**BEFORE THE PUBLIC UTILITIES COMMISSION**
**OF THE STATE OF CALIFORNIA**

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| 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 DIRECT ACCESS PARTIES ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE PULSIFER ON DIRECT ACCESS REFORMS

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

Counsel for the
**ALLIANCE FOR RETAIL ENERGY MARKETS**
**DIRECT ACCESS CUSTOMER COALITION**

**AND ON BEHALF OF THE DIRECT ACCESS PARTIES**

September 12, 2011

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In accordance with California Public Utilities Commission Rule 14.3, the Direct Access Parties[1] submit these opening comments on the *Proposed Decision of Administrative Law Judge ("ALJ") Pulsifer on Direct Access Reforms* ("PD").

## I. Introduction and Summary

These comments address only issues associated with what happens if customers are involuntarily returned to utility service. This includes what tariff service such customers will receive, and how the financial security requirements ("FSR") should be calculated and imposed on Electric Service Providers ("ESP") to ensure that the costs incurred by the utilities in such an event are not borne by bundled customers. Issues related to modifications to the calculation of the Indifference Amount, the Market Price Benchmark used to calculate the Power Charge Indifference Amount and the Competition Transition Charge are dealt with in a separate concurrent filing made today with members of the Joint Parties.

The Direct Access Parties believe that the PD makes significant policy and legal errors. In summary, it:

[1] The Direct Access Parties are California State University, Alliance for Retail Energy Markets ("AReM"), Direct Access Customer Coalition ("DACC"), the Retail Energy Supply Association ("RESA"), BlueStar Energy, Pilot Power Group, Inc. and the Energy Users Forum.

- misinterprets the statute in two ways; first when it rules that involuntarily returned customers must be returned to Bundled Procurement Service ("BPS") rather than Temporary Bundled Service ("TBS") and second when it adopts an exorbitant and commercially infeasible FSR that will harm retail competition in California;
- fails to provide a "safe harbor" option for involuntarily returned customers so that they may return to direct access ("DA") without incurring a minimum stay (proposed in the PD to be an 18-month minimum stay requirement), and without being subjected to the limited space availability under the current DA reopening;
- imposes an entirely unnecessary and costly requirement that third party guarantors be double-A rated;
- leaves far too many of the mechanics of the timing of FSR calculations and posting and the calculation and payment of reentry fees vague or unspecified.

A better approach can and must be taken. Specifically, the Commission should modify the PD to correct the legal error and allow involuntary customers to return to TBS rate rather than BPS, as such a structure will fully protect the interests of bundled customers while also minimizing the FSR. This will be in accord with prior Commission precedent where it has in fact provided that the TBS rate does protect the interests of bundled customers. The original switching exemption decision, D.03-05-034 (*Opinion Adopting Rules for Switching Exemption*) provides that, "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 at p. 20. This principle was reiterated in D.04-01-013 (*Opinion Adopting Short-Term Price Proxy*), which states, "The Commission further ordered that the remaining bundled customers should not be burdened with these added costs and that these customers should be left indifferent to whether DA customers use the utility as temporary 'safe harbor.' (D.03-05-034, pp. 19 – 20.)" D.04-01-013 at p. 1. The same decision provides in Finding of Fact 4 that, "The use of the INC price will ensure that other bundled customers are not adversely affected by the return of DA customers to bundled service." D.04-01-013 at p. 12. It therefore would be totally consistent for the Commission in this decision to confirm that placing returned customers on the TBS rate fully protects the interests of the "other" customers referenced in Section 394.25(e) of the Public Utilities Code, as discussed more fully in Section II. A. below.

If the Commission nevertheless rejects TBS service for involuntarily returned customers, then it should more fully consider these extremely important issues associated with the FSR in a subsequent phase of this proceeding so the details of the FSR can be more fully vetted and evaluated. This means that the PD should be revised to delete the current findings with regard to FSR methodology and instead provide for further workshops and economic analyses of alternatives that will comply with statutory requirements while continuing to provide competitive market options for IOU customers.

## II. The PD Imposes Service Requirements for Involuntarily Returned Customers and an FSR Methodology that are not required under the Law.

