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)

OPENING COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO ON THE FINANCIAL SECURITY BOND METHODOLOGY DISCUSSION IN THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE PULSIFER ON DIRECT ACCESS REFORMS

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OPENING COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO ON THE FINANCIAL SECURITY BOND METHODOLOGY DISCUSSION IN THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE PULSIFER ON DIRECT ACCESS REFORMS

In accordance with California Public Utilities Commission Rule 14.3, the City and County of San Francisco ("City" or "CCSF") respectfully submits these opening comments on the financial security bond methodology discussion in the *Proposed Decision of Administrative Law Judge ("ALJ") Pulsifer on Direct Access Reforms* ("PD"). The City is one of the Joint Parties that are also filing separate comments today on issues associated with modifications to the calculation of the the Market Price Benchmark ("MPB") and total portfolio costs used to calculate the Indifference Amount, and the resulting Power Charge Indifference Amount ("PCIA") and the Competition Transition Charge ("CTC").

As the comments of the Joint Parties' detail, the City is largely supportive of the PD's determinations on issues associated with the modifications to the calculation of the the PCIA and CTC. However, the City has serious concerns about key conclusions in the PD as to the methodology to calculate bond amounts necessary to cover financial security requirements which are contrary to important evidence in the record and result in excessive bond amounts. The City appreciates that the PD makes clear that the methodology to calculate bond amounts for Community Choice Aggregators ("CCAs") is not addressed in this proceeding and is the subject of a different proceeding with a different record. Nonetheless, the City is concerned that certain

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Parties will attempt to use determinations made in this proceeding as precedent for purposes of determining bond amounts for CCAs.

In Appendix A, the City provides edits to the findings of fact, conclusions of law and ordering paragraphs to correct the errors in the PD discussed in these comments.

I. The PD Properly States that this Proceeding should not Prejudge the Calculation of a Financial Security Requirement (Bond Amount) for CCAs.

The PD properly states on page 53 "[w]e make no prejudgment here concerning whether the provisions should be interpreted similarly or differently for CCAs or whether the bond amounts would be different." This conclusion is appropriate. The appropriate methodology for calculation of bond amounts applicable to CCAs is being litigated in docket R.03-10-003. The PD concludes that the methodology proposed by Pacific Gas and Electric Company ("PG&E"), and Southern California Edison Company ("SCE") offers a suitable framework for determining the applicable ESP bond amount. PD at 78. Importantly, the PD notes that "SCE and PG&E offer the only model as a basis to determine financial responsibility requirements for ESP bonds. The DA Parties decline to present their own bond proposal, but focus on opposing the proposal of the IOUs, claiming that little or no ESP bond requirement is necessary." Id. Thus, the PD's conclusions are based on the particular record in this case, and it would violate the due process rights of CCAs to prejudge the outcome of a CCA financial security requirement (bond amount) on this record.

The City has participated actively in R.03-10-003 and presented alternatives to the proposals of PG&E and SCE in that docket. Given that the Commission Rulings and Scoping Memos made clear that the CCA bond amount will be determined in R.03-10-003, the City had the expectation that alternatives for a CCA financial security requirement should only be presented in R.03-10-003, and would be outside the scope in this docket. Thus, it would be

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unfair and contrary to due process for the Commission to prejudge in this case, based on the record in this case, the bond amount methodology that should apply to CCAs.

In addition to due process issues, there are legal and policy reasons that support use of a different methodology to calculate financial security requirements for CCAs and ESPs. These are amply set forth in the City's February 11, 2011 legal brief in this docket and R.03-10-003 and will only be summarized here. Section 394.25(e) provides for a bond or insurance by a CCA and ESP sufficient to support the reentry fees deemed to be necessary by the Commission. The statute references "any reentry fee . . . that the Commission deems is necessary", without any indication that the Commission is obliged to use the same methodology to determine the necessary re-entry fees for CCAs and ESPs. Similarly, bonds are to be "sufficient to cover reentry fees," but there is no legislative direction to use the same bond methodology for CCAs and ESPs. The Legislature could easily have specified that the re-entry fee and bond methodologies be the same for CCAs and ESPs, but it chose not to do so. Thus, the correct reading of the statute is that whether the re-entry fee and bond methodologies should differ for ESPs and CCAs is an issue within the Commission's discretion.

CCAs are public entities accountable to public bodies whose activities are subject to open government laws. As explained previously by the Commission:

> Entities of local government, such as CCAs, are subject to numerous laws that will have the effect of protecting CCA customers and promoting accountability by CCAs. Under existing law, a CCA must conduct public hearings, operate within a budget and disclose most types of information to members of the public. To the extent that a CCA fails to consider the interests of its customers -- who are local citizens — there is recourse in subsequent elections, the courts and before local government agencies.[1]

In the context of re-entry fee and bond issues, the public scrutiny, oversight, and accountability of CCAs provides the necessary assurances that CCAs will be prudently managed and operated

[1] D.05-12-041 at 10-11.

