

9/12/2011 L. Jan Reid

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)

**COMMENTS OF L. JAN REID
ON PROPOSED DECISION OF ALJ PULSIFER**

September 12, 2011

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SUBJECT INDEX

	Page
I. Introduction	1
II. Recommendations	1
III. The Renewable Resource Adder	3
A. Reid’s Contributions	4
B. The Renewable Credit Proposal	4
C. Legal Issues	6
D. Ratepayer Costs	8
E. Weighting of the RPS Adder	11
IV. Minimum Stay Requirement	12
V. Minor Errors	12
VI. Conclusion	13
Appendix	A-1
A. Changes to Findings of Fact	A-1
B. Changes to Conclusions of Law	A-1

TABLE OF AUTHORITIES

	Page
California State Law	
Public Utilities Code § 331	10
Public Utilities Code § 366	7
Public Utilities Code § 451	6
Public Utilities Code § 453	7
Commission Decisions and Orders	
Decision 02-03-055	7
Decision 02-04-067	7
Decision 02-11-022	7
Decision 03-05-034	8
Decision 06-07-030	8
Decision 10-03-021	6
Order Instituting Rulemaking 09-01-019	10

I. Introduction

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, L. Jan Reid (Reid) submits these opening comments on the proposed decision (PD) of Administrative Law Judge (ALJ) Thomas Pulsifer in Rulemaking (R.) 07-05-025. (Agenda ID #10646.) Chief ALJ Karen Clopton mailed the PD on August 23, 2011 and opening comments are due Monday, September 12, 2011. I will file this pleading electronically on the due date.

The PD seeks to resolve Phase III issues in this proceeding relating to the rules and methodologies applicable to Direct Access (DA) and Departing Load (DL) electric service formerly served by the investor-owned utilities (IOUs).¹ I urge the Commission to adopt my recommendations given herein, and to correct the errors that I identify in Sections III-V below.

II. Recommendations

I have relied on state law, past Commission decisions, and the evidentiary record in developing recommendations concerning the PD. I recommend the following:²

1. The Commission should adopt the Renewable Credit Proposal (RCP) as proposed by Reid in Exhibit 700 and in Reid's opening brief. (pp. 4-6)
2. If the Commission establishes an RPS adder, the RPS adder should be weighted 80% using Department of Energy (DOE) data and 20% using the Joint Parties' (JPs') methodology. (p. 11)

¹ The IOUs in this proceeding are Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SG&E).

² Citations for these recommendations and proposed findings are given in parentheses at the end of each recommendation and finding.

3. The Commission should not change the minimum stay requirement in this decision. (p. 12)
4. The Commission should modify the PD to indicate that Reid is a party in this proceeding. (p. 12)

My recommendations are based on the following proposed findings:

1. Reid analyzed and developed TURN's initial Renewable Credit Proposal (RCP) and explained how it could be implemented. (pp. 3-4)
2. Some of the PD's discussion is taken directly from the JPs' testimony, with no citations provided. (pp. 4-5)
3. In his opening brief, Reid explained how the RCP could be implemented, and clarified some misunderstandings concerning the RCP. (pp. 5-6)
4. The Commission has an obligation under Public Utilities Code Section (PUC §) 451 to ensure that rates are just and reasonable. (p. 6)
5. The PD does not discuss rates, explain how much rates will increase under its recommendations, or explain why bundled ratepayers should subsidize direct access customers. (p. 7)
6. PUC § 365.1(a) specifically prohibits the vast majority of residential customers from receiving service from a direct access provider. (p. 7)
7. Both the California legislature and the Commission have established policies whereby bundled ratepayers will be indifferent to the movement of customers from bundled utility service to direct access service. (pp. 7-8)
8. The IOU's have proposed an RPS adder using the data available from the DOE, while the JP has proposed a different methodology. Because the IOUs represent approximately 80% of statewide load, the RPS adder should be weighted 80% using DOE data and 20% using the JPs' methodology. (p. 11)
9. According to the IOUs, the average duration of their contractual obligations is 3.5 years for SCE, 8.1 years for SDG&E, and in excess of 180 months for PG&E. (p. 12)

10. On November 6, 2010, Reid filed a motion for party status in R.07-05-025. On November 24, 2010, ALJ Pulsifer issued a written ruling that granted Reid's motion. (p. 12)

I urge the Commission to modify the PD by adopting a price cap of 120% of the Market Price Referent (MPR), and correcting the errors identified below.