The PD states that "SCE and PG&E offer the only model as a basis to determine financial responsibility requirements for ESP bonds" and that 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." PD at p. 78. This statement does not accurately reflect the record. In fact, the Direct Access Parties offered a comprehensive plan that complied with the statute, dealt with the issue of what rate option should be available to involuntarily returned customers and provided for an appropriate FSR that would cover costs incurred by other IOU customers due to involuntary returns of DA customers to that rate option.

To summarize, with respect to ESP financial security requirements, the DA parties recommended that the Commission adopt the following:

> The ESP security requirement should equal the difference between marginal costs incurred by an IOU to serve a customer that has been involuntarily returned to bundled service and the amounts collected from that customer for service for six months plus the administrative costs incurred by the IOU to enroll the customer into bundled service. Consistent with the Joint Parties' January 24, 2011 brief on ESP and CCA Bonding requirements, the DA Parties believe that involuntarily returned customers should pay the TBS rate for the first six months of their IOU service after their involuntary return. As result, the difference between the costs to serve them, and the revenue collected from them should be minimal, consisting almost entirely of administrative costs. Additionally, ESPs should be allowed flexibility as to how to meet the security requirement (beyond simply posting a bond or letter of credit), and the security requirement should be recalculated annually.[2]

The Direct Access Parties' proposal provides protections for bundled customers as required by law and is fair to DA customers and their suppliers. Rather than adopt this comprehensive proposal, the PD adopts a framework for involuntary returns of customers that is illogical and costly, does not comply with the law and most certainly does not reflect the interests of direct access customers. Furthermore, it imposes these cost burdens on ESPs and the customers they serve with no consideration of the overwhelmingly negative impact it will have on retail competition in California.

In the following sections, the Direct Access Parties address first and foremost why its recommended approach for having the TBS rate apply to involuntary returned customers is, contrary to the assertions made in the PD, completely permissible under existing statute, and identifies some of the more problematic aspects of the PD's proposed FSRs. Moreover, to the extent the Commission does not reject the PD's determination that a TBS rate is impermissible

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[2] See the DA Parties' Summary of Recommendations in their May 6, 2011 Opening Brief, at p. 3.

for involuntary returned customers, the comments herein propose a procedural approach for moving forward with developing an appropriate mechanism for establishing appropriate financial security arrangements that are more equitable, fair to all customers and do not act as a heavy-handed deterrent to retail competition in California.

### A. The PD Adopts a Strained and Inaccurate Interpretation of the Relevant Statute.

The PD accurately notes that the "question of whether the posting of an ESP security instrument is necessary, or how large it should be, turns largely on parties' disagreements concerning whether the ESP would ultimately be legally responsible for all incremental procurement costs resulting from an involuntary return, or whether the returning DA customers themselves should bear sole responsibility at least for incremental costs covered through a TBS rate." PD, at p. 56. It then inaccurately interprets § 394.25(e) to require that ESPs are legally obligated to cover all incremental costs resulting from an involuntary return of its customers to IOU procurement, including the procurement costs of the returned customer itself. In making this conclusion, the PD ignores the clear wording of the statute.

Section 394.25(e) provides that an ESP or CCA must pay any reentry fee that is imposed on their customers that are returned involuntarily to IOU service, in order to avoid imposing costs on *other existing* customers of the IOU. The statute reads, in part:

> 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 . . . [emphasis added]

The reference to "other customers" of the IOU clearly should be read to mean customers <u>other than</u> the DA customers who are involuntarily returned. Put simply, the word "other" could have no other logical meaning. The PD, however, goes far beyond the wording of the statute and seeks to protect not solely the other customers of the utility but also the returned customers themselves. This has two critical effects. First, it grossly inflates the amount of the FSR since it includes the procurement costs of the returned DA customers for a year's time. Second, it significantly harms the interests of DA customers who will have to bear the FSR costs that do not comply with the statute. As a first step, therefore, the Joint Parties recommend that the PD be significantly revised to recognize that the statute does not preclude TBS service for involuntarily returned customers, which will in turn help ensure that the FSR imposed on ESPs is less onerous.

### B. Involuntarily Returned Customers should Return to the TBS Rate rather than be Required to go to Bundled Service and Incur a Minimum Stay Requirement of Eighteen Months.

