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.	R. 07-05-025

COMMENTS OF THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION AND THE CALIFORNIA MANUFACTURERS AND TECHNOLOGY ASSOCIATION ON THE PROPOSED DECISION OF ALJ PULSIFER

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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.	R. 07-05-025

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The California Large Energy Consumers Association (CLECA) and the California Manufacturers and Technology Association (CMTA) hereby submit their Comments on the Proposed Decision (PD) distributed by ALJ Pulsifer on August 23, 2011.

This phase of the proceeding is an inquiry into a number of aspects of direct access (DA) service and the Commission's determinations regarding issues presented by the several parties will have an important role in determining the future health and vitality of the DA program. The Commission has been asked to consider changes in the calculation of the exit fees applicable to DA customers and in the so-called switching rules, and it has been asked to modify the security requirements applicable to energy service providers (ESPs). The PD has, in many respects, done an admirable job in addressing the parties' varied positions on these issues, and CLECA and CMTA support many of the resolutions proposed by the PD.[1] However, we fear that the PD's

[1] CLECA and CMTA support the PD's determinations with respect to the inclusion of pre-2004 vintage renewable resources in the benchmark calculation, the capacity adder, the weighting of the benchmark to reflect the historical generation profile, the removal of CAISO load-based charges, the rejection of PG&E's proposal for a "zero default PCIA value", and the changes in the switching rule notice and stay requirements.

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determination with respect to the question of ESP security requirements will, if adopted by the full Commission, seriously impact the health of the DA program, and could literally spell the end of the program if security bonding costs under the formulation proposed prove to be too costly. This aspect of the PD needs to be changed.

I. BACKGROUND ON CLECA AND CMTA

CLECA and CMTA are organizations of large industrial electric customers of the State's investor-owned utilities, and have participated in Commission proceedings on behalf of such customers for literally decades. During the 1990's, CLECA and CMTA were among the most active and vocal parties advocating for the opportunity for electric utility customers to have a choice as to their generation/energy supplier. CLECA and CMTA viewed retail competition as a powerful tool in the fight to assure that rates for electric service are reasonable and affordable, rates that might permit California industrial electric customers to compete in national and international markets. Since its opening in 1998, many members of these organizations have received DA service from an ESP, although today the majority of member usage is on bundled service.

CLECA and CMTA participated, both at the Legislature and at the Commission, in the development of the original rules governing DA service. CLECA and CMTA helped to develop the current system of exit fees applicable to DA customers, both in the 2002-2003 period when the customer responsibility surcharge ("CRS") was initially developed, and again in 2006 when the methodology for the CRS was revised. Their interest in the modifications of those exit fees and the associated switching rules in this proceeding is ongoing.

With member companies using both DA and bundled service, CLECA and CMTA must attempt to promote policies that treat each type of service fairly. With respect to the CRS, we believe it is important to make a concerted effort to assure that the

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methodology, including the market price benchmark ("MPB"), preserves the "indifference" standard as between bundled and DA customers. Neither type of customer should be advantaged or disadvantaged by the fact that some customers take DA service. While the re-opening of DA service to new customers in 2010 has offered the opportunity of choice of supplier to many new customers, it also severely restricts the ability of previously DA-eligible customers to move between bundled and DA service. Nonetheless, we continue to be interested in preserving the ability to make such moves on reasonable terms.

II. METHODOLOGY FOR DETERMINING THE PCIA AND ONGOING CTC

CLECA and CMTA believe that the PD does a relatively good job of sifting through the various proposals for changes in the methodology for calculation of the PCIA and the ongoing CTC. The advent of the 20% RPS requirement, and now the introduction of a 33% RPS requirement, have changed the utilities' procurement practices and this change brings into question the accuracy of the current MPB approach to the calculation of indifference. Clearly, it is time for the Commission to consider changes in the methodology for calculation of the several elements of the CRS and the PD does not shy away from the task. The PD correctly recognizes that while new renewable procurement costs are reflected in the utilities' total portfolio costs, they are not reflected in the MPB thus creating an inaccurate calculation of the PCIA under the current methodology.[2]

Unfortunately, after reviewing the strengths and weaknesses of the several proposals, the PD adopts a new benchmark methodology which is both overly complex and likely to be inaccurate. The PD proposes the adoption of a new MPB, the renewables portion of which is based on a 68% weighting of utility renewable costs as

[2] PD at pp. 9, 16.

