



**Pacific Gas and
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October 12, 2010

VIA HAND DELIVERY

ALJ Thomas R. Pulsifer
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: 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 - R.07-05-025

Dear Judge Pulsifer:

Enclosed is a copy of Pacific Gas and Electric Company's filing of October 12, 2010 with the
Docket Office using the E-filing system in R.07-05-025.

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E)
RESPONSE TO COMMERCIAL ENERGY OF CALIFORNIA'S
MOTION REQUESTING AN ORDER TO SHOW CAUSE**

In addition, this document was served electronically on all parties that provided an email address
and by United States mail for those parties who did not provide an email address on the official
service list for R.07-05-025.

Sincerely,

/s/

STACY W. WALTER

SWW/pak
Enclosure

cc: Michael R. Peevey, President
Commissioner John Bohn
Commissioner Dian M. Grueneich
Commissioner Nancy E. Ryan
Commissioner Timothy A. Simon
Official Service List for R.07-05-025

SB_GT&S_0696565

**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
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Rulemaking 07-05-025
(Filed May 24, 2007)

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October 12, 2010

**BEFORE THE PUBLIC UTILITIES COMMISSION
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I. INTRODUCTION

Pursuant to Article 11 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) provides this response to the *Motion of Commercial Energy of California Requesting an Order to Show Cause* (Motion) filed on September 27, 2010.

Commercial Energy of California (Commercial) incorrectly claims that PG&E acted in a manner inconsistent with Commission Decision (D.) 10-03-022. First, PG&E's acceptance of six month notices from eligible non-residential customers prior to April 11, 2010 was in compliance with its Electric Rule 22.1. PG&E is not aware of any instance where compliance with tariffs has served as a basis for an Order to Show Cause. Second, D.10-03-022 does not support Commercial's claim that PG&E did not use the correct method to calculate the amount of DA available in 2010. PG&E discusses these items in more detail below and respectfully requests that the Commission dismiss this Motion in an expeditious manner.

II. DISCUSSION

A. PG&E Acted in Compliance with D.10-03-022

All three investor owned utilities; PG&E, Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) stopped accepting six month notices from DA eligible non-residential customers starting April 11, 2010.

1. The decision language supports PG&E's actions.

There is no support for Commercial's claim that PG&E's acceptance of six month notices from non-residential customers planning to switch to DA service should have ceased on March 11, 2010. While D.10-03-022 includes a specific requirement that acceptance of six month notices from residential customers should stop effective March 11, 2010^{1/}, nowhere in the decision is this March 11 cut-off date extended to non-residential customers.

Instead, the Commission establishes April 11, 2010 as the effective date for the SB 695 limited direct access (DA) reopening.^{2/} "Effective April 11, 2010, all qualifying customers will be eligible to take DA service, up to the new maximum cap subject to the conditions as set forth herein 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."^{3/} Consistent with this directive and DA tariff rules, PG&E accepted six month notices from eligible non-residential customers up until the April 11, 2010 effective date.

2. PG&E's tariffs provide for continued acceptance of non-residential six month notices until April 11, 2010.

The Commission required all of the investor owned utilities (IOUs) to file tariffs implementing D.10-03-022. Ordering Paragraph 5 provides that: "The procedures for enrollment of new direct access load pursuant to SB 695, as set forth in Appendix 2 of this

^{1/} D.10-02-033, p. 23.

^{2/} Id., Ordering Paragraph 2.

^{3/} Id., p. 2.

decision, are hereby adopted. The IOUs shall file advice letters within 20 days of the issuance of this decision proposing modifications to their direct access tariffs in compliance with this decision. The advice filings shall be effective upon filing, and any modifications subsequently requested by the Energy Division based on its review of the advice filings shall not alter their effectiveness as of their filing dates.”

PG&E’s Electric Rule No. 22.1 Section C. implements D.10-03-022. It covers in detail the process to be followed in order to switch to DA service during the initial Phase-In period starting April 11, 2010 approved in D.10-03-022. Section C.1. explicitly provides that the new phase-in rules are **not applicable** to non-residential bundled portfolio service (BPS) customers who submitted a Six Month Notice To Transfer To Direct Access Service form prior to April 11, 2010. Section C.1. provides in pertinent part that: “Section C is not applicable to eligible non-residential BPS customers who have submitted a Six Month Notice To Transfer To Direct Access Service form prior to April 11, 2010 and are pending a return to DA service under provision of Section B.2., above.” A similar provision was included in both SCE’s and SDG&E’s tariffs as well.^{4/}

PG&E submitted these revisions to Rule 22.1 via Advice Letter (AL) 3646-E on April 2, 2010. AL 3646-E instructed parties wishing to protest any aspect of the advice letter to do so by April 22, 2010. Both Commercial and the firm representing them in this Motion, Goodin, MacBride, Squeri, Day and Lamprey, LLP, were among the numerous parties served with a copy of AL 3646-E. Commercial had the opportunity to bring their concerns regarding PG&E’s implementation of D.10-03-022 to the attention of the Commission by April 22, 2010. However, there were no protests to AL 3646-E submitted by Commercial or any other party. It is disingenuous for Commercial to say nothing in April and then come forward months later, only after determining the process was not as successful for them as they had hoped^{5/}, asking for an Order to Show Cause for actions by PG&E fully in compliance with these tariffs.

