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 1X and Decision 01-09-060.	Rulemaking 07-05-025 (Filed May 24, 2007)

JOINT COMPLIANCE FILING OF THE DIRECT ACCESS PARTIES ON PHASE III ISSUES: REPORT ON WORKING GROUP 1

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AND ON BEHALF OF THE DIRECT ACCESS PARTIES

November 15, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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JOINT COMPLIANCE FILING OF DIRECT ACCESS PARTIES ON PHASE III ISSUES: REPORT ON WORKING GROUP 1

The Direct Access Parties[1] submit this joint compliance filing pursuant to the June 15, 2010 *Assigned Commissioner and the Administrative Law Judge Ruling Clarifying Scope and Scheduling Further Proceedings* (Ruling) and subsequent proceeding.

I. Summary of Working Group Formation

On July 12-13 2010, a workshop was held by Energy Division regarding Phase III issues in the Commission's Direct Access Rulemaking. The issues were split into three working groups as follows:

- Working Group 1 was established to cover the following issues: switching rules, transitional bundled service rate updates and ESP Financial Security Requirements.
- Working Group 2 was established to cover Direct Access ("DA") process improvements;
- Working Group 3 was established to cover the issue of ensuring uniform compliance with resource requirements.

[1] The Direct Access Parties are: Alliance for Retail Energy Markets (AReM), BlueStar Energy, California Alliance for Choice in Energy Solutions (CACES), California Large Energy Consumers Association (CLECA), California Manufacturers and Technology Association (CMTA), California State University (CSU), Direct Access Customer Coalition (DACC), Energy Users Forum (EUF), School Project for Utility Rate Reduction (SPURR), and Walmart.

The Ruling directed parties to report progress to Energy Division on each of the working groups by November 15, 2010 and include any recommendations either substantively, procedurally, or both.

Since the July 12-13 workshop, the parties have met three times to discuss Working Group 1 issues, on August 30, 2010, September 20, 2010 and then again on October 18, 2010. Representatives from the customers, ESPs and utilities were all in attendance. The Working Group as a whole has been unable to reach consensus on the Working Group 1 issues, as reported by the Southern California Edison ("SCE"), Pacific Gas & Electric ("PG&E") and San Diego Gas & Electric ("SDG&E") (collectively, the "IOUs"). This report is submitted jointly by the Direct Access Parties who participated in the Working Group 1 discussions in order to provide the ALJ, Energy Division staff, and the Commission with further information about the Working Group efforts with respect to the issues discussed in Working Group 1.

With respect to the efforts of Working Groups 2 and 3, the Direct Access Parties believe they concur with the report submitted concurrently by the IOUs. However, at the time this pleading is under preparation, there continue to be a number of changes being made to the IOU pleading. The Direct Access Parties therefore reserve the right to offer such further clarifications as may be necessary.

II. Direct Access Parties Working Group 1 Proposal

The Direct Access Parties have submitted several proposals for the group's discussion at the various meetings that have been held. As a result of the discussions at those meeting and discussion amongst the Direct Access Parties between each of the meeting, modifications were made to the proposals in order to achieve a broader consensus and submitted a revised proposal for the group's consideration at the October 18, 2010 meeting (Attachment A).

III. Key Area of Non-Consensus

The key area of non-consensus between the Direct Access Parties and the IOUs surrounds the interpretation of the statute that governs the requirements for ESP financial security. The statute (Section 394.25(e) of the Public Utilities Code) reads as follows:

> (e) 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 electrical 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.

The Direct Access Parties believe that this statute requires the IOUs to ensure that the IOUs' bundled customers are protected from the increased costs that an IOU might incur to serve Direct Access customers that are involuntarily returned to IOU service. Under the Direct Access Parties' proposal, involuntarily returned customers would be served under the Transition Bundled Service ("TBS") Rate, which is a market-based rate, for up to six months. As such, the IOUs' bundled customers face little risk of increased costs because the rate that the involuntarily returned customers will pay should be the same as the costs incurred by the IOU to serve them. During the TBS service period, the involuntarily returned customer may, if it so chooses, depart IOU service for new Direct Access service. Alternatively, if the customer remains on the utility service beyond the six month TBS period, the customer must then remain on the utility service for the required minimum stay on its applicable tariff rate.

The Direct Access Parties understand the IOUs' position to be that they interpret the statute to require that involuntarily returned customers must receive service under their applicable tariff rate, and therefore the Direct Access Parties proposal that these customers would pay the TBS rate for up to six

months is not permissible. The Direct Access Parties believe this interpretation is strained at best and simply not justified by the language of the statute insofar as the one clear directive in the statute is that any involuntary return is not to cause costs to increase for ***other*** (bundled) customers of the utility. The Direct Access Parties' proposal clearly would achieve that goal. Further, during the several years that this statutory provision has been in effect, the Commission-approved switching rules have provided for returning DA customers to pay TBS rates. There is no directive in the provision that returned customers must pay the utility's otherwise applicable tariff rate. Because of the fundamental difference in statutory interpretation, the parties are unable to reach consensus.

