

9/19/2011 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)

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

September 19, 2011

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## I. Introduction

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, L. Jan Reid (Reid) submits these reply 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 reply comments are due Monday, September 19, 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).<sup>1</sup>

## 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:<sup>2</sup>

1. The Commission should reject the Joint Parties' (JPs') recommendation to ignore the Renewables Portfolio Standard (RPS) costs of non-IOUs. (pp. 3-4)
2. The Commission should find that the Power Charge Indifference Amount (PCIA) cannot be negative. (p. 4)

My recommendations are based on the following proposed findings:

1. Under Senate Bill (SB) 2 1 X, banking of excess procurement is not unlimited and does not include all RPS purchases. (pp. 2-3)

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<sup>1</sup> 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).

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

2. It is likely that the IOUs' RPS costs are higher (on a \$/MWh basis) than those of the non-IOUs. (pp. 3-4)
3. The IOUs have a financial incentive to pay a high price for RPS in order to avoid shareholder penalties. (pp. 3-4)
4. If the Commission allows the PCIA to be negative, this implies that bundled ratepayers receive a benefit from customers switching from bundled service to direct access service. (p. 4)

### **III. Renewables Portfolio Standard (RPS) Issues**

The Joint Parties (JP) incorrectly state that "the cost of procurement for non-IOU entities is not relevant and is not needed to measure bundled customer indifference." (JP Comments, p. 4) The JP raise two issues in support of their statement that procurement costs for non-IOU entities are not relevant:

1. IOUs can bank excess procurement from one year for a credit in a future year.
2. The best information available to evaluate the value of the IOUs' Renewables Portfolio Standard (RPS) is what they paid for recent RPS procurement.

I address each of these issues below.

#### **A. Forward Banking**

The Joint Parties (JP) argue that: (JP Comments, p. 4, footnote omitted)

The PD errs in including non-IOU volumes in the calculation. With the passage of Senate Bill ("SB") 21 X, there is now a legislative mandate for all retail sellers in California to steadily increase the level of RPS compliant renewables in their portfolio from current levels to 33% by 2020. . . . And provided that they meet certain requirements, IOUs can also bank excess RPS-eligible renewables from one year for credit in a future year, thus avoiding the need for a subsequent procurement.

Under SB 21 X, banking of excess procurement is not unlimited and does not include all RPS purchases. For example, the Commission can only authorize unlimited forward banking if a contract was executed prior to June 1, 2010. The

purchase of Renewable Energy Credit contracts (REC-only contracts) cannot be banked because the Commission did not authorize the use of REC-only contracts until January 13, 2011. (See Decision (D.) 11-01-025)

Other limits on forward banking include:

- New PUC § 399.16(d)(1) requires that the renewable energy resource was eligible under the rules in place as of the date when the contract was executed.
- New PUC § 399.16(d)(2) requires that the Commission must have approved the contract.
- New PUC § 399.16(d)(3) requires that contract amendments or modifications occurring after June 1, 2010 neither increase the nameplate capacity or expected quantities of annual generation, nor substitute a different renewable energy resource.

## **B. Valuing RPS**

The JP claim that IOUs represent 68% of the load subject to the RPS requirement, and that non-IOUs represent 32%. (JP Comments, p. 9) Although IOU procurement costs are likely to be higher (see discussion below), the JP recommends that the Commission ignore 32% of the RPS purchases.

The JP argue that: (JP Comments, pp. 4-5, footnote omitted)

The best information available to estimate the value of this avoided IOU procurement – and therefore the market value of the existing portfolio – is what it paid for recent procurement, precisely the data that the Joint Parties’ methodology uses to value wholesale renewable generation.

The IOUs’ procurement costs constitute the best available information *only* if there is no statistically significant difference between the average price paid by IOUs and the average price paid by non-IOUs. It is not possible for the Commission to determine whether or not a statistically significant difference exists, because no evidence has been presented on the RPS costs of non-IOUs.

It is likely that the IOUs' RPS costs are higher (on a \$/MWh basis) than those of the non-IOUs. The IOUs have a financial incentive to pay a high price for RPS in order to avoid shareholder penalties. The IOUs have routinely submitted contracts for Commission approval in which the energy price was higher than the Market Price Referent (MPR).<sup>3</sup>

In 2003, the Commission issued an order stating that "Subject to the flexible compliance mechanism, failure to satisfy the annual procurement targets will result in an automatic penalty of 5 cents per kWh, subject to the process, exceptions, and penalty cap described above." (D.03-06-071, Ordering Paragraph 23, slip op. at 74)

The IOUs have a financial incentive to overpay for RPS, because all RPS costs are paid by IOU ratepayers, and all RPS penalties are paid by IOU shareholders. Thus, it is likely that IOU procurement costs are higher than the RPS costs paid by non-IOUs.

Therefore, I recommend that the Commission reject the JPs' recommendation to ignore the RPS costs of non-IOUs.

#### **IV. Zero Default PCIA Value**

The JP state that they "concur with the PDs ruling that rejects PG&E's proposal to set a zero default PCIA value, on the grounds that it would violate the bundled customer indifference." (JP Comments, p. 10) In this instance, the JP is wrong. A zero default Power Charge Indifference Amount (PCIA) does not violate the principle of bundled customer indifference.

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<sup>3</sup> For example, see Advice Letters 3735-E, p. 3; 3736-E, p. 3; 3754-E, p. 3; 3759-E, p. 3; 3775-E, p. 3; 3837-E, p. 3; 3795-E, p. 10; 3876-E, p. 4; and Resolution E-4388, Finding and Conclusion 9, p. 15.

Reid testified that: (Exhibit 700, pp. 16-17)

If the Commission allows the PCIA to be negative, this implies that bundled ratepayers receive a benefit from customers switching from bundled service to direct access. This is clearly not true. If the Commission designed the perfect system, bundled ratepayers would simply be reimbursed for all of the costs that they face as a result of direct access. I am unaware of any convincing evidence submitted in this proceeding which shows that bundled ratepayers receive a net benefit due to the activities of direct access providers. For example, no party has introduced evidence which shows that an increase in DA reduces the rates paid by bundled ratepayers.

Therefore, I recommend that the Commission find that the PCIA cannot be negative.

## **V. Conclusion**

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

\* \* \*

Dated September 19, 2011, at Santa Cruz, California.

/s/

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## 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 19, 2011, at Santa Cruz, California.

/s/

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