

Docket No.: R.07-05-025

Exhibit No.: _____

Date: _____

Witness: Mark E. Fulmer

**TESTIMONY OF MARK E. FULMER ON BEHALF OF
THE DIRECT ACCESS PARTIES
CONCERNING
THE TRANSITIONAL BUNDLED SERVICE RATE,
DIRECT ACCESS SWITCHING RULES, MINIMUM STAY PROVISIONS, AND
ENERGY SERVICE PROVIDER FINANCIAL SECURITY REQUIREMENTS**

1 **I. INTRODUCTION AND QUALIFICATIONS**

2
3 **Q: Please state your name and business address.**

4 A: My name is Mark E. Fulmer. I am a Principal at MRW & Associates, LLC (“MRW”).
5 MRW is an energy consulting firm founded in 1986 that specializes in power and gas
6 market assessments, regulatory matters, litigation support, expert witness testimony,
7 contract review, and negotiations. My business address is 1814 Franklin Street, Suite
8 720, Oakland, California.

9
10 **Q: Please summarize your professional and educational background.**

11 A: I have been an energy consultant with MRW since 1999. During that time, I have
12 worked with end-use customers, energy service providers, independent power producers,
13 municipalities, trade organizations and financial institutions on a variety of matters
14 related to natural gas and electric industry restructuring, utility ratemaking, price
15 forecasting, and asset valuation. I hold a Master of Science in Engineering from
16 Princeton University and a Bachelor of Science degree in Engineering from the
17 University of California at Irvine. Please see Exhibit C to the Joint Parties testimony
18 sponsored by John Dalessi, Margaret Meal and Mark Fulmer for my resume and lists of
19 my testimonies and publications.

20
21 **Q: Have you previously testified before the California Public Utilities Commission?**

22 A: Yes. I have previously testified before the California Public Utilities Commission
23 (“CPUC”) on behalf of the Direct Access Customer Coalition, the Alliance for Retail

1 Energy Markets, Debenham Wind, Strategic Energy and Constellation NewEnergy, and
2 the City and County of San Francisco. I have also submitted testimony in proceedings
3 before the Federal Energy Regulatory Commission and state utility commissions in
4 Arizona, Hawaii, Pennsylvania and Rhode Island.

5
6 **Q: On whose behalf are you testifying?**

7 A: I am testifying on behalf of the members of the Joint Parties¹ who have a direct interest in
8 Direct Access issues (the Direct Access Parties or “DA Parties”).²

9
10 **Q: What is the DA Parties interest in this proceeding?**

11 A: Besides the issues concerning the calculation of the Power Charge Indifference Amount
12 (“PCIA”) and Competition Transition Charge (“CTC”), which are addressed in the Joint
13 Parties testimony, the DA Parties are interested in the Transitional Bundled Service
14 (“TBS”) rate components and calculation; Direct Access switching rules, including
15 minimum stay provisions; and the factual matters concerning Energy Service Provider
16 (“ESP”) financial security requirements. These issues were identified in the November
17 22, 2010 Assigned Commissioner Scoping Ruling and Administrative Law Judge
18 Pulsifer’s January 7, 2011 Ruling, as matters for which testimony is permitted.

19

¹ See the January 31, 2011 Joint Testimony of John P. Dalessi, Mark E. Fulmer and Margaret A. Meal in this proceeding for a full listing of the Joint Parties.

² The Direct Access Parties are: Alliance for Retail Energy Markets, the Direct Access Customer Coalition, BlueStar Energy, and Pilot Power. The California Alliance for Choice in Energy Solutions (CACES), California Large Energy Consumers Association (CLECA), California Manufacturers and Technology Association (CMTA), California State University (CSU), Energy Users Forum, School Project for Utility Rate Reform (SPURR), and Walmart were additional parties that signed onto the November 15, 2010 Workshop Report but are not sponsors of this testimony, except CSU, SPURR and Walmart, who as members of DACC are indirect sponsors.

1 **Q: Please summarize your recommendations and conclusions.**

2 A: On November 15, 2010, the Direct Access Parties submitted a comprehensive proposal to
3 address these issues as an attachment to their Workshop Report, which is submitted here
4 as Attachment A.³ This proposal and the rationale explaining why the Commission
5 should adopt it are explained more detail in this testimony.
6

7 **Q: Please describe the framework that the Direct Access Parties have used in**
8 **developing their comprehensive proposal.**

9 A: The Direct Access Parties' proposal recognizes that the issues of DA switching rules
10 (including the minimum stay provisions), the TBS rate, and ESPs' financial security
11 requirements are interrelated, and therefore sought to develop a comprehensive proposal
12 to address those issues. In formulating the comprehensive proposal, the Direct Access
13 Parties sought to minimize costs associated with the implementation of the new rules and
14 the required financial security while fully complying with the statutory directives on
15 these components of DA service.
16

