Decision 12-04-012 April 19, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U338E) for Modification of Decision 08-09-012.	Application 11-06-026 (Filed June 24, 2011)

DECISION MODIFYING AND CLARIFYING DECISION 08-09-012

1. Summary

This decision clarifies that "Continuous Direct Access customers" who return to bundled service and subsequently return to direct access service according to the procedures adopted in Resolution E-3843 and revised in Decision (D.) 11-12-018, are subject to the vintaging process adopted in D.08-09-012 and are responsible for "New World Generation Costs" applicable to their assigned vintage.[1]

To implement this clarification, this decision revises Ordering Paragraph 4 of D.08-09-012 and corrects an error in one cell of the table contained in Appendix D of that decision.

This proceeding is closed.

[1] The procedures governing the return of Direct Access (DA) (continuous or not) customers to bundled service and subsequently back to DA service were implemented in Resolution E-3843 and most recently updated in Ordering Paragraph 10 of D.11-12-018. No DA customer returns to bundled service from DA and back to DA except via these adopted procedures, otherwise known as "switching rules."

2. Background

Decision (D.) 08-09-012 adopted a methodology known as "vintaging" to implement a non-bypassable charge to recover the uneconomic or stranded costs related to new generation resources from departing customers. D.08-09-012, in addition to adopting a methodology for calculating this charge, also set policies for determining which customers bear responsibility for these costs.

2.1. Procedural Background

On June 8, 2011, Southern California Edison Company (SCE) filed a petition to modify D.08-09-012. The docket office rejected the filing of the petition and directed SCE to re-file this matter as an application for modification because of the length of time that had lapsed since the date of the issuance of D.08-09-012.

On June 24, 2011, SCE filed this application and served it on all parties to the decision.

On July 14, 2011, Resolution ALJ 176-3277 preliminarily categorized the proceeding as quasi-legislative and determined that no hearing would be necessary.

On July 25, 2011, the Division of Ratepayer Advocates (DRA) filed a response.[2]

On July 27, 2011, Pacific Gas and Electric Company (PG&E) filed a response.[3]

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[2] *Response of the Division of Ratepayer Advocates to the Application of Southern California Edison Company for Modification of Decision 08-09-012*, (DRA Response) July 25, 2011.

[3] *Response of Pacific Gas and Electric Company (U39E) to the Application of Southern California Edison Company for Modification of Decision 08-09-012*, (PG&E Response) July 27, 2011.

On August 8, 2011, SCE filed a reply to the responses.[4]

2.2. Jurisdiction

This application is a petition for modification. Pursuant to Pub. Util. Code § 1708, the Commission has broad authority to modify decisions after notice to parties to the prior proceeding.

3. Issue before the Commission

The issues before the Commission are whether to modify Appendix D and Ordering Paragraph 4 of D.08-09-012 as requested by SCE. The basic question before the Commission is whether certain customers, known as "continuous DA [direct access] customers" are responsible for one particular cost element in the "cost responsibility surcharge." That specific element is known as "New World Generation Costs."

Based on Appendix D, no customers in the "continuous DA" category pay the "New World Generation Costs" element of the cost responsibility surcharge. The modifications and clarifications proposed by SCE would expand the number of customers responsible for certain expenses that a utility incurs to meet the customers' projected demands for power. Specifically, those customers in the "continuous DA" category who received "bundled" electric service from a utility would pay a cost element calculated using the "vintaging" methodology adopted in D.08-09-012.

The history of these issues is quite contorted and requires some explanation. The Commission, in D.08-09-012, sought to implement a

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[4] *Southern California Edison Company's (U338E) Reply to the Responses of PG&E and DRA to SCE's Application for Modification of Decision 08-09-012* (SCE Reply), August 8, 2011.

non-bypassable surcharge, known as a "cost responsibility surcharge" to ensure that those electricity customers whose consumption led a utility to incur certain costs could not escape these costs by departing bundled service.

There were several particular costs that the Commission sought to address. The first and major costs targeted for recovery were those incurred by the Department of Water Resources (DWR) to procure power for customers at the height of the energy crisis in 2001. DWR bought power and signed high-priced contracts for power in order to avoid blackouts. The costs of this power, however, were not all immediately passed on into rates. Instead, some of these costs were financed through borrowing and had to be paid back over time. These costs were considered to be unique and extraordinary at that time. The Commission sought to insure that all who were provided power during this time bore financial responsibility for the costs incurred. Two elements of the cost responsibility surcharge – the DWR Power Charge element and the DWR Bond Charge element – were designed to recover these costs.

