

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

Rulemaking Regarding Whether, or Subject to What
Conditions, the Suspension of Direct Access May Be
Lifted Consistent with Assembly Bill 1X and
Decision 01-09-060.

R.07-05-025
(Filed May 24, 2007)

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
ON PROPOSED DECISION**

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In accordance with California Public Utilities Commission Rule 14.3, the Retail Energy Supply Association (“RESA”)¹ submits these opening comments on the *Proposed Decision of Administrative Law Judge (“ALJ”) Pulsifer on Direct Access Reforms*. RESA is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than regulated utility structure. RESA members are devoted to working with all stakeholders to promote vibrant and sustainable competitive retail energy markets for all consumers.

I. INTRODUCTION AND SUMMARY

RESA has been active in this proceeding as part of both the Direct Access Parties and the Joint Parties.² RESA has reviewed and supports the comments being filed by each of those

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

² The Proposed Decision fails to identify RESA as an active party in this proceeding (see, pp. 4-5). While RESA did not participate in hearings, it is a named member of the Direct Access Parties on Opening and Reply Briefs, as well as in other filings by the Joint Parties. Further, a RESA representative participated in the workshops held in this proceeding. RESA respectfully requests that the Proposed Decision be corrected on this point.

coalitions today. However, RESA has elected to file separate comments to provide a national perspective on the proposed financial security requirements for electric service providers (“ESPs”). RESA strongly affirms the conclusion of the Direct Access Parties -- that the proposed financial security rules are burdensome, unreasonable and anti-competitive. Moreover, the proposed rules are vastly more onerous than those existing in any other competitive retail market in the country. If adopted, they will create a significant barrier to entry for retail providers. Accordingly, RESA respectfully requests that the Proposed Decision be significantly modified to address these concerns.

II. FINANCIAL SECURITY REQUIREMENTS SHOULD BE UNAMBIGUOUS, TRANSPARENT, FLEXIBLE, AND REASONABLE

RESA believes that financial security provisions should be standardized across the state and that the standardization should be based on unambiguous, transparent credit analysis that uses defensible credit standards to calculate each ESP’s financial security requirement. In addition, RESA believes that the resulting credit requirements should be exclusive to any credit risks or requirements that are already mitigated through Regional Transmission Organization (“RTO”) credit obligations incurred by the ESP.

RESA supports the concept of credit risk mitigation and indemnification for its customers and counterparties through flexible, transparent, and appropriately calculated credit and collateralization requirements. RESA believes that standardizing these requirements on industry best practices creates a more efficient and cost-effective market for its customers. In addition, setting credit requirements at a level that is truly commensurate with customer and counterparty risk exposures helps to balance needed protections with the cost that ESPs, and ultimately California customers, incur for those protections.

As a Load-Serving Entities (“LSEs”) and often Scheduling Coordinators at the California Independent System Operator, (“CAISO”), ESPs are required to post collateral with the RTO to cover default risk to the wholesale market. Inclusion of market price risks in utility credit assessments would be duplicative and result in extraneous costs for ESPs and their customers. RESA would like to point out that both Maryland and Illinois have adopted credit requirements for retail suppliers that allow ESPs to provide proof of collateralization at PJM (or MISO in IL) to meet their credit requirements at the applicable utility commissions. As discussed below, RESA requests that the Commission include in a subsequent phase of this proceeding an assessment of the provisions in the Maryland and Illinois regulatory code and determine if it would be possible to adopt similar provisions for ESPs in California.

III. THE ONEROUS AND BURDENSOME FINANCIAL SECURITY REQUIREMENTS ARE UNPRECEDENTED IN RETAIL MARKETS NATIONWIDE

In aggregate, RESA members operate in all of the competitive retail electric markets across the country. Accordingly, they must comply with a large variety of rules and requirements, including financial security and creditworthiness. RESA is unaware of any other state with competitive retail markets that imposes financial security requirements of similar complexity or magnitude on retail providers. In particular, RESA identifies the following major concerns:

- The amount of the security is not commercially feasible and exponentially higher than requirements found in other retail markets
- The amount of security is calculated using a non-transparent, highly complicated formula.
- The calculation is highly volatile and may lead to exponential increases in the dollar amount of the security requirement with 30-days notice.