17 **Q: Please summarize the Direct Access Parties' proposal.**

18 A: With respect to the TBS rate and the minimum stay provisions, the Direct Access Parties'
19 proposal calls for:

- 20 • A TBS rate that is in calculated in the same manner as, and with the same
21 components as, the Market Price Benchmark used to formulate the Indifference
22 Amount.
- 23 • Working definitions for voluntarily returned customers, involuntarily returned
24 customers, and re-entry fees.⁴
- 25 • All customers who return to utility service from DA service without providing six
26 months' notice to the host utility will remain on a TBS rate for six months.
- 27 • If the customer has not secured DA service from an Electricity Service Provider
28 during the appropriate safe harbor period, at the conclusion of the TBS service

³ R.07-05-025, "Joint Compliance Filing Of The Direct Access Parties On Phase Iii Issues: Report On Working Group 1," Attachment A. November 15, 2010.

⁴ Note that the working definitions of "voluntary return" and "involuntary return" presented in Attachment A and utilized in this testimony differ slightly from the usage of the terms in the Public Utilities Code section 394.25(e).

1 period that customer remains on utility service for one year. At the end of this
2 one year “minimum stay,” the customer may leave utility service at any time for
3 new DA service (provided, of course, that there is room under the Senate Bill
4 695-imposed cap).

5
6 As explained in further detail below and in Attachment A, the operation of the safe-
7 harbor provisions and the way vintages are assigned in this proposal differs between
8 customers who return voluntarily to utility service and those that are involuntarily
9 returned to utility service.

10 The proposal also explains how these rules impact the calculation of financial
11 security requirements that the ESP must provide to the utility in order to ensure that
12 bundled customers do not incur extra costs in the event DA customers are involuntarily
13 returned to utility service.

14
15 **Q: Please summarize the Direct Access Parties’ proposal concerning ESP financial**
16 **security requirements.**

17 **A:** The ESP security requirement should equal the difference between marginal costs
18 incurred by a utility to serve a customer that has been involuntarily returned to bundled
19 service and the amounts collected from that customer for service for six months plus the
20 administrative costs incurred by the utility to enroll the customer into bundled service.
21 Consistent with the Joint Parties’ January 24, 2011 brief on ESP and CCA Bonding
22 requirements, the Direct Access Parties believe that involuntarily returned customers
23 should pay the TBS rate for the first six months of their utility service after their
24 involuntary return. As result, the difference between the costs to serve them, and the
25 revenue collected from them should be minimal, consisting almost entirely of
26 administrative costs.

1 Additionally, ESPs should be allowed flexibility as to how to meet the security
2 requirement (beyond simply posting a bond or letter of credit), and the security
3 requirement should be recalculated annually.
4

5 **II. TRANSITIONAL BUNDLED SERVICE RATE**

6
7 **Q: What is the Transition Bundled Service Rate?**

8 A: Under current DA rules, a customer may return to utility service upon six months notice.
9 If a customer returns to utility with less than six months notice, that customer pays the
10 TBS rate for whichever portion of the six month notification period that the customer is
11 taking power from the utility.⁵
12

13 **Q: What is the purpose of the TBS rate?**

14 A: The TBS rate is intended to reflect a market-based price that the host utility will incur to
15 serve a customer that has not provided the required notification to return to fully bundled
16 service. The policy behind this is to ensure that bundled customers will not incur any
17 additional costs because departed load customers return to IOU service before the IOU
18 has been able to incorporate that load into its procurement planning.⁶
19

20 **Q: This sounds very similar to the Market Price Benchmark (MPB) used to calculate**
21 **the departing load indifference rate. Should the MPB and the TBS rate take into**
22 **account the same factors?**

⁵ In addition, if a customer returns to utility service without six months' notice, the first sixty days of the utility service is considered a "safe harbor" period during which a customer may leave utility service to DA service with a new ESP.

⁶ D.03-05-034

1 A: Yes. As described in the Joint Parties' testimony submitted in this proceeding, the MPB
2 reflects an estimate of the current market prices, which would be the same as the current
3 market cost to serve a departed load customer who returns unexpectedly to utility service:
4 market-based commodity power, renewable attributes sufficient to cover the RPS
5 requirement of that customer, the capacity to meet the Resource Adequacy ("RA")
6 obligations to serve the customer, and all necessary variable California Independent
7 System Operator ("CAISO") costs associated with that customer's load.

8

9 **Q: What does the current TBS rate equal?**

10 A: The current TBS rate equals the CAISO's hourly Integrated Forward Market Locational
11 Marginal Price at the respective utilities' Load Aggregation Point, multiplied by an
12 allowance for unaccounted for energy plus an allowance for Ancillary Services and the
13 CAISO Grid Management Charges.⁷

14

15 **Q: What changes do the DA Parties recommend for the TBS rate?**

16 A: The DA Parties recommend that the TBS rate consist of costs to serve customers on a
17 market basis that includes the same components as the MPB used to reflect the market
18 value of the utility supply portfolio. This includes the commodity cost of power, the
19 incremental cost of RPS compliance, and any incremental capacity/RA costs. In addition,
20 all volumetric CAISO costs should be included.