The PD discusses in Section 6.5 whether involuntarily returned DA customers should be automatically placed on the BPS or TBS rate. It concludes that they should be placed on the BPS rate, rather than the TBS rate, on the grounds that "placing involuntarily returned DA customers on the TBS rate would expose them to potential cost increases caused by the failure of their ESP, and would be tantamount to penalizing the DA customers for their ESP's failure." PD at p. 87. Further, the PD states that if an involuntarily returned DA customer seeks to resume DA service with a new ESP, it may do so upon giving six months' advance notice to the IOU. This approach is flawed for several reasons.

First, it ignores the commercial realities and the evidence in this proceeding that direct access customers prefer to deal with the risks of involuntary return through their contractual relationships with their ESPs rather than by means of an unnecessary and costly FSR that will grossly inflate the cost of direct access service and/or make it entirely prohibitive. Second, the conclusion that a TBS rate imposes costs on customers that they are statutorily protected from is inaccurate. Third, the PD imposes on these customers a minimum eighteen month stay, thereby handcuffing them to bundled service that they may not desire. Fourth, the PD ignores the current cap on direct access. It does not explain how an involuntarily returned customer can be expected to be able to return to DA with simply giving six months notice unless space is reserved for it under the cap; not to mention that such an approach would treat involuntarily returned customer much differently than voluntary return customers who have a safe harbor period during which their space under the cap is preserved for them to return to direct access service.

In effect, the PD establishes a system where DA customers are unfairly penalized in a multitude of punitive ways. They are made subject to potentially exorbitant FSR costs that are unnecessary, that could instead be resolved by a more reasonable solution which serves to protect bundled customers but not add unnecessary and harmful costs to direct access customers. Involuntarily returned customers are required to stay on bundled service for 18 months with no temporary preservation of their space under the cap to allow them to select a new DA provider, even though their status as a DA customer makes it clear they prefer competitive market opportunities.[3] In short, the PD is a recipe for punishing DA customers in unnecessary, unreasonable and punitive ways.

### C. The Adopted FSR Amounts are Commercially Infeasible

The PD approves a FSR mechanism that will require ESPs and the DA customers they serve to absorb costs that are far and away outside of what is reasonable and necessary to protect the interests of bundled customers against a possible involuntary return. As noted in the DA Parties' opening brief, the "mass involuntary returns" that allegedly may occur are in fact highly unlikely. The record shows that the DA market has changed significantly since the early days of California's restructured market, in the late 1990's and in 2000-2001, when the only "mass

[3] In the one case where there were significant numbers of involuntarily returned DA customers, the winter and spring of 2001, the record shows that most returned to DA service within six months.[3] *See* Exh. 201 at pp 8-9

involuntary return" of note has occurred. California now has a more mature market that has seen the deployment by the CAISO of its MRTU market design and the imposition of resource adequacy and RPS rules. Furthermore, the IOUs could point to no "mass involuntary" return of customers since the end of the energy crisis. The PD ignores these commercial realities and puts forth a FSR mechanism that is both onerous and unnecessary. Logically, the FSR mechanism should reflect realistic risks associated with the likelihood of mass involuntary returns, which it clearly does not do.

As evidence of the total lack of attention paid to the commercial feasibility of the PD's adopted proposal, it is highly instructive to examine the discussion in Section 6.1.2. There the PD states, "We are not persuaded that a bond that covers incremental procurement costs would necessarily be commercially infeasible for an ESP." It then cites the DA Parties' evidence that historical prices during the commodity price run-up in 2008 "would have resulted in a bond amount in SCE's service area of $55/MWh, or about $112 million for an ESP with $2 million in annual sales." PD at p. 58. The PD next observes that SCE stated that "the price of a $112 million bond would be expected to cost about 1% of the face value of the bond – or $1.1 million – for an ESP with investment grade credit. SCE argues that an ESP with investment grade credit should have little difficulty obtaining a bond or insurance policy on the commercial market at an annual cost of about one percent (1%) of the face value of the bond/policy." PD at pp. 57-58. Apparently this 1% citation is all the PD needs to justify *imposing a $1.1 million FSR on a business with only $2 million in revenues*! This is, on its face, ludicrous and unreasonable.

