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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)

THE DIVISION OF RATEPAYER ADVOCATES' POST-WORKSHOP REPLY COMMENTS REGARDING DWR CONTRACT NOVATION

I. INTRODUCTION

Assuming that the Commission continues to pursue its stated goal of finding a way to accelerate the reopening of Direct Access via novation or assignment of the DWR contracts, the Division of Ratepayer Advocates (DRA) supports the “six principles” and framework for next steps proposed by Pacific Gas and Electric Company (PG&E) in its post-workshop comments. Several good suggestions made by other parties are consistent with PG&E’s “six principles” and proposed framework, and can be incorporated.

II. THE COMMISSION SHOULD ADOPT THE SIX PRINCIPLES PROPOSED BY PG&E

The six principles proposed by PG&E are:

- The Commission should first determine if novation/assignment/renegotiation of all the DWR contracts is possible;
- Customers should benefit from novation/assignment/renegotiation;
- DWR needs to develop a plan before negotiations for replacement agreements begin;
- There must be actual, demonstrated benefits before any contract is assigned/novated;
- Any novation/assignment/renegotiation must be consistent with the PG&E bankruptcy settlement;

- The Commission needs to address cost allocation among the IOUs (in order to ensure that after novation/assignment costs are equitably allocated among all groups of customers).

These principles identify the key issues, including whether novation/assignment of all the DWR contracts is legally and practically possible; whether it is possible to accomplish it on terms that are just and reasonable; and whether it would result in increased costs to customers (to customers as a whole, or to certain groups of customers). As DRA and many other parties have pointed out, assuming novation/assignment of the contracts is possible, the Commission must determine whether it would result in an actual net benefit to customers. If not, there is no public policy that would justify it.

If it is determined that novation/assignment of all the DWR contracts is possible and that it would result in an actual net benefit to customers, DRA believes the Commission also has a responsibility to assess the potential impact of accelerating the reopening of Direct Access on other state energy policy objectives, such as Resource Adequacy, prioritization of new resources pursuant to the Loading Order, and achievement of the Renewable Portfolio Standard. It should not be forgotten that the Renewable Portfolio Standard applies to Electric Service Providers (ESPs) as well as to investor-owned utilities.¹ If the Commission moves forward with novation/assignment, these issues will need to be addressed, if not in this sub-phase, at some point in Phase II.

DRA agrees with PG&E that it makes practical sense to start by having the Commission, in consultation with DWR, determine whether all the existing contracts can be novated/assigned. The suggestion by TURN to start with the Sempra contract, and the

¹ Public Utilities Code section 399.12(i)(3). This subsection made the RPS requirement applicable to ESPs effective January 1, 2006. However, as DRA pointed out in its opening comments, ESPs collectively are only procuring about 4% of their delivered energy from renewable sources, according to the most recent compliance reports filed with the Commission.

one by DRA to start with the small number of contracts that extend beyond 2012, could be considered as part of this process. The Commission and DWR should also consider PG&E's point that assignment "does not offer a reasonable alternative to novation" because, even if it is possible, it might still leave DWR in the role of supplying power.²

The remaining "next steps" outlined by PG&E identify the required tasks (including development of standards for Commission review of the Replacement Agreements) and place them in a logical order. The proposed next steps are also consistent with suggestions made by Southern California Edison, TURN, DRA, and other parties at the Prehearing Conference or the Preliminary Workshop. The proposed timeframe for resolving the cost allocation issue may be optimistic, but the proposal provides a helpful and workable framework for the logical and necessary next steps.

III. CACES AND RELIANT'S REQUEST THAT THE COMMISSION PREDETERMINE THAT THE REPLACEMENT AGREEMENTS ARE "JUST AND REASONABLE" MUST BE REJECTED

Reliant and CACES ask the Commission to issue a ruling predetermining that the terms of the Replacement Agreements are just and reasonable pursuant to Public Utilities Code section 451.³ This request for a blank check should be promptly rejected.

All of the DWR contracts with novation clauses require that before novation can take effect, the Commission must review the Replacement Agreement and issue an order determining that the charges of the Replacement Agreement are just and reasonable as required by section 451.⁴ Reliant limits its predetermination request to those replacement agreements that have no material changes to the terms of the existing DWR contract (other than those related to replacing DWR with another buyer).⁵ However, as SCE and PG&E made clear at the Preliminary Workshop and as SCE points out in its Post-Workshop Comments, the contract renegotiation process will probably be "akin to negotiating an entirely new set of power purchase agreements where both parties seek to

² PG&E comments, pp. 4-5.

³ Reliant comments, pp. 5-8, 10; CACES comments, p. 16.

⁴ See Summary of Assignment/Novation provisions provided by DWR in this proceeding.

⁵ Reliant comments, p. 6, fn. 13.

secure favorable terms . . .”⁶ It is unlikely that the Replacement Agreements will be materially unchanged from the existing contracts.

The Commission is legally required to make decisions based on a record.⁷ It can not know in advance what the terms of the Replacement Agreements will be and therefore can not rule in advance that they are just and reasonable.⁸

IV. CONCLUSION

DRA supports the six principles and outline of next steps proposed by PG&E. Adopting them should minimize wasted time and effort and would help to ensure that the impact on customers of novation/assignment receives adequate scrutiny.

