

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



August 27, 2001

9/6/2001

TO: PARTIES OF RECORD IN A.98-07-003 ET AL.

This is a revised draft decision of Administrative Law Judge (ALJ) Barnett. It will be on the Commission's agenda at the meeting of September 6, 2001. The Commission may act then, or it may postpone action until later.

This version differs from the draft mailed on August 15, 2001 in several ways. First, the effective date of the suspension has been changed from September 1, 2001 to July 1, 2001 (as proposed in the draft mailed June 15, 2001). Second, the draft decision clarifies that customers who have executed direct access contracts prior to July 1, 2001 may continue to receive power from electric service providers for the initial term of the contracts. Several other editorial and explanatory changes have also been made.

Assembly Bill No. 1 from the First Extraordinary Session (AB1X) requires that direct access be suspended until the Department of Water Resources no longer supplies power to the customers of the three largest regulated electricity companies. It directs that the Commission determine the effective date of the suspension. In order to reduce the possibility of harm to customers and to resolve potential conflict, parties should comment on: (1) whether AB1X suspends the entire direct access program, including all transactions under that program, (2) how the Commission can comply with AB1X if it exempts written contracts for direct access executed before July 1, 2001 from the suspension, and (3) whether July 1, 2001 is an appropriate date for the suspension.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

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This draft decision is being served pursuant to Rule 77.2, et seq. Comments on the draft decision are permitted. Those comments are to be electronically served on the service list (for those who have electronic addresses) no later than 10:00 a.m. on September 4, 2001, and shall be filed with the Commission by 5:00 p.m. on that date. Electronic service of the comments shall also be made on lss@cpuc.ca.gov and rab@cpuc.ca.gov. For those who have not provided electronic addresses, printed copies of the comments shall be served by mail or other expeditious mode of delivery. No reply comments will be permitted.

/s/ LYNN T. CAREW

Lynn T. Carew, Chief
Administrative Law Judge

LTC:sid

Attachments

Decision **DRAFT DECISION OF ALJ BARNETT** (Mailed 8/27/2001)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for verification, consolidation, and approval of costs and revenues in the transition revenue account.

Application 98-07-003
(Filed July 1, 1998)

In the Matter of The Revenue Adjustment Proceeding (RAP) application of San Diego Gas and Electric Company (U 902-E) for approval of 1) Consolidated changes in 1999 authorized revenue and revised rate components; 2) the CTC rate component and associated headroom calculations; 3) RGTCOMA balances; 4) PX credit computations; 5) disposition of various balancing/memorandum accounts; and 6) electric revenue allocation and rate design changes.

Application 98-07-006
(Filed July 1, 1998)

Application of Southern California Edison Company (U 338-E) to: 1) consolidate authorized rates and revenue requirements; 2) verify residual competition transition charge revenues; 3) review and dispose of amounts in various balancing and memorandum accounts; 4) verify regulatory balances transferred to the transition cost balancing account on January 1, 1998; and 5) propose rate recovery for Santa Catalina Island diesel fuel costs.

Application 98-07-026
(Filed July 1, 1998; Petition
for Modification filed
January 25, 2001)

O P I N I O N

On January 25, 2001, pursuant to Rule 47 of the Rules of Practice and Procedure, Southern California Edison Company (SCE) filed its Petition for Modification of Decision (D.) 99-06-058. Specifically, SCE requests authorization to temporarily suspend payment of Power Exchange (PX)¹ energy credits to energy service providers (ESPs) and direct access customers until a solution to the current energy crisis and SCE's current liquidity crisis has been achieved. SCE asserts that this temporary suspension is necessitated by the radical increase in the PX energy charge in recent months. SCE says the dramatically inflated market rates that it must pay for electricity for its customers and its current financial crisis, require expeditious action.

In the restructured electricity market in California, customers may subscribe to "bundled service" from the utility distribution company or "direct access" service from an ESP. Customers who purchase bundled service from the utility pay an energy charge to cover the utility's power supply costs. For these bundled service customers, the customer's total "bundled" bill includes charges for all utility services, including distribution and transmission as well as energy. A direct access customer receives distribution and transmission service from the utility, but purchases its electric energy from its ESP.