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reported to the Energy Division and a 32% weighting of Department of Energy (DOE) figures for premiums paid across the country for renewable products.[3] The PD states:

> In order to produce a more broad-based weighting of the RPS adder, therefore, we shall make use of sources of RPS data that incorporate transactions of other load serving entities. In the absence of any superior source that has been identified for this purpose, we shall make use of the western regional renewable energy contract premiums published by U.S. DOE.[4]

We believe that the PD goes astray when it suggests that the proper approach is to include a 1/3 weighting of these DOE-reported renewable premium prices in the calculation of the MPB. The PD explains its purpose in including this data as follows:

> The correct way to adjust the MPB would be based on a benchmark that accurately reflects the market value of all relevant sources of the California renewables market. To accurately reflect the market value of RPS-compliant renewables, the benchmark should reflect prices paid by buyers and sellers in recent transactions for delivery of RPS compliant power in California for the forecast year. Based on the record developed in this proceeding, however, we are left with conflicting proposals, all of which suffer from various deficiencies in completeness, relevance, and/or transparency of the data proposed to be used.[5]

There are two problems with the PD's analysis of the issue. First, it is not clear to CLECA and CMTA why the MPB should be based on a benchmark that reflects the cost of renewables for California utilities, ESPs and CCAs *other* than the three electric utilities subject to these rules. The ESPs' and CCAs' renewables costs, and those of the municipal utilities, are not at issue here. The PD's determination to find a broader benchmark, one reflecting all of the California renewable market(s), appears to fuel the decision to include a 32% weighting for the DOE factor. We believe the benchmark

3 The weighting reflects the percentage of total California load served by the three big investor-owned utilities.
4 Id., at p. 21.
5 Id., at pp. 16-17.

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should reflect the costs the three utilities incur for renewables purchases or production and thus that it should reflect data on their purchases and production costs.

The second problem with the PD's approach is that the DOE data does not accomplish the intended purpose and its inclusion in the MPB will only make the benchmark less accurate. As noted by Dr. Barkovich and as recognized by the PD, *this DOE data involves an entirely different metric both geographically and in kind*; it measures the *premiums paid for voluntary purchases of renewable attributes by retail customers across the country*. Dr. Barkovich testified that:

> SCE has proposed to use as a proxy for the value of the renewable attribute "the average premium for voluntary renewable energy purchases as reported by the U.S. Department of Energy's (DOE) National Renewable Energy Laboratory (NREL)." (SCE, p. 26.)
>
> SCE defends this proposal on the grounds that this figure is publicly available. Unfortunately, it is not a suitable proxy as it captures an entirely different metric. The figure that SCE and SDG&E propose, as SCE admits, "reflects premiums paid by energy consumers in the market", i.e. voluntary payments by retail customers to buy into a portfolio with more renewable energy. This proposed proxy, which SCE estimates at $20/MWh, has nothing to do with a wholesale market premium for renewable generation compared to gas-fired generation. In my opinion, any adder to the MPB for renewable generation should reflect the difference in the price of renewable generation being paid by load-serving entities (LSEs) compared to non-renewable generation. SCE has not even claimed that this proxy in any way represents the premium it pays for renewable generation.

The PD recognizes this problem, but nonetheless goes ahead with the recommendation that the DOE figures comprise 32% of the renewable portion of the benchmark.[6] The PD, borrowing from the utilities' arguments, states that if the renewable portion of the benchmark were comprised only of utility renewable costs, there would never be any excess renewable costs to be recovered from DA customers.[7]

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[6] PD at p. 21.
[7] Ibid.

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But this is a *non sequitor* because the renewable costs comprise just a portion of the MPB and it is the relationship of the MPB to the total utility portfolio cost that drives the Indifference calculation. Clearly, the renewable portion of the MPB calculation should reflect the best information concerning the amount the three utilities actually pay in renewable purchase contracts and their costs for utility-owned renewable generation. Indeed, those are the costs that show up in the total portfolio cost with which the MPB is to be compared. The PD has fouled or tainted that information by the inclusion of DOE data for the western U.S. on premiums paid by retail customers for renewable attributes. The latter has little, if anything to do with costs incurred by Edison, PG&E and SDG&E. This aspect of the PD should be changed so that just the utilities' renewables costs are used in conjunction with the existing one-year strip of conventional power in the creation of the MPB.

III. THE PD'S DETERMINATION THAT ESPS MUST POST A SECURITY BOND REFLECTING THE POTENTIAL INCREMENTAL COSTS ASSOCIATED WITH THE RETURN OF DA CUSTOMERS TO BUNDLED SERVICE IS LEGAL ERROR

As we have stated, CLECA and CMTA have members in both the DA and bundled service categories, indeed more of the load of their member companies is served on bundled service than on DA service. As such, CLECA and CMTA have no interest in rules or fees which would allow DA customers to impose additional costs on bundled service customers or vice versa. This is true with respect to the Indifference calculation and it is true with respect to the switching rules, including the potential for costs associated with the involuntary return of DA customers to bundled service. We believe that the current switching rules, including the use of transitional bundled service (TBS) for DA customers returning to bundled service, does a good job of protecting both types of customers.

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Unfortunately, the PD agrees with the PG&E and Edison argument that ESPs must provide security sufficient to cover all of the incremental costs that might be incurred by the utilities in the event of a mass involuntary return of DA customers to bundled service.