Respectfully submitted,

/s/ KAREN PAULL

Karen Paull
Staff Counsel

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415)
Fax: (415) 703-2262

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⁶ SCE comments, p. 6.

⁷ Public Utilities Code section 1757.

⁸ Moreover, with respect to certain contracts (specifically, the ones that have not been renegotiated), it is by no means clear that the Commission could or would make a finding that the existing terms are just and reasonable.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **THE DIVISION OF RATEPAYER ADVOCATES' POST-WORKSHOP REPLY COMMENTS REGARDING DWR CONTRACT NOVATION in R.07-05-025** by using the following service:

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Executed on June 16, 2008 at San Francisco, California.

/s/ ALBERT HILL
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SERVICE LIST

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tdillard@sppc.com
nwhang@manatt.com
douglass@energyattorney.com
AdviceTariffManager@sce.com
Deana.White@sce.com
mike.montoya@sce.com
rkmoore@gswater.com
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kfoley@sempra.com
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freedman@turn.org
mflorio@turn.org
kpp@cpuc.ca.gov
norman.furuta@navy.mil
scarter@nrdc.org
mrh2@pge.com
sara.oneill@constellation.com
michael.hindus@pillsburylaw.com
lisazycherman@dwt.com
mday@goodinmacbride.com
edwardoneill@dwt.com
stevegreenwald@dwt.com
CRMD@pge.com
l_brown369@yahoo.com
bkc7@pge.com
lex@consumercal.org
ds1957@att.com
phansch@mofo.com
gmorris@emf.net
michaelboyd@sbcglobal.net
Mike@alpinenaturalgas.com
westgas@aol.com
martinhom@comcast.net
wamer@kirkwood.com
mary.lynch@constellation.com
abb@eslawfirm.com
riebert@cfbf.com
californiadockets@pacificcorp.com
steven.huhman@morganstanley.com
myuffee@mwe.com

srantala@energymarketers.com
ralphdennis@insightbb.com
smindel@knowledgeinenergy.com
stephen.baker@constellation.com
jcasadont@bluestarenergy.com
csandidge@reliant.com
dcurrie@reliant.com
sliu@bear.com
julie.martin@bp.com
ntreadway@defgllc.com
HKingerski@mxenergy.com
pucservice@manatt.com
curtis.kebler@gs.com
klatt@energyattorney.com
gbawa@cityofpasadena.net
case.admin@sce.com
debeberger@cox.net
jackson.isaacs@gmail.com
wdsmith@sempra.com
lurick@sempra.com
gbass@semprasolutions.com
snelson@sempra.com
toberts@sempra.com
tcorr@sempraglobal.com
liddell@energyattorney.com
liddell@energyattorney.com
mshames@ucan.org
Dcs4837@yahoo.com
rob@teamryno.com
tomdelmonte@gmail.com
ajaycshah@yahoo.com
jeff.malone@calpeak.com
marcie.milner@shell.com
jleslie@luce.com
kjuedes@urmgroupp.com
thunt@cecmail.org
Diane_Fellman@fpl.com
omv@cpuc.ca.gov
mramirez@sfgwater.org
tburke@sfgwater.org
achang@nrdc.org
dhuard@manatt.com
lfletcher@nrdc.org
brbc@pge.com
bill.chen@constellation.com
yxg4@pge.com
pvh1@pge.com
kfox@wsgr.com

Cassandra.sweet@dowjones.com
gblack@cwclaw.com
jscancarelli@flk.com
jarmstrong@goodinmacbride.com
joshdavidson@dwt.com
todd.edmister@bingham.com
judypau@dwt.com
hilary@newsdata.com
cem@newsdata.com
lisa_weinzimer@platts.com
rfg2@pge.com
jchamberlin@strategicenergy.com
Service@spurr.org
ralf1241a@cs.com
duggank@calpine.com
sbeserra@sbcglobal.net
george.waidelich@safeway.com
pthompson@summitblue.com
phil@auclairconsulting.com
brbarkovich@earthlink.net
mrw@mrwassoc.com
malcolm@ae2.com
philm@scdenergy.com
mary.tucker@sanjoseca.gov
blairj@mid.org
joyw@mid.org
rogerv@mid.org
jderosa@ces-ltd.com
david.oliver@navigantconsulting.com
perdue@montaguederose.com
kenneth.swain@navigantconsulting.com
bernardo@braunlegal.com
blaising@braunlegal.com
karen@klindh.com
atowbridge@daycartermurphy.com
atowbridge@daycartermurphy.com
sas@a-klaw.com
michelle.mishoe@pacificcorp.com
ayk@cpuc.ca.gov
am4@cpuc.ca.gov
bfs@cpuc.ca.gov
los@cpuc.ca.gov
crv@cpuc.ca.gov
edd@cpuc.ca.gov
jw2@cpuc.ca.gov
kdw@cpuc.ca.gov
mjd@cpuc.ca.gov
rhh@cpuc.ca.gov

sjp@cpuc.ca.gov
scr@cpuc.ca.gov
trp@cpuc.ca.gov

kellie.smith@sen.ca.gov
ikwasny@water.ca.gov
jpacheco@water.ca.gov