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 OF DIRECT ACCESS CUSTOMER COALITION, ALLIANCE FOR RETAIL ENERGY MARKETS, MARIN ENERGY AUTHORITY, BLUESTAR ENERGY, SAN JOAQUIN VALLEY POWER AUTHORITY, CALIFORNIA STATE UNIVERSITY, RETAIL ENERGY SUPPLY ASSOCIATION AND CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION TO THE UTILITY JOINT RESPONSE TO MOTION TO STAY THE IMPLEMENTATION OF 2011 POWER CHARGE INDIFFERENCE AMOUNT CHANGES

Daniel W. Douglass
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, California 91367
Telephone: (818) 961-3001
Facsimile: (818) 961-3004
Email: douglass@energyattorney.com

Attorneys for
MARIN ENERGY AUTHORITY
DIRECT ACCESS CUSTOMER COALITION
ALLIANCE FOR RETAIL ENERGY MARKETS

AND ON BEHALF OF THE OTHER NAMED PARTIES

March 25, 2011

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 OF DIRECT ACCESS CUSTOMER COALITION, ALLIANCE FOR RETAIL ENERGY MARKETS, MARIN ENERGY AUTHORITY, BLUESTAR ENERGY, SAN JOAQUIN VALLEY POWER AUTHORITY, CALIFORNIA STATE UNIVERSITY, RETAIL ENERGY SUPPLY ASSOCIATION AND CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION TO THE UTILITY JOINT RESPONSE TO MOTION TO STAY THE IMPLEMENTATION OF 2011 POWER CHARGE INDIFFERENCE AMOUNT CHANGES

I. Introduction and Summary

Pursuant to the direction provided by Administrative Law Judge Pulsifer in his March 11, 2011 ruling,[1] the Direct Access Customer Coalition ("DACC"), the Alliance for Retail Energy Markets ("AReM")[2], the Marin Energy Authority ("MEA"), BlueStar Energy ("BlueStar"), the San Joaquin Valley Power Authority ("SJVPA"), California State University ("CSU"), Retail Energy Supply Association ("RESA"),[3] and the California Municipal Utilities Association ("CMUA") (collectively, the "Joint Parties")[4] respond to the joint filing of Pacific Gas and

[1] Administrative Law Judge's Ruling Denying Request to Shorten Time for Responses.

[2] AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California's direct access market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

[3] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

[4] Attorneys and representatives for SJVPA, CSU, CMUA, BlueStar and RESA have indicated to Mr. Douglass that he may represent that these parties join in and support this reply.

Electric Company ("PG&E"), Southern California Edison Company ("SCE") and San Diego Gas & Electric Company ("SDG&E")[5] in response to the Joint Parties March 4, 2011 Motion to Stay the Implementation of 2011 Power Charge Indifference Amount Changes (the "Motion to Stay"). The IOU Response offers no meaningful reply to the issues presented in the Motion to Stay. In fact, their response obfuscates and avoids focusing on the actual issue; the Joint Parties have made a *prima facie* showing that the 2011 Power Charge Indifference Amount ("PCIA") increases are inappropriately high and, if not stayed, will send false and misleading price signals to any customer who may be considering shopping for power supply from suppliers other than PG&E, SCE, and SDG&E (collectively, the "IOUs"). All parties, including the IOUs, have admitted that the existing PCIA methodology is flawed; yet the IOUs insist that the computational results of that flawed methodology should still be imposed upon customers that have departed or wish to consider departing utility bundled service.

As background, the Motion to Stay requested the following relief:

a. First, that any changes to the PCIA charges calculation by SCE and SDG&E shall be stayed pending a final decision in the exit fee phase of this proceeding. SCE and SDG&E shall continue to charge customers the current PCIA applicable to their respective vintages (with 2011 vintage customers paying the 2010 vintage, as noted in (d) below), and any changes to their PCIA rates made subsequent to the final decision shall be in accordance with the directives provided therein. This treatment is appropriate as both SCE and SDG&E have yet to implement proposed 2011 changes to their respective PCIA calculations.