The Commission, however, exempted from these elements of the cost responsibility surcharge those DA customers – accounting for about 2% of load – who never relied on the investor-owned utilities (IOUs) or DWR to provide them with power during this crisis period in 2001. The Commission reasoned:

> A continuous DA customer, as provided in D.02-11-022, that remained on DA both before and after February 1, 2001, shall be excluded from DWR power and bond charges.[5]

These customers were known as "continuous DA customers."

[5] Resolution E-3843 at 6.

Subsequently, however, the Commission directed PG&E, SCE, and San Diego Gas & Electric Company to include in their rules that "continuous DA customers that commit to receive bundled procurement service for a three-year period should retain their continuous DA status and their cost responsibility – of zero – if they resume DA service at the end of their three-year commitment."[6] This was because the cost responsibility at issue then was for DWR power and customers on DA service continuously from before February 1, 2001 through September 20, 2001 were not part of the bundled load on which DWR based its procurement. Thus, if these customers left DA for bundled service and then returned to DA service, they still did not cause DWR to incur any stranded costs.

As a result of this policy, however, there arose a linguistic gap between the plain sense meaning of "continuous DA customer" and the regulatory meaning: A continuous DA customer, for regulatory purposes, could receive bundled service from a utility for a three-year period yet still be called a "continuous DA customer."

Another element of the cost responsibility surcharge, implemented years later, was unrelated to the energy crisis. This element sought to recover costs incurred to serve customers who were part of the "bundle" for which the utility made planning decisions, and subsequently departed utility bundled service. These procurement costs, for reasons not immediately apparent, were called "New World Generation Costs," although they are simply costs of "generation

[6] *Id*. at 9.

from both fossil fueled and renewable resources contracted for or constructed by the investor-owned utilities subsequent to January 1, 2003."[7]

D.08-09-012 established a "vintaging" methodology to calculate a charge to recover the uneconomic or stranded costs that a utility incurred in the years that the customer was part of bundled load to ensure that the utility could meet then-current and future demand. Those departing customers would bear responsibility for those costs incurred as part of the procurement planning to meet their electric service needs.

In justifying the addition of this cost element and its "vintaging" methodology for calculating its size, D.08-09-012 stated:

> However, until these customers return to DA, they are no different from the other bundled customers on whose behalf the IOUs are making procurement related decisions. Until the proper notice is given, the IOUs have no way of knowing if and when such customers will depart. The IOUs therefore properly include the related loads of the potential DA customers in their load forecasts. By doing so, the IOUs are procuring and making procurement commitments on behalf of these customers. As is the case with all other customers, these customers should be subject to the D.04-12-048 NBC [non-bypassable charge] for procurement commitments made on their behalf up until the date they provide notice to the IOUs of their intent to return to DA.[8]

[7] D.08-09-012, footnote 1 at 2.

[8] Application at 5 citing D.08-09-012 at 36.

Ordering Paragraph 4 of D.08-09-012 states:

> Ordering Paragraph 4: Bundled Service customers who are eligible to return to direct access shall not be excluded from having to pay the NBC associated with D.04-12-048.[9]

Although this discussion is clear, Appendix D to D.08-09-012, in summarizing the decision's determination of who is responsible for particular cost elements, contains a cell at the point where the "Direct Access – continuous" row intersects the "New World Generation Costs" column. That cell contains the entry "No" – thereby indicating that continuous DA customers should not be held responsible for "New World Generation Costs." Significantly, this cell contains no footnote citing a Commission decision supporting the cell entry.

The single issue before this Commission is as follows: Should DA customers designated as "continuous direct access customers" (who received power before and after February 1, 2001 directly from Electric Service Providers (ESPs)) and then subsequently obtained power as a bundled customer, if they return to DA service, bear responsibility for costs incurred to plan for their load using the "vintaging" cost methodology adopted in D.08-09-012?

3.1. Positions of Parties

SCE's application argues that those customers for whom a utility has procured power should shoulder the costs of procurement embodied in a "New World Generation Costs" calculated using the vintaging methodology of D.08-09-012. SCE makes its argument through direct citation to the discussion

[9] *Id*. at Ordering Paragraph 4.

and Ordering Paragraphs of D.08-09-012. SCE concludes that there is no support for the entry of "No" in Appendix D. SCE argues:

> … the only reference in D.08-09-012 distinguishing continuous and non-continuous DA customers in any respect is the new world exemption included in Appendix D. SCE respectfully suggests that it is clear from the language in the New World NBC Decision [D.08-09-012] that the Commission intended no exemption for continuous DA customers. … No basis exists, however, for a new world generation exemption, nor was an exemption ever discussed in D.08-09-012.[10]

SCE argues that:

> … a simple correction to prevent such unjustified cost shifting and to properly assign cost responsibility for new world generation costs. The table in Appendix D should be revised by changing the "No" to "Yes" under New Generation charges for continuous DA customers.[11]

SCE also recommends that the following clarifying language be added to Ordering Paragraph 4 in D.08-09-012:

> Continuous DA customers returning to bundled service and then returning to DA service are subject to the vintaging process as adopted herein, and are responsible for new world generation charges applicable to their assigned vintage.[12]

In its response to the Application, PG&E does not oppose SCE's request, but makes two requests. First, PG&E argues that its billing system is complex and:

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[10] Application at 6.

