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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Senate Bill 237 Related to Direct Access.	Rulemaking 19-03-009

RESPONSE OF THE PUBLIC ADVOCATES OFFICE TO THE 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

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I. INTRODUCTION

Pursuant to Rule 16.4(f) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this response to the April 6, 2026, Petition for Modification (PFM) of Decision (D.) 21-06-033[1] 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 (U.S.), L.P., and Western Power Trading Forum (collectively, Direct Access (DA) Parties).

In D.21-06-033 the Commission recommended that the Legislature not expand the DA program. The PFM requests that the Commission modify D.21-06-003 to effectively reverse the decision and make a formal recommendation to the Legislature to eliminate the cap on DA. For the reasons discussed below, the Commission should deny the PFM.

II. BACKGROUND AND SUMMARY OF THE DA PARTIES' REQUESTED RELIEF

A. Background

DA became available to customers as a part of energy deregulation, enacted by Assembly Bill (AB) 189 (Brulte) in 1996. In 2000-2001, instability and market manipulation led to extraordinary procurement costs. This caused many DA providers to leave the market and return their customers to investor-owned utility (IOU) service.[2] Following the energy crisis, the state capped the amount of load that DA providers can serve and limited new enrollment to non-residential customers.[3]

[1] D.21-06-033, *Decision Recommending Against Further Direct Access Expansion*, June 24, 2021; issued in Rulemaking (R.) 19-03-009. Available at: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M390/K215/390215673.PDF.

[2] D.21-06-033, Appendix A, *Final Report Providing an Assessment of Expansion of Direct Access Pursuant to Senate Bill 237*, September 14, 2020 (Revised May 7, 2021) (2020 Final Staff Report) at 7. Available at: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M390/K217/390217161.PDF.

[3] Senate Bill (SB) 695 (Kehoe 2009).

Senate Bill (SB) 237 (Hertzberg 2018) required the Commission to increase the maximum allowable kilowatt-hour annual limit for DA transactions by 4,000 gigawatt hours (GWh), allocated among the service territories of the large IOUs. SB 237 also amended Public Utilities Code Section 365.1 and required the Commission to provide recommendations to the Legislature on further expansion of DA. Phase 1 of R.19-03-009 implemented the 4,000 GWh increase of the DA cap and Phase 2 assessed the impacts of expanding the DA cap even further.[4]

Consistent with SB 237, the Commission issued the 2020 Staff Report on September 28, 2020 and a revised 2020 Final Staff Report on May 7, 2021. The 2020 Final Staff Report highlights challenges to expanding DA including reliability, alignment with state greenhouse gas (GHG) emission goals, load uncertainty in a fragmented electrical market, challenges related to new resource development,[5] and cost shifts due to load migration.[6] In D.21-06-033 the Commission determined that the expansion of DA to all non-residential customers would present an unacceptable risk to the state's long-term reliability and GHG emission goals and recommended that the Legislature not expand the DA program.[7]

B. Summary of DA Parties' requested relief

The PFM requests that the Commission modify D.21-06-033 to conclude that expansion of the DA program (1) will not create unacceptable risks to electric system reliability, (2) will not cause undue cost shifting to bundled service customers of an electrical corporation or to direct transaction customers, and (3) is consistent with the state's GHG goals.[8] In addition, the PFM proposes that the Commission modify

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[4] R.19-03-009, *Assigned Commissioner's Scoping Memo and Ruling*, April 17, 2019 at 2. Available at: https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M281/K395/281395655.PDF.

[5] 2020 Final Staff Report at 4.

[6] 2020 Final Staff Report at 23-24.

[7] D.21-06-033 at 2, and see also Conclusions of Law 1 and 2 at 28 and 29 and Ordering Paragraph (OP) 1 at 29 (in part, "The Commission recommends that the Legislature not expand Direct Access transactions.").

[8] See PFM, Exhibit A, *Suggested Revisions to D.21-06-033*.