- The volatile nature of the calculation creates significant uncertainty and credit risk for the ESP.
- The utility calculates the financial security requirement for its direct competitor with little apparent oversight by the Commission.
- The accepted credit facilities are limited and seem to make the incorrect assumption that ESPs are rated by credit agencies or have a “parent” to provide a guarantee. In fact, a number of ESPs successfully operating in other states are privately held and, thus, unable to comply with such requirements.
- The AA rating standard is far higher than what is used in any other state and significantly above “investment grade” credit, which for Standard & Poors (“S&P”), for example, is BBB-.
- Two calculations and possible re-postings of security per year are burdensome. By contrast, most states surveyed seem to require an annual process.

For perspective, RESA has compared the financial security requirements proposed for California to those in other states and utilities with successful competitive retail markets. While, each market is different, RESA recognizes that, in general, State Commissions have financial security requirements to obtain a license, and some utilities may have additional requirements to operate within their territory. In some cases, the utilities will have additional financial security requirements only if the ESP utilizes Supplier Consolidated Billing where the ESP is also remitting and collecting utility delivery charges. To illustrate this point, RESA has created a table provided in the Appendix that outlines various state requirements and an example of at least one utility that operates in that particular State. As the Appendix demonstrates, these markets typically have a defined financial security amount specified or a much more simple calculation to arrive at the amount.

When the calculation is simple, understandable and transparent, retail providers can easily assess their credit risk and determine their cost of doing business in the state. By contrast, the complex model proposed for adoption in California by Pacific Gas and Electric (“PG&E”)

and Southern California Edison (“SCE”)³ contains none of these qualities. In fact, the complexity of the model means that there will likely be little or no checks and balances on the utilities, which are making these calculations for their competitors. This is akin to Wells Fargo calculating the security requirements for the much smaller Bank of the West. When retail providers evaluate whether to enter the California market, this calculation and utility-driven process constitutes a major disincentive.

While the methodology for calculating the bond requirement is a significant concern, most alarming is the potential amount of the financial security. As the Direct Access Parties point out in its comments, the Proposed Decision – based on comments made by Southern California Edison (“SCE”) – asserts it is reasonable for an ESP with \$2 million in annual sales to procure a \$112 million bond. Assuming the cost of the bond is 1% of the face value of the bond (for an ESP with investment grade credit), the cost of the bond is \$1.1 million. This cost equates to more than fifty percent of the ESP’s revenues! It is inconceivable for the Commission to conclude that this is in fact “commercially reasonable.” One RESA member, Liberty Power, a privately-held, independent company, which operates in 13 states and the vast majority of utility territories within those states, provides additional insights regarding the varying levels of financial security requirements. In its experience in markets where additional security requirements are required at the utility level, it is quite common for a bond or letter of credit requirement to be in the amount of \$25,000 or less and only in rare instances exceed \$250,000.

Due to the complexity of the California market, the cap on direct access load, regulatory uncertainty, and a number of other issues, currently there are only 17 entities⁴ licensed in

³ Proposed Decision, p. 78.

⁴ List of registered ESPs available on CPUC web site at: http://docs.cpuc.ca.gov/published/ESP_Lists/esp_udc.htm

California representing 15 different companies⁵. As detailed later in these comments, this is only a fraction of the number of suppliers competing for customers in other retail markets. Not only does the current Proposed Decision represent a barrier to entry for future retailers considering expanding to California, but may very well also result in current suppliers exiting the California marketplace. Additionally, the Proposed Decision appears to presuppose that ESPs are credit rated or have a credit -rated parent company. In fact, several of RESA's members and other retailers operating in competitive electric markets are privately -held, independent companies. If the Commission continues to believe that there should be a viable direct access marketplace for electricity in California, then the Proposed Decision requires wholesale revisions as detailed by the Direct Access Parties.

IV. CREATING BARRIERS TO ENTRY IS INCONSISTENT WITH CALIFORNIA AND COMMISSION POLICY TO EXPAND THE COMPETITIVE RETAIL MARKET

While California was the first state in the nation to open its electricity markets to retail competition, its market now lags far behind other states. As shown in the accompanying table, there are a number of other states with far more successful retail markets than California. These states have significantly more retail providers, each offering numerous products and services in competition with the traditional utilities. In addition, market share of competitive providers ranges from 46 to 100% for the states surveyed. California's statistics look woeful by comparison.