[11] *Id*. at 6.

[12] *Id*. at 7.

> PG&E's billing system is complex and even seemingly limited modifications can require time and resources to implement. Therefore, PG&E requests that if the Commission adopts the modifications to D.08-09-012 requested in the Application, that it allow each of the utilities sufficient time to implement these changes. In PG&E's case, it will need at least 12 months to implement this change.[13]

In addition, PG&E asks that if the changes requested by SCE are adopted that the Commission modifications be "prospective only."[14]

In its response, DRA states that it "supports the application."[15] DRA argues that:

> The "No" box checked in the table in Appendix D to D.08-09-012 appears to be the only authority for the position that continuous-DA customers should be excluded from the new world generation charges, yet this table is inconsistent with the body of the decision itself.[16]

DRA, arguing from a principle of "cost causation" concludes:

> … that continuous-DA customers should be responsible for a fair share of new world generation costs incurred on their behalf. Therefore, DRA supports SCE's request to correct the inadvertent error in Appendix D of D.08-09-012, which will also protect against cost shifting and help maintain bundled customer indifference.[17]

In reply, SCE states that it "agrees with DRA's assessment that the exemption must be inadvertent or else it would be inconsistent with

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[13] PG&E Response at 1.

[14] *Id*.

[15] DRA Response at 1.

[16] *Id*.

D.08-09-012's own cost allocation provisions."[18] SCE also agrees with PG&E that the utilities "should be granted sufficient time to implement any changes required in their billing systems" but notes that the time to make changes "will likely differ."[19] SCE also states that it "agrees with PG&E that any change … should be applied prospectively."[20]

3.2. Discussion and Analysis

There is no controversy concerning this matter, only confusion.

The basic source of the problem is the difference in the plain sense meaning of "continuous-DA customer" and the regulatory meaning of that term. We therefore grant SCE's request for relief but alter the entry in Appendix D of D.08-09-012 to refer to this decision to clarify the policy adopted.

There are two different situations for which the Commission has set policy:

1. Customers who left utility bundled service to obtain DA service before February 1, 2001 and continued on DA service from that time with no break or only a stay on safe harbor for switching between ESPs or related reasons.
2. Customers who left utility bundled service to obtain DA service before February 1, 2001 but who returned to bundled service and then returned to DA service in a manner consistent with Resolution E-3843.

Those customers in situation 1 – customers who left the electric utilities to obtain DA service both before February 1, 2001 and continued on DA with no

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[17] *Id*.

[18] SCE Response at 2.

[19] *Id.* at 3.

[20] *Id*. at 4.

break besides safe harbor – bear no responsibility for the DWR Power Charge element, the DWR Bond Charge element or for the "New World Generation Costs" that were the subjects of D.08-09-012. There is no policy controversy or confusion concerning these customers and D.08-09-012 is clear on that matter.

Concerning customers in situation 2 – customers who left the electric utilities to obtain DA service before February 1, 2001 but who at some point after September 20, 2001 received bundled service from the utility – these customers bear no responsibility for the DWR Power Charge element and the DWR Bond Charge element, but if they return to DA service do bear responsibility for the "New World Generation Costs" – with the responsibility calculated using the "vintaging" methodology adopted in D.08-09-012.

Currently, Ordering Paragraph 4 of D.08-09-012 states:

> 4. Bundled service customers who are eligible to return to direct access shall not be excluded from having to pay the NBC associated with D.04-12-048.

The words of Ordering Paragraph 4 are difficult to understand.

Modifying Ordering Paragraph 4 of D.08-09-012, as proposed by SCE, will clarify the situation. Therefore, we modify Ordering Paragraph 4 as follows:

> Continuous DA customers returning to bundled service and then switching to DA service are subject to the vintaging process as adopted herein, and are responsible for new world generation charges applicable to their assigned vintage.

Concerning Appendix D of D.08-09-12, this decision replaces the "No" contained in the cell at the point where the "Direct Access – continuous" row intersects the "New World Generation Costs" column with a yes and an asterisk ("yes*") and a note that directs the reader to follow the policy determinations in this decision.

