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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 RULING
AMENDING SCOPE OF ISSUES
RELATING TO DIRECT ACCESS PHASE-IN**

On November 18, 2009, an Assigned Commissioner's Ruling (ACR) set forth the preliminary scope of issues to be addressed as a new sub-phase of this proceeding to implement provisions of Senate Bill (SB) 695 relating to direct access. Among other things, SB 695 adds Section 365.1(b)¹ to the Public Utilities Code, which amends the previously effective suspension of direct access, and requires the Commission to authorize prescribed increases in the maximum kilowatt-hour (kWh) limit on direct access transactions.

This ruling clarifies and modifies the scope of issues to be addressed in this sub-phase, as necessary to implement a partial reopening of direct access by April 11, 2010.² Other issues that are relevant to the partial reopening of direct access pursuant to Section 365.1(b), but that do not require immediate resolution

¹ All statutory references are to the Public Utilities Code.

² Since April 11, 2010 is on a Sunday, the last business day for concluding this sub-phase is April 9, 2010.

by April 11, 2010, will be deferred to a subsequent phase. The modifications in scope set forth below are based on a review of parties' procedural comments filed on December 7, 2009, as requested by the November 18 ACR.

Additional Data Requirements Regarding the Utilities' Levels of Direct Access

Although each investor-owned utility (IOU) has provided load data regarding the maximum cap on direct access transactions applicable under the statute, certain parties identify additional information that is needed. The Utility Reform Network (TURN) notes that those informational filings do not indicate the current level of direct access in each territory, although the current level of direct access is relevant in assessing how much unused capacity remains for additional direct access transactions. Therefore, each IOU shall provide information on the current level of direct access in its territory, expressed as the annual load of those customers who were taking direct access service in the latest available recorded month.

The California Alliance for Choice in Energy Solutions (CACES) and the Alliance for Retail Energy Markets (AREM) also ask that the utilities be directed to respond to certain questions regarding the load data presented. Accordingly, the utilities are directed to provide responses to the following questions, as applicable:

- a. Does the load data in the filings include transmission and distribution losses?
- b. Does the load data include any direct access service that was provided by the utilities' retail affiliates?
- c. Which 12-month period of historic usage is reported for the amount of bundled load that is eligible for direct access service?

- d. In reporting its load data, Pacific Gas and Electric Company (PG&E) omitted identifying the highest 12-month period of direct access service for its service territory. PG&E is directed to identify the applicable 12-month period.
- e. Based on San Diego Gas & Electric Company's (SDG&E) reported figures, it appears that only 320 gWh of new direct access load is available in its service territory. SDG&E should verify the calculations it has provided to confirm that the figure of 320 gWh is correct.

This additional load information shall be provided by the IOUs through an additional filing in this proceeding due by December 29, 2009.

Direct Access Switching Rules

The appropriate direct access switching rules to be applied for the long term will be deferred to a subsequent phase of this proceeding after April 11, 2010. Likewise, the appropriateness of requiring a six-month notice period before a direct access customers can return to the bundled portfolio will be deferred to a subsequent phase after April 11, 2010. With respect to the direct access switching rules, this sub-phase will consider whether a one-time exception to the three-year minimum commitment period and six-month notice period under the switching rules is appropriate for the partial reopening of direct access in April 2010.

The minimum three-year commitment and six-month notice requirements, as set forth in Decision (D.) 03-05-034, apply only to pre-existing direct access customers. This sub-phase will consider whether those requirements should also be applicable to any bundled customers electing direct access service for the first time.

Security Requirement for Electric Service Providers

Certain parties note that the ACR did not address the security requirement set forth in Public Utilities Code Section 394.25(e) for a bond for electric service providers (ESPs) to cover costs associated with involuntary returns of direct access customers to IOU procurement service. This statutory requirement also applies to Community Choice Aggregators (CCAs). 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 security requirement under Section 394.25(e) for direct access service should be deferred to a less time-constrained forum for reconsidering ESP registration requirements. While disposition of this issue needs prompt attention, the timing should be also coordinated with the Commission's decision addressing the bond requirement in the CCA Rulemaking (R.03-10-003).

Issues relating to the bond requirement for Energy Service Providers pursuant to Public Utilities Code Section 394.25(e) will therefore be promptly taken up in a subsequent phase after April 11, 2010.

