

**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)

**JOINT RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), PACIFIC
GAS AND ELECTRIC COMPANY (U 39-E), AND SAN DIEGO GAS & ELECTRIC
COMPANY (U 902-E) TO MOTION OF VARIOUS PARTIES TO CREATE A SEPARATE
EXPEDITED PHASE TO REVIEW THE METHOD FOR DETERMINING NON-
BYPASSABLE DEPARTING LOAD CHARGES**

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Dated: **October 8, 2010**

JOINT RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) TO MOTION OF VARIOUS PARTIES TO CREATE A SEPARATE EXPEDITED PHASE TO REVIEW THE METHOD FOR DETERMINING NON-BYPASSABLE DEPARTING LOAD CHARGES

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I. INTRODUCTION

Pursuant to Rule 11.1 of the California Public Utilities Commission’s Rules of Practice and Procedure, Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) (collectively, the IOUs) file this joint response to the September 23, 2010 joint motion (“Joint Motion”) of various parties requesting the creation of a separate phase in this proceeding to review the method adopted by the Commission to determine non-bypassable departing load charges.¹ For the reasons discussed below, the IOUs request that any effort to examine the method for determining non-bypassable departing load charges be done in conjunction with the resolution of the issues in Phase III of this proceeding – rather than in a separate phase – and that evidentiary hearings be promptly scheduled for Phase III.

¹ See Motion of Direct Access Customer Coalition, California State University, Alliance for Retail Energy Markets, City and County of San Francisco, Marin Energy Authority, San Joaquin Valley Power Authority, California Municipal Utilities Association, Energy Producers and Users Coalition, California Large Energy Consumers Association, and California Manufacturers & Technology Association to Create a Separate Phase in this Proceeding to Review and Address the Flaws in the Methodology to Determine Non-Bypassable Departing Load Charges, filed September 23, 2010 in this proceeding.

II. DISCUSSION

The Joint Motion asserts that the method adopted by the Commission in D.06-07-030 (as modified by D.07-01-025, D.07-01-030) for calculation of non-bypassable charges requires modification to account for various costs included in the IOUs' calculations of non-bypassable charges, which the Joint Parties apparently believe are recoverable in the market or "bankable" when departing load migrates from the IOUs' procurement services to Direct Access (DA), Community Choice Aggregation (CCA) or self-generation.² The Joint Motion requests expedited resolution of the matter based on an unsupported claim by the Joint Parties that the non-bypassable departing load charges are anti-competitive.³

The IOUs question the Joint Parties' claim that the non-bypassable departing load charges are anti-competitive in light of the Joint Motion's acknowledgment that the DA reopening has been met with "exceptionally higher customer interest, with all available capacity subscribed within approximately one minute of the times established for customers to file notices of intent" to switch to DA.⁴

We further disagree with the claim that the method is "flawed."⁵ The current method for determining non-bypassable charges (also referred to herein as the "method for calculating the indifference rate") is the product of Commission decisions and a multi-party public Working Group that labored for many years to reconcile the various interests of stakeholders in the indifference rate calculation. At the time the indifference rate calculation methodology was adopted, it reflected the consensus view of the various stakeholders, which by definition involved some degree of compromise by all parties on the various issues. As such, the method for calculating the indifference rate is not "flawed," but rather the decision of the Commission based on the balanced record, including input by the Working Group in 2003-06, when the method was developed and refined.

² The Joint Motion (pp. 6-7) asserts the need to include the value of renewable resources, CAISO services, and the value of the delivery profile of the resources.

³ See Joint Motion, pp. __.

⁴ Joint Motion, p. 8.

⁵ See *id.*, p. 5.

Nevertheless, the IOUs do not oppose a review in this proceeding of the issues raised by the Joint Motion relating to the method for determining non-bypassable departing load charges to ensure that it continues to appropriately promote bundled customer indifference to departing load. However, we disagree that a separate phase should be established to examine the matter. Rather, the matter should be examined in conjunction with the resolution of the other issues in this Phase III. Additionally, evidentiary hearing should be scheduled to resolve the Phase III issues.

A. **The Method for Determining Non-Bypassable Departing Load Charges Should be Examined in Conjunction with the Issues in this Phase III**

The issue raised by the Joint Motion regarding the method for determining non-bypassable departing load charges is intricately intertwined with the issues being examined in Phase III of this proceeding, specifically the DA switching rules, the Transitional Bundled Service (TBS) rates, and the bond requirement for Energy Service Providers (ESPs) and Community Choice Aggregators (CCAs) as set forth in Section 394.25(e) of the California Public Utilities (P.U.) Code.