21

22 **Q: Should changes be made to the commodity cost of power element of the TBS?**

⁷E.g., Southern California Edison Schedule PC-TBS

1 A: No. Using the CAISO's hourly Integrated Forward Market Locational Marginal Price at
2 the respective utility's Load Aggregation Point is reasonable.

3

4 **Q: How should the cost to the IOU of meeting the incremental RPS requirement be**
5 **included in the TBS rate?**

6 A: In the long run, when a liquid and reliable market for RPS- compliant renewable power
7 exits in California, the TBS should include a component that reflects the that market
8 value.

9

10 **Q: A liquid and reliable market for RPS-compliant renewable power in California does**
11 **not exist. What do the DA Parties recommend be used in the interim?**

12 A: The DA Parties recommend that the TBS rate be adjusted using the same Green
13 Benchmark weighting proposal that was put forth for the MPB in the Joint Parties'
14 testimony in this proceeding. However, as described in the Joint Parties' testimony, the
15 Green Benchmark is developed based on the green content of the each vintage of the
16 Total Portfolio. Vintaging for the TBS rate would not be needed, and therefore the Direct
17 Access Parties propose that green content for the TBS rate should be based on the overall
18 percentage RPS requirement should be used. Thus, if the RPS percentage in a particular
19 year was 22% then the TBS would equal the commodity cost of power times 78% plus
20 the Green Benchmark times 22%. The commodity cost of power would vary month to
21 month, as is does currently, but the Green Benchmark would equal that set in that year's
22 ERRRA Forecast proceeding.

23

1 **Q: The current TBS rate formula includes an allowance for Ancillary Services and**
2 **CAISO Grid Management Charges. Do the DA Parties recommend any changes to**
3 **these factors?**

4 A: No. The DA Parties note that with respect to the calculation of the Indifference Amount,
5 the Joint Parties testimony in this proceeding recommends removing the CAISO charges
6 from both the Total Portfolio Cost and the MPB. Clearly, removing the CAISO costs
7 from the TBS rate is not analogous or appropriate.

8
9 **Q: The MPB includes an adder for capacity/resource adequacy. Should that adder be**
10 **included in the TBS rate, too?**

11 A: Yes, the same adder that is used for the most recent vintage MPB should also be included
12 in the TBS rate.

13
14 **III. SWITCHING RULES AND MINIMUM STAY PROVISIONS**

15
16 **Q: What are the current notification and minimum stay provisions?**

17 A: A customer must provide six month notification to come from or go to DA service. If
18 less than six months notice is provided before a customer returns to utility service, the
19 customer must pay the TBS rate for whatever portion of the six month notice period the
20 customer is on utility service.⁸ Under current rules, once the six month period is over, the
21 customer returns to fully bundled service, and cannot return to DA service for three years.

22

⁸ A customer in this situation has 60 days of Safe Harbor service, during which time it may elect to leave utility service for DA service.

1 **Q: Do the current notification and minimum stay provisions differentiate between**
2 **customers taking TBS service voluntarily and those involuntarily placed on TBS**
3 **service?**

4 A: No.

5

6 **Q: What do the DA Parties recommend for notification and minimum stay provisions?**

7 A: As noted earlier, the DA Parties recommend that the switching and minimum stay
8 provisions detailed in Attachment A be adopted.

9

10 **Q: The Workshop Report that the DA Parties reference differentiates the switching**
11 **and minimum stay rules between customers voluntarily taking TBS service (either**
12 **as a prelude to full bundled service or as a safe haven between ESPs) and customers**
13 **involuntarily placed on TBS service.⁹ Please summarize the difference.**

14 A: Please see Attachment A for the full details of the difference. In summary, **a voluntary**
15 **return** of a Direct Access customer to utility bundled service occurs when the contract
16 between the customer and his or her ESP has expired and the customer has not entered
17 into a contract with that ESP or another ESP for DA service; or a customer has given the
18 utility six months notice that the customer intends to return to utility bundled service.

19 **An involuntary return** of a Direct Access customer occurs when the customer is
20 returned to utility bundled service due to: the Commission revoking the ESP's
21 registration; the termination of the ESP-utility Agreement; the ESP or its authorized

⁹ Note that the working definitions of "voluntary return" and "involuntary return" presented in Attachment A and utilized in this testimony differ slightly from the usage of the terms in the Public Utilities Code section 394.25(e).

1 CAISO Scheduling Coordinator has defaulted on its CAISO obligations, such that the
2 ESP is no longer has an authorized CAISO Scheduling Coordinator.

3 If a customer is placed on utility service because that customer defaulted under
4 his or her service agreement with the ESP, then that customer should be considered a
5 voluntary return for purposes of the switching and minimum stay rules.

