

Decision 01-09-060 September 20, 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)

INTERIM OPINION SUSPENDING DIRECT ACCESS

1. Summary

This decision suspends the right to enter into direct access contracts or agreements after September 20, 2001. This order is effective today.

2. Background

In California's restructured electricity market, customers may subscribe to "bundled service" from the utility distribution company or "direct access" service from an electric service provider (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 to bundled customer status. The utility is the electricity provider of last resort. The ability to leave the utility system and return may cause substantial fluctuations in the amount of energy the utility must purchase (or has 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.”

3. Discussion

The Legislature has directed this Commission to suspend the right of retail end-use customers to acquire direct access service until DWR no longer procures power for the retail end-users. The legislative direction is clear. The suspension of the right to acquire direct access service should apply to Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E). 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) with funds from 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 acquire direct access service will assist the Administration and the State Treasurer in proceeding with the bond transaction that they are currently undertaking. Suspending the right to acquire direct access service 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 the ability to acquire direct access service will provide DWR with a stable customer base from which to recover the cost of the power it has purchased and continues to purchase.

The statute gives the Commission some discretion as to when the right to acquire direct access service should be suspended. However, the Commission is statutorily required to suspend that right. Moreover, as noted above, suspending the right to acquire direct access service 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.

4. Comments on the Draft Decision

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 in which it requests authorization to temporarily suspend payment of the Power Exchange (PX) credit to ESPs, 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.¹ 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.

The need to implement the Legislature's directive is underscored by recent events. In May of this year, we enacted a dramatic rate increase for PG&E and SCE, affecting customers in all classes. The utilities have issued bills reflecting

¹ Parties who filed comments on the June 15 draft order are: AES NewEnergy, Inc., Alliance for Retail Markets (AReM) and Western Power Trading Forum (WPTF), Association of Bay Area Governments Publicly Owned Energy Resources (ABAG), Association of California Water Agencies (ACWA), California Industrial Users, California Large Energy Consumers Association (CLECA), California Manufacturers & Technology Association, Federal Executive Agencies (FEA), Green Mountain Energy Company, PG&E, SDG&E, San Francisco Bay Area Rapid Transit District, SCE, The Utility Reform Network (TURN) and the University of California and California State University.

The California Retailers Association, Calpine Corporation, Golden State Power Cooperative and New West Energy Corporation, Inc. filed petitions to intervene and provided comments on the draft decision and alternate draft decision.

The Kroger Co. filed a motion for leave to file comments on the draft decision and alternate draft decision. Kroger is not a party to this proceeding.

On August 14, AReM and WPTF's filed an emergency motion to file supplemental reply comments concerning the implementation of an interim direct access continuation program. The City of Cerritos filed a petition to intervene and a response to AReM/WPTF's August 14th supplemental comments. The County of Los Angeles filed a response to the AReM/WPTF supplemental comments.

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.

Under these circumstances, customers might be tempted to switch from utility bundled service to electric service providers in order to avoid some of the impact of higher rates and take advantage of lower spot market prices. It is not in the public interest to permit such behavior. All ratepayers benefit from the State's actions to ensure reliable electricity service and, therefore, all ratepayers should contribute to the effort to pay down the unprecedented debt incurred by the State to help weather the energy crisis.

A revised draft decision was mailed for further comment on August 27, 2001.² In the cover letter attached to the August 27 draft decision, the Chief

² Comments were received on the draft decision mailed on August 27, 2001 from the following parties: AES NewEnergy, AReM and WPTF, ACWA, the California Farm Bureau Federation, the California Industrial Users and California Large Energy Consumers Association, the California Manufacturers & Technology Association, the California Retailers Association, the City of Cerritos, FEA, Golden State Power Cooperative, New West, The Newark Group, Inc., The Office of Ratepayer Advocates, PG&E, SDG&E, Sempra Energy Solutions, Sierra Pacific Industries, SCE, Strategic Energy L.L.C., The University of California and California State University and TURN.

The California Department of Water Resources and AMDAX.com also submitted comments. Neither are parties to this proceeding.

Commonwealth Energy Corporation, the City of San Marcos and the County Sanitation Districts of Los Angeles County each filed petitions to intervene in this proceeding. They also filed comments on the August 27 draft decision.

Administrative Law Judge asked parties to comment on (1) whether AB 1X suspends the entire direct access program, including all transactions under the program, (2) how the Commission can comply with AB 1X 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.