⁵ Direct Energy and Liberty Power each hold two licenses

**COMPARISON OF RETAIL MARKETS -- CALIFORNIA
AND OTHER STATES**

State	Date of Switching Data	# of Retail Providers	% of Load Switched	Source of Switching Data
CT	6/30/11	30 ⁶	67.6	http://www.dpuc.state.ct.us/electric.nsf/22bd353cdb8843d985257615005b5bcc/4d19e927ef8972d285257616005c73bf?OpenDocument
IL	7/11	54 ⁷	51.3 ⁸	http://www.icc.illinois.gov/electricity/switchingstatistics.aspx
MD	6/30/11	60 ⁹	46.7	http://webapp.psc.state.md.us/Intranet/CaseNum/submit_new.cfm?DirPath=\\Coldfusion\Electric%20Choice%20Reports\2011%20Electric%20Choice%20Enrollment%20Reports&CaseN=Electric%20Choice%20Enrollment%20Monthly%20Reports
NY	4/11	303 ¹⁰	50.8	http://www.dps.state.ny.us/Electric_Migration_apr11.pdf
PA	9/3/11	50 ¹¹	51.8	http://extranet.papowerswitch.com/stats/PAPowerSwitch-Stats.pdf?/download/PAPowerSwitch-Stats.pdf
TX	12/31/10	112 ¹²	100 ¹³	http://www.puc.state.tx.us/industry/electric/reports/RptCard/Default.aspx
CA	3/31/11	17 ¹⁴	11.7	http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/Electric+Markets/Direct+Access/thru2008.htm

⁶ List of competitive retail providers registered in Connecticut available at: http://www.ctenergyinfo.com/all_suppliers.htm

⁷ List of competitive retail providers registered in Illinois available at: <http://www.icc.illinois.gov/utility/list.aspx?type=ares>

⁸ Switching statistics for state's largest utility, Commonwealth Edison Company; statewide statistics are unavailable for Illinois.

⁹ Competitive retail providers registered in Baltimore Gas and Electric Company's service territory: http://webapp.psc.state.md.us/intranet/supplierinfo/supplierResult_new.cfm

¹⁰ Competitive retail providers registered to serve business customers: <http://www3.dps.state.ny.us/e/esco6.nsf/>

¹¹ Competitive retail providers registered to serve business customers in PPL's service territory; statewide data unavailable: <http://www.papowerswitch.com/shop-for-electricity/>

¹² Competitive retail providers registered in Texas available at: <http://www.puc.state.tx.us/industry/electric/directories/Default.aspx>

¹³ Competitive retail providers serve 100% of the market with 71% served by non-affiliates and 29% by utility affiliates.

¹⁴ List of registered ESPs available on CPUC web site at: http://docs.cpuc.ca.gov/published/ESP_Lists/esp_udc.htm

California lags for many well-known reasons. Recently, however, California has reinvigorated its competitive retail market with the passage and implementation of Senate Bill (“SB”) 695, which, as of April 2010, allowed retail choice once again for non-residential customers. Moreover, in June 2011, SB 855 (Kehoe) was introduced to raise the allowed level of direct access once more.¹⁵ Furthermore, the Commission has a long -standing and oft -repeated commitment to “competition and customer choice.”¹⁶

Given California’s preferred policy to support and expand direct access, the proposed financial security requirements are befuddling at best. As described above, the exorbitant amounts calculated by a complex, non -transparent approach creates a costly barrier to entry for new retail providers. With a wealth of successful markets to choose from, retail providers will enter where the costs of doing business are definable and reasonable. California will not make that list. Interestingly, even as SCE was actively devising its onerous and anti -competitive model to calculate ESP financial security requirements, its affiliate, Edison Mission Solutions LLC, was busy enrolling as a Retail Electric Supplier in Illinois, taking advantage of the successful retail market in that state.¹⁷ To RESA’s knowledge, SCE’s affiliate has not chosen to apply for ESP status in California’s market. If California is to fulfill the promise of a robust competitive retail market, it must ensure that its rules encourage market entry and provide a reasonable and cost - effective opportunity for ESPs to compete against the incumbent utilities.

