

Decision **ALTERNATE DECISION OF COMMISSIONER LYNCH**
(Mailed 1/16/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the
Implementation of the Suspension of Direct
Access Pursuant to Assembly Bill 1X and
Decision 01-09-060.

Rulemaking 02-01-011
(Filed January 9, 2002)

**ORDER DENYING CITY OF CORONA'S PETITION
FOR MODIFICATION FOR PURPOSES OF
CLARIFYING DECISION 02-03-055**

By this order, we deny the Petition to Clarify or Modify Decision
(D.) 02-03-055 (Implementation Decision) filed by the City of Corona (Corona).

Background

In its Petition, filed August 1, 2002, Corona requests confirmation by the Commission that the Implementation Decision did not suspend a utility distribution company's (UDC) obligation to enter into a service agreement with an Energy Service Provider (ESP) that has not previously offered direct access (DA) services in the UDC's service territory. Corona seeks clarification at this time because two UDCs, Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E), have refused to process UDC/ESP Service Agreements submitted by Corona to those respective entities.

Responses to the Petition were filed by PG&E and the Alliance for Retail Energy Markets and Western Power Trading Forum.

Prior to suspension of the Direct Access Program on September 21, 2001 in D.01-09-060, Corona registered as an ESP with Southern California Edison Company (SCE) and then entered into 53 direct access contracts with City businesses for approximately 25 megawatts of power. All of these contracts were entered into on or before September 20, 2001. After September 20, 2001, Corona entered into additional contracts with DA customers outside of the Corona city limits (and within SCE service territory) whereby Corona replaced the DA customers' previous ESP (Enron Energy Services, Inc.), as allowed by the Implementation Decision. Corona now services approximately 1,300 accounts with a total peak load of approximately 50 megawatts (MW).

Corona has had informal discussions with public sector entities throughout California regarding Corona's ability to serve as their ESP in view of the fact that some ESPs are abandoning their DA contracts. During these discussions, Corona took the anticipatory step of submitting UDC/ESP Service Agreements to PG&E and SDG&E.

Both UDCs, however, refused to process those agreements on the grounds that the Implementation Decision prohibits new service agreements. The Implementation Decision lists several numbered criteria that establish the process for continuing limited DA service. Criteria 1 and 2 set forth the process for determining the validity of DA contracts entered into prior to the September 21, 2001 DA suspension date if the customer's Direct Access Service Request (DASR) has not yet been submitted to a UDC prior to that date. Criterion 1 states in its entirety:

ESPs shall have provided by October 5, 2001 a list of names of all customers with direct access contracts in place as of September 20, 2001.¹

The discussion following Criterion 1 directs the UDCs to accept DASRs from ESPs for customers that were not on the October 5 list if both the DA customer and the ESP signed an affidavit stating that the customer had a valid DA contract in place prior to September 20, 2001.

Criterion 2 states in its entirety:

To submit an ESP list, or to submit DASRs for its accounts, an ESP must (1) have in effect a valid ESP/UDC Service Agreement as of September 20, 2001, and (2) ESPs serving small customers must have in effect as of September 20, 2001 valid Commission registration as required by law.

The sole comment following this criterion is that, “The need for valid service agreements and registration is not disputed.”

Corona argues that Criterion 2 directly relates to Criterion 1. Criterion 1 (and the ensuing discussion) sets forth the dates and process by which ESPs were to prove the eligibility and validity of any DA contracts in place as of the September 20, 2001 DA suspension date. Criterion 2 simply states that the only ESPs that may comply with Criterion 1 (i.e., by submitting a list of eligible DA contracts and to establish DA service for those customers by submitting DASRs for the customers on that list) were those ESPs with a valid service agreement in place on September 20, 2001.

¹ D.02-03-055, p. 20.

PG&E filed a response to Corona's Petition on September 3, 2002. PG&E claims that because Corona did not have an ESP service agreement with PG&E in effect as of September 20, 2001, PG&E believes it does not have the authority to enter into such an agreement with Corona now. PG&E claims Corona's request is in direct conflict with the Criterion 2 requirement adopted by the Commission in D.02-03-055.

On this basis, because Corona's ESP service agreement was only with SCE, PG&E has refused to enter into any new UDC/ESP Service Agreements. PG&E indicates it "would welcome any clarification or modification the Commission wishes to provide regarding the ESP/UDC service agreement requirement in D.02-03-055." PG&E argues, however, that to the extent the Commission decides to modify D.02-03-055, and allow Corona and other new ESPs to enter the direct access market, that the Commission should also clarify whether switching to direct access service by bundled service customers is allowed at all. To avoid confusion and piecemeal decisionmaking, PG&E argues that any clarification or modification regarding the ESP/UDC service agreement requirement should occur at the same time the Commission resolves the pending rehearing issue identified in D.02-04-067. PG&E characterizes the D.02-04-067 rehearing as a reconsideration of whether or under what circumstances customers can sign up with "new ESPs" after returning to bundled service.

Corona disputes PG&E's interpretation of D.02-03-055, arguing that Criteria 1 and 2, when read **as a whole**, were meant only to restrict which ESPs could submit DASRs establishing initial service for those customers who had signed valid DA contracts on or prior to September 20, but were not on DA service on or prior to September 20. In other words, Corona contends that

Criterion 2 solely affected which ESPs could comply with the requirements of Criterion 1, and no more than that.

