BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

FILED
05/06/26
04:59 PM
R1903009

Order Instituting Rulemaking to Implement Senate Bill 237 Related to Direct Access	R.19-03-009 (Filed March 14, 2019)

RESPONSE OF COMMERCIAL ENERGY OF CALIFORNIA ON THE COMPETITION PARTIES' PETITION FOR MODIFICATION OF DECISION 21-06-033

DOWNEY BRAND LLP
Michael B. Day
Christopher M. Marelich
455 Market Street, Suite 1500
San Francisco, California 94105
Telephone: (415) 848-4808
Email: mday@downeybrand.com
cmarelich@downeybrand.com

Attorneys for Commercial Energy of California

Dated: May 6, 2026

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Senate Bill 237 Related to Direct Access	R. 19-03-009 (Filed March 14, 2019)

RESPONSE OF COMMERCIAL ENERGY OF CALIFORNIA ON THE COMPETITION PARTIES' PETITION FOR MODIFICATION OF DECISION 21-06-033

In accordance with Rule 16.4 (f) of the Commission's Rules of Practice and Procedure, Commercial Energy of California ("Commercial Energy") submits this response on the petition for modification ("Petition") filed by the Alliance for Retail Energy Markets, California Coalition of Large Energy Users, Direct Access Customer Coalition, Regents of the University of California, Shell Energy North America (US), L.P., and the Western Power Trading Forum (collectively, the "Competition Parties") to amend Decision ("D.") 21-06-033 ("the Direct Access Decision" or "DA Decision") issued on June 29, 2021.[1] As discussed below, Commercial Energy strongly supports the Competition Parties' request to modify the DA Decision and the recommendation that the Commission advise the California Legislature to remove the cap on the Direct Access ("DA") Program.

I. <u>THE COMMISSION SHOULD GRANT THE PETITION FOR MODIFICATION.</u>

A. The Petition Correctly Notes that Direct Access Customers Will be Harmed If the Direct Access Cap is Not Removed.

Commercial Energy is a DA provider operating in California, subject to the same statutory and regulatory requirements as the other Competition Parties. Like the Competition Parties, Commercial Energy shares concerns that the DA Decision issued on June 29, 2021, is in

[1] D.21-06-033 (Issued on June 29, 2021).

direct conflict with recent bills passed by the California Legislature and Commission decisions impacting the Integrated Resource Planning ("IRP") process. The Commission's D.26-02-057 ("IRP Decision") and Assembly Bill ("AB") 1373 have equalized treatment among all load-serving entities ("LSEs"), including all energy service providers ("ESPs"), with respect to Resource Adequacy ("RA") and IRP procurement needs.[2] However, as the Competition Parties accurately note, ESPs will be unable to serve this new load given the cap on the DA Program established by the DA Decision. The statutory mismatch between the DA Decision and the directives of the IRP Decision is not without harm. As the Competition Parties state:"[t]he effect is straightforward: existing DA customers . . . will bear procurement costs attributable to load that ESPs are not legally permitted to serve."[3]

B. The Decision to Restrict the Direct Access Program is Not Supported by Energy Division Staff and Stakeholders, Nor Reflects the Compliance Obligations That Energy Service Providers Must Meet.

The Competition Parties are correct in their assessment that Energy Division staff and stakeholders supported reopening the DA Program cap throughout this proceeding. The Staff Report Providing Recommendations on the Schedule to Reopen Direct Access ("Staff Report"), provided by way of Administrative Law ("ALJ") Judge Jeanne M. McKinney's September 28, 2020 ruling, noted that Energy Division Staff believed that the DA Program could be reopened if ESP's demonstrated compliance with three obligations.[4] Commercial Energy and fifteen other

---

[2] Petition for Modification of Decision 21-06-033 by the Alliance for Retail Energy Markets, California Coalition of Large Energy Users, Direct Access Customer Coalition, Regents of the University of California, Shell Energy North America (US), L.P. and Western Power Trading Forum, pp. 2–4 (Filed April 6, 2026).

[3] *Id.* at p. 5.

[4] These obligations were: (1) ESPs submit robust, transparent IRP filings and meet all procurement requirements pursuant to D.19-11-016; (2) ESPs meet their Renewables Procurement Standards ("RPS") obligations for the 2021–2024 compliance period; and (3) ESPs comply with all Resource Adequacy

stakeholders filed opening comments on the Staff Report in support of the Energy Division's recommendation to reopen the DA Program cap.[5] Since the issuance of the Staff Report, all three obligations have been met by the ESPs, collectively.