A utility's bundled customer can choose to become a direct access customer and later revert back to bundled customer status. The utility is the electricity provider of last resort. The ability to leave the utility system and

¹ The Power Exchange has not provided service effective mid-January 2001.

return may cause substantial fluctuations in the amount of energy the utility must purchase (or have purchased on its behalf).

Recent events in the California electric market have caused a radical change in the area of direct access. First, the Governor's Proclamation of January 17, 2001, found that an emergency exists in the electricity market in California threatening "the solvency of California's major public utilities," Second, on February 1, 2001, Assembly Bill No. 1 from the First Extraordinary Session (Ch. 4, First Extraordinary Session 2001) (AB 1X) was signed into law which, among other things, requires that the Department of Water Resources (DWR) procure electricity on behalf of the customers of the California utilities. In regard to direct access, AB 1X adds Section 80110 to the Water Code:

"After the passage or such period of time after the effective date of this section as shall be determined by the commission, the right of retail end use customers pursuant to Article 6 (commencing with Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code to acquire service from other providers shall be suspended until the department [the Department of Water Resources] no longer supplies power hereunder." The section was effective February 1, 2001.

AB 1X, Section 7 states:

"This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to address the rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, that endanger the health, welfare, and safety of the people of this state, it is necessary for this act to take effect immediately."

The Legislature has directed this Commission to suspend direct access until DWR no longer procures power for the retail end-users, and we find it should be suspended effective July 1, 2001. The Legislative direction is clear; and the suspension should apply to SCE, Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E). In the interest of providing cost stability for current direct access customers, written contracts for direct access signed before July 1, 2001 are exempt from the suspension for the initial term of the contracts.

Currently, the State of California through the DWR is purchasing electric energy on behalf of the utilities' existing ratepayers (except those purchasing electric energy from ESPs) using the State's General Fund and an interim loan. To repay the General Fund and continue the power purchase program, state agencies are preparing to issue DWR Power Supply Revenue Bonds. We have been informed by the State Treasurer's Office, the Department of Finance, the DWR, and members of the financing team for the DWR Power Purchase Revenue Bonds that "to sell the bonds with the investment grade ratings required by law, it will be necessary to control the conditions under which ratepayers (generally large users, such as industrial customers) 'exit the system'." (See Appendix A, emphasis added.)

We agree that suspending the right to contract for direct access will assist the Administration and the State Treasurer in proceeding with the bond transaction that they are currently undertaking. Suspending the right to contract for direct access will assist in issuing these bonds at investment grade, by providing DWR with a stable customer base from which to recover its costs. Furthermore, we note that the suspension of direct access will provide DWR

with a stable customer base from which to recover the cost of the power it has and continues to purchase.

The statute gives the Commission some discretion as to when the right to contract for direct access should be suspended. However, it does not give the Commission discretion as to whether to suspend direct access. Moreover, as noted above, suspending the right to contract for direct access will help ensure the recovery of DWR's costs and, thus, successful issuance of the bonds as currently contemplated by the Administration and the State Treasurer. DWR has been purchasing power since January 2001 and the Administration and the State Treasurer are proceeding apace with the bond transaction. Accordingly and in light of the urgency clause contained in the legislation, we conclude as explained in greater detail below that we should suspend the right to contract for direct access as of July 1, 2001, as originally proposed by the ALJ in mid-June.

Comments

A draft decision was mailed for comment on June 15, 2001. At that time, the draft decision included a proposed resolution of SCE's Petition for Modification, as well as our implementation of AB 1X. At this time, we will not resolve issues regarding payment of PX credits raised in the comments and by SCE's petition. However, it is imperative that we now address the direct access issue. We therefore bifurcate this proceeding and will address SCE's petition in the next phase.