Corona argues that in adopting the Implementation Decision, the Commission was focused **solely** upon stopping additional load from moving to direct access. The decision focuses on establishing the September 20 cut-off date, how to ascertain whether a customer had a valid DA contract in place on or prior to that date, and how to limit additional load moving to direct access. Nowhere does the decision address preventing new ESPs from entering the market.

Corona disputes PG&E's claim that there is any basis to defer action on Corona's Petition until the rehearing issue identified in D.02-04-067 is resolved. Corona denies that the rehearing has anything to do with whether customers can sign up with "new ESPs." Corona argues that the rehearing issue in D.02-04-067 has no relevance to its Petition, but instead relates only to whether a DA customer may switch between DA and bundled service.

Corona claims that by refusing to execute any more ESP service agreements, the UDCs have artificially limited the number of available ESPs, thereby limiting existing DA customer choice. Corona argues that if new ESPs are not allowed to fill the void left by ESPs that have left the market, DA costs will increase with the lessened competition among remaining ESPs.

Corona argues that the Commission did not intend to limit the provision of DA service by ESPs to only those ESPs who had UDC/ESP Service Agreements in place on or prior to September 20, 2001. However, to clarify the issue for the benefit of the UDCs, Corona requests the following modification of Criterion 2 and the ensuing comments:

For the sole and limited purpose of submitting a list of those customers with a valid direct access contract in place as of

September 20, 2001, and processing the initial DASRs for those customers not yet on DA service as of September 20, 2001. To submit an ESP list, or to submit DASRs for its accounts, an ESP must (1) have in effect a valid ESP/UDC service agreement as of September 20, 2001, and (2) ESPs serving small customers must have in effect as of September 20, 2001 valid Commission registration as required by law.

The need for valid service agreements and registration is not disputed. This requirement does not affect the UDCs' current and continuing obligation to process and execute new service agreements with any qualified ESP that wants to provide direct access service in a UDC's service territory to existing direct access customers. This will give existing direct access customers needed flexibility in the event the customer chooses to switch to a new ESP.

Discussion

We conclude that Corona's interpretation of D.02-03-055 as to the meaning underlying Criterion 1 and 2 is incorrect. Corona's proposed changes to D.02-03-055 are not a clarification, as Corona suggests, but a modification of the clearly stated policy and criteria established in that decision. Corona has not demonstrated any changed circumstances or need to modify our prior decision.

Corona requests that the Commission modify D.02-03-055 to state that the modification is necessary to "...give existing direct access customers needed flexibility in the even the customer chooses to switch to a new ESP." However, there is no evidence that this is necessary. There has been no showing that a shortage of ESPs exists, or that direct access customers have little choice among ESPs. Corona's requested modification is therefore unsupported by the record in this proceeding, and is not necessary to allow DA customers to switch from one ESP to another, and to allow assignment of DA contracts from one ESP to another.

No useful purpose is served by delaying Commission action on Corona's Petition until a decision on the pending rehearing of issues identified in D.02-04-067. As noted by Corona, the rehearing issue relates to customers' ability to switch between DA and bundled service. The rehearing issue in D.02-04-067 is independent of the issue raised in Corona's Petition which involves giving existing DA customers flexibility to sign up with ESPs. Accordingly, Corona's Petition for Modification of D.02-03-055 is denied.

Comments on Alternate Draft Decision

The alternate draft decision of the Commissioner Lynch in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were received from parties. SCE stated that it fully supports the alternate draft decision of Commissioner Lynch.

Assignment of Proceeding

Geoffrey Brown and Carl Wood are the Assigned Commissioners and Thomas Pulsifer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.02-03-055 set forth two criteria for determining the validity of contracts entered into prior to the September 20, 2001 suspension date.
2. The second of the prescribed criteria requires that to submit an ESP list, or to submit direct access service requests for its accounts, an ESP must have in effect a valid ESP/UDC service agreement as of September 20, 2001.
3. Since Corona did not have an ESP/UDC service agreement with PG&E in effect as of September 20, 2001, PG&E believes it does not have the authority to enter into such an agreement with Corona.

4. It is not necessary to modify D.02-03-055 to clarify that the requirement for the ESP to have a valid service agreement under the second criterion does not affect the UDC's continuing obligation to process and execute new service agreements with any qualified ESP that wants to provide direct access service in the UDC's service territory to existing direct access customers.

5. Corona's proposed clarification language is not needed to facilitate DA customers' ability to switch from one ESP to another.

Conclusions of Law

1. The Petition for Modification filed by the City of Corona should be denied.
2. D.02-03-055 should not be modified to clarify that it is not the intent of the Commission to prohibit new ESPs from entering the California direct access market in accordance with the language set forth in Ordering Paragraph 1 below.
3. There is no good reason to defer action on Corona's Petition until resolution of the rehearing issue in D.02-04-067.
4. UDCs should continue to process and execute new ESP/UDC Service Agreements.
5. UDCs should not be required to execute an ESP/UDC service agreement with Corona, allowing Corona to serve direct access customers in PG&E's and SDG&E's service territories.

IT IS ORDERED that:

The Petition for Modification of Decision 02-03-055 filed by the City of Corona is denied.

This order is effective today.

Dated _____, at San Francisco, California.