

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

Order Instituting Rulemaking to Integrate and Refine
Procurement Policies and Consider Long-Term
Procurement Plans.

R.10-05-006
(Filed May 6, 2010)

**COMMENTS OF THE DIRECT ACCESS CUSTOMER COALITION
ON PRELIMINARY SCOPING MEMO**

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June 4, 2010

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The Direct Access Customer Coalition (“DACC”)¹ respectfully submits these comments, in accordance with the Order Instituting Rulemaking (“OIR”) in Rulemaking (“R.”) 10-05-006, filed May 6, 2010, which set this date for submission of opening comments on the Preliminary Scoping Memo.

I. THE COMMISSION SHOULD DELAY NO LONGER AND ADDRESS “SYSTEM VS. BUNDLED” LOAD IN TRACK III

The last rulemaking addressing long-term procurement plans (“LTPP”) failed to take any action on Phase II of that proceeding, R.08-02-007.² As highlighted in the OIR,³ Phase II of R.08-02-007 included an issue critical to all direct access customers:

- Considering whether and to what extent to adopt refinements to policies distinguishing system versus bundled resource needs, including a methodology that allocates the cost of new generation to system and bundled customers.⁴

¹ DACC is a regulatory alliance of commercial, industrial and governmental customers who have opted for direct access for some or all of their loads.

² OIR, p. 7.

³ OIR, p. 6.

⁴ R.08-02-007, p. 11.

Resolution of this issue is essential to establish cost causation, ensure proper allocation of costs and benefits between direct access and bundled customers, and identify and eliminate any existing cross subsidies.

This issue originates because the Commission has thus far determined that all new generation either procured or constructed by the utilities is eligible for the cost allocation mechanism (“CAM”) adopted in D.06-07-029. The CAM requires cost recovery from all customers, bundled and direct access alike, which has created significant concerns for direct access customers.

Indeed, the Preliminary Scoping Memo in R.08-02-007 specifically found that the current CAM approach may lead to “cross subsidies” between direct access and bundled load, which should not be tolerated.⁵ That Preliminary Scoping Memo also provided guidance on information to be provided and tasks to be accomplished in addressing this issue.⁶ DACC urges the Commission to address its unfinished business and move swiftly to resolve this issue in this proceeding. DACC does not believe that this issue must be resolved before the utilities begin development of their bundled procurement plans in Track 2, provided those plans exclude direct access load growth, as discussed in the next section,.

II. THE COMMISSION SHOULD DIRECT UTILITIES TO EXCLUDE DIRECT ACCESS LOAD GROWTH FROM BUNDLED LOAD FORECASTS IN THEIR TRACK 2 PROCUREMENT PLANS BY USING LOAD FORECASTS PREPARED BY THE CALIFORNIA ENERGY COMMISSION

In past LTPP proceedings, utility load forecasts have engendered significant controversy. A key issue raised by direct access supporters was the extent to which the utilities included

⁵ R.08-02-007, Appendix A, p. A-27.

⁶ R.08-02-007, Appendix A, p. A-28.

reasonable projections of direct access load migration. Without such reasonable projections, the utilities could over-procure and seek associated stranded costs.⁷

Moreover, the concern about utilities' under-forecasting direct access load in their planning projections is not merely a hypothetical issue. In Phase I of the PG&E General Rate Case (A.09-12-020) PG&E shows direct access load declining both in absolute and percent-of-load served terms.⁸ From 2009 to 2011, PG&E's forecast shows direct access load decreasing by 448,124 MWh per year, or a decrease from 6.68% of total load to 6.07% of total load. The passage and implementation of California Senate Bill ("SB") 695 allows for a partial re-opening of direct access to new customers. Decision 10-03-022 directed that PG&E phase in an additional 3,946 GWh of direct access load over four years (2010-2013). Given the phase-in schedule dictated by D.10-03-022, 70% of that 3,946 GWh, or 2,762.2 GWh, can be added by 2011.⁹ If this materializes, it means that, rather than decreasing by 448,124 MWh from 2009 to 2011, it is more reasonable to forecast that DA load will increase by an estimated 2,762,200 MWh (not adjusted for differences in load factor of direct access customers). Thus, a forecast that reflected the SB 695 mandated DA reopening would suggest that 9.76% of PG&E system-wide demand would be served by direct access in 2011 rather than the 6.07% suggested by PG&E.

The Commission has previously directed the utilities to adopt the load forecasts developed by the California Energy Commission ("CEC") in the most recent Integrated Energy Policy Report ("IEPR")¹⁰ and DACC urges the Commission to continue this policy in R.10-05-

⁷ D.07-12-052, p. 32.