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and that, in the unlikely event a CCA runs into financial difficulties, there will be significant advance notice to the public (and utilities) of such difficulties and the efforts of the CCA to address them. This oversight of CCAs significantly mitigates the risk that a CCA might fail and bundled customers might incur costs as a result, which in turn significantly tempers the basis and need for costly financial security requirements for CCAs due to their unique characteristics. In sum, Section 394.25(e) does not constrain the Commission's discretion to adopt different re-entry fee and bond methodologies for ESPs and CCAs. In determining whether and how such methodologies should differ, the Commission should take into account the differences between CCAs and ESPs, particularly the fact that CCAs are public entities.

II. The PD Errs in Adopting a Methodology to Calculate Bond Amounts for ESPs that Includes a "Stress Factor" Multiplier that the Records Shows is Obscure, Based on Unreliable or Non-existent Data, and Will Result in an Excessive Bond Amount.

A. The Stress Factor Multiplier is Based on Unreliable or Non-existent Data for Implied Volatility

The PD adopts the methodology proposed by PG&E and SCE to calculate the bond amounts for ESPs, which was submitted as a settlement proposal in R.03-10-003. That methodology is purported to be designed to cover market uncertainties with regard to what procurement costs an IOU might incur at some point in the future if an ESP were to unexpectedly return load to an IOU. PG&E and SCE's proposed bond calculation attempts to do this based on current market prices with certain adjustments, multiplied by a stress factor. "A key input used [in the PG&E/SCE proposed methodology] to determine the stress factor multiplier is an estimate of 'implied volatility.'" Id. However, the record shows that the input data proposed to be used for "implied volatility" in the proposed calculation is, in the case of PG&E, non-existent, and even where implied volatility data is available, that data is unreliable

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and unverifiable. The adoption of a stress factor in the face of no reliable or verifiable data to support it constitutes error.

First, even PG&E's witness admitted that there is no product available from any broker that estimates the implied volatility of NP 15 prices. As noted in the PD "[t]the table of data sources in that testimony listed only one provider of volatility data, Amerex. PG&E's Hessami acknowledged that Amerex does not provide NP 15 volatility data." PD at 76. The PD notes that PG&E offered two alternatives to address the unavailability of NP15 implied volatily data: to use SP 15 data as a proxy for NP 15 prices, or to use historical volatility data. PD at 80-81. The PD properly concludes that the record provides "no basis for concluding that SP 15 volatilities would serve a as a reasonable proxy for NP 15 volatilities or whether SP 15 volatilities could be adjusted to become a reliable proxy." PD at 81.

The PD similarly finds that there are problems with PG&E's second proposal, namely that although the period to use for calculating historical volatility would be important, PG&E had no proposal for an appropriate time period. PD at 81. The PD attempts to correct the problem by asking PG&E to file a proposal through an advice letter. Id.

However, with regards to PG&E, there is no worthwhile data to support historical volatilities as a substitute for implied volatility. PG&E's own witness conceded that historical volatility is not a good predictor of future volatility[2] and that PG&E has not performed any studies to determine how well historical volatility predicts future volatility.[3] Thus, the historical volatility data suffers from the exact same flaws that properly led the PD to dismiss use of SP 15 data to estimate implied volatilities for NP 15. It is illogical to reject use of the one, and then

[2] Tr. 628:13-21 (PG&E/Hessami).

[3] Tr. 629: 3-7 (PG&E/Hessami).

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adopt use of the other, when both metrics suffer from the same lack of evidentiary support for their usefulness.

This problem cannot be corrected by assessing differing time periods, since there is a more fundamental problem: the lack of any evidence correlating the historical volatility data with the metric it is intended to estimate, future volatility. Moreover, the advice letter process proposed in the PD is totally inadequate to test fundamental factual questions such as whether historical volatility can be used to reliably predict future volatility (a fact there is no support for in the current record) and if so, the appropriate time period to consider.

Second, the PD also errs in accepting implied volatilies for SP 15 given the record on the limited data that is available to support such volatilities. The record contains evidence of only one broker, Amerex, that provides implied volatility quotes for SP 15,[4] and Amerex bases its quotes on indicative data based on an unknown quantity of trades in the options market.[5] PG&E's witness Hessami acknowledged that the accuracy of price information in a market increases with the number of transactions – or liquidity – of the market.[6] Mr. Hessami and PG&E do not have any data about the liquidity or illiquidity of the options market for SP 15 prices[7] and thus are unable to evaluate the accuracy of the Amerex quotes. SCE also stated that it lacks this liquidity information.[8]

In sum, the PD errs in adopting a stress factor methodology that relies on estimates of implied volatility data, shown by the record to be either unavailable, or unreliable and obscure.

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[4] Tr. 636:7-10 (PG&E/Hessami).

