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 THE DIRECT ACCESS PARTIES ON THE PROPOSED DECISION ON DIRECT ACCESS REFORMS

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AND ON BEHALF OF THE DIRECT ACCESS PARTIES

September 19, 2011

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In accordance with Rule 14 .3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Direct Access Parties[1] submit these reply comments on the *Proposed Decision of Administrative Law Judge ("ALJ") Pulsifer on Direct Access Reforms* ("PD"). These reply comments address issues associated with the financial security requirements ("FSR") and related proposals made by the Division of Ratepayer Advocates ("DRA"), Southern California Edison Company ("SCE"), and Pacific Gas & Electric Company ("PG&E").

I. REPLY TO DRA

DRA makes legal error in concluding that the PD's interpretation of § 394.25(e) is correct. For DRA's interpretation to be correct, the word "other" in the statute must be assumed to have no meaning, which is, at best, a strained interpretation. As thoroughly explained in the DA Parties legal briefs and comments in this proceeding, the Commission must reject the legal interpretation of the statute supported by DRA and embodied in the PD. Moreover, both SCE and PG&E continue to endorse precisely the same legal error. The statute was intended to protect the interests of bundled customers so that they would not be harmed by any involuntary

[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.

return of direct access customers. The PD goes far beyond that and, in doing so, does grievous harm to retail competition in California.

II. REPLY TO SCE

SCE states that the PD should be modified to clarify whether involuntarily returned direct access ("DA") customers placed on BPS must serve the full 18-month minimum stay before seeking to return to DA service, recommending that it would be reasonable to permit *involuntarily* returned customers that wish to promptly return to DA service to do so simply upon a 6-month advance notice to the utility, subject to the DA load limitations and other applicable switching rules. There are two key points that need to be made with respect to SCE's recommendation.

First, the Direct Access Parties agree that involuntarily returned customers should be afforded an opportunity to resume direct access service and in fact, believe that the PD should be clarified to afford these customers the same 60-day safe harbor right to return to DA that is the right of any returning customer. SCE's recommended clarification, on the other hand, while relieving involuntarily returned customers of the 18 month minimum stay provisions, does not allow such customers to retain their space under the direct access cap while they negotiate a new supply agreement with an Electric Service Provider ("ESP"). There is simply no reason that involuntarily returned customers should be denied the same opportunity to stay on direct access service that other customers have.

Second, SCE's recommendation that involuntarily returned customers should be allowed to return to direct access service with six months notice is noteworthy in another respect - that is, the fact that SCE believes that these customers can and should be allowed to return to direct access service with six months notice clearly argues in favor of having the FSR cover a

maximum of six months rather than the twelve specified in the PD. The record shows that in the one case where there were significant numbers of involuntarily returned DA customers, the winter and spring of 2001, most returned to DA service within six months. Exh. 201 at pp 8-9. Allowing the 60-day safe harbor will encourage returns and further reduce the need for a 12-month FSR.

SCE also recommends that the definition of mass involuntary return should include an ESP's elective termination of service to all customers. This recommendation is entirely inappropriate and should be rejected. The elective termination of service has no relationship to a "mass involuntary return." In fact, the Commission has observed ESPs exiting the market in the past on an orderly basis where the ESP simply continues to serve its customers for the remainder of their unexpired contract terms and then declines to enter into new contracts. There is neither supporting evidence, nor is there any reason to *assume* that such orderly exits could possibly lead to the mass involuntary return that SCE claims. Furthermore, the PD specifically provides that an involuntary return of a DA customer to IOU bundled service has not occurred in the vent a customer's contract with an ESP has expired.[2] Thus, SCE's proposal should be rejected.

SCE also states that it should be permitted to use implied volatility data to calculate the ESP bond amounts. As discussed extensively in the DA Parties' reply testimony and the DA Parties' Opening Brief at 8-9, the use of the utility-proposed formula, including its use of implied volatility, is commercially infeasible and results in ludicrous and unreasonable ESP bond amounts.

[2] PD, at p. 87.

Finally, the Direct Access Parties support SCE's interpretation of the ALJ's April 14, 2011 Ruling in which SCE's 2011 PCIA rates are subject to refund resulting from revisions to the PCIA. The Direct Access Parties support SCE's plans to issue refunds of any overcharges resulting from the PCIA true-up once the revised rates are approved by the Commission.

III. REPLY TO PG&E

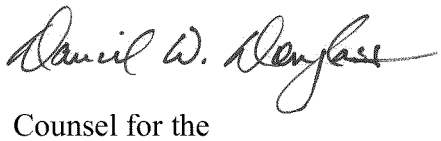
PG&E recommends that the definition of an involuntary return of a DA customer should be expanded to include involuntary returns that occur as a result of an ESP defaulting on its energy supply procurement obligations such that the ESP is no longer able to serve its customers. This is also unnecessary and inappropriate. First, such a default may not result in an involuntary return of customers to utility service. The so-called default may be simply a supplier-ESP dispute and the ESP may simply move to other supplier(s). Second, the utility would have no way of knowing about an ESP default to a supplier, as the contract details would be a matter to which only the supplier and ESP would be privy. Finally, if this type the default did create a situation where the ESP ceases to supply power to its customers, it would likely trigger any or all of the other three definitions of an involuntary return specified in the PD.

IV. CONCLUSION

The Direct Access Parties appreciate the opportunity to make this reply to address other parties' requested changes to the PD. Moreover, the Direct Access Parties urge the Commission to modify the PD to adopt the changes requested in our opening comments, the most notable of which is that the Commission revise the financial security requirements in accordance with the DA Parties' proposal, including placing involuntary return customers on Transitional Bundled Service ("TBS") service for six months. This approach fully protects bundled customers from the unlikely event of an involuntary return of direct access customers to utility service while at

the same time minimizing the costs of financial security arrangements. Alternatively, the Commission should revise the PD to establish a subsequent phase of the proceeding to consider reasonable financial security requirements that both protect customers and ensure the development of a robust competitive retail market.

Respectfully submitted,



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