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 THE MARIN ENERGY AUTHORITY
ON ESP SECURITY REQUIREMENTS OF THE PROPOSED DECISION
ADOPTING DIRECT ACCESS REFORMS

Elizabeth Rasmussen
Regulatory and Legal Counsel
MARIN ENERGY AUTHORITY
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Telephone: (415) 464-6022
Facsimile: (415) 459-8095
E-Mail: erasmussen@marinenergyauthority.org

September 12, 2011

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

Rulemaking Regarding Whether, or Subject to What Conditions, the Suspension of Direct Access May Be Lifted Consistent with Assembly Bill 1X and Decision 01-09-060.	Rulemaking 07-05-025 (Filed May 24, 2007)

COMMENTS OF THE MARIN ENERGY AUTHORITY ON ESP SECURITY REQUIREMENTS OF THE PROPOSED DECISION ADOPTING DIRECT ACCESS REFORMS

Pursuant to California Public Utilities Commission ("Commission") Rule 14.3, the Marin Energy Authority ("MEA") respectfully submits the following comments on the Proposed Decision Adopting Direct Access Reforms, dated August 23, 2011 ("PD"). MEA is a member of the Joint Parties which will concurrently file comments on the power charge indifference adjustment ("PCIA"); however, as a community choice aggregator ("CCA"), MEA is not a Direct Access Party. While the energy service provider ("ESP") bonding requirements are not applicable to MEA, the proposed methodology that the PD sets forth is fundamentally flawed, and if applied to CCAs in the CCA Rulemaking (R.03-10-003) would be disastrous to MEA as California's only operating CCA. Further, adoption of the proposed bonding methodology would create a chilling effect on retail competition and the launch of other CCAs in California.

I. <u>FLAWED ESP BOND METHODOLOGY</u>

MEA supports the Direct Access Parties' conclusion that the proposed ESP bond methodology is fundamentally flawed. The proposed ESP bond methodology originated in the CCA Rulemaking (R.03-10-003), and was developed among various stakeholders including investor-owned utilities, bundled ratepayers, and an aspiring CCA in the Central Valley that is no longer actively pursuing CCA implementation. At the time this methodology was developed, no CCA was in operation and therefore no active CCA was involved in the development of the methodology. The Direct Access Parties were also not involved in that process. The resulting methodology does not conform to the requirements of law, Public Utilities Code ("P.U. Code") Section 394.25, which states that the financial security that the ESP or CCA must post must be sufficient to cover " any reentry fee imposed on that customer that the commission deems is <u>necessary</u> to avoid imposing costs on <u>other customers</u>." There are two components to this requirement: (A) the administrative fee which is the obligation of the ESP, and (B) the incremental costs of return of an involuntarily returned customer.

A. Administrative Fee

As set forth in the investor-owned utilities' tariffs, values have been set which determine what the per customer administrative cost is to reincorporate an involuntarily returned customer to investor-owned utility service. Such costs are the obligation of the ESP and should be reflected in the financial security.

B. Incremental Cost of Power

In order to protect bundled ratepayers from the incremental cost of power related to an involuntarily returned customer, the financial security imposed on ESPs far exceeds what is <u>necessary</u> to protect bundled customers, and in fact creates such a high financial security requirement that the impact is not the protection of bundled customers but rather the elimination of competition from the market. The PD also commits legal error in rejecting a reasonable solution proposed by the Direct Access Parties for avoiding potential cost shifting if customers were to be involuntarily returned to bundled service which would require that involuntarily returned customers be placed on Transitional Bundled Service ("TBS"). The PD's conflation of the reentry fee as it relates to the administrative charge and the protection of the bundled ratepayer for incremental costs of energy lacks a legal and logical foundation. While a returning customer on a TBS rate would pay for any incremental cost of power, the ESP returning such a customer would be clearly double-charged since both the customer and the ESP itself would be paying for the incremental cost of power, when in fact the TBS rate alone is sufficient to protect the bundled ratepayers.

II. SOLUTION TO FINANCIAL SECURITY REQUIREMENTS AND ADDITIONAL REQUIREMENTS TO PROTECT BUNDLED RATEPAYERS

MEA agrees with the Commission that the administrative fee is the responsibility of the relevant ESP. However, MEA disagrees with the Commission's analysis regarding the treatment of the incremental costs of power. In this regard, MEA supports the Direct Access Parties' proposal and recommendation that in lieu of utilizing the deeply flawed methodology set forth in the PD, that the Commission utilize an already proven and existing tool: the transitional bundled service ("TBS") rate. This approach, recommended by the Direct Access Parties, would place involuntarily returned customers on the TBS rate for a period of six months. The TBS rate has many benefits, to bundled ratepayers, to the Commission and to ESP customers.