[5] Ex. 400 (Hessami/PG&E), p. 4A-25; Tr. 632:17-21 (Hessami/PG&E).

[6] Tr. 632:22 - 633:13 (Hessami/PG&E). As an example to support this point, Mr. Hessami agreed that one would feel more confident about market prices in a particular housing market if one had more comparable prices from previous home sales. Tr. 633:14-23.

[7] Tr. 634:25 - 635:6 (Hessami/PG&E); Ex. 421 (PG&E DR Response 4.a).

[8] Ex. 307, SCE DR Response 3.a.

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B. The Adoption of a 95% Confidence Interval and a One Year Procurement Period Result in an Excessive Financial Security Bond Amount.

At least two additional factors in the methodology adopted by the PD result in excessive bond amounts: use of a 95% confidence interval for forecasting procurement costs, and use of a one year period for calculation of re-entry fees and, in turn, bond amounts. Neither of these factors is supported by the record. The PD erroneously justifies the 95 percent confidence interval as part of the stress factor calculation based on the Commission's use of that interval in D.07-12-052.[9] However, that decision dealt with the very different issue of how much market risk the Commission wished to tolerate in utility procurement portfolios. In the context of energy procurement, changes in market prices have a direct impact on customer rates for any un-hedged portion of the utility supply portfolio. Here, the Commission must balance quite distinct considerations, including in particular, avoiding an excessive bond requirement. Thus, the PD's reliance on D.07-12-052 is erroneous for determining that 95% is the appropriate confidence interval to use as an input in the proposed bond methodology.

Use of a one year period to calculate re-entry fees and bond amounts is also unnecessary and contributes significantly to the excessive bond amounts that result, as it effectively can at least double both re-entry fees and bond amounts. In support of a 12-month time frame, the PD indicates that the utilities could require more than a year to adjust their procurement strategies, and references CCA tariffs as the basis for that determination.[10] This conclusion is contrary to testimony of Direct Access witness Fulmer showing that a six-month time frame for calculating

[9] PD at 80.

[10] SCE Opening Brief at 61-62 (citing Rule 23.S.1).

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re-entry fees and bond amounts is consistent with current tariffs and allows utilities ample time to adjust their procurement for the returning customers.[11]

Moreover, contrary to the findings in the PD, an analysis of CCA tariffs demonstrates that they support bond amounts and re-entry fees based on a six-month period. During the proceedings, SCE referenced CCA Rule 23.S.1, and claimed this rule justifies a one year procurement period for re-entry fees.[12] Rule 23.S.1, however, relates to a voluntary and orderly termination of a CCA and is not apt. The more applicable section of Rule 23 is section T which relates to involuntary termination of a CCA, the context the bond is supposed to protect against. Sections T.3, and 4.d relate respectively to an immediate involuntary termination, and an involuntary termination followed by opportunities to cure. In both cases, CCA customers returned to bundled utility service are subject to the provisions of Rule 23.L, which specifies a six-month period prior to a return to bundled utility rates. The relevant language of Rule 23.L states that: "Customers must provide a six-month advance notice to PG&E prior to becoming eligible for BPS [Bundled Portfolio Service] so PG&E can adjust its procurement activity to accommodate the additional load."[13] Thus, contrary to the discussion in the PD, the Commission has already recognized that six months is sufficient for utilities to adapt to the new load.

C. The Adopted Methodology Results in Excessive Financial Security Requirements and Bond Amounts.

The PD also errs in adopting a proposed methodology that the record shows results in excessive bond amounts. Direct Access Parties' witness Fulmer performed an analysis comparing historical bond amounts for procurement costs under the proposed CCA settlement with a utility's actual exposure caused by an ESP's involuntary return of customers to the utility

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[11] Ex. 200, p. 16 (Fulmer/DA Parties).

[12] SCE Opening Brief at 61-62.

[13] Rule 23.L.3.b.

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if the customers were paying bundled rates.[14] Using SCE data, Mr. Fulmer's analysis of bond amounts and reentry fees demonstrates that, without exception, each of the historical bond amounts would have exceeded any re-entry fees that would have become due, typically by a significant margin.[15] For an ESP with annual sales of 2 million MWh, the bond requirement would have exceeded re-entry fees that would have become due by amounts ranging from $22 million to $117 million.[16] This testimony, similar to analyses CCSF has presented in the CCA docket, shows that the CCA bond settlement produces unreasonably high bond requirements that go far beyond covering the risk the bonds are designed to insure against. The PD errs in failing to address this important consideration.

The PD stresses that only PG&E and SCE presented a proposed methodology for calculating bond amounts. However, even without an alternative proposal, the Commission should reject the unsupported aspects of the IOUs' proposals for bond amounts and re-entry fees, and ask the IOUs to make a proposal that does not rely on these flawed elements.