[5] March 21, 2011, Joint Response of Pacific Gas and Electric Company (U 39-E), Southern California Edison Company (U 338-E) and San Diego Gas & Electric Company (U 902-E) to Motion to Stay Implementation of 2011 PCIA ("IOU Response").

b. Second, that PG&E shall create an account that records all PCIA collections in excess of its prior 2010 PCIA charges. Amounts in excess of the 2010 levels shall be refunded to customers immediately subsequent to the issuance of a final decision in the exit fee phase of this proceeding. Any changes to its PCIA rates made subsequent to the final decision shall be in accordance with the directives provided therein. This treatment is appropriate due to the fact that its 2011 PCIA rates were put into effect on January 1, 2011.

c. Third, that PCIA rates computed pursuant to a final decision in the exit fee phase of this proceeding shall be implemented within 30 days of the issuance of the final decision.

d. Fourth, that in the event that Vintage 2011 customers begin DA service before the final decision concerning the revised PCIA calculation methodology, those customers would be charged the Vintage 2010 PCIA rate until the final decision is implemented.

The relief requested in the Motion to Stay would ensure that ratepayers are not required to pay a PCIA rate that is artificially and inappropriately inflated, and will eliminate the imposition of fluctuating rate changes that are contrary to the Commission's long-standing policies and practices that support rate stability. The Motion to Stay also noted that this highly important issue has been denied a hearing in other Commission proceedings related to the calculation of the PCIA. By objecting to prompt Commission consideration of this matter in any existing docket, the IOUs are playing a regulatory "shell game" to deprive customers of an opportunity to be heard in a reasonable time frame and to be afforded just and reasonable rates.

The Joint Parties reply to the matters raised in the IOU Response is provided below.

II. The IOU Statement that a Revised PCIA May Not be Closer to the 2010 PCIA is Inaccurate

The IOU Response makes the highly implausible argument that the revised 2011 PCIA that is arrived at through this proceeding may not, in fact, be closer to the 2010 PCIA rate:

> The Joint Parties are advocating holding the 2011 PCIA at the 2010 level because it is lower and the Joint Parties are simply shopping for a lower amount of above-market costs for their customers to pay. The Joint Parties do not provide any evidence that, when the flaws they allege to exist in the current methodology are fixed, the revised PCIA amount will be closer to the 2010 PCIA.[6]

This simply is not correct. The discussion to date in this proceeding has not been whether the PCIA calculation methodology should be changed. Rather, it has been focused on by how much it should be changed; indeed, even the proposals made by the IOUs in this proceeding would also cause the PCIA to be reduced. In its rebuttal testimony, in fact, SCE concedes that, "Generally speaking, parties are in agreement that some modifications to the indifference amount calculation adopted in 2006 (D.06-07-030, as modified) are warranted."[7] Therefore, the suggestion in the IOU Response that the revised PCIA that results from the deliberations in this proceeding will not be lower, and thus closer to (or even below) the 2010 PCIA is demonstrably false.

III. What Should Happen if the "New PCIA" is Higher than the 2010 PCIA

The IOU Response notes that the 2011 PCIA may be higher than the 2010 PCIA and that the Joint Parties do not propose that "departing customers paying above-market costs should pay to SCE and SDG&E the difference between the 2010 PCIA and that established through any revised methodology ultimately approved by the Commission in this proceeding"[8] in the event the Motion to Stay is granted. They contend that in such a case, customers departing from SCE

[6] IOU Response, at p. 4.

[7] SCE Rebuttal Testimony at p. 6.

[8] IOU Response, at p. 4.

and SDG&E will have benefitted because they will have been paying the lower 2010 PCIA rates while this proceeding is pending. But the possibility that 2011 PCIA ultimately will be determined to be higher than the 2010 PCIA is no reason to reject the Motion to Stay. The Commission is perfectly capable of accommodating that possibility in its actions taken to implement the requested stay, for example though the creation of balancing accounts as is commonly done in many cases where the results of ratemaking remain uncertain for some period of time. The Joint Parties would not object to such action should the Commission believe it necessary to do so.

IV. Public Policy Concerns are Broader than Enumerated by the IOUs

The IOU response next briefly makes the argument that public policy is not well-served by staying rates that are set pursuant to a Commission-approved method. Once again, this is just another variant on the IOUs' "shell game" strategy to deny any hearing to the legitimate concerns of departing load customers. Moreover, it omits consideration of the public policy concerns that are raised by the Commission continuing to allow rates to be imposed that have been widely acknowledged to be excessive and unfair.