In their responses to the Chief ALJ's first and second questions, many parties refer to Section 80110 of AB 1X where it states that, "...the right of retail end use customers ... *to acquire* service from other providers shall be suspended ... " (Emphasis added.) They believe that "to acquire," indicates that suspension applies to prospective, new direct access service and is not intended to suspend the entire program. Parties also question the legality of prohibiting current direct access customers from renewing existing contracts and agreements. In this decision, we only order the suspension of direct access as of the effective date of this decision and we reserve for a future decision how, if at all, we should effect contracts executed or agreements entered into before the effective date of this decision.

The Chief ALJ's third question raises concerns by numerous parties regarding suspension of direct access effective July 1, 2001. In particular, some parties have questioned the legality of retroactive suspension. However, if we were to wait until we fully analyzed all comments before issuing a decision on any aspect of the suspension of direct access, we would likely be faced with the argument that suspension should be deferred until the date of this later decision.

Some parties also have questioned the need to suspend direct access at this time. They argue that the threat of rolling blackouts has become remote, the

wholesale price of electricity has decreased significantly, and, therefore, an emergency no longer exists. We disagree. While we have seen relief with respect to certain conditions, we cannot at this time declare that the risks to California electricity consumers have been eliminated, nor can we be lulled into a sense of complacency. As discussed above, repayment of the State's General Fund will be accomplished through the issuance of DWR Power Supply Revenue bonds at investment grade. A stable customer base is required to ensure a continuous revenue stream to repay the revenue bonds. Furthermore, as explained above, now is the time to prevent customers from switching from utility bundled service to electric service providers in order to shift to others some of the impact of higher rates. Given these considerations, it would not be in the public interest for the Commission to delay action to suspend direct access service beyond this time.

Accordingly, we issue this interim order in which we suspend the right to enter into new contracts or agreements for direct access effective today. This decision prohibits the execution of any new contracts for direct access service, or the entering into, or verification of, any new arrangements for direct access service pursuant to Public Utilities Code Sections 366 or 366.5, after the effective date of this order.³ All other pending issues concerning direct access contracts or agreements executed before today remains under consideration by the Commission and will be resolved in a subsequent decision. In other words, effective today, no new contracts or agreements for direct access service may be

³ All references in this order regarding the "suspension of the right to acquire direct access service" include the execution of any new contracts, agreements and arrangements for direct access service, or the verification of such contracts, agreements or arrangements pursuant to Public Utilities Code Sections 366 or 366.5.

signed; the effect to be given to contracts executed or agreements entered into before the effective date of this order, including renewals of such contracts or agreements, will be addressed in a subsequent decision. We put all those concerned about these matters on notice that we may modify this order to include the suspension of all direct access contracts executed or agreements entered into on or after July 1, 2001. Parties' comments regarding retroactive suspension, including the July 1, 2001 date, will be addressed by a subsequent decision.

We direct on the utilities not to accept any direct access service requests (DASRs) for any contracts executed or agreements entered into after the effective date of this decision. Steps that the utilities might take to ensure compliance with this order may include obtaining from each energy service provider a list of relevant identifying information for those customers that have entered into timely contracts, but for whom DASRs have not been submitted. We direct the utilities to revise any information disseminated to customers that describes direct access to explain that direct access service has been suspended. The utilities should submit these revisions to the Public Advisor's office and the Energy Division for review. Within 14 days of the effective date of this decision, each utility should inform the Director of the Energy Division of the steps it has taken to comply with this order.

Several groups filed petitions to intervene in order to file comments submitted with their petitions. Because we believe no party will be prejudiced, we grant these petitions to intervene. AReM/WPTF's emergency motion to file supplemental comments is granted. ACWA and AReM/WPTF filed motions on September 18, 2001 to postpone the Commission's consideration of the suspension of the right to acquire direct access service. They believe that new

information from the State Treasurer and the California Senate's Concurrent Resolution No. 46 indicate that there is no need to suspend direct access at this time. Again, we are concerned that delaying the suspension of direct access service would allow customers who switch to direct access to shift the burden of higher rates to customers who continue to receive utility bundled service. Therefore, we deny the motions of ACWA and AReM/WPTF.

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.

Conclusions of Law

1. The determinations we make today should apply to PG&E, SDG&E and SCE.
2. Pursuant to Water Code Section 80110, the right to acquire direct access service should be suspended as of the date of this order.
3. The execution of any new contracts for direct access service, or the entering into, or verification of, any new arrangements for direct access service pursuant to Public Utilities Code Sections 366 or 366.5, after the effective date of this order, is prohibited.

4. The effect to be given to contracts executed, agreements entered into or arrangements made for direct access service before today, including renewals of such contracts, as well as comments of the parties will be addressed in a subsequent decision.