D.21-06-033 to recommend that the Legislature remove the cap on the provision of DA electrical service.[9]

III. SUMMARY OF CAL ADVOCATES' RECOMMENDATIONS

The Commission should deny the DA Parties' PFM for the following reasons:

- Given the complex issues and unverified claims presented by the DA Parties, a petition for modification is not the appropriate vehicle to make the changes the DA Parties seek.
- The PFM may result in cost shifts to bundled and unbundled ratepayers due to the potential departure of customers with a lower cost of service to DA.
- Removing the DA load cap would increase potential load migration, introduce additional uncertainty in procurement allocations, and pose a risk to reliability.

IV. DISCUSSION

A. There is an insufficient record to support the DA Parties' proposed changes to D.21-06-033.

The Commission should deny the DA Parties' PFM because a petition for modification is not the appropriate vehicle to examine the changes the DA Parties seek. The Commission's determination in D.21-06-033 to recommend that the Legislature not expand the DA program was based on a robust evidentiary record including a workshop, Energy Division report, and party comments. The PFM presents complex issues and unverified claims that require more thorough examination than a response to petition for modification reasonably allows. For example, the DA Parties recommend that the Commission modify D.21-06-033 to "delete" all existing Findings of Fact and Conclusions of Law[10] in D.21-06-033, which include Findings of Fact 8 and 14:[11]

> If there is significant load migration between [load-serving entities (LSEs)], [community choice aggregators (CCAs)] and [electric service providers (ESPs)] will have difficulty financing the new

[9] See PFM, Exhibit A, *Suggested Revisions to D.21-06-033*.

[10] PFM, Exhibit A, *Suggested Revisions to D.21-06-033,* regarding D.21-06-033 Pages 27-29

[11] D.21-06-033, Findings of Fact 8 and 14 at 28.

> generation resources needed for system reliability and for GHG emissions reduction goals.

and:

> If an LSE fails to procure new generation required for reliability or GHG-reduction, electricity costs could increase for all customers.

The DA Parties recommend that the Commission modify D.21-06-033 to include the following new Finding of Fact which reaches conclusions contrary to the proposed deletions:[12]

> Allowing ESPs to serve new customers adds contractual certainty, enhance[s] system reliability and insulate[s] residential and small customers from the rate increases that could occur should the new load be served exclusively by other LSEs.

This proposed modification does not rely on "fact" that is not reasonably subject to dispute, it is speculation.

It would be neither just nor reasonable to modify the Commission's findings in D.21-06-033 and reverse its recommendation to the Legislature regarding expansion of the DA program without building a robust evidentiary record to test the validity of the DA Parties' claims regarding reliability and ratepayer benefits. Moreover, a response to the PFM does not afford parties sufficient opportunity to deliberate on the findings that would be necessary for the Commission to recommend DA expansion.

The PFM's proposed Conclusions of Law directly contradict the Commission's existing conclusions in D.21-06-033 and should not be adopted without providing parties sufficient opportunity to examine the facts presented in the PFM and provide additional evidence to support the Commission's deliberation on the issues raised in the PFM. Therefore, if the Commission finds the information provided in the PFM sufficient to re-examine its recommendation to retain the DA load cap, the Commission should open a new proceeding to comprehensively address the issues raised in the PFM.

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[12] PFM, Exhibit A, *Suggested Revisions to D.21-06-033*, proposed Findings of Fact 8.

B. Granting the PFM may result in harmful cost shifts to ratepayers.

In D.21-06-033 the Commission stated:[13]

> Because the Commission has already determined that it cannot recommend expansion of Direct Access, it is not necessary for this decision to make a specific finding regarding cost-shift in an expanded Direct Access.

The DA Parties recommend that the Commission modify D.21-06-033 to remove this language and add the following new Conclusion of Law: "The recommendation herein will not cause undue shifting of costs to bundled-service customers of an electrical corporation or to direct transaction customers."[14] However, the DA Parties' proposed modifications are contradicted by the record evidence in R.19-03-009 which establishes that expansion of the DA program may result in an undue cost shift to ratepayers.