6
7 **Q: Now that the DA Parties have differentiated between involuntary and voluntary**
8 **returns to utility service, please outline the recommended switching and minimum**
9 **stay rules.**

10 **A:** First, a **voluntarily returning** customer must give six months notice before returning to
11 utility service from Direct Access service. If a voluntarily returning customer remains on
12 Direct Access service for the full six month notice period, upon the customer's return to
13 utility service the customer will receive service under the otherwise applicable bundled
14 tariff. A voluntarily returning customer that returns to utility service without six months
15 notice should be charged the TBS rate for utility service for six months.

16 The Safe Harbor period for voluntary returned customers should remain at 60
17 days. That is, the voluntarily returning customer should have sixty days on TBS service
18 to submit a DASR to return to DA service. If the customer returns to DA service within
19 the safe harbor period, that customer should retain the PCIA vintage to which the
20 customer was subject at the time of the voluntary return.

21 If the voluntarily returning customer has not elected new Direct Access service by
22 the end of the safe harbor period, the remainder of the six month service on TBS service
23 will be provided to the customer, after which time the customer will take service under

1 the applicable bundled tariff and will be subject to the minimum stay provisions. If that
2 customer, after remaining on bundled service for the applicable minimum stay, returns to
3 DA service, that customer would be assigned the then-current vintage for PCIA purposes.

4
5 **Q: What do the DA Parties recommend for switching restrictions for involuntarily**
6 **returned customers?**

7 A: This issue was briefed on January 24, 2011, and this testimony is written to be consistent
8 with the Joint Parties' brief. Thus, I assume that it is statutorily permissible for
9 involuntarily returned customers to pay the TBS rate for the first six months that they are
10 on utility service after the involuntary return.

11
12 **Q: What about the Safe Harbor provisions for involuntarily returned customers?**

13 A: An involuntarily returned customer will not have provided any notice to the utility of its
14 return to utility service. In order to provide such a customer with the necessary flexibility
15 to choose between utility service and alternative retail service, the Direct Access Parties
16 proposal would allow that customer to notify the utility that it plans to return to Direct
17 Access service any time during the first 60 days that it is on TBS service. That customer
18 will then have the remainder of the six month period to actually return to Direct Access.

19
20 **Q: Would an involuntarily returned customer who exercises this right to go back to DA**
21 **service retain his or her vintage status?**

22 A: Yes, such a customer would keep his or her vintage.
23

1 **Q: What minimum stay provisions do the DA Parties recommend?**

2 A: The DA Parties recommend that the minimum stay for voluntarily returning customers be
3 12 months, which begins at the end of the safe harbor period or when the customer
4 commits to returning to utility service. The minimum stay for an involuntarily returned
5 customer would also be 12 months and would begin at the end of the six month TBS rate
6 period (assuming of course that the customer has not exercised the right to take DA
7 service from another ESP).

8
9 **Q: What is the basis for the DA Parties' recommendation of a 12 month minimum**
10 **stay?**

11 A: The appropriate length of a customer's minimum stay on bundled service before
12 returning to direct access was vigorously litigated in R.02-01-011. A three-year minimum
13 stay was eventually adopted in D.03-05-034. That decision noted: "Based on the
14 testimony of various parties, we conclude that three-year minimum commitment period is
15 sufficient to eliminate the potential for DA customers basing a gaming strategy on
16 anticipated seasonal pricing patterns."¹⁰ With the amount of DA load capped and demand
17 for DA exceeding the capped amount, there is little opportunity for customers to "game"
18 rates by strategically jumping between DA and bundled service, particularly with respect
19 to seasonal pricing patterns. As such, a full three years is not necessary to prevent such
20 behavior.

21

¹⁰ D.03-05-034, page 39.

1 **Q: Another reason of the minimum stay provision was to minimize the potential**
2 **stranded costs from contracts entered into by the utilities to serve the returned**
3 **customers.¹¹ Is that issue still relevant?**

4 A: No. Because the DA market is capped, and because the cap appears to be fully
5 subscribed, DA load that departs DA service to return to the utility will likely be quickly
6 replaced by new DA load. Utility resources are simply not stranded.

7 Furthermore, the DA Parties believe that the utilities' supply portfolios are
8 sufficiently flexible to address the migration to and from DA service on the time-frames
9 discussed here. For example, in Phase 2 of R.06-02-013, Southern California Edison's
10 (SCE's) Manager of Resource Planning testified that they "have many shorter term
11 contracts that we negotiate annually in some cases," and that gives SCE the flexibility to
12 adjust their portfolio on an annual or "even maybe" a quarterly basis.¹² He went on to
13 note that he believed that SCE's plan is flexible enough to adapt to the reopening of
14 direct access.¹³ If SCE has the flexibility to deal with the migration of load onto direct
15 access resulting from the reopening of direct access in 2010, one can safely infer that the
16 portfolio can address the migration of customers who give a year's notice.