It is important to reiterate here the facts which the IOU Response conveniently declines to discuss. Namely, despite the recognition by all parties that the PCIA is slated to be reduced as a result of this proceeding, the IOUs have already implemented (in the case of PG&E) or are planning to implement (in the case of SCE and SDG&E) substantial increases in the PCIA. The following table from the Joint Parties Motion bears repeating:

Table 1 - 2011 Proposed and Implemented Changes to Vintage 2010 PCIA[9]

Utility	2011 PCIA	Percent Change from 2010
PG&E (E19-P)	1.40¢/kWh	+35%
SCE (TOU-8-P)	2.15¢/kWh	+293%
SDG&E (AL-TOU)	1.85¢/kWh	+60%

In summary, customers who had the audacity to shop for power from non-IOU vendors are, in the case of PG&E, paying a PCIA rate that is 35% above current levels, and are facing increases in SCE and SDG&E territories as high as 293% and 60% above current levels, respectively. There are obvious public policy concerns that are raised by allowing such increases to be imposed at a time when parties have conceded that the PCIA almost certainly will be decreased. To the extent the Commission believes that the IOU Response had presented a valid public policy concern, that concern should be more than outweighed by the policy concerns that are raised by requiring retail choice customers to pay an egregiously overstated PCIA.

V. It is the IOUs' Suggestion that there is No Competitive Harm that is Illusory

The IOU Response states that the Joint Parties provide no evidence that the current and planned 2011 PCIA increases offer any competitive harm, citing both MEA's plans to expand and the fact that customers have eagerly sought space under the statutory cap each time that space has been offered as part of the DA reopening. The fact that customers have a healthy and understandable interest in investigating alternatives to utility bundled service does not mean that competition is unharmed by inappropriately high PCIA charges. MEA has experienced a far higher than expected opt-out rate (at least partially in response to PG&E's anticompetitive activities) that may also be due in part to the significantly increased PCIA rate. As for the direct

[9] Sources: PG&E December 2010 and January 2011 Tariffs; SCE A.10-08-001 (11/5/10 Update) and Schedule DACRS; SDG&E A.10-10-001 (1/14/11 Update) and Schedule DA-CRS.

access response, whether or not the Phase 2 cap will be fully subscribed, as the time period for customers to move to direct access service has only come to an end very recently, and the data is not available as to whether the cap is fully subscribed. Therefore, whether the high PCIA charges have caused customers to relinquish their opportunity to move to direct access is not yet clear. Regardless of that outcome, however, the IOUs' self-serving and unsupported contention that no competitive harm can result from charging exorbitant "exit fees" for departures from bundled service is plainly illogical.

VI. The DWR Issue Raised by PG&E is Not a Reason to Deny the Joint Parties Motion

Finally, the IOU Response argues that payments made to DWR by PG&E cannot be refunded to customers. Further, it is stated that the Commission should not require this type of retroactive adjustment to the 2011 PCIA, especially given the legal uncertainty concerning obtaining refunds from DWR and the potential detrimental impact on DWR and its bondholders. What the IOU Response conveniently does not mention, however, is that PG&E's DWR Power Charge remittance rate is negative,[10] and thus the adjustment to the PCIA could not generate a deficit to the DWR Power Charge Balancing Account. Even if it did, a refund need not be made, as there could simply be a credit taken against future payments that are owed to DWR by PG&E.

VII. Summary and Conclusion

The IOU Response asserts no meaningful grounds to deny the Motion to Stay. In fact, the IOU Response is most notable for what it omits. The IOU Response avoids confronting the fact that the PCIA increases currently implemented or planned by the IOUs are causing or will cause community choice aggregation and direct access customers to pay charges that are egregiously high and unjustified and that the IOUs have already acknowledged that reforms to the

[10] D.10-12-006, Appendix A.

calculation that will cause it to be lower are warranted. If the reduction causes the result that the new 2011 PCIA is higher than the former 2010 rate, the Commission can appropriately account for that possibility in its grant of the Motion to Stay. Finally, neither the alleged public policy concern nor the DWR issue rise to the level of being a justification for denial of the Motion to Stay. Indeed, public policy is served when the Commission takes every step to ensure that rates are fair and equitable.

Over many years, the Commission has repeatedly stated its goal of avoiding unnecessary rate volatility. In this case, real rate shock is precisely what will occur if the Motion to Stay is not granted. The relief requested in the Motion to Stay is necessary (a) to ensure that customers are not forced to pay rates resulting from seriously flawed calculation methodologies; and (b) to ensure that the customers can fairly evaluate their options in community choice aggregation and direct access. The Joint Parties therefore respectfully request that the relief sought in the Motion to Stay be granted.