The 2020 Final Staff Report identifies potential cost shifts that are not addressed by the Power Charge Indifference Adjustment (PCIA) and could result from the expansion of DA.[15] Specifically, the 2020 Final Staff Report finds that load migration could result in cost shifting to bundled customers because the composition of customers within each rate class may change.[16] Customers with a lower cost of service could be incentivized to depart for ESP service, leaving the IOUs with a higher proportion of more costly customers to serve.[17] Unlike IOUs that are obligated to serve customers in their

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[13] D.21-06-033 at 22, and see Conclusion of Law 4 at 29.

[14] See PFM, Exhibit A, *Suggested Revisions to D.21-06-033*.

[15] 2020 Final Staff Report at 23-24.

[16] 2020 Final Staff Report at 24:

> Direct Access expansion could lead to cost shifting by changing the composition of customers within each rate class. This could occur if customers with a lower cost of service have an economic incentive to depart IOU service, leaving the IOUs with customers with a higher average cost-of-service. If such migration were to occur, it would change the composition of IOU tariff classes, leaving the IOUs with a pool of higher cost customers. To cover the higher average cost of serving the remaining pool of customers, IOUs would need to increase their rates for affected rate classes.

[17] 2020 Final Staff Report at 24.

service territories,[18] ESPs can choose which customers to offer service to and have no obligation to serve customers with a higher cost of service. The 2020 Final Staff Report notes that the IOUs would need to raise their rates for affected rate classes,[19] resulting in increased costs for the remaining bundled customers. The DA Parties state that large load contracts are beneficial to the ESPs because those contracts provide certainty.[20] However, these types of large load contracts are beneficial to all LSEs because the contracts provide consistent demand and cost recovery; if the IOUs are left with fewer of these large loads in bundled service, it could negatively impact IOU ratepayers on the whole.

While the 2020 Final Staff Report focuses on cost shifts to bundled customers, CCA customers could also be vulnerable to cost shifts if the Commission expands the DA program. The PCIA is a mechanism that prevents cost shifting when a customer departs IOU bundled service. However, there is no such mechanism to prevent cost shifting for load that departs CCA unbundled service for another LSE. Load departure from CCAs to ESPs could leave CCAs with the significant procurement costs they incurred to serve customers that migrated to ESPs. This would result in a smaller pool of CCA customers paying for resources procured on behalf of a larger pool of customers. Since only an estimated 32% of statewide electrical load will come from bundled IOU customers in 2025,[21] the remaining 68% of California electrical load is not protected from cost shifting by the PCIA.

The Commission should deny the DA Parties' PFM because it fails to demonstrate that the elimination of the cap on DA will benefit ratepayers and will not result in unjust and unreasonable cost shifting to both bundled and unbundled customers.

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[18] See Public Utilities Code Section 387(b).

[19] 2020 Final Staff Report at 24.

[20] PFM at 16.

[21] California Energy Commission (CEC), CED 2025 Baseline Forecast LSE and BAA Tables at Form 1.1c. Available at: https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=25-IEPR-03.

C. Granting the PFM would pose a risk to reliability.

D.21-06-033 states that "[e]xpanding Direct Access will create unacceptable risks to electric system reliability."[22] The DA Parties recommend that the Commission modify D.21-06-033 to remove this decision language and add the following new Conclusion of Law: "Expanding Direct Access will not create unacceptable risks to electric system reliability."[23] Expansion of the DA program introduces additional uncertainty to load departure volumes and load forecasts that increase system reliability risks.

Removal of the DA load cap would likely result in load departure.[24] The 2025 IEPR forecast indicates that commercial and industrial customers account for between 50 and 60% of California's electrical load.[25] In the Integrated Resource Planning (IRP) proceeding, the Commission ordered additional procurement to account for anticipated load growth from commercial and industrial sources, including data centers and building and transportation electrification.[26] The DA Parties note their interest in serving large commercial load,[27] stating that DA programs are oversubscribed in two of three IOU

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[22] D.21-06-033, Conclusions of Law 1 at 28.

[23] See PFM, Exhibit A, *Suggested Revisions to D.21-06-033*.

[24] See 2020 Final Staff Report at 25:

> The load migration that would be enabled by reopening Direct Access leaves all LSEs uncertain about future load, making it challenging for any LSE, including the CCAs and IOUs, to build the large-scale generation resources the state needs to ensure reliability in the future.