III. The Renewable Resource Adder

The PD states that: (PD, p. 11)

Reid recommends adopting the proposal in TURN's post-workshop comments which maintains the current MPB methodology such that the PCIA would incorporate the entire RPS adder premium inherent in the IOUs' costs of procurement to meet the RPS goals, but non-utility retail suppliers would be given RPS credit for their proportionate share of the IOU's RPS purchases. Reid's rationale appears to be that this would obviate the need for bundled customers to pay for the renewable attributes they retain.

The PD errs on at least four occasions regarding the renewable resource adder. These errors include:

1. The PD implies that Reid simply adopted The Utility Reform Network's (TURN's) initial proposal (Renewable Credit Proposal, RCP). (See Section III.A)
2. The PD fails to acknowledge that the Renewable Credit Proposal (RCP) was the only Renewables Portfolio Standard (RPS) proposal in which bundled ratepayers would neither gain nor lose. (See Section III.B)
3. The PD is inconsistent with state law and prior Commission decisions. (See Section III.C)
4. The PD incorrectly states that "Reid's proposal lacks specificity regarding the intended mechanism for allocating RPS credits." (See Section III.C)

I discuss each of these errors below.

A. Reid's Contributions

Reid did not simply adopt The Utility Reform Network's (TURN's) proposal. Reid analyzed TURN's initial proposal (Renewable Credit Proposal, RCP) and explained how it could be implemented.

Reid analyzed the RCP and found that it was the only RPS proposal in which bundled ratepayers would neither gain nor lose. (Exhibit 700, pp. 12-13) Since TURN did not serve direct or reply testimony, Reid adopted the RCP as his own proposal. Reid's opening brief explained how the RCP could be implemented. (Opening Brief of L. Jan Reid, May 6, 2011, p. 4)

Therefore, I recommend that the PD be changed to reflect Reid's contributions to the instant rulemaking on this issue.

B. The Renewable Credit Proposal

The PD incorrectly states that "Reid's proposal also appears inconsistent with the current mechanisms in place for LSEs to demonstrate compliance with the RPS." (PD, p.17)

Some of the PD's discussion is taken directly from the JPs' testimony, with no citations provided. For example, the ALJ's proposed decision states that: (PD, p. 17, footnote omitted)

Reid's proposal also appears inconsistent with the current mechanisms in place for LSEs to demonstrate compliance with the RPS. Reid testifies that DA providers would receive RPS credit for their proportional share of the IOU's RPS purchases Reid's proposal lacks specificity regarding the intended mechanism for allocating RPS credits. It is unclear whether Reid is proposing to create a new RPS compliance product called an "RPS Credit" or if he is proposing to allocate existing Western Renewable Energy Generation Information System (WREGIS) certificates to load-serving entities (LSEs). The latter approach would require a methodology be developed to fairly allocate the various renewable resources in the IOU portfolio to LSEs.

In this case, the PD is an identical, word-for-word recitation of a portion of the JPs' reply testimony. Every sentence that is quoted above is taken directly from the JPs' reply testimony. (See Exhibit 101, p. 13)

For the reasons given below, I recommend that the material quoted above be deleted from the proposed decision.

