouse gas “cap and trade” obligations placed on the IOUs, as well. Further, since the Commission imposes long-term procurement planning obligations on the utilities, it should examine the long-term planning obligations that should be imposed on direct access service providers. Finally, this examination should ensure that if the IOUs’ obligations evolve over time, then the obligations on direct access providers should keep pace.

The amended December 17 Ruling fails to adequately address the provision from SB 695 that requires that all costs from CPUC-mandated new generation resources needed for system reliability, as specified in new Public Utilities Code section 365.1 (c)(2), shall be the responsibility of all customers. To correct this and in order to create a more level and transparent playing field, PG&E recommends that ESPs be required to file Long-Term Procurement Plans, which includes identifying how they would meet their RPS, RA, GHG, and other energy provider obligations and requirements. In addition, the Commission should place the requirements and compliance burden for procurement-related activities directly on ESPs, just as it does for IOUs (i.e., ESPs would be mandated to physically provide all of these services and to comply with these requirements).^{12/}

^{11/} See, “the second status report on the global negotiations” filed on December 15, 2009, jointly by the IOUs, TURN, and CCC in R.04-04-003.

^{12/} As an example of an area of concern, on December 23, 2009, a proposed decision was issued in R.06-02-012 that would limit the ability of the three largest IOUs to use renewable energy credits to meet their

IV. CONCLUSION

PG&E looks forward to participating in the January 11, 2010 workshop and working with the Commission on a smooth reopening of DA as provided by SB 695.

Respectfully Submitted,

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annual renewable procurement targets, but would not place the same limits on other ESPs. (December 23, 2009, Proposed Decision in R.06-02-012, Ordering Paragraph 17.)

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, California 94105.

On the 5th day of January, 2010, I served a true copy of:

**SUBSTANTIVE COMMENTS OF PACIFIC GAS AND
ELECTRIC COMPANY (U 39 E) PURSUANT TO THE
ASSIGNED COMMISSIONER'S DECEMBER 17, 2009,
RULING**

by electronic mail to the official parties of the service list for R.07-05-025 providing an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the 5th day of January, 2010.

/s/

PATRICIA KOKASON