IV. Next Steps

In order to resolve these issues, the Direct Access Parties suggest that the Commission direct that parties submit legal briefs on whether nor the statute referenced above requires that involuntarily returned customers must be afforded service at their applicable tariff rate. Once that matter is resolved, the parties may be able to reach consensus on the working group 1 issues; if consensus is still not achieved at that point, the Commission can direct the parties to submit their respective proposals for Commission review and decision.

Respectfully submitted,

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DOUGLASS & LIDDELL

On behalf of the
ALLIANCE FOR RETAIL ENERGY MARKETS
DIRECT ACCESS CUSTOMER COALITION

AND ON BEHALF OF THE DIRECT ACCESS PARTIES

November 15, 2010

ATTACHMENT A

Proposal for TBS/Switching Rules/Minimum Stay/Financial Security Working Groups
Presented at October 18, 2010 meeting
For Discussion Purposes Only

Supporters (referred to as "Joint Parties"):

Alliance for Retail Energy Markets
BlueStar Energy
California Large Energy Consumers Association
California Manufacturers and Technology Association
California State University
Direct Access Customer Coalition
Energy Users Forum
School Project for Utility Rate Reduction
Walmart

I. Overview:

The purpose of this proposal is to build on areas of potential consensus with respect to switching restrictions, minimum stay provisions, applicability of TBS rate, and ESP financial security requirements, consistent with applicable statutes, including Section 394.25(e) of the Public Utilities code which reads as follows:

> (e) 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 electrical 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.

Section II of this proposal provides definitions to key terms that are used in the proposal. Sections III through VII outlines the specific components of the proposal with respect to switching restrictions applicable to voluntary and involuntary returns of customers to utility service; the calculation mechanism for ESP financial security requirements; and comments about the TBS rate. Section VIII presents the underlying rationale for this proposal.

II. Defined Terms: For purposes of this proposal, the following are defined terms:

1. An ***involuntary return*** of a Direct Access customer to service from a Utility Distribution Company (UDC) has occurred when the UDC has initiated the DASR process to return a customer to UDC bundled service due to any of the following events:
   a. The Commission has revoked the ESP's registration.
   b. The ESP-UDC Agreement has been terminated.
   c. The ESP or its authorized CAISO Scheduling Coordinator ("SC") has defaulted on its CAISO SC obligations, such that the ESP is no longer has an appropriately authorized CAISO Scheduling Coordinator.
2. An ***involuntary return*** of a Direct Access customer to UDC bundled service has not occurred as a result of the following events:
   a. A customer's contract with an ESP has expired.
   b. An ESP discontinues service to a customer due to that customer's default under their service agreement with the ESP.
3. A ***voluntary return*** of a Direct Access customer to UDC bundled service has occurred under either of the following conditions:
   a. An ESP has ceased to serve a customer because the contract between the ESP and the customers has expired.
   b. A customer has given the utility six months notice that the customer intends to return to UDC bundled service.
4. ***Re-entry fees*** are the sum of (i) the difference between marginal portfolio costs incurred or benefits obtained by the UDC to serve a customer that has been involuntarily returned to UDC bundled service and the amounts collected from that customer for service during the first six months that a customer is on UDC bundled service after the involuntary return, and (ii) the administrative costs incurred by the UDC to enroll the customer into UDC bundled service. For clarity, Re-entry Fees are applicable with respect to the UDCs procurement plan and resource adequacy requirements, and are not applicable to any costs associated with transmission or distribution or other utility charges already paid by Direct Access customers.

III. Switching Restrictions Applicable to *voluntary return* customers:

1. ***Voluntary return*** customers must give six months notice before returning to utility service from Direct Access service.
2. If a ***voluntary return*** customer remains on Direct Access service for the full six month notice period, upon the customer's return to utility service at the end of the six month notice period, the customer will receive service under the applicable tariff.
3. A ***voluntary return*** customer that returns to utility service without six months notice because its contract with an ESP has expired, or the customer has otherwise terminated its current relationship with the ESP, and no new ESP service has been initiated, will be charged the TBS rate for utility service for six months.

