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)

REPLY TO PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO THE MOTION OF COMMERCIAL ENERGY OF CALIFORNIA REQUESTINGANORDERTOSHOWCAUSE

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For Commercial Energy of California

October 22, 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)

REPLY TO PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO THE MOTION OF COMMERCIAL ENERGY OF CALIFORNIA REQUESTINGANORDERTOSHOWCAUSE

Pursuant to Administrative Law Judge Pulsifer's email granting Commercial Energy of California's ("Commercial Energy") request to file this Reply (dated October 18, 2010) and Rule 11.1 of the Commission's Rules of Practice and Procedure, Commercial Energy hereby submits this Reply to Pacific Gas and Electric Company's (PG&E) Response to Commercial Energy's Motion Requesting an Order Requiring PG&E to Show Cause why it should not be deemed out of compliance with the Commission's Decision ("D".) 10-03-022, regarding implementation of the reopening of Direct Access ("DA"). Commercial Energy believes that PG&E has not complied with D.10-03-022 by: (1) improperly allowing DA-eligible customers to submit 6-month notices to switch to DA between the effective date of D.10-03-022 and the effective date of the DA Open Enrollment Window ("OEW"); and (2) incorrectly calculating the amount of DA available for 2010.

In response to Commercial Energy's Motion Requesting an Order to Show Cause ("Motion"), PG&E argues that PG&E's 2010 load limit is consistent with the requirements of D.10-03-022, that the language of D.10-03-022 and PG&E's Rule 22.1 support PG&E's actions, and that the Commission's Energy Division reviewed and confirmed PG&E's compliance with the Commission's requirements. PG&E's arguments are inconsistent and unsupported by the Commission's implementation of SB 695.

More importantly, PG&E's Response provides conclusive evidence that Commercial Energy is entitled to the relief it seeks. PG&E cannot have it both ways. If, as PG&E claims, the SB 695 DA protocols adopted by the Commission became effective on April 11, 2010, the load of the DA eligible customers it permitted to file DASRs prior to April 11, 2010 cannot count toward the available DA load to be allocated during the first OEW. In that case, PG&E should have updated the DA load available for the OEW. However, if the SB 695 protocols went into effect when D.10-03-022 became effective, all DA eligible preferences were extinguished, and PG&E should not have allowed those customers to file DASRs in advance of the OEW. Whichever legal analysis of the implementation of SB 695 prevails, PG&E has misapplied the statute and its own tariffs.

I. PG&E'S CALCULATION OF ITS 2010 DA LOAD LIMIT IS NOT CONSISTENT WITH D.10-03-022 AND IS INCONSISTENT WITH ITS OWN ARGUMENTS.

In its response, PG&E argues that its calculation of its 2010 DA load limit is consistent with D.10-03-022 because it used the 2010 DA load cap provided in the Decision and calculated the cap as provided in its tariff.[1] Neither the tariff nor the load cap set forth in the Decision take into consideration PG&E's continued acceptance of 6-month notices through April 11, 2010. The Decision does, however, include language providing for publicly-available information to be updated by the utilities, including information regarding changes in usage to determine the DA load availability.[2] This language indicates that PG&E should have recalculated its baseline and 2010 load limit rather than simply relying on the numbers set forth in the Decision, which were based on data collected in late 2009.

[1] Pacific Gas and Electric Company's Response to Commercial Energy of California's Motion Requesting an Order to Show Cause, p. 5 (October 12, 2010).
[2] D.10-03-022, Appendix 2, pgs. 6-7.

Furthermore, PG&E argues that the effective date for the reopening of DA under SB 695 was April 11, 2010.[3] Under PG&E's own argument those customers who enrolled in DA prior to April 11th should not have counted toward the 2010 DA load limit because they enrolled prior to the reopening of DA. It is fundamentally inconsistent, and simply nonsensical, for PG&E to argue that customers who admittedly enrolled *prior* to the DA reopening should count toward the load limit established in D.10-03-022 for the DA reopening. Customers who enrolled prior to April 11th should have counted towards PG&E's baseline amount of DA *or* all customers should have been prohibited from enrolling in DA except through the OEW and been counted towards the load available for 2010. D.10-03-022 carefully considered the phase-in of expanded DA and the annual percentages associated with each phase. PG&E significantly undermined this aspect of the Decision by calculating its 2010 load limit in a manner that substantially diminished the amount of load available for 2010.

