

Decision 10-05-039 May 20, 2010

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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)

**DECISION REGARDING PETITION TO MODIFY DECISION 10-03-022**

We hereby grant the Petition for Modification (Petition) of Decision (D.) 10-03-022 (Decision) filed March 25, 2010 by the “Joint Parties.”<sup>1</sup>

D.10-03-022 authorized increased limits in direct access (DA) transactions within the service territories of California’s three major investor-owned electric utilities (IOUs): Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (SDG&E). The authorization was implemented in accordance with the provisions of Senate Bill (SB) 695.

The Petition seeks modification in the enrollment schedule adopted in the Decision whereby customers submit a “notice of intent” (NOI) to sign up for DA service subject to the SB 695 limits during an “Open Enrollment Window” (OEW). The Decision also required the utilities to implement a wait-list of

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<sup>1</sup> The “Joint Parties” consist of The Utility Reform Network, Southern California Edison Company, the California Alliance for Choice in Energy Solutions, the Alliance for Retail Energy Markets, the California State Universities, the Direct Access Customer Coalition, the Silicon Valley Leadership Group, and the School Project for Utility Rate Reduction (collectively referred to herein as the “Joint Parties”).

customer NOIs submitted during the OEW but that exceed the available Year 1 allocation of space for new DA load. When customers whose NOIs have been accepted do not ultimately take DA service by having a registered Electric Service Provider (ESP) submit a Direct Access Service Request (DASR), the IOUs are required to accept NOIs of customers on the wait-list to back-fill available room under the Year 1 allocation. Those customers have a 60-day period to elect DA service by having a registered ESP submit a DASR to serve them. The wait-list then expires at the end of the OEW.

D.10-03-022 adopted the following timeline for NOI submission, evaluation, and customer election to take or not take DA:

NOI submission begins	April 16, 2010
NOIs evaluated and customers notified of acceptance	May 6, 2010
ESPs submit DASR for customers with accepted NOIs	July 5, 2010
OEW/wait-list expiration	June 30, 2010

The Joint Parties' original proposal for SB 695 implementation assumed an OEW effective date of April 1, 2010, which would have provided for a 90-day OEW. This would have allowed at least a few days for the IOUs to accept NOIs off the wait-list before the June 30 end date for the OEW. D.10-03-022 adopted the Joint Parties' proposal, in part, but did not adopt their proposed OEW effective date of April 1, 2010. Instead, D.10-03-022 adopted an OEW effective date of April 11, 2010, with the first NOI submission due on April 16, 2010. Consequently, the maximum period for notice and DASR acceptance expires on May 6, after the end of the OEW (due to the five-day lag at the start of the OEW for NOI acceptance).

In view of the time frames adopted in D.10-03-022, the period between the first date for NOI submission and close of the OEW is only 75 days, rather than

the 90 days assumed in the Joint Parties' original proposal. As a result, the Joint Parties believe that this 75-day period is likely to be too short to allow for the wait-list to be used to backfill space that becomes available during the OEW. Consequently, the Joint Parties believe that the implementation of the wait-list will be frustrated because it will expire before the utilities can accept any NOIs off the wait-list.

The Joint Parties thus seek a modification of D.10-03-022 to extend the OEW to run for 95 days. They argue this additional period is needed to allow for the directives of the OEW wait-list to be implemented to achieve the results intended by the Commission. The proposed modification would be accomplished by moving the end-date for the OEW from June 30, 2010 to July 15, 2010. The modification would result in a 15-day delay in the ability of customers to submit the 6-month advance notices of intent to switch to DA service in 2011. As a result, the phase-in of DA load in Year 2 would commence on January 16, 2011 rather than January 1, 2011.

The Joint Parties argue that the additional 15 days is warranted to ensure that customers on the OEW wait-list have a reasonable opportunity to backfill room under the Year 1 allocation that becomes available when customers with accepted NOIs to switch to DA ultimately do not complete the switch.

SDG&E filed a response to the Petition on April 14, 2010. SDG&E opposes the Joint Parties' proposal for extending the OEW by 15 days and modifying the date by which customers begin submitting 6-month notices. SDG&E argues that such modifications would require additional and modified communications to customers that are likely to cause confusion and uncertainty. SDG&E acknowledges the timing problem noted by the Joint Parties, but disagrees with their solution. As an alternative remedy, SDG&E proposes that the utilities be

granted an additional 15 days within which to process any NOIs remaining on the wait-list during that period of time.