Also see 2020 Final Staff Report at 15:

> If Direct Access was opened to all non-residential customers, the large-scale load migration would create planning challenges for setting targets.

[25] CEC, CED 2025 Baseline Forecast – Total State at Form 1.1b. Available at: https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=25-IEPR-03. Also see 2020 Final Staff Report at 11 ("Reopening Direct Access would allow nearly two-thirds of existing load, including load that has recently migrated to CCA service, to migrate between IOU, ESP and CCA service.").

[26] D.26-02-057, *Decision Requiring 2029-2032 Electric Resource Procurement and Transmitting Portfolios for 2026-2027 Transmission Planning Process*, February 26, 2026 at 10; issued in R.25-06-019, *Order Instituting Rulemaking to Continue Oversight of Electric Integrated Resource Planning and Procurement Processes*. Available at: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M601/K777/601777006.PDF.

[27] PFM, Section II.C at 11-12.

service territories,[28] and indicate significant customer interest in Direct Access electrical service.[29] The PFM does not provide estimates of the load volume DA Parties expect to serve following the proposed removal of the DA load cap, but it is reasonable to assume that load departure for DA service could be significant.[30]

Frequent or unpredictable load departure poses challenges to long-term planning and contracting in general.[31] Past Long-Term Procurement Planning (LTPP) and IRP decisions have allocated procurement responsibilities to LSEs over multi-year periods,[32] and the Commission has not issued retroactive adjustments to account for load departure. In the absence of mechanisms like the PCIA to ensure ratepayer indifference, load departure reduces the certainty that LSEs will be able to effectively recover the cost of long-term contracts required by IRP allocation.[33] Uncertainty in cost recovery could impact overall reliability because LSEs may procure insufficient capacity to prevent rate increases for their customers.[34] The DA load cap limits reliability risk by constraining

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[28] PFM at 20.

[29] PFM at 19.

[30] See 2020 Final Staff Report, Figure 2 at 7.

[31] 2020 Final Staff Report at 11.

[32] See D.19-11-016, *Decision Requiring Electric System Reliability Procurement for 2021-2023*, November 7, 2019, OP 3 at 80-81; issued in R.16-02-007, *Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements*, available at: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M319/K825/319825388.PDF; D.21-06-035, *Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026)*, June 24, 2021, OP 1 at 94; issued in R.20-05-003, *Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes*, available at: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K603/389603637.PDF; D.23-02-040, *Decision Ordering Supplemental Mid-Term Reliability Procurement (2026-2027) and Transmitting Electric Resource Portfolios to California Independent System Operator for 2023-2024 Transmission Planning Process*, February 23, 2023, OP 2 at 87; issued in R.20-05-003, available at: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M502/K956/502956567.PDF; and D.26-02-057, OP 1 at 143-144.

[33] 2020 Final Staff Report at 23:

> Significant loss of load may leave LSEs with financial commitments for new generation projects for which the LSE can no longer collect enough revenue to recover the costs, leaving LSEs and their new projects financially vulnerable.

[34] See 2020 Final Staff Report at 25:

the maximum amount of load departure to DA service. The DA Parties contend that reliability would no longer be a risk if DA was reopened[35] and that allowing ESPs to serve new customers will enhance system reliability.[36] However, the PFM does not address the risks of increased load migration that could result from the removal of the DA cap.

The Commission should deny the PFM because removal of the DA cap may result in cost shifts and inequitable allocation of procurement responsibilities.

V. CONCLUSION

The Commission must deny the PFM. Granting the PFM may result in undue cost shifts to bundled and unbundled ratepayers and would increase potential load migration and introduce additional uncertainty in procurement allocations. If the Commission considers expansion of the DA program, it should open a new proceeding to develop an evidentiary record that addresses the issues raised PFM.

Respectfully submitted,

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The load migration that would be enabled by reopening Direct Access leaves all LSEs uncertain about future load, making it challenging for any LSE, including the CCAs and IOUs, to build the large-scale generation resources the state needs to ensure reliability in the future.

[35] PFM at 12.

[36] PFM at 16.