II. THE LANGUAGE OF D.10-03-022 AND SB 695 DO NOT SUPPORT PG&E'S ACTIONS.

PG&E cites language in D.10-03-022 which states that "DA remains suspended, *except as provided by this decision implementing SB 695*. Existing rules and processes currently in place for DA service shall remain in place, *except for changes specified herein as necessary to implement the provisions of SB 695*."[4] PG&E cites this language to support its continued acceptance of 6-month notices to switch between the effective date of the Decision (March 15, 2010) and April 11, 2010 (the effective date of the OEW). This language does not justify PG&E's actions. Rather, this language makes clear that D.10-03-022 implements the provisions of SB 695 (Public Utilities Code section 365.1), which, as discussed in detail in Commercial Energy's Motion,

[3] PG&E Response, p. 2.
[4] D.10-03-022, p. 2 (emphasis added).

do *not* provide for separate enrollment procedures that favor so-called "existing" DA eligible customers over other customers.

III. PG&E DID NOT PROVIDE SUFFICIENT INFORMATION FOR PARTIES TO DETERMINE THE POTENTIAL IMPACT OF ITS ACTIONS.

PG&E further argues that its Tariff Rule 22.1, which implements D. 10-03-022, explicitly permits the continued acceptance of 6-month notices through April 11, 2010 and that Commercial Energy had the opportunity to protest the Advice Letter after it was filed on April 2, 2010.[5] Until PG&E filed its Advice Letter, on April 2, 2010, it was not clear that PG&E was continuing to accept 6-month notices and would continue to do so through April 11th.[6] In addition, PG&E's intent to count customers who submitted 6-month notices prior to April 11th toward the 2010 DA load limit was not evident from the Advice Letter filing. The implications of PG&E's actions were not disclosed to Commercial Energy or any other party until the release of the Energy Division's report on the utilities' implementation of SB 695 (Status Report) on August 2, 2010, which revealed that PG&E's load limit for 2010 was significantly lower than the level estimated in D.10-03-022.[7]

IV. ENERGY DIVISION'S STATUS REPORT ADDRESSES ADMINISTRATION OF THE NOTICE OF INTENT PROCESS, NOT THE SPECIFIC CONCERNS RAISED BY COMMERCIAL ENERGY IN ITS MOTION.

Finally, PG&E argues that the Energy Division's Status Report confirmed PG&E's compliance with D.10-03-022.[8] The purpose of the Status Report, as stated by PG&E itself, was to determine the fairness of the utilities' administration of the Notice of Intent (NOI) process. PG&E states that Energy Division's conclusion that the utilities fairly administered the NOI process

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[5] PG&E Response, p. 2-3.
[6] PG&E's Advice Letter instructed parties wishing to protest the Advice Letter to do so by April 22, 2010. The OEW occurred on April 16, 2010.
[7] Status Report on the Results of the Energy Division's Review of the Utilities' Senate Bill 695 Implementation for 2010 per D.10-03-022 (updated August 2, 2010).
[8] PG&E Response, p. 4.

implies that its acceptance of 6-month notices through April 11th was appropriate. The Status Report acknowledges that "Grandfathered DA-Eligible customers were not prohibited from submitting six-month notices to switch to DA service prior to April 11, 2010…"[9] However, this statement does not indicate that Energy Division considered or resolved any of the legal arguments raised by Commercial Energy in its Motion.

V. CONCLUSION

Based on the foregoing and Commercial Energy's Motion, Commercial Energy respectfully requests that the Commission issue an Order requiring PG&E to Show Cause why it should not be ordered to:

- disclose the number of customers allowed to enroll between the effective date of D.10-03-022 and the effective date of the OEW and the amount of GWHs associated with those customers;
- disallow the 6-month notices to switch received between the effective date of D.10-03-022 and the effective date of the OEW;
- recalculate the amount of DA available for 2010 by either:
  - disallowing 6-month notices submitted between the effective date of the Decision and April 11, 2010,
  - (ii) counting such customers towards PG&E's baseline amount of DA, or
  - (iii) both.
- restore the DA queue consistent with the requirements of D.10-03-022 and distribute expanded DA capacity to those who would otherwise have been able to enroll during the OEW if not for PG&E's continued acceptance of 6-month notices in violation of D.10-03-022 and the miscalculation of available DA load for 2010; and

[9] Status Report, p.2.

ffi reconfigure the enrollment queue for 2011 in a manner consistent with the revised OEW for 2010 and the requirements of D.10-03-022.

Commercial Energy understands and acknowledges the difficulty of disallowing the 6-month notices to switch received between the effective date of D.10-03-022 and the effective date of the OEW; therefore, the most practical solution is to allow more load from the OEW period and grant accepted customers the opportunity to choose to enroll in DA by November 30, 2010. That load would then be deducted from the remaining DA balance for the last two years of the phase-in.

Respectfully submitted this 22nd day of October, 2010 at San Francisco, California.

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CERTIFICATE OF SERVICE

I, Melinda LaJaunie, certify that I have on this 22nd day of October 2010 caused a copy of the foregoing

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to be served on all known parties to R.07-05-025 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand delivered as follows:

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California Public Utilities Commission
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ALJ. Thomas R. Pulsifer
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I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of October 2010 at San Francisco, California.

/s/ Melinda LaJaunie
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