The Commission cannot conceivably think that imposing a FSR that could be equal to an amount as high as fifty-five percent of revenues is reasonable. To put this in perspective, the reported revenue of SCE for 2010 was $9,983,000,000.[4] Using precisely the example provided

[4] *See*, Southern California Edison 2010 Annual Report at http://www.edison.com/files/SCE_AR10.pdf

in the PD, if a similar bonding requirement was to be placed on SCE, the FSR cost would be approximately $5.5 *billion* dollars! If the Commission continues to believe that retail competition best serves the interests of California ratepayers, then it needs to adopt a wholesale revision of the provisions in the PD so that a more realistic and fair FSR is adopted.

### D. The Requirement that a Third Party Guarantor Must be AA Rated is Excessive and Unreasonable.

The PD requires that "Third party guarantors should at least have AA investment grade credit." PD, at p. 71. This is yet another example of the PD adopting unreasonable requirements without any consideration of cost or appropriateness. It is notable that not one of the three IOUs or their corporate parents has an AA credit rating or higher. Thus, their bundled customers certainly do not have whatever benefits might be deemed to accrue from dealing with an AA supplier. The general obligation bonds issued by the State of California do not have an AA credit rating or higher. In addition, as a point of reference to the energy sector that the ESPs are participating, the California ISO sets the creditworthiness threshold of third party guarantors at Investment Grade. Why then should the FSR mechanism impose this unnecessarily high credit rating threshold for third party guarantors? Doing so will both limit the field of eligible guarantors and even further drive up the FSR costs credit support for ESPs. It will also limit the field of eligible ESPs in California to only the largest and most financially secure, thereby limiting competition in the DA market and reducing customer options for selecting a competitive supplier. This requirement should be eliminated and third party guarantors should instead be required to have, as the CAISO and other ISOs throughout the country have established, an investment grade rating. Furthermore, the PD should be modified to provide explicitly that guarantees from investment grade-rated corporate parents may be used by ESPs to satisfy the FSR, as this clarity is necessary to avoid any misunderstandings as to what qualifies as a third-party guarantor.

### E. The Mechanics of the Timing of FSR Calculations and Posting and the Calculation and Payment of Reentry Fees Needs to be Revised.

Sections 6.6 and 6.7 of the PD deal generally with the mechanics of the FSR calculation methodology, the posting of FSR by the ESP, and the payment of reentry fees should a mass involuntary return actually occur. As a preliminary comment, the PD addresses calculation and posting for new ESPs that are entering the market, providing for on-going FSR calculation requirements (i.e. twice a year calculation and re-posting). The Direct Access Parties presume that the same requirements are intended to apply to existing ESPs who are already operating under $100,000 bonds posted with the Commission, but there is some uncertainty because the PD says, "the ESP's bond should be required to be posted before ESP service is permitted to begin." PD at p. 90. Therefore, this needs to be clarified.

Presuming the same FSR requirements are to be applied to both new and existing ESPs, the following issues need to be clarified with regard to the FSR mechanics:

a. The IOUs are to file Advice Letters specifying the FSR calculations for each ESP on November 10 and an unspecified date in early May. The PD should be modified so that the May date is specified.

b. The PD should be modified to specify that the Advice Letter must have the specific calculation for each ESP filed under confidential seal, but that the applicable ESP shall receive by electronic means on that same filing date the FULL and unredacted version of the confidential filing. This means that the IOUs must be required to file separate advice letters for each ESP operating in their respective service territories.

c. The applicable ESP should then be provided reasonable due process to review and protest the filing.

d. The PD hints at adjusting the IOU's calculation for "detected errors" (PD at p. 89), but provides no process for the actual adjustment of such errors. Clearly there needs to be a defined process and timetable whereby the ESP, the Energy Division and the applicable IOUS can review and seek changes to the calculation.

e. The PD should be modified to make it explicitly clear that the FSR is a statewide requirement for which the relevant security is posted with the Commission and not with the ESPs' competitors, the IOUs. This is in accord with current procedure and should be retained.

