

**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 IX And Decision 01-09-060.

R.07-05-025
(Filed May 24, 2007)

**OPENING COMMENTS OF
SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)
ON THE ISSUES RAISED IN THE ASSIGNED COMMISSIONER'S
AMENDED SCOPING MEMO**

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I. INTRODUCTION

Pursuant to the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”), and the *Assigned Commissioner’s Amended Scoping Memo* issued on April 19, 2010 (“Amended Scoping Memo”), San Diego Gas & Electric Company (“SDG&E”) hereby respectfully submits the following opening comments for Commission consideration in the above-captioned proceeding. More specifically, SDG&E’s opening comments address: i) the appropriate Direct Access (“DA”) switching rules to apply for the long-term and whether the six-month notice period for DA customers returning to bundled portfolio service continues to be appropriate; ii) what bonding or other security requirements should apply to Electric Service Providers (“ESPs”) to cover the costs associated with involuntary returns of DA customers to an investor-owned utility (“IOU”) procurement service pursuant to Public Utilities Code (“PUC”) section 394.25(e); iii) whether, or subject to what considerations, this proceeding should continue to

address Phase II and III issues after resolving the forgoing SB695-related implementation issues; iv) whether this proceeding should consider DA process improvements in the Pacific Gas & Electric Company (“PG&E), Southern California Edison Company (“SCE”) and SDG&E territories, pursuant to D.08-05-003; and v) whether the proceeding’s schedule should be revised.

II. Existing DA Switching Rules

As to the need to review or implement changes to existing DA switching rules, SDG&E believes that parties will first need to assess the risks, if any, associated with adjusting the noticing requirements or modifying other processes to mitigate identified risks that are not already covered.

A. Six-Month Notice Requirement to Transfer from Bundled Service to DA

In order to transfer from bundled service to DA service, a customer must provide the utility with a six-month notice. At the time this requirement was established, the DA customer cost responsibility surcharge (“DACRS”) did not include stranded costs associated with new-world utility-owned generation resources. Since then, the DACRS has been modified to incorporate a means to recover stranded costs that may result from customers switching to DA. Therefore, SDG&E believes that the Commission (and interested parties) must first address whether the current methodology is sufficient to cover *all* costs that are or are determined to be non-bypassable, (i.e., stranded Resource Adequacy/Renewable Portfolio Standard costs). If not, then the Commission must consider whether it is more appropriate to modify the DACRS or the noticing requirements to the extent the identified risks are mitigated.

B. Six-Month Notice Requirement to Transfer from DA to Bundled Service

In order to transfer from DA service to bundled service, a six-month notice requirement also exists. Under this requirement, customers returning from DA service to bundled service without the six-month notice would receive service from the utility under the transitional bundled service (“TBS”) rate. The question the Commission must then consider is whether the existing six-month notice requirement and the current TBS rate are sufficient to mitigate the costs (i.e., potential reentry fees) that a returning customer might impose on bundled customers or utility shareholders.

C. Three-year Bundled Service Commitment

The existing DA switching rules require that DA customers returning to utility procurement service¹ make a three-year commitment to the bundled portfolio service. In contemplating the adoption of the current three-year commitment period in D.03-05-34, the Commission recognized the importance of such a “commitment in order to avoid gaming, cream skimming, and costs shifting to other bundled customers” and went on to also point out that “if a current DA customer does not want the restrictions of a long-term commitment, then bundled utility service is not the appropriate option for that customer.” SDG&E believes that over the course of time since the switching rules were adopted, the current three-year commitment requirement for DA customers returning to bundled service has proven to be effective at achieving the Commission’s objectives, has not been burdensome or caused hardships for customers and is of an appropriate duration.

¹ A 60-day utility procurement service option continues to be available for customers requiring short-term utility procurement services.

III. Bonding Requirements for Electric Service Providers

As a threshold matter, SDG&E believes that PUC Section 395.25(e) generally requires that ESPs and CCAs are to be held responsible for any reentry fees imposed on customers involuntarily returned to bundled service. However, a thorough assessment of the risks, determination of potential reentry fees, and what conditions constitute a customer's involuntary return must be undertaken prior to a determination of the level of security required of the ESPs.

While the legislation is silent with respect to the exact type or the level of bond that must be posted by ESPs, SDG&E believes that, at a minimum, the level of security required of an ESP must be commensurate with the level of risk to bundled customers and utility shareholders. For example, during the CCA bond proceeding addressing similar issues, the underlying premise was that because CCA customers involuntarily returning to bundled utility service *en masse* were not subject to TBS, significant risks were unfairly shifted to both bundled customers and utility shareholders. This is not the case under the current DA switching rules that do not make a distinction between voluntary returns and involuntary returns to bundled service. In fact, regardless of the circumstances causing a DA customer's return to bundled service, and absent completion of a six-month advance notice period, the customer receives service from the utility under the TBS rate.

IV. Phase II Should be Closed in Light of SB 695

As noted in the Amended Scoping Memo, Phase II of the proceeding was established to address whether, and under what conditions, DA may be reinstated.² In D.08-02-033, the Commission determined that the lifting of DA was barred as long as the Department of Water Resources (“DWR”) supplies power to retail customers as a party to its existing power contracts. The Commission subsequently concluded that there was merit in considering ways to relieve DWR of its obligations to supply power by supporting negotiations with DWR contract counterparties to enter into replacement agreements with the IOUs. Thus, Phase II of the proceeding was established to determine the feasibility and framework for a plan to accelerate the removal of DWR as power supplier through a contract novation and renegotiation process.