Procurement-Related Requirements

The ACR identified a list of procurement-related requirements that energy service providers of generation to direct access customers must satisfy pursuant to Public Utilities Code Section 365.1(c)(1), including resource adequacy, renewables portfolio standards, and greenhouse gas requirements. This sub-phase shall include consideration of what issues remain to be addressed by the Commission in order to ensure that energy service providers of direct access are subject to procurement-related requirements on the same basis as the IOUs. Specific additional procurement-related requirements will be considered in appropriate proceedings.

Non-Bypassable Charges not to be Relitigated

The ACR asks the question: “What applicable non-bypassable charges are involved?” This sub-phase of the proceeding will not re-litigate what charges apply or how the charges are calculated. As noted by TURN, however, it could be useful for the IOU to summarize the applicable charges for the benefit of customers considering switching to direct access. Accordingly, this sub-phase will not address what non-bypassable charges apply or how they are calculated.

Clarification of the term “Direct-Access-Eligible Customers”

In its comments, the Division of Ratepayer Advocates (DRA) seeks clarification of the use of the term “Direct-Access-Eligible Load” as identified in the listing of issues relating to administration, and whether such load should receive a preference in returning to direct access as long as the overall cap is not exceeded, and whether there should be a set-aside for such load. DRA seeks clarification as to whether “Direct-Access-Eligible Load” means (1) currently bundled customers that seek to return to direct access; (2) current direct access customers that seek to expand their direct access load; or (3) bundled customers that seek to become direct access customers for the first time. As used in the ACR, “Direct-Access-Eligible Load” refers to currently bundled customers that seek to return to direct-access under the provisions of the switching rules as adopted in D.03-05-034. In framing their responses to the issues in the ACR, parties should identify any relevant distinctions in new prospective versus existing direct access customers, as appropriate.

Schedule for Workshop and Comments

TURN requests that the due date for substantive comments be extended from December 29, 2009, to January 5, 2010. TURN believes this additional

extension will accommodate holiday schedules, and provide time to analyze data on the current level of direct access in each service area. TURN's requested extension is granted. Substantive comments shall be due on January 5, 2010.

CACES and AReM request a change in the date for the scheduled workshop from January 13, 2010 to January 11, 2010. The workshop date is accordingly changed to January 11, 2010, starting at 9:30 a.m. A subsequent ruling will provide an agenda for the workshop.

Meter Installation Issues

CACES and AReM request that the scope of issues be amended to consider whether to waive the interval meter requirement for direct access customers. Interval meters allow customers better access and control to their load consumption and are a step toward achieving a more efficient power grid. Under current rules, any customer with a peak load greater than 50 kW must install an approved interval meter. CACES and AReM ask that the Commission consider in this sub-phase whether to allow a waiver of this requirement for direct access customers. They seek the waiver to avoid a circumstance where direct access customers are required to spend money to install an interval meter that will soon be replaced by the "Advanced Meter Initiative" that will deploy advanced meters to residential and commercial/industrial customers.

As noted by CACES and AReM, this issue needs to be addressed early so that direct access customers can know whether a waiver of the meter installation requirement applies at the time that new enrollments of direct access commence. I hereby amend the scope of this sub-phase to consider whether to allow a waiver of the interval meter installation requirement in order to receive direct access pursuant to the implementation process to be implemented by April 11, 2010.

Schedule for Subsequent Phases of this Proceeding

CACES and AREM ask the Commission to clarify that the remaining phases of the rulemaking (i.e., Phase II.B and III) proceed even while the direct suspension, apart from SB 695, continues in place. The question of scheduling for other phases of the proceeding will be taken up in a separate ruling and is not addressed here.

IT IS RULED that:

1. The scope of this sub-phase of the proceeding for issues to be resolved by April 11, 2010 is hereby amended and clarified as set forth above.
2. Each of the investor-owned electric utilities shall produce a supplemental information filing, setting forth the current level of direct access in its territory, expressed as the annual load of those customers who are taking direct access service in the latest available recorded month. The utilities shall also provide responses to the clarifying questions regarding their load data as set forth above. This supplemental information shall be filed and served by each utility by December 29, 2009.
3. The due date for substantive comments for this sub-phase is hereby extended from December 29, 2009, to January 5, 2010.
4. The workshop previously scheduled for January 13, 2010 is rescheduled to January 11, 2010. A subsequent ruling will specify the agenda and further details.

Dated December 17, 2009, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

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Dated December 17, 2009, at San Francisco, California.

/s/ OYIN MILON
Oyin Milon

N O T I C E

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