⁸ A.09-12-020, workpapers supporting PG&E-8, pp. WP 4-3 and WP 4-5.

⁹ D.10-03-022, Appendix 2.

¹⁰ D.07-12-052, Finding of Fact 12, p. 272.

006. In fact, the CEC’s 2009 IEPR specifically addressed the issue of forecasts for direct access vs. bundled load and will soon produce a “supplemental analysis that disaggregates the 2009 IEPR planning area forecasts into bundled and direct access segments.”¹¹ The Commission should require the utilities to use the CEC’s disaggregation of bundled system load as the foundation for their bundled procurement plans in Track 2 of this proceeding and to use the 2009 IEPR results for their proposed system plans.

III. THE COMMISSION MUST CLARIFY RULES FOR DETERMINING WHEN CUSTOMERS “BENEFIT” AND ARE, THEREFORE, SUBJECT TO THE CAM

DACC has long been concerned that the utilities have attempted to apply the CAM to any and all procurement regardless whether the Commission has determined that *all customers* have “benefited.” When considering modifications to the CAM, including those required by SB 695,¹² DACC urges the Commission to clarify the rules for determining which customers are *benefiting* from a particular utility procurement, and are, therefore, required to *pay* for the procurement.

Further, DACC disagrees that SB 695 “eliminates the CAM election process,” as suggested in the OIR.¹³ While SB 695 made the use of an energy auction voluntary,¹⁴ it did not address in any way the Commission’s requirement in D.06-07-029 that the utilities make a CAM election at the time they seek contract approval.^{15,16}

¹¹ 2009 Integrated Energy Policy Report, Final Committee Report, California Energy Commission, December 2009, p. 50.

¹² OIR, Track 3, Issue 1, p. 14.

¹³ OIR, p. 14.

¹⁴ Public Utilities Code, §365.1(c)(2)(B).

¹⁵ D.06-07-029, pp. 60 and 62.

¹⁶ As clearly explained in R.06-02-013, not requiring the utilities to make a CAM election at the time contract approval is sought creates an opportunity for strategic selection down the road; see D.07-12-052, p. 120.

Moreover, SB 695 requires the Commission to make a *determination* that the procurement is “*needed to meet system or local reliability needs for the benefit all customers*” in a utility’s service area, in order for the Commission to authorize a utility to employ the CAM (emphasis added).¹⁷ This limits the application of the CAM. In addition, the “system vs. bundled” load issue described above, with the potential for unacceptable cross-subsidies, is directly relevant. For example, the CAM would not apply for procurement needed to meet the load growth attributed solely to utility bundled load. The CAM also should not apply if the procurement is to meet specific local needs that do not benefit “all customers,” as required by SB 695. Accordingly, DACC urges the Commission to include in Track 3 of this proceeding consideration of clear guidelines specifying under what conditions the CAM will apply to future utility procurement.

IV. CONCLUSION

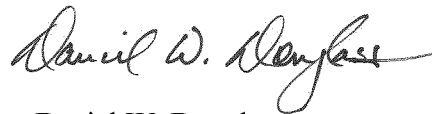
DACC respectfully requests that the Commission include the following issues in R.10-05-006:

- Address in Track III of this proceeding a key, unresolved issue from Phase 2 of R.08-02-007 of significant concern to direct access customers: consideration of policies to distinguish system from bundled resource needs and a methodology to allocate the costs of new generation between system and bundled customers.
- Direct the utilities to exclude direct access load growth from their forecasts of bundled customer load for Track II and to use the 2009 IEPR load forecasts prepared by the CEC for their Track 2 bundled and system procurement plans.

¹⁷ Public Utilities Code, §365.1(c)(2)(A).

- Include in Track III the consideration of “necessary modifications” to the CAM identification of clear guidelines specifying the conditions under which the CAM will apply to future utility procurement.

Respectfully submitted,



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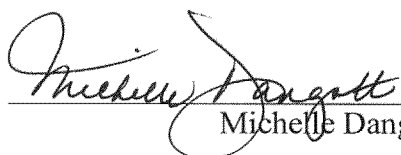
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June 4, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *Comments of the Direct Access Customer Coalition on the Preliminary Scoping Memo* on all parties of record in *R.10-05-006 and R.08-02-007* by serving an electronic copy on their email addresses of record and, for those parties without an email address of record, by mailing a properly addressed copy by first-class mail with postage prepaid to each party on the Commission's official service list for this proceeding.

This Certificate of Service is executed on June 4, 2010, at Woodland Hills, California.



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