In D.08-11-056, the Commission adopted a plan to foster such contract novations/renegotiations. The Commission determined that “the most efficient outcome can be expected if negotiations are conducted in a sequence of priorities, beginning with the Sempra and Coral contracts.”³ As the Commission noted, absent successful renegotiations of those contracts, the Sempra contract will expire September 2011 and the Coral contract will expire in June 2012.⁴ The Commission’s plan also included establishment of a “Working Group” to implement protocols and strategies for conducting negotiations with the counterparties to the DWR contracts

² Pursuant to a legislative mandate under Assembly Bill (“AB”) 1X, signed into law on February 1, 2001, the Commission suspended the right to enter into new contracts for DA after September 20, 2001. See D.01-09-060 and Pub. Util. Code section 366.

³ D.08-11-056, FOF 13, 14.

⁴ *Id.*, FOF 19, 21.

with the goal of removing DWR as a party to the contracts, while ensuring that any resulting contract changes are not detrimental to ratepayers.

On October 11, 2009, Senate Bill (“SB”) 695 was signed into law and, as of November 18, 2009, the Commission stayed the requirement for the Working Group status reports on the progress of the DWR contract novations/renegotiations.

Importantly, SB 695 added Section 365.1(b) to the Public Utilities Code, establishing a limited, phased-in reopening of DA while concurrently maintaining the suspension of retail end-use DA transactions “until the Legislature, by statute, lifts the suspension or otherwise authorizes direct transactions.”⁵ Clearly, under the forgoing legislative restriction preempting further Commission action on DA, the Commission cannot reinstitute DA beyond the limited reopening under SB 695, at least until further legislative direction authorizing such action.

Because the Commission’s original impetus (lifting the suspension of DA) in its effort to expedite removal of DWR from its role as power supplier has essentially been obviated by SB 695, it is SDG&E’s view that the Working Groups efforts under Phase II(a) may no longer be required.⁶ Similarly, since Phase II(b) was established to address the public policy merits of lifting the suspension of DA and was deferred pending an assessment of the prospects and timing of successful negotiations of replacement contracts;⁷ SDG&E believes the Phase II (a and b) issues can be closed

⁵ SB 695 Section 2, adding PUC 365.1(a).

⁶ Moreover, SDG&E notes that if DWR initiates certain modifications to the DWR contracts (such as novations/renegotiations of the type that were originally set to be addressed in Phase II of this proceeding) pursuant to SB 695 Section 9, amending Section 80110 of the Water Code, then interested parties may comment in that process under Section 80110(c)(1), or otherwise to the Commission (for its recommendation), under applicable Commission-established procedures.

⁷ See February, 4, 2009 *Assigned Commissioner and Administrative Law Judge Ruling Regarding Implementation Measures For Phase II(A)(2)*, paragraph 8.

and the scope of the remaining Phase III issues should be modified, as proposed above.

V. DA Process Improvements Need Not Be Considered at this Time

While there may be certain specific processes that may be improved with minimal effort, SDG&E believes that a more expansive review and/or modification of current DA processes would be premature. The more appropriate time to consider a wide scope of process improvements is if, and when, the continued suspension of DA is lifted by further express legislative action.

VI. Revisions to the Procedural Schedule

As indicated above, SDG&E believes the Commission can now close out Phase II of the proceeding under the current framework and instead proceed to address the issues set for Phase III. The March 2, 2009 *Assigned Commissioner Ruling Providing Modified Scoping Memo and Schedule for the Proceeding* addressed the Phase II (a) and (b) schedule indicating that “Phase II(a)(1) would conclude by January 1, 2010 and that Phase II(b) would proceed immediately thereafter.” Further, the Commission expected that Phase II(b) could be conducted on an expedited manner and that the parties would then proceed to Phase III. The Commission also indicated that it anticipated that both Phase II(b) and Phase III would conclude by September 1, 2010. Thus, SDG&E believes that if the Commission were to now close Phase II and proceed to Phase III, it could still meet its target schedule of September 1, 2010.

III. CONCLUSION

SDG&E appreciates the opportunity to submit its opening comments on the issues raised in the Amended Scoping Memo. Given the implementation directives of SB 695, the Commission should ensure that proposed modifications to the DA switching rules are equitable and reduce unnecessary complexities to the maximum extent possible.

Further, SDG&E believes the SB 695 mandates for equal treatment along with PUC Section 395.25(e) requires the Commission to ensure that ESPs and CCAs are subject to appropriate DA entry/exit security requirements that will prevent the potential for gaming and/or stranding of costs. In addition, because the legislature expressly maintained the existing suspension of DA transactions, with the limited exception authorized under PUC Section 365.1, the Commission can proceed to close Phase II and instead focus on Phase III issues under a slightly modified schedule.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **OPENING COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON THE ISSUES RAISED IN THE ASSIGNED COMMISSIONER'S AMENDED SCOPING MEMO** on all known interested parties of record in R.07-05-025 via email to those whose email address is listed in the official service list and via first class mail to those whose email address is not available.

Copies were also delivered to Administrative Law Judge and Assigned Commissioner in this Rulemaking.

Executed this 7th day of May, 2010, at San Diego California.

/s/ LISA FUCCI-ORTIZ
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