A. The use of the TBS rate is consistent with law and protects the bundled ratepayers

As noted above, P.U. Code Section 394.25, which states that the financial security that the ESP or CCA must post must be sufficient to cover "any reentry fee imposed on that customer that the commission deems is <u>necessary</u> to avoid imposing costs on <u>other customers</u>." As noted above, the PD commits legal error by conflating involuntarily returned customers with bundled customers and TBS with reentry fees. Involuntarily returned customers do not automatically upon their return become bundled customers – when those customers are placed on a TBS rate, they are transitioning to become bundled customers, but they are not bundled customers. The reentry fee contemplated by the legislation is not the TBS charges but any additional fee that the Commission deems is necessary to avoid cost shifting to bundled customers. This "reentry fee" is the so-called administrative fee discussed in the PD. In addition, as noted above, the failure to offset the financial security requirements with the amounts paid on the TBS rate result in a clear case of double charging – once with the financial security posted and once through the payment of the TBS rate (*i.e.* the incremental cost of power) by the involuntarily returned customer.

By placing an involuntarily returned customer on the TBS rate and establishing the ESP security requirement to ensure payment of the administrative "reentry fee" that is not covered by the TBS charges, the "other customers," *i.e.* the bundled customers, are fully protected from any incremental costs of the return. This efficiently and effectively achieves the Commission goal of protecting the bundled ratepayers against the potential impact of an involuntary return.

B. The TBS rate is an established and relied-upon tool, and is administratively simple to implement

Another key benefit of the use of the TBS rate to achieve protection of the bundled ("other") customers is that the TBS rate uses an already-existing and -approved methodology, one that is already implemented by the investor-owned utilities. This established rate creates significant administrative simplicity in implementation since no new mechanisms will need to be developed in order to protect the bundled ratepayers. The TBS rate is already being calculated on an ongoing basis, and would not require the additional recalculations of the financial security amounts and the administrative burden caused for investor-owned utilities, ESPs and the Commission that would result from each of these recalculations.

This methodology further creates a more even playing field than what would result under the PD methodology, due to the disparate treatment under the P.U. Code of investor-owned utilities, ESPs and CCAs, whereby ESPs and CCAs are required to post financial security while investor-owned utilities are not.

III. OTHER FLAWS TO THE PROPOSED FINANCIAL SECURITY REQUIREMENTS AND ADDITIONAL REQUIREMENTS TO PROTECT BUNDLED RATEPAYERS

If the Commission were to implement the flawed methodology set forth in the PD, rather than the TBS methodology, several modifications to the PD methodology would be required. First, the financial security would need to be based on expected re-entry costs, mitigated by any payments that would be made by returning customers under TBS, and not a maximum potential re-entry cost. One minimum requirement to achieve this would be to eliminate the "stress factor" in the calculation as proposed by MEA in R.03-10-003. Furthermore, a "safety valve" mechanism will need to be integrated into the financial security process to prevent an unanticipated increase in bond obligation from triggering unintended consequences, such as creating a significant negative economic impact on an entity and risk of default solely because of the bond and not due to any operational or financial defect.

Second, the PD will need to address significant concerns that the PD fails to give sufficient consideration to market realities. For example, the PD voices a concern that "issuers of commercial bonds or insurance policies may pose counter-party risk to the IOU… [if those] issuers [have] less than high quality credit (less than AA investment grade credit)." (PD at 69.) Again, MEA believes that this requirement is not commercially practicable. MEA notes that in the current difficult financial climate, very few companies or financial institutions hold AA or greater credit ratings. For example, PG&E holds a BBB+ credit rating; Bank of America holds a

A+ rating; and Wells Fargo – which has one of the highest rating of banks currently – holds a AA or AA- rating. The State of California has a A- credit rating.

If the investor-owned utilities and the Commission express concern about lower-than-AA credit ratings, a much larger concern for energy customers and the Commission is, without a doubt, receiving protection against the investor-owned utilities themselves. However, investor-owned utilities are currently not required to post a bond. In the case at hand, to require financial security at a credit rating level even greater than those of the investor-owned utilities is unreasonable.

IV. CONCLUSION

The proposed ESP security requirements are unworkable and do not conform to the requirements of law or the realities of the market. The financial security requirements set forth in the PD will burden ESP customers significantly and will further limit customer choice and market competition. MEA requests that either the Commission implement the TBS proposal as set forth by the Direct Access Parties, or the Commission bifurcate the PD to separately address the ESP bond methodology to address the significant ESP financial security requirements with substantive input from all relevant stakeholders.

Respectfully submitted,

/s/ Elizabeth Rasmussen

Elizabeth Rasmussen
Regulatory and Legal Counsel
MARIN ENERGY AUTHORITY
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Telephone: (415) 464-6022
Facsimile: (415) 459-8095
E-Mail: erasmussen@marinenergyauthority.org

September 12, 2011