D. Other Corrections.

Consistent with Appendix B, the PD should be clarified to provide that an IOU's costs of complying with the Renewable Portfolio Standard ("RPS") should be excluded from the calculation of both re-entry fees and bond amounts. This feature is important to moderate the cost of the financial security requirement, appropriate to the extent the CPUC affords the IOUs flexibility to adjust their RPS purchases in the context of returning direct access load, and consistent with the CCA Settlement and the position of the IOUs in the CCA docket.[17]

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[14] Ex. 201 (Fulmer/DA), pp. 12-15.

[15] *Id.*, pp. 13-15, Table 1 and Figure 2.

[16] *Id.*, Table 1 and Figure 2.

[17] Exh. 400, at 4A-8 and 4A-17 (PG&E/Hessamin); Exh. 300 at 56: 1-10 (SCE/Singh).

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Appendix B provides that "No RPS price will be included in the re-entry fee calculation because the Commission will provide the IOUs as Providers of Last Resort flexible compliance in meeting the RPS requirements for the DA customer load involuntarily returned to IOU procurement service." PD at Appendix B, 2.

The PD should also be clarified to remove all references to stress factor adders in the calculation of re-entry fees. Re-entry fees are determined if and when the re-entry occurs, so no stress factor to account for re-entry at some point in the future is needed.[18]

III. Conclusion.

The City respectfully requests that the errors in the PD described in these comments be corrected as set forth herein.

Dated: September 12, 2011

Respectfully submitted,
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[18] For example, Appendix B in the PD includes a reference to a "stressed" RA price, which is not part of SCE's and PG&E's proposal for re-entry fees.

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APPENDIX PROPOSED CHANGES TO THE FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. The existing Commission-adopted methodology used to calculate the Indifference Amount has become outdated in view of industry and regulatory changes over time.

2. Pursuant to Pub. Util. Code § 365.1(b), individual retail nonresidential enduse customers may acquire electric service from other providers in each electrical corporation's distribution service territory, up to a maximum allowable total annual limits established in D.10-03-022.

3. Under current rules, former DA customers on bundled utility service must provide six months' notice in order to leave bundled utility service. The sixmonth notice requirement applies for customers that switch back to DA. A DA customer who returns to bundled service must commit to stay for at least a three-year period.

4. SB 695 requires that other providers of electricity in California are to be subject to the same procurement-related requirements that apply to the IOUs, including RA requirements, renewable portfolio standards, and greenhouse gas emission reductions.

5. The current indifference methodology only recognizes the IOUs' cost of renewable resources in the calculation of the Total Portfolio Cost, but does not account for the market value of renewable resources in the MPB.

6. An adjustment to the MPB to account for the market value of renewable resources will result in a more accurate measure of indifference costs.

7. An accurate market-based measure for use in a renewable resource adder calls for data sources that represent transactions among all load serving entities in California, not just those of the IOUs.

8. Relying solely upon IOU transactions as the data source to construct a renewables adder is deficient to the extent it fails to account for transactions of other categories of California load serving entities.

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9. All of the parties proposals for adjusting the MPB to account for renewable resources have deficiencies that make the proposals unsuitable as a basis for calculating the indifference amount.

10. While the value of the utilities' renewable resources constitute 68% of total California load subject to RPS requirements, the remaining 32% of such resources come from other load serving entities.

11. The data on renewable resource transactions from SNL Publications is not a reliable source for purposes of calculating a renewable adder to determine indifference costs.

12. The data reported by the United States Department of Energy survey of reported renewable energy contract premiums in the Western United States compiled by the National Renewable Energy Laboratory offers a proxy value that can be used in conjunction with California utility data to produce a weighted RPS adder.

13. The MPB incorporates a capacity adder value to reflect the cost of resource adequacy based on the annualized cost of a combined cycle combustion turbine, but the current methodology does not provide for updating the value over time.

14. The record is insufficient at this time to provide a factual basis to adopt an updated RA capacity adder value for purposes of the MPB. The existing RA capacity adders adopted in D.07-01-030 remain the best RA measure.

15. The currently pending CEC proposed "Capacity Procurement Mechanism" price before the Federal Energy Regulatory Commission is not suitable as MPB capacity adder value, particularly because the CPM price is above current RA capacity market values. The FERC has raised questions about the CPM price and has made it subject to refund pending further study.

16. The total portfolio calculation currently includes certain CAISO loadbased costs which the IOUs avoid when load departs for DA service. Exclusion of the load-based CAISO costs that vary based on the amount of load will produce a more accurate indifference amount calculation.

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17. Under the current method for calculating the indifference amount, the total portfolio reflects the profile of the underlying IOU generation resources or contracts; however, the MPB calculation essentially is weighted based on the number of peak and off-peak hours in a year.

18. The current MPB is based on an implicit assumption that the IOU supply portfolio serves a flatter load profile than it actually does, thus creating an artificially low market value and artificially high indifference amount.

19. Parties identified two alternative approaches by which to revise the MPB to reflect more accurately the shaping profile of portfolio resources, weighted either by using the IOU generation profile or the IOU load profile.