Respectfully submitted,

Daniel W. Douglass
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, California 91367
Telephone: (818) 961-3001
Facsimile: (818) 961-3004
Email: douglass@energyattorney.com

Attorneys for
DIRECT ACCESS CUSTOMER COALITION
ALLIANCE FOR RETAIL ENERGY MARKETS
MARIN ENERGY AUTHORITY

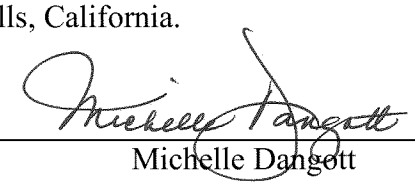
AND ON BEHALF OF THE OTHER NAMED PARTIES

March 25, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of ***Reply of Direct Access Customer Coalition, Alliance for Retail Energy Markets, Marin Energy Authority, BlueStar Energy, San Joaquin Valley Power Authority, California State University, Retail Energy Supply Association and the California Municipal Utilities to the Utility Joint Response to Motion to Stay the Implementation of 2011 Power Charge Indifference Amount Changes*** 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 March 25, 2011, at Woodland Hills, California.



Michelle Dangott

SERVICE LIST – R.07-05-025

abb@eslawfirm.com
AdviceTariffManager@sce.com
ako@cpuc.ca.gov
amber.wyatt@sce.com
AndersonR@conedsolutions.com
atrowbridge@daycartermurphy.com
barmackm@calpine.com
bcragg@goodinmacbride.com
bernardo@braunlegal.com
bfinkelstein@turn.org
bfs@cpuc.ca.gov
bhines@svlg.org
bkc7@pge.com
blairj@mid.org
blaising@braunlegal.com
blake@consumercal.org
brbarkovich@earthlink.net
californiadockets@pacificorp.com
case.admin@sce.com
cassandra.sweet@dowjones.com
ccasselman@pilotpowergroup.com
cem@newsdata.com
CentralFiles@SempraUtilities.com
chh@cpuc.ca.gov
chilen@nvenergy.com
cjw5@pge.com
clamasbabbini@comverge.com
clu@cpuc.ca.gov
cmansbridge@ces-ltd.com
cmkehrein@ems-ca.com
colin.cushnie@sce.com
CRMd@pge.com
crv@cpuc.ca.gov
david.oliver@navigantconsulting.com
dbp@cpuc.ca.gov
DBR@cpuc.ca.gov
ddavie@wellhead.com
ddickey@tenaska.com
debeberger@cox.net
debra.gallo@swgas.com
dgrandy@caonsitegen.com
dhaval.dagli@sce.com
dhuard@manatt.com
Diane.Fellman@nrgenergy.com
dorth@krcd.org
douglass@energyattorney.com
ds1957@att.com
dvidaver@energy.state.ca.us
DWTCPUCDOCKETS@dwt.com
edd@cpuc.ca.gov
ek@a-klaw.com
erasmussen@marinenergyauthority.org
eric.a.artman@gmail.com
etoppi@ces-ltd.com
ewdlaw@sbcglobal.net
gbawa@cityofpasadena.net
gblack@cwclaw.com
george.waidelich@safeway.com
gifford.jung@powerex.com
gmorris@emf.net
gohara@calplg.com
grehal@water.ca.gov
hcolbert@sourceenergy.net
hgolub@nixonpeabody.com
HKingerski@mxenergy.com
igoodman@commerceenergy.com
iibarguren@tyrenergy.com
ikwasny@water.ca.gov
james.richards@tyndall.af.mil
james.schichtl@sce.com
janet.combs@sce.com
janreid@coastecon.com
jarmstrong@goodinmacbride.com
jcasadont@bluestarenergy.com
jderosa@ces-ltd.com
jeanne.sole@sfgov.org
jeff.malone@calpeak.com
jeffgray@dwt.com
Jennifer.Hein@nrgenergy.com
jennifer.shigekawa@sce.com
JerryL@abag.ca.gov
jjg@eslawfirm.com
jkarp@winston.com
jkern@bluestarenergy.com
jleslie@luce.com
jmcmahon@8760energy.com
john.holtz@greenmountain.com
joseph.donovan@constellation.com
joyw@mid.org
jpacheco@water.ca.gov
jscancarelli@crowell.com
jspence@water.ca.gov
judypau@dwt.com
julie.martin@bp.com
jw2@cpuc.ca.gov
jwwd@pge.com
kar@cpuc.ca.gov
karen@klindh.com
kb@enercalusa.com
kdw@cpuc.ca.gov
keith.mccrea@sablaw.com
kellie.smith@sen.ca.gov
ken@in-houseenergy.com
kenneth.swain@navigantconsulting.com
kerry.hattevik@nexteraenergy.com
KFoley@SempraUtilities.com
khassan@semprautilities.com
kho@cpuc.ca.gov
kjsimonsen@ems-ca.com
kjuedes@urmgroup.com
KKloberdanz@SempraUtilities.com
kkm@cpuc.ca.gov
klatt@energyattorney.com
kmills@cfbf.com
kowalewskia@calpine.com
liddell@energyattorney.com
lisa_weinzimer@platts.com
lisazycherman@dwt.com
lmarshal@energy.state.ca.us
lmh@eslawfirm.com
lmi@cpuc.ca.gov
los@cpuc.ca.gov
lpettis@calstate.edu
lwhouse@innercite.com
lwt@cpuc.ca.gov
M6Sk@pge.com
makens@water.ca.gov
marcie.milner@shell.com
martinhomec@gmail.com
mary.lynch@constellation.com
mary.tucker@sanjoseca.gov
mary@solutionsforutilities.com
matthew@turn.org
mbyron@gwfpower.com
mcox@calplg.com
mday@goodinmacbride.com
mdjoseph@adamsbroadwell.com
michael.hindus@pillsburylaw.com
michael.mcdonald@ieee.org
michael.yuffee@hoganlovells.com
michaelboyd@sbcglobal.net
michelle.mishoe@pacificorp.com
mike.montoya@sce.com
mike@alpinenaturalgas.com
millsr@water.ca.gov
mjaske@energy.state.ca.us
mjd@cpuc.ca.gov
mkuchera@bluestarenergy.com
MMcclenahan@SempraUtilities.com
mramirez@sfwater.org
mrh2@pge.com
mrw@mrwassoc.com
mshames@ucan.org
mtierney-lloyd@enernoc.com
mwofford@water.ca.gov
nes@a-klaw.com