¹⁵ http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0851-0900/sb_855_bill_20110622_amended_asm_v97.html

¹⁶ See, for example, *Order Granting Petition for Rulemaking and Instituting Rulemaking as to Whether, When or How Direct Access should be Restored*, R.07-05-025, May 24, 2007, p. 1.

¹⁷ The registration for SCE’s affiliate in Illinois was activated on July 28, 2010. See link on Table 1 for retail providers in Illinois as well as SCE’s parent web site noting the retail affiliate:
<http://www.edison.com/ourcompany/emg.asp>

V. **THE COMMISSION MUST TAKE ANOTHER LOOK AT FINANCIAL SECURITY REQUIREMENTS**

There can be no policy or principled justification for adopting unreasonable and onerous financial security requirements that create barriers to entry for ESPs just at the time California is seeking to expand the competitive retail market. The fact that only one model was proposed in the proceeding does not support adopting that model if it is shown to be unreasonable and burdensome as RESA has done. Further, the fact that the adopted model was presented in whole cloth by the ESPs' utility competitors should also raise Commission concerns.

Accordingly, RESA urges that the Proposed Decision be modified to provide the Commission and all parties the opportunity to conduct a full investigation of *reasonable and cost-effective* financial security requirements for ESPs that can be met by both large public entities and smaller privately-held, independent retailers and avoid creating barriers to entry. The requirements adopted in other states can serve as a valuable resource and first step. In particular, RESA strongly supports the recommendation of the Direct Access Parties to initiate a subsequent phase of this proceeding to accomplish this task. As the Direct Access Parties note, taking this step would require that the Proposed Decision be revised to delete the current findings with regard to the financial security methodology and instead provide for further workshops and economic analyses of alternatives. In particular, RESA supports the following modification to Ordering Paragraph 31, as proposed by the Direct Access Parties:

Ordering Paragraph 31: This proceeding ~~is closed.~~ shall be extended for the purpose of more fully considering the issue of the ESP 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.

In closing, RESA respectfully requests that the Commission adopt RESA's recommended modifications to the financial security requirements to ensure a viable and competitive retail electric market, consisting of a large and diverse group of retailers that can compete to bring innovative products and services to California's energy users.

Respectfully submitted,



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On Behalf of:
RETAIL ENERGY SUPPLY ASSOCIATION

September 12, 2011

APPENDIX

**FINANCIAL SECURITY REQUIREMENTS PROPOSED FOR CALIFORNIA
COMPARED TO A SAMPLE OF OTHER STATES¹⁸**

State / Utility	Purpose	Financial Security Required (\$)	Accepted Credit Facilities	Credit Standard
CT	State Certification ¹⁹	Lesser of (a) \$250,000 or (b) 5% of estimated gross receipts of one year of operation	Bond; letter of credit; guarantee; other appropriate financial instrument from creditworthy institution	Not Specified
CL&P / UI (CT)	Utility Operations	<i>No Additional Requirements Identified</i>		
IL	State Certification ²⁰	Varies from \$30,000 - \$300,000 depending on type of customer served.	Appropriate credit rating; one or more lines of credit with ISOs or wholesale power supplier; certified member of ISO and purchases 100% of supply there; guarantee; bond, letter of credit; line of credit from financial institution with credit rating of A- (S&P), A3 (Moody's)	Company long-term credit rating: S&P – BBB- Moody's – Baa3; Company commercial paper rating: S&P – A-2 Moody's – P-2
Ameren (IL)	Utility Operations ²¹	Ameren <u>may</u> request additional security in amount acceptable to Ameren (<i>generally no additional requirements unless utilizing Supplier Consolidated Billing</i>)	Cash Deposit; letter of credit; bond	Not Applicable
MD	State Certification ²²	Proof of financial integrity. <u>If</u> collecting deposits or pre-payments \$50,000 initially then 100% of deposits or prepayments.	Acceptable financial integrity if supplier receives an unsecured credit allowance greater than \$2M from PJM Interconnection, LLC, and provides documentation of the credit allowance; Bond or similar instrument	Not Applicable
BGE	Utility	<u>May</u> require an amount equal to 2	Cash Deposit; Letter of Credit;	Not Specified

¹⁸ The requirements are complex and this summary is at a very high level; a complete comparison would require much more extensive detail than we are able to provide at this time.