> We conclude that mass involuntarily returned DA customers are to be protected by the ESP's financial security instrument covering all of the IOU's incremental costs to serve those returned customers. Consistent with our interpretation of § 394.25(e) concluding that the ESP is legally obligated to cover all incremental costs resulting from an involuntary return of its customers to IOU procurement, we determine that an ESP bond must be sufficient to cover such costs.[8]

The PD makes this determination in spite of the fact that the use of the TBS rate for returning DA customers assures that all such incremental costs are paid by such customers and not be bundled service customers. In this respect, the PD commits legal error.

Section 394.25(e) of the Public Utilities Code seeks to ensure that involuntarily returned DA customers do not impose costs on the utility's other customers and states as follows:

> 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

8 PD, at p. 56.

> 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. (emphasis added.)

At the outset, it is important to recognize that Section 394.25(e), by its express terms, vests the Commission with a substantial amount of discretion. The phrase "*any* reentry fee imposed on that customer that the Commission *deems necessary* to avoid imposing costs on other customers" clearly allows the Commission to determine the conditions and circumstances under which a reentry fee for involuntarily returned customers may or may not be necessary. Stated differently, under Section 394.25(e), it is within the Commission's discretion to find that with appropriate safeguards in place, no reentry fee is necessary. In this event, the bonding requirement would become moot by the express terms of Section 394.25(e). The PD ignores that discretion in finding that such customers must be returned to full bundled service, rather than TBS service, and that the ESPs must provide financial security measured by the ever-changing estimates of the incremental costs which would be occasioned by such return to bundled service, and the volatility indices associated with such procurement costs.

CLECA and CMTA submit that a reentry fee is entirely unnecessary if the Commission adopts appropriate terms and conditions for the service to be provided by the utility for involuntarily returned customers. There is no re-entry fee today and the system of TBS rates works very well to place the incremental procurement costs where they belong; with the returning DA customer. The Commission does not need to take a paternalistic approach to DA customers by shifting that cost responsibility to ESPs, particularly an approach that is likely to smother the very program they favor.

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During the workshop phase of the R.07-05-025 proceeding, a group of parties known as the Direct Access Parties[9] proposed that involuntarily returned customers, like other returning DA customers, be required to take TBS for a period of six months. As currently established, the rate for TBS reflects the utility's short-term procurement costs. The Direct Access Parties proposed (with the apparent support of all parties) that the TBS rate also include a capacity adder to reflect Resource Adequacy. At the end of the six-month period, the customer would take service under the otherwise applicable rate unless the customer had elected to return to DA service before that time. With this type of TBS rate, the involuntarily returned customer will not impose costs on other bundled customers and thus no reentry fee is needed. If no re-entry fee is needed, there is no need for a big security obligation.

It also should be clear that such a TBS rate itself does not constitute a "reentry fee" (which would trigger a bonding requirement under Section 394.25(e)) since the TBS rate includes costs such as transmission and distribution (T&D), along with short run energy procurement costs and an RA adder. The involuntarily returned customer would have paid these T&D costs as a DA customer and would continue to pay them as a TBS customer. Thus, they are not costs which are imposed on any other customer. In sum, by requiring the involuntarily returned customer to pay the procurement costs actually incurred by the utility to serve the returning customer plus an RA capacity adder, the TBS rate proposal ensures that the involuntarily returned customer does not impose costs on other customers. To the extent there are additional administrative

[9] The Direct Access Parties include Alliance for Retail Energy Markets, BlueStar Energy, California Alliance for Choice in Energy Solutions, CLECA, CMTA, California State University, Direct Access Customer Coalition, Energy Users Forum, School Project for Utility Rate Reduction, and Walmart.

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costs incurred by the utility for dealing with involuntarily returned customers, CLECA and CMTA would have no objection to the inclusion of reasonable administrative costs in the TBS rate.

Unfortunately, the PD determines that "as a matter of law" the ESPs are responsible for all costs associated with the involuntary return of customers to utility service.[10] Further, it requires that such customers must go directly on to bundled service and that they must remain on bundled service until they can provide 6-months' notice of their desire to return to DA service. Thus, the PD not only threatens the economic viability of DA service by imposing this new security requirement on ESPs, who will surely attempt to recover its costs in their charges to DA customers, it requires a DA customer which is involuntarily returned to the utility to remain there perhaps for a far longer period than the customer would choose. This paternalistic approach is both unnecessary and inappropriate. In its effort to protect such customers, the PD would actually increase the likelihood that they will be harmed and it risks the possibility that DA service will be rendered uneconomic by the creation of the new security requirements.

[10] PD at pp. 65-66, 68.

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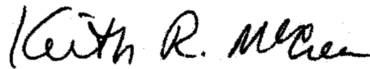
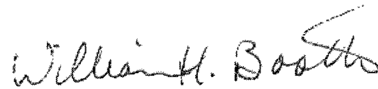
Accordingly, the Commission should find that a reasonable TBS rate can be structured so that any reentry fee is unnecessary. Such an approach and finding is fully consistent with the plain language of Section 394.25(e).

Respectfully submitted,





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