20. The IOU generation profile would more closely track actual portfolio costs, but the IOU load profile follows the shape of how load varies from hour to hour.

21. By using the utility's bundled load profile for the weighting factors, the shaped energy price for "brown" power would be the same for all PCIA vintages and for the CTC portfolio.

22. The inputs for calculating the shaped energy price should be readily available since each utility's bundled hourly load profile is used to derive the utility's fuel and purchase power expense forecast presented in annual ERRA proceedings.

23. Bundled customer indifference is determined with reference to total portfolio costs, not isolated costs related to just the ERRA costs.

24. PG&E's proposal would violate the bundled customer indifference by recognizing only the cost to bundled customers from using more above-market CTC resources, while not recognizing the offsetting benefit accruing to bundled customers from also using more below-market utility resources.

25. An 18-month minimum stay requirement for bundled service strikes a reasonable balance, mitigating the risk of stranded RA and other potential stranded costs, while acknowledging that the

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capped DA market supports some lowering of the minimum stay requirement from its current length of three years.

26. The re-entry fees which are covered under the provisions of § 394.25(e) include all incremental costs resulting from the involuntary return of DA customers to bundled service, including administrative costs and procurement costs that exceed the costs paid by bundled customers.

27. A security bond, letter of credit, or secured cash deposits are alternative means that can meet the ESP financial security obligations of § 394.25(e). The use of self insurance or showing of an ESP's investment-grade bond ratings are inadequate alternatives that fail to provide the requisite financial security required by § 394.25(e).

28. The fees that are currently in effect by utility tariff to cover administrative costs for the voluntary return of a CCA customer offer a reasonable proxy to use for purposes of ~~securing a~~ establishing bond amounts and calculating re-entry fees for the administrative costs for involuntarily returned DA customers.

29. A ~~one-year~~ six month period offers a reasonable time frame for calculating the ~~duration of~~procurement cost recovery period for re-entry fees, in terms of keeping the bond costs manageable while protecting bundled customers against cost shifting.

~~30. A forecast of incremental procurement costs based on a 95% confidence interval offers a reasonable proxy for achieving bundled customer indifference since this confidence interval was adopted by the Commission in D.07-12-05 as the confidence interval to be used by IOUs to manage rate level risk for bundled service customers~~.

~~31. The determination of re-entry fees required under § 394.25(e) requires a forecast of incremental costs for purposes of securing a bond and is required for calculating actual costs of re-entry once an involuntary return occurs~~.

32. Whether or not the returning DA customer pays the TBS rate or the BPS rate, the incremental costs incurred by the IOU to serve involuntarily returned DA customers would not change. The ESP remains responsible for covering incremental procurement costs.

33. The calculation of a financial security requirement to cover potential ~~estimated~~ re-entry fees as set forth in Appendix A incorporates the substance of the proposed bond methodology of SCE and PG&E ~~and provides a reasonable methodology for use in determining a bond amount under § 394.25(e), subject to further Commission determination of the historical data necessary to calculate the volatility factor~~. This methodology is flawed in that it produces excessive bond amounts, relies on non-existent or unreliable data, an unduly extended time period and an unjustified and excessive confidence factor.

34. The proposed ~~re-entry fee formula for forecasting procurement costs~~ bond methodology would use implied volatility data from a third-party broker if that data is available. Information is available to parties to access market prices. However limited information is available to parties to access implied ~~and~~ volatilities.~~, although a~~Access to the limited implied volatility information requires a fee-based subscription. Such data is available for SP 15 based on a proprietary model, from one broker only, and has not been shown to be reliable or verifiable as an indicator of future market prices. ~~but is not available for NP 15~~.

35. PG&E has not performed a study of volatilities comparing NP 15 and SP 15. Thus, we have no basis for concluding that SP 15 volatilities would serve as a reasonable proxy for NP 15 volatilities or whether SP 15 volatilities could be adjusted to become a reliable proxy.

36. PG&E has not performed a study of volatilities comparing historic volatilities and their relationship to implied volatilities. Thus, we have no basis for concluding that historic NP 15 volatilities would serve as a reasonable proxy for NP 15 implied volatilities or whether historic NP 15 volatilities could be adjusted to become a reliable proxy.

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~~Historic NP 15 data offers an acceptable proxy for calculating NP 15 volatility factors, but a further record is needed to determine the appropriate historical data period to utilize~~.

37. The calculation of actual re-entry fees set forth in Appendix B incorporates the substance of the proposal of PG&E and SCE and cannot be adopted due to significant flaws in the proposed methodology and inputs to that methodology. ~~provides a reasonable methodology for determining actual re-entry fees due to an involuntary DA return, subject to determination of the appropriate historical data to use calculate volatility~~.

38. An ESP with investment grade credit should be able to obtain a bond or insurance policy on the commercial market at an annual cost of about 1% of the face value of the bond/policy amount.