17

18 **Q: Why is it important to differentiate between voluntary and involuntary returns**
19 **when assigning minimum stay provisions?**

20 A: Voluntary return and involuntary return customers are in different positions. The
21 voluntary return customer knows beforehand that its DA service is ending, and therefore
22 can make appropriate plans for either continued DA service with another ESP or bundled

¹¹ D.03-05-034, pages 38-40.

¹² R.06-02-013, RT, p. 188, line 24, to p. 189, line 2, and p. 189, lines 9-10 (Minick, SCE).

¹³ Op. cit., lines 9-10

1 service with the utility subject to known minimum stay requirements. The involuntary
2 return customer may not have been able to make a measured decision concerning future
3 retail service. This is why the involuntary customer should be granted greater flexibility
4 with respect to the safe harbor provisions.

5
6 **Q: The DA Parties' recommendation assumes that an involuntary return customer will**
7 **be on the TBS rate. Does the DA Parties' recommendation change if the**
8 **Commission rules that involuntary return customers can be placed on some other**
9 **rate for some or all of the six months?**

10 A: No. An involuntary return customer should have keep the same safe harbor provisions
11 described above regardless of the rate the Commission says he or she should be paying.

12
13 **Q: What notice requirement should be placed on a customer who is returning after**
14 **servicing the minimum stay or beginning direct access?**

15 A: As long as direct access service is capped per Senate Bill 695, the DA Parties do not
16 believe that any notice is needed. When space under the cap is freed up by a customer
17 leaving direct access, a new customer can take that departing customer's allotment.

18
19 **IV. ESP FINANCIAL SECURITY REQUIREMENTS**

20
21 **Q: What is the rationale for placing Financial Security Requirements on ESPs?**

22 A: The policy rationale for placing Financial Security Requirements on ESPs working in
23 California is still to maintain bundled customer indifference. That is, bundled customers

1 rates should not rise due to circumstances where DA customers are involuntarily returned
2 to utility service.

3
4 **Q: Please review the statutory context associated with the ESPs financial security**
5 **obligations.**

6 A: The statute on this issue is Section 394.25(e) of the Public Utilities Code. Briefly, this
7 section of the Code specifies that any reentry fee needed to avoid imposing costs on other
8 customers imposed on an involuntarily returned customer must be covered by its ESP or
9 CCA. Additionally, the ESP or CCA must post financial security to cover that re-entry
10 fee.

11
12 **Q: The statute refers to re-entry fees. Please define re-entry fees.**

13 A: Attachment A has a full definition of re-entry fee. In summary, re-entry fees are the sum
14 of:

- 15 (i) the difference between marginal portfolio costs incurred (or benefits
16 obtained) by the utility to serve a customer that has been involuntarily
17 returned to bundled service and the amounts collected from that customer for
18 service during the first six months that a customer is on bundled service after
19 the involuntary return; plus
20 (ii) the administrative costs incurred by the utility to enroll the customer into
21 bundled service.

22
23 **Q: What then do you recommend for ESP financial security requirements?**

1 **A:** ESPs should be required to post financial security to the IOUs to cover expected re-entry
2 fees for customers that are involuntarily returned to utility service, as the terms
3 “involuntary return” and “re-entry fees” are defined above.

4
5 **Q:** **The DA parties recommend that the involuntarily returned customer pay the TBS**
6 **rate for six months. Given the recommended components of the TBS, would there**
7 **be a difference between the TBS rate and the “marginal portfolio costs incurred” by**
8 **the utility to serve that customer?**

9 **A:** No. The TBS rate is designed to fully cover the marginal portfolio costs that a utility
10 would incur so serve a returning customer. Therefore, bundled customers are fully
11 protected from adverse rate impacts by the returning customer paying the TBS.

12
13 **Q:** **Why do you recommend that the bond be based on a six-month period?**

14 **A:** Six months corresponds to the notice requirement customers must give to return to
15 bundled service. Since after six months an involuntarily returned customer remaining on
16 bundled service customer is equivalent to a customer who has given six months notice,
17 there is no reason to extend the forward looking financial security timeframe beyond six
18 months.

19
20 **Q:** **How should an ESP be able to meet the financial security requirement?**

21 **A:** In general, ESPs should be allowed maximum flexibility as to how they can meet the
22 financial security requirement. An ESP should be able to meet its financial security

1 requirement through: having an investment grade credit rating, a parent company
2 guarantee, a surety bond, a letter of credit, or cash.