In his opening brief, Reid explained how the RCP could be implemented and clarified some misunderstandings concerning the RCP. Reid recommended that: (Opening Brief of L. Jan Reid, May 6, 2011, p. 4)

1. When a customer submits a direct access request to an IOU, the customer will provide the name of the Energy Service Provider (ESP) or Community Choice Aggregator (CCA) who will be providing service to the customer.
2. When a customer moves from bundled service to direct access service, the IOUs will calculate the RPS credit and provide this information to the Energy Division as part of the IOUs' monthly Direct Access Service Report (DASR) filing.
3. The RPS credit is calculated by percent of customer load for that calendar year or portion of a calendar year. The percent of customer load is calculated by the formula (Customer Load for the period) / (Utility Load for that period). The Customer Load Percentage is then multiplied by the IOU's Annual Procurement Target (APT) to yield an RPS credit. For example, suppose that Pacific Gas and Electric Company (PG&E) had a load of 77,000 gigawatt hours (GWh) and an APT of 770 GWh, and that a migrating customer used four GWh of electricity. In this example, the customer load percentage would be $4/77,000 \approx .005\%$. The RPS credit would be $.005\% \times 770 \text{ GWh} \approx 38.5 \text{ megawatt hours (MWh)}$.
4. The Energy Division will communicate the aggregate amount of the credit or debit to the ESP or the CCA, and to the IOU.
5. When the ESP files their RPS compliance report, they will include the RPS credit as part of their filing.
6. When the IOU files their RPS compliance report, they will include the RPS debit as part of their filing.

7. All administrative costs, which I believe will be minor, will be the responsibility of the initiating party. The IOUs can seek recovery of any incremental administrative costs in their next general rate case. The ESP or CCA will pay the additional administrative costs associated with their compliance filings. Under my proposal, the Western Renewable Energy Generation Information System (WREGIS) would not be involved other than in its role in identifying generator output.
8. My proposal will have no effect on the 25% limit on REC purchases. That limit only applies only to the IOUs, not to the ESPs. (D.10-03-021, Ordering Paragraph 17, slip op. at 99)

The PD also errs when it states that “Reid’s rationale [for the RCP] appears to be that this would obviate the need for bundled customers to pay for the renewable attributes they retain.” (PD, p. 4) The PD implies that Reid seeks to have direct access customers pay for all of the costs of the renewable attribute while receiving none of the benefits.

Reid has clearly stated that “The Commission should not adopt a renewable adder to the market price benchmark. Instead, the Commission should find that DA providers should receive RPS credit for their proportional share of the IOUs RPS purchases.” (Exhibit 700, p. 3, Item #3)

Therefore, I recommend that the Commission delete the above-cited material, which appears on page 4 of the PD, and adopt the RCP as proposed by Reid in Exhibit 700 and in Reid’s opening brief.

C. Legal Issues

The Commission has an obligation under Public Utilities Code Section (PUC §) 451 to ensure that rates are just and reasonable. The PD fails to fulfill this obligation. I estimate that the PD will result in a rate increase of \$26.87 million for PG&E ratepayers, \$33.44 million for SCE ratepayers, and \$1.75 million for SDG&E ratepayers.

The PD does not discuss rates, explain how much rates will increase under its recommendations, or explain why bundled ratepayers should subsidize direct access customers. Furthermore, the PD is inconsistent with state law and with past Commission decisions.

Both the state legislature and the Commission have established policies whereby bundled ratepayers will be indifferent to the movement of customers from bundled utility service to direct access service.

The California legislature has mandated that:

- It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers. (PUC § 366(d)(1))

Likewise, the Commission has consistently maintained that bundled customers should be indifferent to the movement of entities from bundled service to direct access service. In previous decisions, the Commission has stated that:

- In D.02-03-055, we expressly stated our intent to prevent cost-shifting and to ensure that the surcharges be fully compensable so that direct access customers pay their fair share of costs. (D.02-04-067, slip op. at 4)
- Our stated goal is to achieve bundled customer indifference. (D.02-11-022, slip op. at 63)
- In order to achieve bundled customer indifference as intended by D.02-03-055, bundled rates should neither increase nor decrease solely as a result of the migration from bundled to DA load between July 1 and September 20, 2002, inclusively. (D.02-11-022, Conclusion of Law 3, slip op. at 156)
- Consistent with its broad authority to regulate, together with Public Utilities Code Sections 451 and 453 prohibiting discrimination, bundled customers may not be arbitrarily charged for obligations which rightfully are the responsibility of DA customers. (D.02-11-022, Conclusion of Law 8, slip op. at 156)
- The DA customer will not be able to use the “safe harbor” as a means of gaming or arbitraging, because we shall require such transient

customers to pay the spot price for power rather than the bundled rate. Because they will reimburse the utility for any incremental costs incurred on their behalf, bundled customers should be left indifferent to whether DA customers use the utility as temporary “safe harbor.” (D.03-05-034, slip op. at 20)