5. We specifically reserve the right to modify this order to include the suspension of all direct access contracts executed, agreements entered into or arrangements made on or after July 1, 2001.

6. The utilities should modify any information disseminated to customers that describes direct access service to explain that the right to acquire direct access service has been suspended. Revisions are subject to review by the Public Advisor's Office and Energy Division.

7. The utilities should not accept any DASRs for any contracts executed or agreements entered into after the effective date of this decision.

8. Within 14 days of the date of this order, each utility, by letter, should inform the Director of the Energy Division of the steps it has taken to ensure that no direct access service requests are accepted for any contracts executed or agreements entered into after the effective date of this decision.

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

10. Since no party will be prejudiced, all petitions to intervene and all motions to file late filed and supplemental comments that have been explicitly noted by this order should be granted.

11. ACWA's and AReM/WPTF's motions to postpone consideration of the suspension of the right to acquire direct access service are denied because a delay of the suspension would allow customers who switch to direct access to shift higher rates to customers who continue to receive utility bundled service.

A.98-07-003 et al. ALJ/RAB/sid ****

INTERIM ORDER

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. All petitions to intervene and all motions to file late filed and supplemental comments are granted.
3. The motions of ACWA and AReM/WPTF to postpone consideration of the suspension of the right to acquire direct access service are denied.
4. The execution of any new contracts, or the entering into, or the verification of any new arrangements for direct access service pursuant to Public Utilities Code Sections 366 or 366.5, after September 20, 2001, is prohibited.
5. PG&E, SDG&E and SCE shall notify their customers that the right of retail end users to acquire direct access service from other providers, except the Department of Water Resources, is suspended effective as September 20, 2001.
6. PG&E, SDG&E and SCE shall modify any information disseminated to customers that describes direct access service, subject to review by the Public Advisor's office and Energy Division, to explain that the right to acquire direct access service has been suspended.
7. PG&E, SCE and SDG&E shall not accept any direct access service requests for any contracts executed or agreements entered into after September 20, 2001.
8. Within 14 days of the effective date of this order, PG&E, SDG&E and SCE, by letter, shall inform the Director of the Energy Division of the steps they have taken to ensure that no direct access service requests are accepted for any contracts executed or agreements entered into after September 20, 2001.

9. This phase of the proceeding remains open for further consideration of comments of the parties, including the effect to be given to contracts executed or agreements entered into before the effective date of this order, as well as renewals of any contracts or agreements.

This order is effective today.

Dated September 20, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

I will file dissent.

/s/HENRY M. DUQUE
Commissioner

I will file a dissent.

/s/ RICHARD A. BILAS
Commissioner

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Commissioners Henry M. Duque and Richard A. Bilas, dissenting:

One could say that this order is consistent with the Administration's present third world country mentality. We are punishing the very consumers and providers who made a commitment to ensuring electric restructuring did work by adding a demand retail component to cure the dysfunctions in the wholesale market.

We are not convinced that the Department of Water Resources (DWR) bond ratings depend on killing direct access. This notion is a scare tactic and a smoke screen. Direct access comprises such a small percentage of overall demand that it cannot reasonably be seen to be a threat to the sale of the bonds. Direct Access should be seen as a benefit to DWR. It would decrease the amount of the utilities net short obligations and relieve DWR from its power purchasing responsibilities sooner.

Something else is going on here. We think that the DWR does not want direct access because if the public is presented with alternatives, it will make DWR's purchasing mistakes abundantly clear. The Commission should be holding hearings to test the assertions being made by DWR, Finance and the Treasurer. Instead, the Commission is making an ill informed, panicked decision to act now and study the repercussions later.

DWR and the bonds should not be threatened by direct access if DWR is making prudent energy purchases. Only if DWR's contracts are too expensive, relative to market, will customers seek shelter in lower direct access prices. Indeed, retaining direct access as a way to send price signals to consumers may be the only way to place pressure on DWR to make more prudent purchases. This is a very important consideration since AB 1X prevents us from engaging in any prudency review of the DWR costs to be passed through to ratepayers in order to repay the bonds. If there is no yardstick, how can anyone measure DWR performance? The answer is, one can't, unless SB 18xx is signed into law.

We think that additional review of these issues, before suspending direct access, would have produced a more sound decision in the long run.

For these reasons we must respectfully dissent.

/s/ HENRY M. DUQUE

Henry M. Duque
Commissioner

/s/ RICHARD A. BILAS

Richard A. Bilas
Commissioner

September 20, 2001