3

4 **Q: How frequently should the ESP financial security requirement be?**

5 A: Consistent with practices in other states, once a year is sufficient.

6

7 **Q; Does this complete your testimony?**

8

9 A: Yes, it does.

ATTACHMENT A

**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 COMPLIANCE FILING OF THE DIRECT ACCESS PARTIES
ON PHASE III ISSUES: REPORT ON WORKING GROUP 1**

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**ALLIANCE FOR RETAIL ENERGY MARKETS
DIRECT ACCESS CUSTOMER COALITION**

AND ON BEHALF OF THE DIRECT ACCESS PARTIES

November 15, 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)

**JOINT COMPLIANCE FILING OF DIRECT ACCESS PARTIES
ON PHASE III ISSUES: REPORT ON WORKING GROUP 1**

The Direct Access Parties¹ submit this joint compliance filing pursuant to the June 15, 2010
*Assigned Commissioner and the Administrative Law Judge Ruling Clarifying Scope and Scheduling
Further Proceedings* (Ruling) and subsequent proceeding.

I. Summary of Working Group Formation

On July 12-13 2010, a workshop was held by Energy Division regarding Phase III issues in
the Commission's Direct Access Rulemaking. The issues were split into three working groups as
follows:

- Working Group 1 was established to cover the following issues: switching rules,
transitional bundled service rate updates and ESP Financial Security Requirements.
- Working Group 2 was established to cover Direct Access ("DA") process improvements;
- Working Group 3 was established to cover the issue of ensuring uniform compliance with
resource requirements.

¹ The Direct Access Parties are: Alliance for Retail Energy Markets (AReM), BlueStar Energy, California Alliance
for Choice in Energy Solutions (CACES), California Large Energy Consumers Association (CLECA), California
Manufacturers and Technology Association (CMTA), California State University (CSU), Direct Access Customer
Coalition (DACC), Energy Users Forum (EUF), School Project for Utility Rate Reduction (SPURR), and Walmart.

The Ruling directed parties to report progress to Energy Division on each of the working groups by November 15, 2010 and include any recommendations either substantively, procedurally, or both.

Since the July 12-13 workshop, the parties have met three times to discuss Working Group 1 issues, on August 30, 2010, September 20, 2010 and then again on October 18, 2010. Representatives from the customers, ESPs and utilities were all in attendance. The Working Group as a whole has been unable to reach consensus on the Working Group 1 issues, as reported by the Southern California Edison (“SCE”), Pacific Gas & Electric (“PG&E”) and San Diego Gas & Electric (“SDG&E”) (collectively, the “IOUs”). This report is submitted jointly by the Direct Access Parties who participated in the Working Group 1 discussions in order to provide the ALJ, Energy Division staff, and the Commission with further information about the Working Group efforts with respect to the issues discussed in Working Group 1.

With respect to the efforts of Working Groups 2 and 3, the Direct Access Parties believe they concur with the report submitted concurrently by the IOUs. However, at the time this pleading is under preparation, there continue to be a number of changes being made to the IOU pleading. The Direct Access Parties therefore reserve the right to offer such further clarifications as may be necessary.

II. Direct Access Parties Working Group 1 Proposal

The Direct Access Parties have submitted several proposals for the group’s discussion at the various meetings that have been held. As a result of the discussions at those meeting and discussion amongst the Direct Access Parties between each of the meeting, modifications were made to the proposals in order to achieve a broader consensus and submitted a revised proposal for the group’s consideration at the October 18, 2010 meeting (Attachment A).

III. Key Area of Non-Consensus

The key area of non-consensus between the Direct Access Parties and the IOUs surrounds the interpretation of the statute that governs the requirements for ESP financial security. The statute (Section 394.25(e) of the Public Utilities Code) reads as follows:

(e) If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electrical corporation shall be the obligation of the electric service provider or a community choice aggregator, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.

The Direct Access Parties believe that this statute requires the IOUs to ensure that the IOUs' bundled customers are protected from the increased costs that an IOU might incur to serve Direct Access customers that are involuntarily returned to IOU service. Under the Direct Access Parties' proposal, involuntarily returned customers would be served under the Transition Bundled Service ("TBS") Rate, which is a market-based rate, for up to six months. As such, the IOUs' bundled customers face little risk of increased costs because the rate that the involuntarily returned customers will pay should be the same as the costs incurred by the IOU to serve them. During the TBS service period, the involuntarily returned customer may, if it so chooses, depart IOU service for new Direct Access service. Alternatively, if the customer remains on the utility service beyond the six month TBS period, the customer must then remain on the utility service for the required minimum stay on its applicable tariff rate.

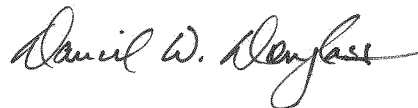
The Direct Access Parties understand the IOUs' position to be that they interpret the statute to require that involuntarily returned customers must receive service under their applicable tariff rate, and therefore the Direct Access Parties proposal that these customers would pay the TBS rate for up to six

months is not permissible. The Direct Access Parties believe this interpretation is strained at best and simply not justified by the language of the statute insofar as the one clear directive in the statute is that any involuntary return is not to cause costs to increase for *other* (bundled) customers of the utility. The Direct Access Parties' proposal clearly would achieve that goal. Further, during the several years that this statutory provision has been in effect, the Commission-approved switching rules have provided for returning DA customers to pay TBS rates. There is no directive in the provision that returned customers must pay the utility's otherwise applicable tariff rate. Because of the fundamental difference in statutory interpretation, the parties are unable to reach consensus.