~~39. The procedures for the filing of advice letters to implement the provisions of the ESP bond requirements proposed by PG&E and SCE are reasonable.~~

40. The implementation of true-up procedures in accordance with the ALJ ruling dated April 14, 2011, provides a reasonable means of incorporating the revisions in methodologies adopted in this proceeding into the PCIA and TBS rates for 2011, taking into account the effects of those revisions for periods of time prior to the effective date of this decision.

Conclusions of Law

1. In administering the DA program, any adopted rules are subject to the provisions of Pub. Util. Code § 366.1(d) that all retail customers bear their fair share of purchase power obligations with no shifting of recoverable costs between customers.

2. Consistent with the increased allowances for DA transactions authorized pursuant to SB 695, any revised rules adopted for administering the DA program should also seek to preserve the benefits of customer choice.

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3. The total portfolio methodology used to determine bundled ratepayer indifference should be calculated in a manner that subtracts the total portfolio from a market price benchmark that includes recognition of the market value of RPS and RA resources applicable to all load-serving entities.

4. The Commission needs to determine a suitable proxy based upon available information.

5. Given the lack of a suitable record regarding an updated resource adequacy capacity adder, the existing capacity adder should continue to be used for the present time.

6. All load-related CAISO costs should be excluded from the calculation of the total portfolio and market price benchmark in order to produce a more accurate measure of indifference.

7. The determination of the MPB should be revised to more accurately reflect the load shape based upon time-of-use variations.

8. Under Pub. Util. Code § 394.25(e), the ESP is responsible for procuring a bond or related evidence of insurance as delineated in this decision to cover all re-entry fees imposed due to the ESP's customers that are involuntarily returned to bundled service. The ESP shall not be obligated for any re-entry fees, however, if a DA customer returns to the IOU due to default in payment to the ESP or other contractual obligations, or because the DA customer's contract with
the ESP has expired.

9. For purposes of assessing re-entry fees, an involuntary return of a DA customer to bundled service may occur due to any of the following:

a. The Commission revokes the ESP registration;

b. The ESP Agreement with the utility becomes terminated; and

c. The ESP or its authorized CAISO SC has defaulted on its obligations, such that the ESP no longer has an authorized SC.

10. If an ESP becomes insolvent and is unable to discharge its obligations to pay re-entry fees, the returning DA customers must bear responsibility for the payment of the re-entry fees.

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11. The purpose of § 394.25(e) is to protect against costs being shifted on to other customers in the event of an involuntary return of DA customers to IOU service.

12. The requirements of § 394.25(e) must be satisfied through posting of a bond, letters of credit, or cash security deposits, or equivalent evidence of insurance as delineated in this decision sufficient to cover re-entry fees as defined in this order.

13. The re-entry fees as required under § 394.25(e) resulting from an en masse involuntary return of an ESP's customers to bundled utility service must include all incremental costs incurred by the IOU as a result of the DA customers' involuntary return necessary to avoid cost shifting to bundled customers, but to provide certainty and to reduce administrative burdens, it is reasonable to estimate those costs when the return occurs, with no true-up.

14. Even if involuntarily returned DA customers are charged a portion of the incremental procurement costs through a TBS rate, any such charges imposed on involuntarily returned customers ultimately remain a legal obligation of the ESP pursuant to § 394.25(e).

15. Because incremental procurement costs resulting from serving involuntarily returned DA customers shifting costs must not be shifted to bundled customers, those associated incremental costs are included in re-entry fees pursuant to § 394.25(e) irrespective of whether the costs are recovered through a TBS rate or not.

16. Because the ESP bond proposal sponsored by PG&E and SCE is not offered as a settlement in this proceeding, the proposal must be evaluated on its substantive merits rather than based upon the Commission's settlement rules.

New: § 394.25(e) does not require the same methodology for calculation of financial security requirements for CCAs as for ESPs.

New: Nothing in this decision should be construed as a prejudgment regarding the merits of re-entry fees or bond obligations that may be deemed applicable to CCAs, which are under consideration in

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R.03-10-003, in the context of the record in that proceeding and the policy considerations relevant to CCAs.

~~17. The ESP bond proposal of PG&E and SCE offers a reasonable means of complying with the requirements of § 394.25(e) for determination of an ESP bond obligation, subject to finalizing the derivation of the volatility factor.~~

~~18. The steps involved in the calculation of the ESP bond amount for estimated re-entry fees as set forth in Appendix A of this order should be adopted.~~

~~19. The steps involved in the calculation of actual re-entry fees to be paid at the time of an involuntary DA customer return as set forth in Appendix B should be adopted.~~

20. The procedures for implementation of the revised methodologies for calculating the PCIA and TBS rates as adopted in this proceeding should be implemented by advice letter filings in accordance with the directives set forth in the ALJ Ruling issued in this proceeding on April 14, 2011. The Commission affirms the ALJ Ruling pursuant to the provisions of Pub. Util. Code § 310.