Finally, we find that there is merit to PG&E's requests for time to implement the changes, and we permit PG&E, SCE and SDG&E up to 12 months to make the changes to their tariffs and billing systems. In addition, we clarify that these changes will only apply prospectively, from the time that the billing and tariff changes are made.

4. Categorization and Need for Hearing

This decision confirms the preliminary category of the proceeding as quasi-legislative and the hearing designation that there is no need for a hearing.

5. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Timothy J. Sullivan is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Appendix D of D.08-09-012 contains the word "No" in the cell at the point where the column "New World Generation Costs" intersects the row "Direct Access – continuous" thereby indicating that customers who have been on DA continuously do not pay the cost elements associated with the IOU's generation costs incurred to meet bundled demand.

2. The cell at the point where the column "New World Generation Costs" intersects the row "Direct Access – continuous" in Appendix D of D.08-09-012 does not cite a source that justifies the entry.

3. D.08-09-012 established a "vintaging" methodology to calculate the cost obligations that a utility has incurred in the years that the customer was part of bundled load to ensure that the utility could meet then current and future demand.

4. The regulatory category "Direct Access – continuous" contains customers who have received DA service without break from a period prior to February 1, 2001 and those who received DA before February 1, 2001 but who returned to bundled service after September 20, 2001, in a manner consistent with Resolution E-3843 and revised in D.11-12-018.

5. It is reasonable that customers who left utility bundled service of electric utilities to obtain DA service before February 1, 2001 and continued on DA service from that time with no break other than safe harbor should not pay the costs known as "New World Generation Costs."

6. It is reasonable to require any customers who receive bundled service and who return to DA service to pay the non-bypassable charge associated with power procured to meet their needs, as described in D.04-12-048.

7. It is reasonable that customers who left utility bundled service of electric utilities to obtain DA service before February 1, 2001 and who subsequently return to bundled service and then switch back to DA service in a manner consistent with Resolution E-3843, and revised in D.11-12-018, to pay the costs known as "New World Generation Costs" pursuant to the vintaging process adopted in D.08-09-012.

8. A utility's billing system can be complex and even seemingly limited modifications can require time and resources to implement.

9. It is reasonable to permit utilities up to 12 months to implement the changes that would bring their tariffs and billing practices into conformity with the policies adopted in D.08-09-012 and clarified in this decision.

10. It is reasonable that any change in customer rates would be applied prospectively only from the time that the tariffs and billing practices are changed.

11. It is reasonable to categorize this proceeding as quasi-legislative and to find that there is no need for a hearing.

Conclusions of Law

1. A customer who departed utility bundled service of an electric utility to obtain DA service before February 1, 2001 but who subsequently returns to bundled service after September 20, 2001 in a manner consistent with Resolution E-3843, as modified by D.11-12-018, retains the designation of "Direct Access – continuous."

2. Currently, Ordering Paragraph 4 of D.08-09-012 states: "Bundled service customers who are eligible to return to direct access shall not be excluded from having to pay the NBC associated with D.04-12-048."

3. Ordering Paragraph 4 of D.08-09-012 provides that customers who have been part of bundled service who elect to switch to DA service should be subject to a non-bypassable charge for procurement commitments made on their behalf.

4. The word "No" in the cell at the point where the "New World Generation Costs" column intersects the "Direct Access – continuous" row in Appendix D of D.08-09-012 is inconsistent with Ordering Paragraph 4 of D.08-09-012.

5. The Commission has broad authority, consistent with Public Utilities Code Section 1708 to modify decisions that it has adopted.

O R D E R

IT IS ORDERED that:

1. Decision 08-09-012 is modified as follows:
   - Ordering Paragraph 4 is amended to read: Continuous direct access customers returning to bundled service and then returning to direct access service are subject to the vintaging process as adopted herein, and are responsible for new world generation charges applicable to their assigned vintage.
   - The word "No" in the cell at the point where the "New World Generation Costs" column intersects the "Direct Access – continuous" row in Appendix D of Decision 08-09-012 is replaced with a yes and an asterisk ("yes*"). At the bottom of that page, the asterisk should direct readers to this decision for the relevant policy.
2. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall implement the changes needed to bring their tariffs and billing practices into conformity with the clarifications to Decision 08-09-012 adopted in Ordering Paragraph 1 within 12 months of the mailing of this order.
3. All charges resulting from today's decision shall apply prospectively, and only from the time that the tariff and billing charges described in Ordering Paragraph 2 are implemented.
4. The preliminary categorization of quasi-legislative and the determination that hearings are not required are affirmed.
5. Application 11-06-026 is closed.

This order is effective today.

Dated April 19, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners