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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)

ADMINISTRATIVE LAW JUDGE'S RULING REGARDING MOTION FOR PRODUCTION OF DATA ON DIRECT ACCESS ENROLLMENT PROCESS

This ruling grants, in part, the motion filed February 23, 2012, (Motion) by the Retail Energy Supply Association, Alliance for Retail Energy Markets, and Direct Access Customer Coalition (collectively, the Joint Parties). The Joint Parties request (1) a status report on direct access implementation, in accordance with the transitional reopening rules adopted in Decision (D.) 10-03-022; (2) direction from the Commission to the investor-owned utilities (IOUs) to comply with the web posting requirements in D.10-03-022; and (3) a blanket waiver from having to submit a new motion to request any future status reports on direct access implementation.

Responses to the motion were filed on March 9, 2012, by Pacific Gas and Electric Company (PG&E) and jointly by Southern California Edison Company and San Diego Gas & Electric Company (the Joint Utilities).

Status Report on Enrollment Process

The Joint Parties request that Energy Division provide a status report by March 30, 2012 on the results of the 2012 enrollment process. This enrollment period completes the final phase-in of direct access ordered in D.10-03-022.

No public information is currently available regarding: (1) the results of the direct access enrollment process for Years 3 and 4 that occurred on January 13, 2012 and thereafter; or (2) the number of customers that submitted a notice to switch for Year 3, but failed to complete the Direct Access Service Request (DASR) process and were placed on Transitional Bundled Service (TBS).

The Joint Parties request that the status report disclose the number of customers submitting six month switching notices, the load associated with those submissions, the number of customers and the associated load that was rejected, and the amount of time to fill the caps for Year 3 and Year 4.

The Joint Parties request information on the number of customers and their associated load that submitted six-month switching notices, but failed to complete the DASR process in the time required and were, therefore, transferred by the IOUs to TBS. The Joint Parties request this information be provided in tabular format for Year 1, Year 2, and Year 3 of direct access implementation pursuant to D.10-03-022 and Senate Bill 695.

The time period for the IOUs to respond to the six-month switching notices for this final phase concluded at the end of February 2012. The Joint Parties proposed that the information be made available to Energy Division Staff by no later than March 1, 2012.

In response to the Motion, the Joint Utilities agree they can provide a report on the most recent enrollment period containing the number of six-month notices submitted as well as the number of customers that did not submit a DASR by the requested date and were placed on the transitional bundled service rate. However, the Joint Utilities suggest a 30-day extension in which to prepare the report.

The request for the Energy Division to produce a status report on the 2012 enrollment process is granted, but the due date for the report shall be set for May 14, 2012. The report shall be limited to the information in Ordering Paragraph 2 of this ruling.

Compliance with Web Posting Requirements

The Joint Parties request that the IOUs be directed to update their web pages promptly to: (1) reflect the current status of direct access; (2) provide no less than monthly notice to customers of available cap room; and (3) post when each IOU is accepting six-month notices from customers to apply for available cap room.

D.10-03-022 required the IOUs to update their web sites continually to keep customers apprised of whether room is available under the load cap and whether the utility is accepting six-month notices to switch. The Energy Division's status report issued July 15, 2011 noted that the IOUs were not in compliance with this requirement and stated that the IOUs are obligated to update their web sites at least monthly. The report further noted that the IOUs' web pages did not seem up-to-date with the latest information on direct access switching. The Joint Parties were unable to find information on the IOUs' web sites specifying the available room under the cap, and claim that some of the posted information is significantly out of date.

In response to the motion, PG&E contends that it has provided direct access status information on its web site in compliance with D.10-03-022. In Year 1, Year 2 and Year 3, PG&E fully subscribed the amount of load available under annual load limits and had no additional room available during the course of the year to enroll additional customers. PG&E reviewed the amount of direct access load on a monthly basis, but there was no change in the monthly status of

direct access enrollments to be posted on PG&E's web site between enrollment periods.

With respect to the annual enrollment periods, PG&E's web site provided updated information on the date and time of the next enrollment, and detailed instructions for submitting a six-month switching notice. PG&E's web site does not currently include a statement about the date of the most recent evaluation/update of direct access load. PG&E agrees to update its web site to disclose the date the information was last updated.

In response to the motion, the Joint Utilities similarly state that during each phase-in period from 2010 to 2012, the space available under the annual load limitations was fully allocated, and a notice to this effect was promptly posted on the Joint Utilities' respective web sites. Any space that subsequently became available has been de minimus, and therefore rolled into the next phase-in period.

Based on the utilities' explanations, no further Commission directives to update utility web sites appear necessary, except for the requirement to maintain updated data as to the date of the most recent evaluation/update of direct access load.

Blanket Waiver

The Joint Parties request a blanket waiver from being required to file new motions to request subsequent status reports on future direct access implementation results, arguing that the requirement to file a motion to obtain such information wastes both resources and time. While the 4-year phase-in of direct access under D.10-03-022 is now complete, the Joint Parties envision that they may wish to request status reports on direct access implementation at times in the future.

In 2010, 2011 and now 2012, parties had to submit a motion to obtain information on the status of the enrollment of direct access customers. The requested information is not available to the public unless provided, in aggregated fashion, by the IOUs or the Commission. Release of this information is in the public interest, because it demonstrates compliance with the law and Commission order and indicates the demand for retail choice by California consumers.

The Joint Utilities generally support the request for a blanket waiver, but note two issues. In November 2010, the parties submitted a Working Group Report containing a series of proposed process improvements for managing the direct access load cap after the increases are fully phased in. One of these proposals dealt with administering future enrollments. The Joint Utilities believe that it is timely for the Commission to take action on this recommendation.

The Joint Utilities support the Joint Parties request for a blanket waiver to the extent that the status reporting is limited to an annual report. In the November 2010 Working Group Report, annual enrollment was proposed, which would align with an annual request for reports. The Commission has not addressed recommendations on process improvements for managing the direct access load cap after the increases are fully phased in. In November 2010, the parties submitted a Working Group Report containing a series of proposed process improvements, one of which dealt with administering future enrollments. The Commission has taken no action on this recommendation and the Joint Utilities believe it is timely for the Commission to do so.

PG&E also expresses concern with granting a blanket waiver since Joint Parties do not include clear parameters describing 1) the information to be provided or 2) the frequency of the reports. With the recent completion of the

2012 enrollment period, the 4-year phase-in of direct access under D.10-03-022 is essentially complete. Instead of adopting a waiver request now, PG&E recommends that a workshop be convened where interested parties can discuss and resolve 1) the details of the ongoing process that should be followed if and when space becomes available under the overall direct access cap and 2) the reporting requirements that should accompany the process.

In view of the concerns raised by PG&E and the Joint Utilities, the request for a blanket waiver will be addressed after further clarification regarding the appropriate information to be provided in future status reports and the frequency of such reports. A subsequent ruling will be issued to address the resolution of this issue.

IT IS RULED that:

1. The motion of the Retail Energy Supply Association, Alliance for Retail Energy Markets, and Direct Access Customer Coalition is hereby granted to the extent set forth below.

2. The request is granted for the Energy Division to produce a status report on the 2012 direct access enrollment process to include (1) the results of the enrollment process for Years 3 and 4 that occurred on January 13, 2012 (including numbers of customers and amount of load associated with accepted NOIs; the numbers of rejected NOIs broken down by before and after 9 AM on the first day; and the time that elapsed to fill the Year 3 and Year 4 caps) and thereafter; and (2) the number of customers that submitted an accepted notice to switch for Years 1, 2 and 3, but failed to complete the Direct Access Service Request process and were placed on Transitional Bundled Service. The Report on the processing of the rejected NOIs only requires the utilities to provide numbers of rejected notices (not associated numbers of customers or load) broken out by numbers of

rejected notices just prior to 9 AM and after for the first day. The due date for Energy Division to provide the updated status report is May 14, 2012.

3. Each of the electric utilities subject to the requirements of D.10-03-022 shall promptly update their respective web sites to maintain current data regarding the date of the most recent evaluation/update of direct access load. In other respects, the electric utilities web site data is compliant with requirements.

4. The request for a blanket waiver from the requirement to file subsequent motions for further status updates on the direct access enrollment process is deferred, pending clarification concerning 1) the details of the ongoing process that should be followed if and when space becomes available under the overall direct access cap and 2) the reporting requirements that should accompany the process. A subsequent ruling will address the process to resolve this issue.

Dated March 26, 2012, at San Francisco, California.

/s/ DOROTHY J. DUDA for
Thomas R. Pulsifer
Administrative Law Judge