f. The PD cites the 30-day review period for Advice Letters, but is silent on how, when or by whom the ESP is notified of the final amount due, particularly if it has been adjusted for the "detected errors" mentioned above. The Direct Access Parties recommend that the Energy Division should be required to notify the ESP of the final amount due on an aggregate, statewide basis.

g. Importantly, the timing of the posting must be extended. As an example, if it takes the Energy Division thirty days to review and approve an IOU's proposed FSR amount, an ESP would be notified by December 10 of the FSR amount that the ESP is required to post security by December 31. This is unreasonable. The Direct Access Parties recommend that the advice letter should be filed on October 10 and April 10 of each year with the Energy Division required to inform the ESP of the corrected aggregate statewide amount within thirty days. The ESP would then have until December 31 or June 30, as applicable, to post the required FSR with the Commission.

h. The PD also says the ESP must post the required security on the defined dates (December 31 and June 30) regardless whether the applicable IOU advice letter has been "approved." PD at p. 90. This is also unreasonable because it puts the IOU in the position of being able to unilaterally impose what may be inaccurate costs on its competitor. There must be a defined, transparent process for the ESPs to ensure accurate security calculations before the required posting of multi-million dollar bond amounts. The posting must not be required until the full due process of detecting and fixing errors is complete.

i. The PD would require ESPs to pay actual "Re-Entry Fees" to the IOU fifteen calendar days from the date the IOU issues the "demand." This is extremely unreasonable and anti-competitive. There must be a process for the ESP, Energy Division and the IOU to review the accuracy of the calculation, protest and adjust the errors and, then provide at least thirty days to pay. There must be full due process before an ESP is required to meet a payment demand that may not accord with the Commission's requirements.

j. The PD embraces the concept that the "demand" is calculated at the outset and not trued-up to actual amounts. This, however, provides the IOU with the incentive to over-estimate the fees so as to minimize the potential for unrecovered costs, which is also unreasonable.

All of the foregoing indicates that numerous important issues related to the FSR methodology remain unresolved. The Joint Parties propose in the following section an alternative approach to resolving these matters fairly and equitably.

**F. A More Reasoned Approach is Called for with Regard to ESP FSR.**

First and foremost, the Direct Access Parties strongly urge the Commission to recognize the having involuntarily returned customers placed on a TBS rate is not inconsistent with the existing statue. Such an approach is fair, and reflects the fact that DA customers are able and willing to address the potential for ESP default in their commercial arrangements. Adoption of that approach, in turn, minimizes, and nearly eliminates, the exposure that existing bundled customer have when and if such an involuntary return should ever occur.

If, nevertheless, the Commission insists that BPS service is required for returning customers, the Commission must then modify the PD so that there is further opportunity to address remaining important issues with regard to ESP FSRs. The prior section highlights some of those issues; there may be more. Put simply, the PD does not pay sufficient attention to the economic realities of the costly obligation it seeks to impose on direct access customers. Nor does it consider the public policy impacts associated with approving an FSR that imposes high costs that will serve to make direct access a significantly less attractive economic option.

It would be productive for the Commission to more fully consider these issues in a subsequent phase of this proceeding. This would mean that the PD should be revised to delete the current findings with regard to the FSR and instead provide for further workshops and economic analyses of FSR alternatives that will comply with statutory requirements while continuing to provide competitive market options for IOU customers.

## III. Conclusion

The Direct Access Parties respectfully request that the errors in the PD described in these comments be corrected as set forth herein.

Respectfully submitted,

Daniel W. Douglass

Counsel for the
**ALLIANCE FOR RETAIL ENERGY MARKETS**
**DIRECT ACCESS CUSTOMER COALITION**

**AND ON BEHALF OF THE DIRECT ACCESS PARTIES**

September 12, 2011

**APPENDIX PROPOSED CHANGES TO THE FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS**

The Direct Access Parties recommend here solely revisions to the findings of fact, conclusions of law and ordering paragraphs related to the FSR. Changes requested in the body of the PD are not provided in this Appendix. Changes related to the calculation of the Indifference Amount, the Market Price Benchmark used to calculate the Power Charge Indifference Amount and the Competition Transition Charge are omitted from this exhibit and are contained in the separate concurrent filing made today by the Joint Parties.