^{4/} See SCE’s Rule 22.1.C.1 and SDG&E’s Rule 25.1.C.1.

^{5/} Declaration of Ron Perry, Paragraph 1.

3. The Energy Division reviewed and confirmed PG&E's compliance with D.10-03-022.

Commercial references the *Status Report on the Results of Energy Division's Review of the Utilities' Senate Bill 695 Implementation for 2010 per D.10-03-022 (updated August 2, 2010)* (Energy Division Report) in its Motion and emphasizes that the report shows that PG&E's 2010 DA load includes load for thirty customers that submitted six month notices prior to the DA open enrollment window (OEW). In The Declaration of Ron Perry attached to the Motion he claims that the Energy Division Report "appears to indicate that PG&E followed enrollment procedures that were inconsistent with D.10-03-022."^{6/} The Energy Division Report does not support this assertion. Instead, it includes a detailed note describing PG&E's results. "PG&E's April 2010 Baseline DA Load was lower than the Existing Baseline DA Load reported in Appendix A of Decision 10-03-022. Consequently, PG&E states that it increased the 2010 Annual Limit to fully subscribe the 2010 Load Cap. **Grandfathered DA-Eligible customers were not prohibited from submitting six-month notices to switch to DA service prior to April 11, 2010**, and 30 such customers in PG&E's territory exercised that option. The load associated with those customers reduced the amount of space available for new load under the 2010 Load Cap by approximately 569 GWH."^{7/} With these facts clearly set out in the report, the Energy Division Report concludes that PG&E and the other IOUs acted in compliance with Commission requirements. "In its review of the information submitted by PG&E, SCE and SDG&E, the Energy Division has not found evidence that the utilities administered the NOI process unfairly."^{8/} Implicit in the Energy Division conclusion is the understanding that PG&E's acceptance of pre-April 11, 2010 customer six month notices was appropriate. Here again, the Energy Division Report provides no basis for Commercial's claim that PG&E's acceptance of six month notices prior to April 11, 2010 was not in compliance with D.10-03-022. In fact, the

^{6/} Id., Paragraph 2.

^{7/} Energy Division Report, p. 2, Notes to Table 3 (Emphasis added).

^{8/} Id., p. 3.

report itself contradicts Commercial's position.

B. PG&E's Established 2010 DA Load Limit is Consistent with D. 10-03-022.

Commercial also argues that PG&E should have recalculated its baseline and annual DA load limits using DA load data as of April 2010. This ad hoc approach is not supported by D.10-03-022. The Commission provided clear guidance to PG&E and the other IOUs regarding the calculation of the annual DA load limits. Data was collected from each IOU in late 2009. In D.10-03-022 the Commission confirmed this particular data should be used in calculating the DA annual load limits. "We conclude that the utilities reported load figures reasonably comply with the criteria set forth in SB 695. We adopt those figures for use in this decision in implementing SB 695 caps."^{9/} For PG&E the adopted load figures^{10/} were:

1. Load Cap Pursuant to SB 695	9,520 GWH
2. Existing Base Line DA	5,574 GWH
3. New DA Load Allowance	3,946 GWH

With the baseline and overall load cap established, the Commission explained how the four year phase-in should be calculated. "We shall therefore adopt annual DA caps of up to 35% in the first year, up to 70% in the second year, up to 90% in the third year, and up to 100% in the fourth year. . . . Each individual year's DA limit shall stand alone, and not be dependent on the amount of annual migration in prior years of the phase-in."^{11/} These percentages are set out in Appendix 2 of D.10-03-022. As part of PG&E's AL 3646-E submission discussed above, PG&E included language in Electric Rule 22.1 Section C.2 setting out in detail how to calculate the Annual Limit for each year, 2010^{12/} through 2013. PG&E administered the 2010 OEW using the 2010 DA Load Cap provided for in D.10-03-022 and calculated as provided in its tariffs. There

^{9/} D.10-03-022. pp. 7 – 8.

^{10/} Id., p 7. See also, Ordering Paragraph 2, and Appendix 1.

^{11/} Id., pp 14 – 15.

^{12/} While the formula is correct, there is a typographical error in the GWh total in Section C.2.a. This error does not impact the calculation of the load for 2011, nor did it have any impact on the amount of load accepted in 2010.

is no basis here whatsoever for an Order to Show Cause as claimed by Commercial.

C. IOUs Share Consistent Approach

As a final point, PG&E would like to emphasize that all three IOUs have consistent tariff language governing both 1) acceptance of non-residential six months notices until April 11, 2010 and 2) the method for calculating the 2010 load limits.^{13/} While Commercial elected to direct this Motion to Show Cause toward PG&E alone, PG&E acted in full compliance with D.10-03-022 and its tariffs, and should not be subject to any Order to Show Cause.

III. CONCLUSION

PG&E respectfully requests that the Commission act expeditiously to dismiss Commercial's Motion.

Respectfully submitted,

CHRISTOPHER J. WARNER
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By: _____ /s/
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October 12, 2010

^{13/} See, SCE's Rule 22.1.C.1 and 2. See SDG&E's Rule 25.1.C.1 and 2.

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, California 94105.

On the 12th day of October, 2010, I served a true copy of:

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by electronic mail to the official parties of the service list for R.07-05-025 providing an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the 12th day of October, 2010, at San Francisco, California.

/s/

PATRICIA KOKASON