In comments on the draft decision, several parties questioned the need for the Commission to implement the legislative suspension of direct access as soon as July 1, 2001. By the draft decision mailed for comment to the parties on June 15, 2001, market participants were provided notice that direct access would be suspended as of July 1, 2001. The Commission postponed its consideration of

the draft decision. However, we do not change the effective date of the suspension. The underlying legislation was introduced on January 3, 2001, enrolled and sent to the Governor on February 1, 2001, and signed by the Governor the same day. Market participants have now had eight months since then to prepare for this event. We do not wish to reward customers who have switched to direct access since July 1, 2001 in the hope that we would change the effective date of the suspension when this switch could disadvantage customers who continue to receive bundled service from the utility.

The need to implement the Legislature's directive is underscored by recent events. In May of this year, we enacted a dramatic rate increase, affecting customers in all classes for PG&E and SCE. The utilities have issued bills reflecting these new rates. In addition, we take official notice of DWR's recent report on the nature of its contractual commitments, suggesting that bundled electric customers will face high energy costs over the next few years. At the same time, increased conservation efforts and new generation, coupled with the Federal Energy Regulatory Commission's recent action to expand wholesale price mitigation across the Western region, offer some hope that average electric spot market prices will be lower over the next year than they were during the last.

This is a time when large customers might be tempted to switch from utility bundled service to energy service providers in order to avoid some of the impact of higher rates and take advantage of lower spot market prices. This is precisely the wrong time to encourage such behavior. All ratepayers should contribute to the effort to pay down the unprecedented debt incurred by the State to help weather the energy crisis.

We are aware that some parties have asked for us to hold hearings on the timing of the suspension of direct access. We have carefully reviewed the comments filed by various parties on this point and are not convinced that any party has identified any material factual issue that requires an evidentiary hearing. Thus, we do not intend to hold evidentiary hearings, especially as we are simply implementing a clearly worded statute that directs the Commission to suspend direct access.

Comments were filed by The Utility Reform Network, San Francisco Bay Area Rapid Transit District, SCE, PG&E, SDG&E, Alliance for Retail Energy Markets, Association of Bay Area Governments Publicly Owned Energy Resources, AES New Energy, Inc., New West Energy Corporation, Federal Executive Agencies, California Manufacturers and Technology Association, California Large Energy Consumers Association, Green Mountain Energy Company, the Kroger Co., Calpine Corporation, California Industrial Users, the University of California and California State University, Golden State Power Cooperative, California Retailers Association, and the Association of California Water Agencies.

Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of AB1X. Therefore, Public Utilities Code Section 1731(c) (applications for rehearing are due within 10 days after the date of issuance of the order or decision) and Public Utilities Code Section 1768 (procedures for judicial review) are applicable. (See Stats. 2001-2001, First Extraordinary Session, Ch. 9.)

Findings of Fact

1. An emergency exists in the electricity market in California.

2. Pursuant to Water Code § 80110, this Commission must determine when the right of retail end use customers to acquire service from other providers shall be suspended.

3. Consistent with the draft decision mailed to parties on June 15, 2001, which suspended direct access effective July 1, 2001, and to ensure that we do not reward customers who have switched to direct access since July 1, 2001 and disadvantage customers who continue to receive bundled service from the utility, the July 1 effective date for the suspension of direct access is unchanged.

Conclusions of Law

1. The determinations we make today should apply to PG&E, SDG&E, as well as SCE.

2. The right to contract for direct access should be suspended effective July 1, 2001. Written contracts executed prior to July 1, 2001 should be exempt from the suspension for the initial term of the contracts.

3. This order should be effective today so that our order may be implemented expeditiously.

4. All petitions to intervene and petitions to late-file comments are granted.

O R D E R

IT IS ORDERED that:

1. This order shall apply to Southern California Edison Company (SCE). Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E).

2. SCE, PG&E, and SDG&E shall notify their customers that the right of retail end users to acquire service from other providers, except the Department of Water Resources, is suspended until the Department no longer supplies power pursuant to Water Code §§ 80000, *et seq.*, effective July 1, 2001, except that customers with written contracts executed prior to July 1, 2001 may continue to receive power from such other providers for the initial terms of any such contracts.

This order is effective today.

Dated _____, at San Francisco, California.

(See Formal Files for the Appendix.)