**Findings of Fact**

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 while on TBS service.

27. A security bond, letter of credit, ~~or~~ secured cash deposits or parental guarantee from investment grade-rated institutions or corporate parents (as applicable) 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 bond and calculating re-entry fees for involuntarily returned DA customers.

29. A one-year period offers a reasonable time frame for calculating the duration of re-entry fees, in terms of keeping the ~~bond~~ financial security costs manageable while protecting bundled

customers against cost shifting, but will be re-evaluated in the subsequent phase of this proceeding addressing financial security requirements for ESPs.

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.07-12-005 as the confidence interval to be used by IOUs to manage rate level risk for bundled service customers, but will be re-evaluated in the subsequent phase of this proceeding addressing financial security requirements for ESPs.

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

32. ~~Whether or not the~~ Requiring returning DA customer to ~~pays~~ the TBS rate ~~or the BPS rate,~~ and their ESP to pay the incremental costs incurred by the IOU to serve involuntarily returned DA customers ~~would not change.  The~~ will satisfy the ESP's ~~remains responsible for covering incremental procurement costs~~ legal obligation pursuant to § 394.25(e).

~~33. The calculation of 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.~~

~~34. The proposed re-entry fee formula for forecasting procurement costs would use implied volatility data from a third-party broker.  Information is available to parties to access market prices and volatilities, although access to the information requires a fee-based subscription.  Such data is available for SP 15 based on a proprietary model, 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. 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 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.~~

33~~8~~. 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.

34~~9~~. The procedures for the filing of advice letters to implement the provisions of the ESP ~~bond~~ financial security requirements proposed by PG&E and SCE are reasonable, subject to certain revisions.

35. Each advice letters shall be filed on or before October 10 and April 10 of each year and shall have the specific calculation for each ESP filed under confidential seal, with the applicable ESP provided by electronic means on that same filing date the full and unredacted version of the confidential filing.

36. The applicable ESP should then be provided reasonable due process to review and protest the filing.

37. The Energy Division shall be required to notify the ESP of the final amount due on an aggregate, statewide basis within thirty days of each advice letter filing date.

38. The ESP shall have until December 31 or June 30, as applicable, to post the required security with the Commission, provided that the full due process of detecting and fixing errors is complete.

**Conclusions of Law**

8. Under Pub. Util. Code § 394.25(e), the ESP is responsible for satisfying a financial security requirement ~~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.

11. The purpose of § 394.25(e) is to protect against costs being shifted on to other bundled 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 or parental guarantee from an

investment grade rated institution or corporate parent, as applicable 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.

14. ~~Even if~~ Requiring involuntarily returned DA customers ~~are charged a portion of the incremental procurement costs through a~~ to pay the TBS rate and their ESP to pay the incremental costs incurred by the IOU to serve the involuntarily returned DA customers will satisfy~~, any such charges imposed on involuntarily returned customers ultimately remain a~~ the 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~~ through the mechanism of having 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.~~ 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.

~~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.~~

**IT IS ORDERED** that:

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~~ an 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 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, including a guarantee from an investment grade corporate parent) 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~~ administrative 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~~.

39. The amount of an electric service provider's ~~bond~~ financial security requirement must be calculated twice annually: once ~~in early November~~ on or before October 10 and again ~~in early~~



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~~May~~ on or before April 10. ~~Bonds~~ Financial security requirement shall be posted by December 31 and June 30, respectively, provided that the full due process of detecting and fixing errors is complete. The frequency of posting will be re-evaluated in the subsequent phase of this proceeding addressing financial security requirements.

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 rationales 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 protested by the ESP or 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 to TBS service, not including the TBS rate itself. 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 in excess of the TBS rate, should any exist, under then-current market conditions to serve the involuntarily returned Direct Access customers for a one-year period.

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

31. This proceeding ~~is closed.~~ shall be extended for the purpose of more fully considering the issue of the financial security requirement required pursuant to Section 394.25(e) of the Public Utilities Code. A subsequent ruling shall be issued providing the procedural steps to be undertaken to consider this issue while ensuring that direct access remains a viable option for California ratepayers.