IV. Next Steps

In order to resolve these issues, the Direct Access Parties suggest that the Commission direct that parties submit legal briefs on whether nor the statute referenced above requires that involuntarily returned customers must be afforded service at their applicable tariff rate. Once that matter is resolved, the parties may be able to reach consensus on the working group 1 issues; if consensus is still not achieved at that point, the Commission can direct the parties to submit their respective proposals for Commission review and decision.

Respectfully submitted,



Daniel W. Douglass
DOUGLASS & LIDDELL

On behalf of the
ALLIANCE FOR RETAIL ENERGY MARKETS
DIRECT ACCESS CUSTOMER COALITION

AND ON BEHALF OF THE DIRECT ACCESS PARTIES

November 15, 2010

ATTACHMENT A

Proposal for TBS/Switching Rules/Minimum Stay/Financial Security Working Groups Presented at October 18, 2010 meeting For Discussion Purposes Only

Supporters (referred to as “Joint Parties”):

**Alliance for Retail Energy Markets
BlueStar Energy
California Large Energy Consumers Association
California Manufacturers and Technology Association
California State University
Direct Access Customer Coalition
Energy Users Forum
School Project for Utility Rate Reduction
Walmart**

I. Overview:

The purpose of this proposal is to build on areas of potential consensus with respect to switching restrictions, minimum stay provisions, applicability of TBS rate, and ESP financial security requirements, consistent with applicable statutes, including Section 394.25(e) of the Public Utilities code which reads as follows:

(e) If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electrical corporation shall be the obligation of the electric service provider or a community choice aggregator, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.

Section II of this proposal provides definitions to key terms that are used in the proposal. Sections III through VII outlines the specific components of the proposal with respect to switching restrictions applicable to voluntary and involuntary returns of customers to utility service; the calculation mechanism for ESP financial security requirements; and comments about the TBS rate. Section VIII presents the underlying rationale for this proposal.

II. Defined Terms: For purposes of this proposal, the following are defined terms:

1. An *involuntary return* of a Direct Access customer to service from a Utility Distribution Company (UDC) has occurred when the UDC has initiated the DASR process to return a customer to UDC bundled service due to any of the following events:
 - a. The Commission has revoked the ESP's registration.
 - b. The ESP-UDC Agreement has been terminated.
 - c. The ESP or its authorized CAISO Scheduling Coordinator ("SC") has defaulted on its CAISO SC obligations, such that the ESP is no longer has an appropriately authorized CAISO Scheduling Coordinator.
2. An *involuntary return* of a Direct Access customer to UDC bundled service has not occurred as a result of the following events:
 - a. A customer's contract with an ESP has expired.
 - b. An ESP discontinues service to a customer due to that customer's default under their service agreement with the ESP.
3. A *voluntary return* of a Direct Access customer to UDC bundled service has occurred under either of the following conditions:
 - a. An ESP has ceased to serve a customer because the contract between the ESP and the customers has expired.
 - b. A customer has given the utility six months notice that the customer intends to return to UDC bundled service.
4. *Re-entry fees* are the sum of (i) the difference between marginal portfolio costs incurred or benefits obtained by the UDC to serve a customer that has been involuntarily returned to UDC bundled service and the amounts collected from that customer for service during the first six months that a customer is on UDC bundled service after the involuntary return, and (ii) the administrative costs incurred by the UDC to enroll the customer into UDC bundled service. For clarity, Re-entry Fees are applicable with respect to the UDCs procurement plan and resource adequacy requirements, and are not applicable to any costs associated with transmission or distribution or other utility charges already paid by Direct Access customers.

III. Switching Restrictions Applicable to *voluntary return* customers:

1. *Voluntary return* customers must give six months notice before returning to utility service from Direct Access service.
2. If a *voluntary return* customer remains on Direct Access service for the full six month notice period, upon the customer's return to utility service at the end of the six month notice period, the customer will receive service under the applicable tariff.
3. A *voluntary return* customer that returns to utility service without six months notice because its contract with an ESP has expired, or the customer has otherwise terminated its current relationship with the ESP, and no new ESP service has been initiated, will be charged the TBS rate for utility service for six months.

