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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)

**ASSIGNED COMMISSIONER'S
AMENDED SCOPING MEMO**

This amended scoping memo revises the scope and schedule for the proceeding, and solicits comments on the disposition of remaining issues, as discussed below.

1. Background

This proceeding was initiated on May 24, 2007 for the purpose of considering whether, or subject to what conditions, the Direct Access suspension may be lifted. The Order Instituting Rulemaking (OIR) adopted a scoping memo establishing three major phases:

1. Commission Authority to Lift the Direct Access Suspension.
2. Public Policy Merits of Lifting the Direct Access Suspension and Applicable Wholesale Market Structure/Regulatory Prerequisites.
3. Rules Governing a Reinstated Direct Access Market: *e.g.*, Entry/Exit/Switching; Default Arrangements, and Cost Recovery Issues

On February 28, 2008, Decision (D.) 08-02-033 concluded Phase I, finding that absent legislative action, the Direct Access suspension must continue as long as the Department of Water Resources (DWR) supplied power to retail customers through its power contracts (Water Code § 80260).

Phase II was bifurcated to facilitate the novation and negotiation of replacement contracts to terminate DWR's role of supplying power. D.08-11-056 established a target goal of January 1, 2010, for completing the novation and negotiation of contracts to replace the DWR contracts. Since the DWR contract novation and negotiation process still remains unfinished, however, the scope of issues and the procedural schedule needs to be updated and revised to reflect current circumstances.

While Phase II was in progress, the Legislature enacted Senate Bill (SB) 695 (Stats. 2009, ch.337). SB 695 added Section 365.1(b) to the Public Utilities Code, which prescribed limited increases in Direct Access load. In all other respects, Direct Access remains suspended. On November 18, 2009, an Assigned Commissioner's Ruling (ACR) amended the scope of this proceeding to address the implementation of SB 695. D.10-03-022, issued on March 11, 2010, addressed the implementation measures that had to be decided within the time limits mandated by SB 695. Other SB 695 implementation issues which did not require immediate resolution were deferred to a subsequent phase of this proceeding.

In view of the priority assigned to SB 695 implementation, the schedule for other issues in the proceeding was deferred. Effective November 18, 2009, the requirement for status reports on the progress of negotiations for contract novation or renegotiation was stayed. A subsequent ruling, issued December 17, 2009, further clarified and modified the scope of issues to be addressed to implement a partial reopening of Direct Access pursuant to SB 695

by April 11, 2010. By this ruling, I identify the additional issues in this proceeding which still require resolution, as identified below, and solicit comments on those issues.

2. Scoping Memo Update

The scope of the proceeding is revised to consider the following issues relating to implementation of SB 695.

2.1 Direct Access Switching Rules

In D.03-05-034, the Commission adopted rules regarding the rights and obligations of Direct Access customers to return to bundled service and subsequently switch back to Direct Access service. Returning Direct Access customers that elected to remain on bundled service beyond a transitional window period were required to make a minimum commitment as a bundled customer for a three-year minimum period in order to continue to receive the bundled portfolio rate. The Direct Access customers were also required to provide a six-month advance notice to the utility prior to becoming eligible for the bundled portfolio rate.

The minimum three-year commitment and six-month notice requirements, as set forth in D.03-05-034, apply only to pre-existing Direct Access customers. Those requirements are not applicable to any bundled customers electing Direct Access service for the first time pursuant to SB 695.

With respect to the Direct Access switching rules, D.10-03-022 only addressed whether a one-time exception to the three-year minimum commitment period and six-month notice period under the switching rules was appropriate for the partial reopening of Direct Access to become effective on April 11, 2010. Accordingly, comments are hereby solicited to address the following additional issue: What should be the appropriate Direct Access switching rules to apply for

the long term; and does the six-month notice period required before the Direct Access customers can return to the bundled portfolio continue to be appropriate? If not, what notice period is appropriate?

2.2 Security Requirements Applicable to Electric Service Providers

The December 17, 2009 ACR deferred consideration of the Public Utilities Code Section 394.25(e) security requirements for a bond for electric service providers to cover costs associated with involuntary returns of Direct Access customers to investor-owned utility procurement service. This statutory requirement also applies to Community Choice Aggregators (CCAs).