- Specifically, we required [in D.02-03-055] that bundled customers be indifferent due to customers migrating from bundled to DA load, and that there be no cost shifting. (D.06-07-030, slip op. at 3)

The PD departs from this long-established principal of bundled-customers indifference. If the Commission approves the PD, bundled ratepayers will lose approximately \$62 million over a three-year period (See Section III.D). If the Commission approves the PD, bundled ratepayers will not be indifferent to departing load.

D. Ratepayer Costs

Reid has provided the Commission with the information given below:

(Exhibit 700, Table 5, p. 12)

Table 5: Effect of RPS Recommendations on PCIA for the Years 2011-2013

IOU	IOUs	Joint Parties³	TURN
PG&E PCIA (\$/MWh)	-3.81	-13.61	0.00
PG&E Change in PCIA (\$ Million)	-9.77	-34.92	0.00
SCE PCIA (\$/MWh)	-4.18	-17.21	0.00
SCE Change in PCIA (\$ Million)	-10.73	-44.13	0.00

³ I assume that the Joint Parties are recommending that the renewable adder be equal to the average price paid by each IOU as shown in Table 4.

IOU	IOUs	Joint Parties³	TURN
SDG&E PCIA (\$/MWh)	-2.40	-7.43	0.00
SDG&E Change in PCIA (\$ Million)	-0.72	-2.23	0.00

The Joint Parties' (JPs') recommendation would have raised the rates of bundled ratepayers by a total of \$81.28 million: \$34.92 million for PG&E ratepayers, \$44.13 million for SCE ratepayers; and \$2.23 million for SDG&E ratepayers. Although the PD does not adopt all of JPs' recommendations, the PD is predominantly based on the JPs' recommendations.

The ALJ's proposed decision states that: (PD, pp. 21-22)

We shall weight the adopted RPS adder by 68% allocated to the IOU costs for RPS based on Joint Parties' proposed methodology. We shall weight the remaining 32% of the RPS adder allocated to the DOE data. This weighting corresponds to the percentage of the total load subject to RPS requirements represented by IOU load.

Based on my previous estimates of the costs of different parties' proposals, I estimate that the PD will increase rates by \$62.06 million over a three-year period. I estimate that the PD will result in a rate increase of \$26.87 million for PG&E ratepayers, \$33.44 million for SCE ratepayers, and \$1.75 million for SDG&E ratepayers.

The PD does not explain how much rates will increase under its recommendations or why bundled ratepayers should subsidize direct access customers. I note that Public Utilities Code §365.1(a) specifically prohibits the vast majority of residential customers from receiving service from a direct access

provider. (Exhibit 700, p. 5) Thus, the vast majority of residential customers cannot partake of the benefits (if any) of direct access.⁴

The inequities of such a system are obvious. These inequities include: (Exhibit 700, p. 6)

1. PG&E's residential ratepayers pay a system average rate of 16.3 cents/kilowatt hour (cents/kwh) compared to 12.3 cents/kwh for large commercial and industrial customers.
2. In 2011, residential customers will pay 41.65% of PG&E's total bundled customer revenue requirement and 38.60% of PG&E's bundled customer generation revenue requirement.

Thus, the PD will transfer wealth from bundled residential ratepayers to direct access customers.

The Commission has consistently attempted to create a win-win regulatory framework in which no party is worse off.⁵ As presently constituted, the DA system is a zero-sum game. If direct access customers are better off, bundled ratepayers are worse off. For example, an RPS adder necessarily benefits DA customers at the expense of bundled customers. This is especially true in the case of bundled residential customers who are prohibited from switching to direct access.

