Decision 10-10-024 October 28, 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 FOR MODIFICATION OF DECISION 10-03-022 REGARDING DIRECT ACCESS TRANSACTIONS

We hereby deny the California State University Petition for Modification of Decision 10-03-022 which addressed issues relating to the limited reopening of direct access in accordance with provisions of Senate Bill 695 (Stats. 2009, ch. 337).

1. Parties Positions

By its Petition filed June 23, 2010, California State University (CSU) seeks a Commission order modifying Decision (D.) 10-03-022[1] to give priority for direct access (DA) service to customers that were previously eligible for DA service under the switching rules in place prior to D.10-03-022. A response in opposition to the CSU Petition was jointly filed on July 19, 2010, by Southern California Edison Company (SCE) and The Utility Reform Network (TURN). A further response was filed by San Diego Gas & Electric Company on

[1] The Commission modified D.10-03-022 in D.10-05-039, subsequent reference to D.10-03-022 are as modified by D.10-05-039.

July 23, 2010. CSU seeks a Commission order modifying D.10-03-022 to affirm that customers that were previously eligible for DA service under provisions of Assembly Bill (AB) 1X (which CSU calls "grandfathered DA customers") should have priority to transfer to DA service under the switching rules in place prior to D.10-03-022. The Commission adopted procedures in D.10-03-022 for the limited reopening of DA pursuant to Senate Bill (SB) 695 whereby qualifying customers could apply for DA service, up to a new maximum cap subject to applicable conditions. CSU argues that D.10-03-022 needs to be modified to clarify that grandfathered DA customers who are currently fulfilling, or have fulfilled the three-year Bundled Portfolio Service (BPS) commitment have the option to return to DA service with the required six-month notice as long as room exists under the overall cap.

The CSU Cal Poly Pomona campus (described as "grandfathered DA customer") filed a six-month notice with SCE, to resume DA service on December 8, 2010 (based on Rule 22.1 established under D.03-05-034 and Resolution E-4006). SCE declined the six-month notice for CSU Cal Poly Pomona's return to DA service, and advised that the notice was submitted outside of the designated submission period. SCE advised CSU that grandfathered customers could no longer resume DA service under rules previously established and must participate in the new annual enrollment periods established in D.10-03-022 under SB 695 in order to return to DA service.

CSU disagrees with SCE's interpretation of the applicable rules, and thus seeks a Commission order resolving parties' differences. CSU proposes that D.10-03-022 be modified to affirm as follows:

i) that the DA rules for switching remain in effect for those temporary, one time changes utilized during the initial

open enrollment window (OEW), for which enrollment has already closed; and

ii) that grandfathered DA customers who are currently fulfilling, or have already fulfilled, their three-year BPS commitment may return to DA service under existing switching rules by giving their six-month advanced notice as long as room exists under the overall cap.

TURN and SCE oppose CSU's requested modification in D.10-03-022 to provide customers previously eligible for DA under AB 1X the right to transfer to DA service pursuant to the switching rules in place prior to the issuance of D.10-03-022. TURN and SCE argue that there is no "grandfathered" right to switch to DA service under AB 1X, but that SB 695 repealed the DA suspension under AB 1X, and reinstated the suspension of DA *except as permitted in SB 695.* They argue that D.10-03-022 provides no preference under the switching rules or set-aside under the annual load limits for any DA-eligible customers.

They argue that there is no longer any basis for grounding the term "DA eligible" in the DA suspension under AB 1X, which was repealed by SB 695. The term "DA eligible" previously applied to those customers eligible to take DA service under the AB 1X suspension. SCE and TURN argue that "DA eligible" now identifies all customers eligible to switch to DA service under SB 695.

TURN and SCE argue that CSU had the opportunity along with all other DA-eligible customers to submit a notice of intent (NOI) to switch to DA service during the OEW beginning on April 16, 2010. CSU did not have a NOI accepted before SCE's 2010 load limit and wait-list allocation under D.10-03-022 were completely subscribed. CSU attempted to submit a *six-month notice* during the OEW to switch to DA service, but this was rejected because the 2010 load limit and wait-list were fully subscribed, and the six-month notice was premature for

securing a spot under the 2011 load limit. SCE and TURN argue that the Commission, in using the term "*existing* DA-eligible customers" in D.10-03-022, intended to refer to customers previously eligible for DA service under AB 1X.