4. During the first 60 days of the of the six month period that the customer is on TBS service (referred to as the safe harbor period), the **voluntary return** customer may leave utility service and return to Direct Access service by having an ESP submit a DASR for service that will begin no later than the first meter read after the end of the 60 day safe harbor period.
5. The **voluntary return** customer will be subject to the non-bypassable charge vintage that is applicable to its new Direct Access service, if the customer does not leave the UDC service within the safe harbor period. If the customer does leave UDC service within the safe harbor period, that customer will retain the non-bypassable charge vintage to which the customer was subject at the time of the voluntary return.
6. If the **voluntary return** customer has not elected new Direct Access service by the end of the safe harbor period, the remainder of the six month service on TBS service will be provided to the customer, after which time the customer will be returned to the applicable tariff, and will be subject to the minimum stay provisions.
7. A DASR may be submitted for a **voluntary return** customer to leave utility service at then end of the minimum stay as of (1) the first scheduled meter read date that is 5 days after the customer has provided notice to the utility that the customer intends to return, so long as that scheduled meter read date is after the end of the customer's minimum stay period, or (2) the date of a special on-time meter read that is agreed to by the UDC, ESP, and customer and is after the end of the customer's minimum stay period.

IV. Switching Restrictions Applicable to *Involuntary Return* Customers:

1. **Involuntary return** customers will pay the TBS rate for the first six months that they are on utility service after the involuntary return.
2. The **involuntary return** customer may notify the utility that it plans to return to Direct Access service any time during the first 60 days that it is on TBS service, and will then have the remainder of the six month period to return to Direct Access service by having an ESP submit a DASR for service that will begin no later than the first meter read after the end of the six month period.
3. An **Involuntary return** customer who leaves utility service within the six month period will retain the non-bypassable charge vintage to which it was subject at the time of the involuntary return.
4. If the **involuntary return** customer has not elected Direct Access service by the end of the six month period, the customer will have no further rights to retain its previous non-bypassable charge vintage, and at the end of the six month period will be returned to an applicable tariff service, and will be subject to the minimum stay provisions.
5. A DASR may be submitted for an **involuntary return** customer to leave utility service at the end of the customer's minimum stay as of (1) the first scheduled meter read date that is 5 days after the customer has provided notice to the utility that the

customer intends to return, so long as that scheduled meter read date is after the end of the customer's minimum stay period, or (2) the date of a special one-time meter read that is agreed to by the UDC, ESP, and customer and is after the end of the customer's minimum stay period.

- V. **Minimum Stay Provisions:** The minimum stay for *voluntary return* customers will be 12 months, which begins at the end of the safe harbor period or when the customers returns to utility service after having given six months notice. The minimum stay for an *involuntary return* customer will be 12 months and will begin at the end of the six month TBS rate period.

Separate issue with respect to TBS service: The Joint Parties request that the working group consider a mechanism that would allow customers to remain on TBS at their election beyond the six month notice period, so as to preserve their option to return to Direct Access service beyond the safe harbor period without being subject to a minimum stay on UDC service. Any customer making such election would be required to do so during the safe harbor period and would be required to give the UDC six months notice before transitioning from TBS service to an applicable utility tariff.

- VI. **ESP financial security requirements:** ESPs will be required to post financial security to the IOUs to cover expected re-entry fees for customers that are involuntarily returned to utility service, as the terms "involuntary return" and "re-entry fees" are defined above. The calculation of expected re-entry fees shall be based on the ESP expected load over a six month period multiplied by expected, reasonable differences between the TBS rate and market prices, plus estimated administrative fees to enroll the expected ESP load into utility service.

- VII. **TBS Rate:** Modifications to the TBS rate to reflect Resource Adequacy, as proposed by the IOUs at the January 12 and 13 workshops, are acceptable. There must be further discussion of all CAISO charge codes and how those are reflected in the TBS rate.

VIII. **Rationale for this proposal:**

1. The PU code section 395.25(e) financial security requirements are intended to protect the IOUs' bundled customers from involuntary returns of Direct Access customers.
2. Statute does not require customers who are returned involuntarily to utility service to be returned immediately to an applicable bundled tariff.
3. The definition of voluntary and involuntary returns does not affect the level of the security requirement; it only becomes applicable with respect to the conditions under which the utility will be able to access the financial security.
4. Six months is sufficient time for utilities to adjust their portfolios to integrate involuntarily returned load.

5. Utility planning processes should be conducted under a presumption that the Direct Access cap will be full. Consistent with that assumption, there is no need for a long minimum stay because customers are going to be only able to leave utility service when there are temporary opening in an existing cap or expansion of the cap.
6. Because any customer who departs utility service after the one year period will be assuming responsibility for exit fees based on the then current applicable vintage, bundled customers are not exposed to increased costs as a result of customers leaving utility service, so there is no need for a multi-month notice period for customers to leave utility service.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the *Joint Compliance Filing of the Direct Access Parties on Phase III Issues: Report on Working Group 1* on all parties of record in *Rulemaking 07-05-025*, by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on November 15, 2010, at Woodland Hills, California.



Michelle Dangott

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of *Testimony of Mark E. Fulmer on Behalf of The Direct Access Parties Concerning the Transitional Bundled Service Rate, Direct Access Switching Rules, Minimum Stay Provisions, and Energy Service Provider Financial Security Requirements* on all parties of record in proceeding *R.07-05-025* by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on January 31, 2011, at Woodland Hills, California.


Michelle Dangott

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