Despite the initial broad-based support for reopening DA Program, the Staff Report was significantly revised to recommend against reopening the DA. Subsequently, the DA Decision recommended against advising the Legislature to reopen the DA. The Competition Parties accurately note that the two primary reasons for not reopening the DA Program was a flawed characterization that ESPs' relied on California Independent System Operator ("CAISO") system power to meet "all energy needs beyond their RPS requirement . . . [and] [t]he GHG emission factor for CAISO system power is slightly higher than gas generation[,]" leading to an unsupported argument that reopening the DA would "increase GHG emissions and increase criteria air pollutants and toxic air contaminants."[6] None of these reasons justify the DA Program cap. As the Competition Parties explain, ESPs like Commercial Energy are not solely reliant on CAISO system power to meet its procurement and compliance obligations. Instead, ESPs are subject to the same RA, GHG reduction, RPS, and criteria air pollutant requirements as other LSEs, and must comply with Mid-Term Reliability ("MTR") procurement Commission orders that have created long-term contracting requirements. ESPs in California have demonstrated compliance with these requirements. All LSEs, including ESPs, met 2025 RA requirements, and the number of RA violations for ESPs has dropped to zero in 2025.[7] ESPs who did not opt of IRP

(RA) requirement including multi-year local, year-ahead flexible and system, and month-ahead system and flexible obligations.

[5] See Commercial Energy of California Reply Comments on the Energy Division Report on Recommendation on the Schedule to Reopen Direct Access, p. 1.

[6] See D.21-06-033 at p. 11.

[7] See Petition, p. 13 (citing EUB Citations, August 2025).

procurement collectively met IRP procurement requirements set forth in D.19-11-016.[8] Should the Commission adopt further GHG emission reduction goals and air pollution reduction targets applicable to all LSEs, ESPs will be expected to meet those requirements as well.

C. Reopening the Direct Access Program Will Help Meet Forecasted Load Growth Needs.

Commercial Energy agrees with the Competition Parties that the DA Program is an appropriate mechanism to meet the state's rapidly -growing load growth needs. As discussed in the Petition, "the largest drivers of load growth according to the California Energy Commission's California Energy Demand Integrated Energy Policy Report (IEPR Forecast) are the anticipated needs to serve electric vehicle charging, new large data centers and 'additional fuel switching'."[9] The DA Program allows these large-load customers to negotiate a contract directly with an ESP and include provisions such as green power attributes within it that go above and beyond current statewide green policy requirements. Furthermore, a contract negotiated in the DA Program has the added benefit of impacting only the parties involved. Other customers will not incur rate increases as a result of the generation necessary to fulfill the contract, nor will they incur stranded costs if the load never materializes, is reduced, or otherwise is not utilized. Given these benefits, the Commission should grant the Petition and request that the Legislature lift the DA Program cap. ESPs are well positioned to serve large-load customers that are the biggest drivers

[8] The Competition Parties explain that the most recent progress report with the IRP and MTR procurement orders, issued December 1, 2024, does not take into account that LSEs were not subject to IRP procurement penalties until June 1, 2025, as set forth in D.21-06-035. As a result, the December 1, 2024 report does not include certain compliance performance data of LSEs, nor storage additions that have contributed towards a surplus RA market.

[9] See Petition, p. 7 (citing "Energy Commission 2025 IEPR Forecast, Updated Results," Presented to the Demand Analysis Working Group January 5, 2026).

of forecasted load growth, but cannot do so as a result of the DA Decision's restrictions on the DA Program.

D. Customer Demand for Direct Access Service Cannot be Met Due to the Cap.

The Competition Parties note that there is widespread customer demand for DA Program service, despite the overly complex requirements to become a DA customer that are not required for those seeking to take service from an Investor-Owned Utility ("IOU") or Community Choice Aggregator ("CCA").[10] Specifically, the Competition Parties note that "both [Direct Access Customer Coalition] and [Alliance for Retail Energy Markets] members have attested that there is an unmet desire by customers to utilize DA" and that "[California Coalition of Large Energy Users] members have attempted to increase the amount of load under DA successfully."[11] Furthermore, "DA has for years been oversubscribed on two IOUs and nearly so on the third," despite the procedural limitations created by the Legislature that act as a barrier to taking DA service.

II. <u>CONCLUSION.</u>

Commercial Energy appreciates this opportunity to file a response on the Competition Parties' Petition. As discussed above, the DA Decision's conclusion that the DA Program cap should not be reopened was based on reliability and GHG emission concerns that have not come to pass, and fail to reflect the uniform compliance obligations of ESPs and all other LSEs. Since the June 29, 2021 DA Decision, the Legislature and Commission have required ESPs to conduct RA and IRP procurement that ESPs will be unable to procure due to the strict DA Program cap. If the DA Program cap is not reopened, DA customers will pay a disproportionate share of the

[10] See Petition, pp. 18–20.

[11] See Petition, p. 19.

procurement costs for load growth outside the DA market. Beyond the harms to DA customers themselves, the Commission should recognize that retaining the DA Program cap does not benefit the state. DA service is in high demand and is ideal for serving the large-load customers that are the biggest drivers of forecasted load growth. For the reasons discussed above, Commercial Energy requests that the Commission grant the Competition Parties' Petition, modify the DA Decision, and advise the California Legislature to remove the cap on the DA Program.

Respectfully submitted May 6, 2026, at San Francisco, California.

DOWNEY BRAND, LLP

By: *\/s\/ Michael B. Day*

MICHAEL B. DAY
CHRISTOPHER MARELICH
455 Market Street, Suite 1500
San Francisco, California 94105
Telephone: (415) 848-4800
Email: mday@downeybrand.com
cmarelich@downeybrand.com

Attorneys for Commercial Energy of California