¹⁹ DPUC Regulations 16-245-4. Licensing of electric suppliers and administration of renewable energy portfolio requirements - Security:
<http://www.dpuc.state.ct.us/DPUCinfo.nsf/f17596944e54b1f985256b5100704d92/24f2f05178fd0407852568d400530c39?OpenDocument>

²⁰ Illinois Administrative Code, Title 83 Chapter I: Illinois Commerce Commission, Subchapter C: Electric Utilities Part 451: Certification of Alternative Retail Electric Suppliers:
<http://www.ilga.gov/commission/jcar/admincode/083/08300451sections.html>

²¹ Ameren Credit Application

²² Annotated Code of Maryland, Division I, § 7-507. Licenses to supply electricity

(MD)	Operations ²³	months of projected Customer Payments <i>if the Electric Supplier provides consolidated billing</i>	Investment-grade bond rating; guarantee from investment-grade parent	
NY	State Certification	<i>Supplier only needs to meet the distribution utility's uniform creditworthiness standards</i>		
NY	Utility Operations ²⁴	Must satisfy creditworthiness requirements	Electric supplier or its guarantor maintains minimum rating from one of credit agencies or utilizes utility consolidated billing and utility has right of first access to the funds; Letter of credit or surety bond from financial institution with A bond rating; Dun & Bradstreet 1A2 rating and 24 months of good payment record with utility; defined unsecured credit allowance	S&P – BBB Moody's – Baa2
PA	State Certification ²⁵	Initially \$250,000; after 1 st year 10% of reported gross receipts	Bond or other security approved by Commission	Not Applicable
Met-Ed / Penelec / Penn Power (PA)	Utility Operations ²⁶	Initial amount of \$250,000; then equal to value of "Coordination Services Charges" projected for the ESP during the next 2 billing periods based on forecasted load	Letter of credit; parental guarantee, cash deposit	S&P – BBB- Moody's – Baa3
Duquesne (PA)	Utility Operations ²⁷	Lesser of (a) \$250,000 or (b) two months of customers' MWh load x \$25	Letter of credit; or "other guarantee satisfactory to the Company"	Not Specified
TX	State Certification ²⁸	Can meet rating or net worth requirements; if not may provide letter of credit of \$500,000.	Letter of credit; guarantee from affiliate; guarantee from financial institution with investment grade rating or wholesale power provider	Investment grade rating of provider or guarantor: S&P – BBB- Moody's – Baa3
Centerpoint (TX)	Utility Operations ²⁹	If required, two months' maximum expected transition charge collections <i>Note: TX has Supplier Consolidated Billing Model;</i>	Have long-term unsecured credit rating; cash deposit; affiliate guarantee; surety bond; letter of credit	S&P – BBB- Moody's – Baa3
CA Proposed	Utility Operations	Complex model with highly variable amount: \$100,000-\$25 million+	Bond; letter of credit; cash deposit; equivalent evidence of insurance	AA

²³ [Baltimore Gas and Electric Electricity Supplier Coordination Tariff](#)

²⁴ [New York Uniform Business Practices, Case 98-M-1343](#)

²⁵ [Pennsylvania Code, Chapter § 54.40 - Bonds or other security: http://www.pacode.com/secure/data/052/chapter54/s54.40.html](#)

²⁶ [First Energy Creditworthiness: https://www.firstenergycorp.com/supplierservices/Pennsylvania/Met-Ed_and_Penelec/ME_%26_PN_Creditworthiness.html](#)

²⁷ [Duquesne Light Electric Generation Supplier Coordination Tariff](#)

²⁸ [Public Utility Commission of Texas, Substantive Rules, §25.107 Certification of Retail Electric Providers \(REPs\).](#)

²⁹ [Public Utility Commission of Texas, Substantive Rules, § 25.108 Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges.](#)