Section 394.25(e) states:

“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 electric 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. In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.”

A proposed settlement addressing the bond requirement for CCAs has been presented for the Commission’s consideration in Rulemaking (R.) 03-10-003. The implementation of the bond requirement under Section 394.25(e) for Direct Access service should be coordinated with the implementation for CCAs in the CCA, R.03-10-003.

Issues relating to the bond requirement for Electric Service Providers (ESPs) pursuant to Public Utilities Code Section 394.25(e) were to be taken up in this phase of the proceeding, pursuant to D.10-03-022. Accordingly, comments are solicited on what bonding or other security requirements should apply to ESPs to cover the costs associated with involuntary returns of Direct Access customers to an investor-owned utility procurement service pursuant to Section 394.25(e). As appropriate, parties should address any relevant relationships to the pending consideration of Section 394.25(e) bond requirements for CCAs. In any event, however, issues relating to bond requirements for CCAs addressed in R.03-10-003 will not be relitigated in this proceeding.

2.3 Disposition of Pending Issues in Phases II and III

Comments are solicited on whether, or subject to what considerations, this proceeding should continue to address Phase II and III issues after resolving the above-referenced implementation issues relating to SB 695.

Phase II was originally designated to address the policy merits of reinstating Direct Access, and the prerequisites under which any reinstatement would be appropriate. A Working Group was established to develop protocols and strategies for negotiating replacement power contracts to substitute DWR with the Investor-Owned Utilities. Periodic progress reports were issued by the Energy Division on the status of Working Group efforts. In view of the priorities in implementing SB 695, the schedule for the Progress Reports was stayed by ruling dated November 18, 2009, pending further ruling or order.

Comments are solicited as to whether the Working Group progress reports should resume or not, and if so, subject to what priorities. Comments should address the current prospects for successful negotiations for replacement of DWR contracts within the time constraints of this proceeding. Based on the anticipated timetable for contract negotiations, and in view of the authorizations in Direct Access already allowed pursuant to SB 695, parties should address whether there is merit in continuing to address Phase II and Phase III issues relating to a full lifting of the Direct Access suspension (beyond the SB 695 allowances). Alternatively, comments should address whether this proceeding should be closed upon completion of any outstanding issues relating to SB 695 implementation.

2.4 Consideration of Process Improvements per OP 14 of D.08-05-003

Comments are solicited on the merits of considering Direct Access process improvements in the PG&E, SCE, and SDG&E territories, pursuant to Ordering Paragraph (OP) 14 of D.08-05-003 which states:

“SCE, AReM, and CMTA shall submit a joint report that identifies specific potential process improvements, proposes recommendations for SCE’s DA process improvements, and recommendations for an ongoing process to consider possible future process improvements that reflect the needs and interests of all DA market participants in SCE territory. Participants [in the meeting on the subject that Energy Division was to convene] may submit with the report their comments addressing any disagreements or reservations that participants may have with any recommendations or other aspects of the report. The report shall be submitted in R.07-05-025 for consideration if, and when, Phase III of that proceeding is commenced.”

3. Updating the Schedule

Comments in response to this ruling should address the three issue areas set forth above and any relevant considerations regarding the prospective schedule in light of updated developments since the schedule was last updated. Opening comments shall be due on May 7, 2010, and reply comments are due on May 21, 2010. After review of the comments, a further determination will be made as to the schedule for unresolved issues, and a schedule for the remainder of the rulemaking will be set.

Pursuant to Public Utilities Code Section 1701.5, it is anticipated that this proceeding will be resolved within 18 months of the date of this amended scoping memo.

IT IS RULED that:

1. The procedural schedule is hereby revised as set forth above. A more specific schedule for the remainder of the proceeding will be set after review of parties comments in response to this ruling.
2. The amended scoping memo, as set forth above, is hereby adopted.
3. Comments are solicited on the revised scope of issues to be addressed in this proceeding, as set forth above.
4. Opening comments on the three issue areas identified in this ruling shall be due on May 7, 2010, and reply comments shall be due on May 21, 2010.

Dated April 19, 2010, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

INFORMATION REGARDING SERVICE

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Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated April 19, 2010, at San Francisco, California.

/s/ CRISTINE FERNANDEZ
Cristine Fernandez

N O T I C E

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