San Diego Gas & Electric Company (SDG&E) supports SCE/TURN's opposition, asserting that D.10-03-022 provides no preference under the switching rules or set-aside under the annual load limits for any DA-eligible customers. If approved, CSU's requested changes would impact all three of the California electric investor-owned utilities (IOUs) as well as DA-eligible customers, by artificially creating two distinct classes of DA eligible customers, further exacerbating the potential for undue customer confusion. In addition, such a modification would unnecessarily create additional administrative burdens and costs. SDG&E's computer systems would need to be reprogrammed and other utilities' systems could be similarly impacted.

SDG&E indicates that the IOUs have already fully implemented the processes described in the DA decision. DA-eligible customers have been operating under such processes for over 3 months and the majority of such parties appear to be ready to move on to the next phase of the proceeding. Given these facts, SDG&E believes the need for finality of D.10-03-022 is imperative.

Accordingly, SDG&E argues that the CSU Petition to modify D.10-03-022 would be potentially detrimental to the other IOUs or their DA-eligible customers, and should be denied.

2. Discussion

We conclude that CSU has failed to justify its requested modifications to D.10-03-022. D.10-03-022 clarifies that all non-residential customers in the IOU's service areas are eligible to switch to DA service under SB 695. D.10-03-022 is clear that there is no preference under the switching rules for any customers

eligible for DA service under SB 695, including customers previously eligible under AB 1X.[2] Therefore, "DA eligible" customers are now *all non-residential customers* in the IOU's OEW beginning on April 16, 2010. CSU did not have a NOI accepted before SCE's 2010 load limit and wait-list allocation under D.10-03-022 were completely subscribed. CSU attempted to submit a *six-month notice* during the OEW to switch to DA service, but this was rejected because the 2010 load limit and wait-list were fully subscribed, and the six-month notice was premature for securing a spot under the 2011 load limit. D.10-03-022 makes clear that customers may submit six-month advance notices *starting July 16, 2010* to switch to DA service in 2011.

The Commission in D.10-03-022 considered and declined to grant a preference to any subset of "DA eligible customers" in switching to DA service. D.10-03-022 creates a level playing field for all DA eligible customers by granting a one-time waiver of all minimum BPS commitment periods in place as of the effective date of the DA reopening on April 11, 2010.

All DA eligible customers have a fair opportunity to switch to DA service under the first-come, first-served rules adopted in D.10-03-022. CSU does not claim that it was unable to fully participate in the proceeding leading to D.10-03-022, nor has it been able to show that it was unfairly treated under the utilities' implementation of that decision. Providing CSU with a preference to switch to DA service in 2010 would be inappropriate and discriminatory. Under D.10-03-022, CSU has another opportunity to switch to DA service in January 2011 by submitting a six-month notice beginning on or after July 16, 2010

[2] See D.10-03-022, Conclusion of Law 11.

as long as there is room under the 2011 load limit, consistent with the rules adopted in D.10-03-022. Thereafter, six-month advance notices to switch to DA service in 2012 may be accepted anytime on or after January 16, 2011 up to the 2012 load limit. This phase-in process will continue through 2012 and 2013.

At the outset of the OEW, all existing BPS commitments were waived to place all customers on equal footing with respect to the reopening. In addition, six-month advance notices were waived for the OEW, so that eligible customers could seek to switch as soon as feasible in 2010, subject to the annual load limits.[3]

For these reasons, the CSU petition is denied.

3. Comments of Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Pulsifer in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on October 14, 2010. We have considered the comments in our final order.

4. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission adopted in D.10-03-022 to implement provisions of SB 695 which was signed into law as an urgency statute, adding § 365.1(b) to the Public Utilities Code.

[3] See D.10-03-022 at 22.

2. A temporary waiver of the six-month advance notice requirement during the OEW was adopted in D.10-03-022 for all DA eligible customers.

3. The Commission in D.10-03-022 considered and declined to provide a preference to any subset of DA eligible customers in switching to DA service.

4. D.10-03-022 creates a level playing field for all DA eligible customers by granting a one-time, permanent waiver of all minimum BPS commitment periods in place as of the effective date of the DA opening on April 11, 2010.

Conclusions of Law

1. CSU timely filed a Petition for Modification of D.10-03-022.

2. CSU, in its Petition, has not identified any provision of D.10-03-022 that warrants modification.

3. The Petition for Modification of D.10-03-022 filed by CSU should be denied.

4. No preference under the switching rules is warranted for any customers eligible for DA service under the provisions of SB 695, including customers previously eligible under provisions of AB 1X.

O R D E R

IT IS ORDERED that June 23, 2010, Petition for Modification of Decision 10-03-022 filed by California State University is denied.

This order is effective today.

Dated October 28, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

Commissioner Dian M. Grueneich, being necessarily absent, did not participate.