21. Unless otherwise expressly approved in the ordering paragraphs below, any proposals for revisions in the methodologies for calculating the indifference amount or TBS rate should be deemed denied.

Ordering Paragraphs

1. The calculation of the Power Charge Indifference Amount applicable to Direct Access and Departing Load customers must be modified to incorporate revisions in the calculation of the total portfolio and market price benchmark as directed in the following ordering paragraphs.

2. The Market Price Benchmark used to calculate the indifference amount must be revised to incorporate an adder to reflect the market value of renewable portfolio standard resources.

3. All pre-2004 procurement resources must be included in the Renewable Portfolio Standard calculation for purposes of the Market Price Benchmark indifference calculation.

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4. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company must each file a Tier 2 advice letter with the Energy Division within 30 calendar days following the issuance of this decision, identifying the:

a. most recent 12 months figures derived from US Department of Energy survey of Western US renewable energy premiums in calculating a weighted proxy for the Market Price Benchmark compiled by the National Renewable Energy Laboratory; and

b. all Renewable Portfolio Standard –compliant resources that began delivery in year 2010 and those projected in the investorowned utilities' Energy Resource Recovery Account forecast applications that were to begin delivery in 2011. This must include both contracts and IOU-owned resources. Confidential cost data submitted to Energy Division will be protected from disclosure.

5. The Energy Division will prepare a resolution to adopt the Renewable Portfolio Standard adder to be used to determine a Market Price Benchmark proxy value based on consideration and a 32% weighting of the DOE data in relation to a 68% weighting of the investor-owned utility cost data as relevant in the Commission's adoption of an appropriate adder to reflect renewable resources in the calculation of the indifference amount.

6. All California Independent System Operator (CAISO) charges that vary based on the amount of load shall be excluded from the total portfolio cost and Market Price Benchmark for purposes of calculating the Power Charge Indifference Amount. The list of load-related CAISO charges identified in the testimony of the Joint Direct Access parties (Exhibit 100, Exhibit A) is adopted for use in identifying the applicable load-related charges to be excluded. As the CAISO charges change over time, the IOUs shall file advice letters to update the excluded charges.

7. The Market Price Benchmark (MPB) calculation must be weighted to reflect variations in load shape on a time-of-use basis based upon the investor-owned utility (IOU) generation load profile data.

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In order to avoid the necessity to use confidential data, the MPB calculation must make use of most recent historic IOU generation load profile data that is publicly available.

8. The calculation of the temporary bundled service (TBS) rate shall be conformed to be consistent with the relevant changes in the methodology for calculating the total portfolio and Market Price Benchmark (MPB) as adopted in this decision. Specifically, the adopted MPB changes for Renewable Portfolio Standard resources shall be reflected in the TBS rate. Load-related California Independent System Operator charges, however, shall continue to be included in the TBS rate so that all relevant short-term charges are paid by Direct Access
customers.

9. The minimum stay commitment for Direct Access customers electing to return to investor-owned utility procurement service shall be reduced from three years to 18 months.

10. The six-month advance notice requirement shall continue in effect for Direct Access (DA) customers to return to investor-owned utility (IOU) service or for bundled customers departing IOU service to be served by an electric service provider.

11. The proposal for bundled customers to be charged to pay Direct Access customers for negative indifference amounts is denied.

12. The proposal is denied to set the Power Charge Indifference Amount to zero in those instances where the indifference amount is less than the ongoing Competition Transition Charge.

13~~. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must each file a Tier 2 Advice Letter within 30 days of this order to amend their tariffs to incorporate the ESP financial security provisions and re-entry fee provisions in Appendix A and B.~~

~~14. Upon Commission approval of the above-referenced advice letters to implement the procedures for the posting of financial security in accordance with this decision, each electric service provider~~

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~~offering Direct Access service within California shall be responsible as a condition of registration of posting a bond and/or other equivalent proof of insurance (e.g., letter of credit, cash deposit, third party guarantee) that covers re-entry fees pursuant to § 394.25(e).~~

15. The electric service provider re-entry fee must incorporate as a proxy for administrative costs, the administrative fees that are included in the respective retail utility tariff for returning Community Choice Aggregator customers.

16. ~~The electric service provider re-entry fee must include all incremental procurement costs prescribed in Appendix A and B as a result of providing service to *en masse* involuntarily returned Direct Access (DA) customers, including any incremental costs that may otherwise be charged to DA customers.~~

New: No RPS price should be included in the re-entry fee or bond amount calculation because the Commission can provide the IOUs flexible compliance in meeting the RPS requirements for the DA customer load involuntarily returned to IOU procurement service.

17. The amount of an electric service provider's bond must be calculated twice annually: once in early November and again in early May. Bonds shall be posted by December 31 and June 30, respectively.

18. For an electric service provider that begins service in Month M+2 (where M denotes the month when the investor-owned utility will calculate the bond amount, and is not May or November), the bond calculation must be performed using Month M-1 data, and the bond shall be for the period from the start date through the next semi-annual calculation.