SDG&E argues that its proposed alternative is a simpler solution that preserves the ability for customers to submit 6-month notices on July 1, 2010, and retains the existing June 30, 2010 OEW. SDG&E has already begun reprogramming its systems to meet the April 11 effective date, and argues that changing those dates will require more system modification.

The Joint Parties oppose the alternative remedy proposed by SDG&E, arguing that it is not in accord with the customer-driven process adopted in D.10-03-022. If the OEW ends on June 30, wait-list customers will be forced either to (a) stay on the wait-list and hope to get an opportunity for 2010 enrollment; or (b) abandon their wait-list position and hope to get an opportunity for 2011 DA service. The OEW wait-list customers could not remain on the wait-list and also submit a 6-month notice to switch to DA in 2011, because the utilities' systems do not permit customer accounts to submit two NOIs. The automated processes associated with the subsequently submitted 6-month notice would override the wait-listed NOI submitted during the OEW. Thus, customers would have to opt off the wait-list to try to secure a spot for 2011 before knowing whether the OEW wait-list process would provide them an opportunity to transfer to DA in 2010.

## **Discussion**

We conclude that the Petition for Modification of D.10-03-022 should be granted, and accordingly adopt the modifications proposed by the Joint Parties, as summarized in Appendix A. We acknowledge the concerns raised by SDG&E in its opposition regarding the potential difficulties in modifying notices to customers and reprogramming of computer systems. We conclude, however,

that the alternative solution suggested by SDG&E would produce a less satisfactory result as compared with the proposed modification of the Joint Parties. If the OEW ends on June 30, customers may not be provided enough time to consider all of the factors involved in deciding whether to transfer to DA. Customers would have no way of knowing at the end of the OEW whether or not they could come off the wait-list and commence DA service in 2010. Under the Joint Parties' proposal, however, these wait-listed customers would know before July 16 whether or not their NOIs had been accepted for 2010 DA service. They could therefore make an informed decision as to whether or not to submit a 6-month notice on or after July 16 for 2011 DA service.

Extending the OEW by an additional 15 days is warranted to ensure that customers on the OEW wait-list have a reasonable opportunity to back fill room under the Year 1 allocation that becomes available when customers with accepted NOIs to switch to DA ultimately do not complete the switch. The adopted modification will move the end-date for the OEW from June 30, 2010 to July 15, 2010. The modification will result in a 15-day delay in the ability of customers to submit the 6-month advance notices of intent to switch to DA service in 2011. As a result, the phase-in DA load in Year 2 will commence on January 16, 2011 rather than January 1, 2011.

### **Categorization and Assignment of Proceeding**

This proceeding is categorized as Ratesetting. The assigned Commissioner is Michael R. Peevey and the assigned Administrative Law Judge is Thomas Pulsifer.

### **Comments on Proposed Decision**

The proposed decision of Commissioner Peevey in this matter was mailed on April 30, 2010 to the parties in accordance with Pub. Util. Code § 311 and

comments were allowed under Rule 14.6(b) of the Commission's Rules of Practice and Procedure. All Parties stipulated to reduce the comment period. Comments were filed on May 13, 2010.

### **Findings of Fact**

1. D.10-03-022 adopted a phase-in program for timely implementation of enrollments of new DA customers consistent with the provisions of SB 695.
2. D.10-03-022 adopted an enrollment process for customers to submit NOIs to sign up for DA service during an OEW. Any NOIs submitted during the OEW that are not accepted due to lack of available space are to be placed on a wait-list.
3. The function of the wait-list is to provide the opportunity for the IOUs to back-fill any room occupied by NOIs that were submitted for the first-year allocation of DA but ultimately voided for failure to submit a DASR or to correct a deficiency.
4. Customers need a reasonable period of time in order to make an informed decision about whether to seek to enroll in DA.
5. The Joint Parties' originally proposed schedule would have allowed at least a few days at the end of the OEW for the utilities to accept NOIs off the wait-list before the June 30 end-date for the OEW.
6. Since D.10-03-022 adopted an effective date of April 11, rather than April 1, 2010, the time period between the first date for NOI submission and close of the OEW was shortened to only 75 days. The resulting OEW period is likely to be too short to allow for the wait-list to be used to back fill space that becomes available during the OEW.
7. If the OEW ends on June 30, wait-list customers will be forced either to (a) stay on the wait-list and hope to get an opportunity for 2010 enrollment; or

(b) abandon their wait-list position and hope to get an opportunity for 2011 DA service.