norman.furuta@navy.mil
ntreadway@defgllc.com
nwhang@manatt.com
omv@cpuc.ca.gov
pasteer@sbcglobal.net
patrickm@crossborderenergy.com
perdue@montaguederose.com
phanschen@mofo.com
phil@auclairconsulting.com
philm@scdenergy.com
pk@utilitycostmanagement.com
plook@rrienergy.com
pucservice@manatt.com
ralf1241a@cs.com
ralphdennis@insightbb.com
rasmith@sfwater.org
RegRelCpucCases@pge.com
rfg2@pge.com
rhh@cpuc.ca.gov
rkmoore@gswater.com
RLane@semprautilities.com
rob@teamryno.com
rogerv@mid.org
ron.perry@commercialenergy.net
rpistoc@smud.org
rschmidt@bartlewells.com
rshilling@krcd.org
Saeed.Farrokhpay@ferc.gov
sas@a-klaw.com
sberlin@mccarthylaw.com
scarter@nrdc.org
scr@cpuc.ca.gov
sdhilton@stoel.com
sean.beatty@mirant.com
Service@spurr.org
shannonrmaloney@msn.com
SJP@cpuc.ca.gov
SNelson@Sempra.com
srantala@energymarketers.com
ssmyers@att.net
stevegreenwald@dwt.com
steven.huhman@morganstanley.com
steven@iepa.com
sue.mara@rtoadvisors.com
sww9@pge.com
Sxpg@pge.com
tam.hunt@gmail.com
tburke@sfwater.org
tciardella@nvenergy.com
TCorr@SempraUtilities.com
tdillard@sppc.com
thomas.r.del.monte@qmail.com
tlocascio@libertypowercorp.com
todd.edmister@bingham.com
TRoberts@SempraUtilities.com
trp@cpuc.ca.gov
tsolomon@winston.com
wamer@kirkwood.com
wbooth@booth-law.com
WDSmith@SempraUtilities.com
westgas@aol.com
wetstone@alamedamp.com
WKeilani@SempraUtilities.com
wmc@a-klaw.com
wtr@cpuc.ca.gov
zdavis@advantageiq.com