19. ~~The gross bond amount to cover incremental costs, including procurement costs, must be determined pursuant to the steps as set forth in Appendix A of this decision.~~

~~20. The actual re-entry fees applicable upon involuntary return of Direct Access customers must be determined as set forth in Appendix B of this decision.~~

~~21. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must submit to the Commission's Energy Division in a Tier 2 advice letter filing, calculated in a manner consistent with this decision. The filing shall include an Excel spreadsheet showing the formulas to derive the values on each cell. The filing must set forth supporting rationals regarding the appropriate historical data necessary to measure the volatility factor in the bond formula.~~

~~22. After the Commission approves the initial bond calculation methodology by resolution, all subsequent updates in the bond calculations shall be submitted as a Tier 1 advice letter with Excel spreadsheets as specified above to the Energy Division. The filing shall be deemed accepted unless the Energy Division suspends the advice letter during the 30-day review period.~~

23. The electric service provider (ESP) is responsible for covering all applicable re-entry fees for its customers that are involuntarily returned. Only if, or to the extent, that the ESP is unable to cover all of the applicable re-entry fees, any unreimbursed fees from the ESP's must be covered by the returned Direct Access customers.

~~24. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must each calculate actual re-entry fees due within 60 days of the earlier of the start of the involuntary return, or the receipt of the electric service provider's written notice of involuntary return, using the method described below.~~

25. Re-entry fees must constitute a binding estimate of the incremental administrative and procurement costs under then-current market conditions to serve the involuntarily returned Direct Access customers for a ~~one-year~~six-month period.

26. The re-entry fees must be demanded from the electric service provider only after the involuntary return is initiated.

27. The changes in Power Charge Indifference Amount methodologies adopted in this decision shall be implemented in accordance with the procedure set forth in the Administrative Law Judge (ALJ) April 14, 2011 Ruling. In accordance with Public Utilities Code Section 310, the directives of the April 14, 2011 ALJ ruling are hereby affirmed by the Commission

28. To implement of the revised Power Charge Indifference Amount (PCIA) determined pursuant to this proceeding, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company each must promptly adjust its 2011 PCIA rate prospectively to be consistent with the revised PCIA methodology. Each of the advice letter filings shall also calculate the difference between their existing temporary bundled service (TBS)

rate and the revised TBS rate calculated in accordance with the directives in this proceeding. The difference shall applied to transactions covering the same period as for the adjustment to the PCIA rate, and incorporated as an adjustment to the TBS rate charged to Direct Access customers.

29. Southern California Edison Company and San Diego Gas & Electric Company must calculate the difference attributable to the revised Power Charge Indifference Amount (PCIA) compared with the PCIA previously adopted in their 2011 Energy Resource Recovery Account (ERRA) proceedings. This difference shall be applied to transactions beginning from the effective date of the PCIA rate change adopted in their respective ERRA proceedings for 2011

through the effective date of the revised PCIA implemented pursuant to the revisions adopted in this proceeding. This resulting difference shall be incorporated as an adjustment to the prospective 2011 PCIA rates in the Tier 2 Advice Letter filing based upon the revised PCIA methodology adopted in this proceeding.

30. Once Pacific Gas and Electric Company (PG&E) implements the revised Power Charge Indifference Amount (PCIA) consistent with the methodologies adopted in this proceeding, PG&E shall promptly revise its previously adopted 2011 PCIA rate to incorporate this deferred difference.

This difference must be applied to transactions beginning from the effective date of April 14, 2011 Administrative Law Judge Ruling through the effective date of the revised PCIA implemented pursuant to the revisions adopted in this proceeding. This resulting difference shall be incorporated as an adjustment to the prospective 2011 PCIA rates based upon the revised PCIA methodology adopted in this proceeding.

New: Nothing in this decision should be construed as a prejudgment regarding the merits of re-entry fees or bond obligations that may be deemed applicable to CCAs, which are under consideration in R.03-10-003, in the context of the record in that proceeding and the policy considerations relevant to CCAs.

31. This proceeding is closed.

CERTIFICATE OF SERVICE

I, **KIANA V. DAVIS,** declare that:

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action. My business address is City Attorney's Office, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102; telephone (415) 554-4698.

On September 12, 2011, I served: **OPENING COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO ON THE FINANCIAL SECURITY BOND METHODOLOGY DISCUSSION IN THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE PULSIFER ON DIRECT ACCESS REFORMS** by electronic mail on the attached Service List, Proceeding No. R. 07-05-025.

The following addressee(s) without an email address were served:

BY UNITED STATES MAIL: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

Malcolm Reinhardt
Accent Energy
1299 Fourth Street, Suite 302
San Rafael, CA 94901

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

Executed September 12, 2011, at San Francisco, California.

/S/
KIANA V. DAVIS

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