4. During the first 60 days of the of the six month period that the customer is on TBS service (referred to as the safe harbor period), the ***voluntary return*** customer may leave utility service and return to Direct Access service by having an ESP submit a DASR for service that will begin no later than the first meter read after the end of the 60 day safe harbor period.
5. The ***voluntary return*** customer will be subject to the non-bypassable charge vintage that is applicable to its new Direct Access service, if the customer does not leave the UDC service within the safe harbor period. If the customer does leave UDC service within the safe harbor period, that customer will retain the non-bypassable charge vintage to which the customer was subject at the time of the voluntary return.
6. If the ***voluntary return*** customer has not elected new Direct Access service by the end of the safe harbor period, the remainder of the six month service on TBS service will be provided to the customer, after which time the customer will be returned to the applicable tariff, and will be subject to the minimum stay provisions.
7. A DASR may be submitted for a ***voluntary return*** customer to leave utility service at then end of the minimum stay as of (1) the first scheduled meter read date that is 5 days after the customer has provided notice to the utility that the customer intends to return, so long as that scheduled meter read date is after the end of the customer's minimum stay period, or (2) the date of a special on-time meter read that is agreed to by the UDC, ESP, and customer and is after the end of the customer's minimum stay period.

IV. Switching Restrictions Applicable to *Involuntary Return* Customers:

1. ***Involuntary return*** customers will pay the TBS rate for the first six months that they are on utility service after the involuntary return.
2. The ***involuntary return*** customer may notify the utility that it plans to return to Direct Access service any time during the first 60 days that it is on TBS service, and will then have the remainder of the six month period to return to Direct Access service by having an ESP submit a DASR for service that will begin no later than the first meter read after the end of the six month period.
3. An ***Involuntary return*** customer who leaves utility service within the six month period will retain the non-bypassable charge vintage to which it was subject at the time of the involuntary return.
4. If the ***involuntary return*** customer has not elected Direct Access service by the end of the six month period, the customer will have no further rights to retain its previous non-bypassable charge vintage, and at the end of the six month period will be returned to an applicable tariff service, and will be subject to the minimum stay provisions.
5. A DASR may be submitted for an ***involuntary return*** customer to leave utility service at the end of the customer's minimum stay as of (1) the first scheduled meter read date that is 5 days after the customer has provided notice to the utility that the

customer intends to return, so long as that scheduled meter read date is after the end of the customer's minimum stay period, or (2) the date of a special one-time meter read that is agreed to by the UDC, ESP, and customer and is after the end of the customer's minimum stay period.

V. **Minimum Stay Provisions:** The minimum stay for ***voluntary return*** customers will be 12 months, which begins at the end of the safe harbor period or when the customers returns to utility service after having given six months notice. The minimum stay for an ***involuntary return*** customer will be 12 months and will begin at the end of the six month TBS rate period.

Separate issue with respect to TBS service: The Joint Parties request that the working group consider a mechanism that would allow customers to remain on TBS at their election beyond the six month notice period, so as to preserve their option to return to Direct Access service beyond the safe harbor period without being subject to a minimum stay on UDC service. Any customer making such election would be required to do so during the safe harbor period and would be required to give the UDC six months notice before transitioning from TBS service to an applicable utility tariff.

VI. **ESP financial security requirements:** ESPs will be required to post financial security to the IOUs to cover expected re-entry fees for customers that are involuntarily returned to utility service, as the terms "involuntary return" and "re-entry fees" are defined above. The calculation of expected re-entry fees shall be based on the ESP expected load over a six month period multiplied by expected, reasonable differences between the TBS rate and market prices, plus estimated administrative fees to enroll the expected ESP load into utility service.

VII. **TBS Rate:** Modifications to the TBS rate to reflect Resource Adequacy, as proposed by the IOUs at the January 12 and 13 workshops, are acceptable. There must be further discussion of all CAISO charge codes and how those are reflected in the TBS rate.

VIII. **Rationale for this proposal:**

1. The PU code section 395.25(e) financial security requirements are intended to protect the IOUs' bundled customers from involuntary returns of Direct Access customers.
2. Statute does not require customers who are returned involuntarily to utility service to be returned immediately to an applicable bundled tariff.
3. The definition of voluntary and involuntary returns does not affect the level of the security requirement; it only becomes applicable with respect to the conditions under which the utility will be able to access the financial security.
4. Six months is sufficient time for utilities to adjust their portfolios to integrate involuntarily returned load.

5. Utility planning processes should be conducted under a presumption that the Direct Access cap will be full. Consistent with that assumption, there is no need for a long minimum stay because customers are going to be only able to leave utility service when there are temporary opening in an existing cap or expansion of the cap.
6. Because any customer who departs utility service after the one year period will be assuming responsibility for exit fees based on the then current applicable vintage, bundled customers are not exposed to increased costs as a result of customers leaving utility service, so there is no need for a multi-month notice period for customers to leave utility service.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the ***Joint Compliance Filing of the Direct Access Parties on Phase III Issues: Report on Working Group 1*** on all parties of record in ***Rulemaking 07-05-025***, by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on November 15, 2010, at Woodland Hills, California.

Michelle Dangott

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