In such an environment, it is difficult for the Commission to make changes to the DA system without transferring wealth from bundled customers to direct access customers. In this proceeding, the Commission has before it an RPS proposal (the RCP) in which no party will be worse off. The Commission should

⁴ Residential customers are allowed to receive service from a community choice aggregator as defined in PUC § 331.1.

⁵ For example, see "Order Instituting Rulemaking 09-01-019", slip op. at 2.

take advantage of this unique opportunity and adopt the Renewable Credit Proposal advocated by Reid.

E. Weighting of the RPS Adder

For the reasons discussed in Sections III.A-III.D, I do not support the PD's proposed RPS adder or its proposed weighting methodology. The ALJ's proposed decision states that: (PD, pp. 21-22)

We shall weight the adopted RPS adder by 68% allocated to the IOU costs for RPS based on Joint Parties' proposed methodology. We shall weight the remaining 32% of the RPS adder allocated to the DOE data. This weighting corresponds to the percentage of the total load subject to RPS requirements represented by IOU load.

The PD errs because of the following reasons:

- There is no evidentiary support for such a weighting scheme and no party proposed that the RPS adder be weighted.
- The IOUs represent approximately 80% of the statewide load, not 68% as claimed by the PD.⁶
- Logically, the weights should be reversed; for example 68% using DOE data and 32% using the JPs' methodology.

The IOU's have proposed an RPS adder using the data available from the DOE, while the JP has proposed a different methodology. Because the IOUs represent approximately 80% of statewide load, the RPS adder should be weighted 80% using DOE data and 20% using the JPs' methodology.

There is no good reason for the Commission to adopt the renewable adder weights given in the PD.

⁶ See R.10-05-006, Cross Examination of Mark Rothleder of the California Independent System Operator, 1 RT 413:16-23.

IV. Minimum Stay Requirement

The PD changes the minimum stay requirement from 36 months to 18 months as recommended by the IOUs. (PD, p. 45) The PD states that: (PD, pp. 46-47)

Gaming is not the only concern the Commission seeks to address by the minimum stay requirement. The Commission also seeks to mitigate the risk of stranded costs from the utilities' prospective procurement obligations by considering the mix of resources and the average duration of contractual obligations.

The PD errs in changing the minimum stay requirement because the PD fails to consider the average duration of the IOUs' contractual obligations. According to the IOUs, the average duration of their contractual obligations is 3.5 years for SCE, 8.1 years for SDG&E, and in excess of 180 months for PG&E. (Exhibit 701, pps. 4 and A-1 – A-3)

Therefore, I recommend that the Commission refrain from changing the minimum stay requirement at this time.

V. Minor Errors

After listing the names of all of the other parties in this proceeding, the PD simply states that "Mr. L. Jan Reid (Reid) also participated in the proceeding representing himself." (PD, p. 5) Thus, the PD implies that Reid was not a party in this proceeding.

On November 6, 2010, Reid filed a motion for party status in R.07-05-025. On November 24, 2010, ALJ Pulsifer issued a written ruling that granted Reid's motion. Therefore, I recommend that the Commission modify the PD to indicate that Reid is a party in this proceeding.

The PD states that "Reid testifies that DA providers would receive RPS credit for their proportional share of the IOU's RPS purchases Reid's proposal lacks specificity regarding the intended mechanism for allocating RPS credits."

(PD, p. 17) Thus, the PD contains two distinct sentences that are not separated by a period. For clarification purposes, I recommend that a period [.] be inserted after the word "purchases".

VI. Conclusion

The Commission should modify the PD as recommended by Reid for the reasons given herein.

* * *

Dated September 12, 2011, at Santa Cruz, California.

/s/

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APPENDIX

A. Changes to Findings of Fact

Delete 6, 9, and 25

6. The Renewable Credit Proposal advocated by L. Jan Reid is reasonable and should be adopted.

10. While the value of the utilities' renewable resources constitute 80%~~68%~~ of total California load subject to RPS requirements, the remaining 20%~~32%~~ of such resources come from other load serving entities.

B. Changes to Conclusions of Law

Delete 2-4

VERIFICATION

I, L. Jan Reid, make this verification on my behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated September 12, 2011, at Santa Cruz, California.

/s/

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