For example:

- The TBS rate, which DA or CCA customers may opt onto during the advance notice period for voluntarily returning to IOU bundled procurement service, does not include a proxy for renewable portfolio standards (RPS) costs, even though the IOUs are responsible for RPS compliance for customers on TBS. The reason TBS includes no RPS costs is that customers on TBS continue to pay their Cost Responsibility Surcharge (CRS), which includes the costs of renewable resources in their vintaged portfolio. Thus, to the extent the method for establishing the indifference rate were to include an adder to the Market Price Benchmark for RPS costs (as the Joint Motion appears to advocate), the TBS rates would likewise have to include an adder for RPS costs.

- The method for determining the CCA bond, recommended in a multi-party settlement filed in 2009 and adopted in a recent Proposed Decision,⁶ relies on the Market Price Benchmark, a key component of the indifference rate calculation for setting non-bypassable departing load charges. To the extent the MBP is modified, the method for determining the bond calculation may also need to be modified. The IOUs advocate applying the same method for calculating the CCA bond (as appropriate) to the ESP bond obligations under P.U. Code Section 394.25(e).
- With regard to the DA switching rules, some parties in this Phase III have advocated relaxing these rules to allow departing load to freely migrate to and from the IOUs' procurement service with little to no advance notice or minimum stay on bundled portfolio service (BPS). How this issue is ultimately resolved is relevant to the method for determining the indifference rate for departing load, because the more lax the DA switching rules, the less appropriate various adders to the Market Price Benchmark may be.

Accordingly, any effort to examine the claims by the Joint Motion regarding the ongoing appropriateness of the method for determining non-bypassable departing load charges should be undertaken in conjunction with the resolution of the issues in this Phase III. In the IOUs' view, it makes no sense to resolve the DA switching rules, TBS, and bond issues, only to subsequently seek to modify the indifference rate calculation as requested by the Joint Motion in a manner that may skew the balance of the various interests ultimately struck in resolving the Phase III issues.

B. Evidentiary Hearings Should be Scheduled for this Phase III

The IOUs request that evidentiary hearings be scheduled for this Phase III proceeding regarding the issues raised by the Joint Motion. Although parties have been engaged in Working Group discussions to seek consensus on the various issues, there has been little (if any) progress

⁶ See Proposed Decision of Administrative Law Judge Yip-Kikugawa, issued September 8, 2010 in R.03-10-003.

made on the DA switching rules, TBS and the ESP bond issues.⁷ In part, the lack of progress is due to fundamental differences on the material facts.

To the extent Phase III is revised to include an examination of the issue raised by the Joint Motion regarding the method for determining non-bypassable departing load charges, the complexity and fact-intensity of the issues will increase and enhance the need for evidentiary hearings. Parties can continue to seek settlement of some or all of the issues; however, having a finite timeframe in which to do so prior to hearings will, in the IOUs' view, benefit settlement efforts because it mitigates the risk that settlement efforts will not drag in perpetuity with little to no progress, and ensures that these issues will be resolved within a reasonable timeframe. Given the plea for expediency in the Joint Motion, having a deadline for settlement efforts and a date-certain for evidentiary hearings is reasonable.

III. CONCLUSION

Based on the foregoing, to the extent the Commission intends to re-examine the method for determining non-bypassable departing load charges as requested by the Joint Motion, the IOUs request that it be done in conjunction with the resolution of issues in Phase III of this proceeding – rather than in a separate phase – and that evidentiary hearings be promptly scheduled for Phase III.

Respectfully submitted,

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⁷ The IOUs believe that some progress has been made on process improvements and the disposition of ESP procurement requirements under SB 695.

/s/ Kim Hassan

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October 8, 2010

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **JOINT RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) TO MOTION OF VARIOUS PARTIES TO CREATE A SEPARATE EXPEDITED PHASE TO REVIEW THE METHOD FOR DETERMINING NON-BYPASSABLE DEPARTING LOAD CHARGES** on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address.
First class mail will be used if electronic service cannot be effectuated.

Executed this **8th day of October, 2010**, at Rosemead, California.

/s/ Andrea Moreno
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