8. The modification proposed by the Joint Parties to allow an additional 15 days extension in the OEW provides the most effective remedy to provide customers with adequate time.

9. Under SDG&E's alternative proposal, customers would have to opt off the wait list to try to secure a spot for 2011 before knowing whether the OEW wait list would provide them an opportunity to transfer to DA during 2010.

### **Conclusions of Law**

1. The Joint Parties timely filed their Petition for Modification in accordance with Commission rules.

2. The Petition for Modification provides a reasonable remedy that is consistent with the goals of D.10-03-022, providing adequate time for the customer notice and opportunity to enroll in DA.

3. The Petition for Modification should be granted in accordance with the order below.

### **O R D E R**

#### **IT IS ORDERED** that:

1. The Petition for Modification of Decision 10-03-022 is granted.
2. Decision 10-03-022 is hereby modified to incorporate the revisions set forth in Appendix A.

3. Rulemaking 07-05-025 remains open for subsequent matters.

This decision is effective immediately.

Dated May 20, 2010 at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners



## **APPENDIX A**

### **Adopted Modifications to D.10-03-022**

The following modifications shall be made to D.10-03-022, with deletions shown as strike-through and additions shown as underlining, as indicated below:

**Page 13:**

A front-loading of 50% in the first year could create a surge in demand for DA concentrated in the open enrollment window between mid April and ~~June 30~~ July 15, 2010.

**Page 14:**

As a result, customers could feel pressured to rush to sign up before the ~~June 30th~~ July 15th deadline.

**Page 14, footnote 14:**

Appendix 2 at 4, 8.a., “Customers may submit 6-month advance NOIs starting ~~July 1~~ July 16, 2010 to switch to DA in 2011.”

**Page 29:**

To facilitate a smoother synchronization between the phased increase in DA load and the annual RA schedule, the next step in the DA phase-in schedule would occur on January ~~4~~ 16, 2011, rather than on April 11, 2011.

**Conclusion of Law 4:**

4. A temporary one-time waiver of the current three-year minimum bundled service commitment for customers now on BPS customers should be granted covering the initial open enrollment period, starting on the effective date of this decision and extending through ~~June 30~~ July 15, 2010.

**Appendix 2, Page 2, Par. 6:**

The OEW will begin on the fifth business day after the Effective Date and end on ~~end ninety (90) calendar days thereafter or on June 30~~ July 15, 2010, ~~whichever comes first~~. The OEW will occur in Y1 of the phase-in period only.

**Appendix 2, Page 4, Par. K:**

Any NOIs on the wait-list that were not accepted during the OEW will be void, and customers will be notified that they can begin submitting 6-month advance NOIs as early as ~~July 1~~ July 16, 2010 to switch to DA in 2011.

**Appendix 2, Page 4, Par. 1:**

The OEW will close ~~90 calendar days after the Effective Date, or on June 30~~  
July 15, 2010, whichever comes first.

**Appendix 2, Page 4, Par. m:**

This revised forecast shall account both for customer migration up to that date, but also to forecast expected customer migration during the second phase of DA access that commences ~~in January of~~ January 16, 2011.

**Appendix 2, Page 5, Par 8a:**

Customers may submit 6-month advance NOIs starting July ~~1~~16, 2010 to switch to DA in 2011 (Y2).

A customer with an accepted NOI will be switched to DA starting ~~in~~ January 16, 2011, provided the customer's 6-month advance notice period has been satisfied and a DASR has been timely received.

**Appendix 3, Page 3:**

To facilitate a smoother synchronization between the phased reopening of DA and the annual RA schedule, the next step in the DA phase-in schedule shall occur on January ~~1~~16, 2011, rather than April 11, 2011.

**(END OF APPENDIX A)**