

**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)

**NOTICE OF EX PARTE COMMUNICATIONS
OF THE DIRECT ACCESS PARTIES**

Pursuant to Rule 8.4 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Direct Access Parties¹ provide the following joint notice of ex parte communications. On Friday, October 7, 2011, a written ex parte communication was sent to Sarah Thomas, advisor to Commissioner Ferron. The written communication was in the form of an email sent by Michael Day, counsel to Commercial Energy, on behalf of the Direct Access Parties. A copy of the email and a document attached thereto is included with this notice of ex parte communication.

Respectfully submitted,



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October 10, 2011

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, BlueStar Energy, Pilot Power Group, Inc. and the Energy Users Forum.

ATTACHMENT

-----Original Message-----

From: MDay [<mailto:MDay@goodinmacbride.com>]
Sent: Friday, October 07, 2011 8:38 AM
To: 'srt@cpuc.ca.gov'
Cc: 'Brown, Carol A.'; MDay; douglass@energyattorney.com
Subject: FW: Record Citations

Sara,

Here are the record citations that you requested of Dan Douglass. He prepared them, but at the moment he is out of the country so he asked me to forward them to you. Please let me know if you have any questions.

Mike Day

Michael B. Day

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GOODIN,
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SQUERI, DAY &
LAMPREY, LLP

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**Record Citations Pertaining to the DA Parties TBS Rate Proposal and the
ESP Financial Security Requirement Issues**

The Proposed Decision (PD) suggests that “PG&E and SCE were the only parties to propose a methodology to calculate an ESP security bond.” PD at p. 72. In fact, the DA Parties offered a comprehensive proposal that dealt with PCIA issues, switching rules and the financial security requirement to be made applicable to ESPs. It has also been suggested that the record did not contain sufficient information on the DA Parties proposal, the important role of the Temporary Bundled Service (TBS) element of that proposal and the costly and burdensome nature of the SCE/PG&E financial security requirement proposal. The following is a summary that highlights evidence in the record supporting the DA Parties proposal and highlighting the exorbitant cost of the proposed FSR.

TBS Rate Proposal

1. CLECA/CMTA Opening Testimony:

“Customers involuntarily returned to bundled service can and should take TBS service.”

“Thus, the requirement for TBS service, if it is properly priced, should provide the appropriate protection for bundled customers than might result from an involuntary return of DA customers.”

See generally, Q&A 30 and 31, pp. 22-23.

2. SDG&E Opening Testimony of James Spurgeon:

“When faced with the question of whether they prefer the ESP bond approach or the TBS approach, during the workshops and the informal working group meetings, DA customers have indicated that, in the event they are involuntarily returned to utility procurement service, recognizing the risk of being exposed to an extremely high TBS rate, they prefer the TBS approach and are willing to accept the risks. In SDG&E’s view, bundled customers are indifferent under either approach. Therefore, in recognition of customers’ preferred approach, SDG&E proposes that customers, who are involved in an en masse involuntarily return to bundled service, should receive utility procurement service under the modified TBS rate, as described above, for a period of twelve months.”

See generally, Section C. SDG&E ESP Financial Security Proposal, pp. JS-7 - JS-9.

3. Direct Access Parties Opening Testimony:

“Consistent with the Joint Parties’ January 24, 2011 brief on ESP and CCA Bonding requirements, the Direct Access Parties believe that involuntarily returned customers should pay the TBS rate for the first six months of their utility 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.”

Testimony of Mark E. Fulmer, at p. 4.

4. Joint Parties 1/24/11 Legal Brief on Bonding

“Specifically, the Direct Access Parties have made a comprehensive proposal to address switching restrictions, minimum stay provisions, and ESP financial security arrangements, a feature of which is that direct access customers who are involuntarily returned to utility service would be placed on TBS for a period of up to six months. This approach is a simple way to avoid the imposition of any utility procurement-related costs on the “other customers” referred to in § 394.25(e), and to thereby limit “reentry fees” and the corresponding ESP bonding requirement to such amounts as necessary to cover the administrative costs, if any, associated with the involuntary return of customers to utility service. The Joint Parties’ position is that nothing in § 394.25(e) bars the Commission from allowing involuntary returned direct access or community choice aggregation customers from being on TBS for a transition period and therefore nothing that would bar the Commission from adopting the Direct Access Parties’ proposal.”

See p. 3.

5. CLECA/CMTA Reply Brief

“CLECA and CMTA are strongly opposed to proposals that DA customers who are involuntarily returned to bundled service should move immediately to bundled procurement service, and thus take on the minimum stay obligations, rather than to Transitional Bundled Service ("TBS") with safe harbor rights. As we indicated in our Opening Brief, the conditions affecting the risk of a mass involuntary return on DA customers which were present in the market in 2000 no longer exist.”

See p. 2

6. Commercial Energy Reply Brief

“As discussed above, the financial security proposal put forth by PG&E and SCE is unnecessary and unwarranted, as well as being anti-competitive. Preventing cost shifting to utility bundled customers that could result in the event of a mass involuntary return of DA customers to utility service can be addressed simply and fairly by the *current* rule placing all customers returning to utility service without advance notice on the TBS rate for 6 months.”

See p. 7

7. Direct Access Parties Opening Brief

See summary of recommendations at the start of the brief for a three-page explanation of the comprehensive proposal.

The Financial Security Requirement Proposed by SCE and PG&E is Onerously Expensive

8. Direct Access Parties Opening Brief

“SCE recommendation to give no weight to the DA Parties demonstration that SCE’s proposed method for calculating ESP financial security requirement results in grossly excessive values is based on exaggeration and misdirection.”

“There is a fundamental fact that must be considered in connection with the FSR debate. If SCE and PG&E are successful in imposing exorbitant and highly variable costs on DA customers, the

net result will be that the Commission may well witness a historic *voluntary return* of DA customers as Direct Access becomes uneconomic. This is not a result that is in any way logically consistent with the premise of this proceeding or with Senate Bill 695, the statutory change that permitted the direct access market to be reopened.”

“With respect to the SCE/PG&E proposal it is clear that their FSR calculation model suffers from three serious flaws, as discussed more thoroughly in the DA Parties opening brief. First, the costs are egregiously high. Second, the SCE/PG&E model is very volatile and can move by tens of millions of dollars over the course of a year, thereby placing significantly higher costs on direct access customers. Third, it will have the effect of deterring customers from electing direct access, particularly since the SCE/PG&E model requires a 12-month bond instead of the 6-month period recommended by the DA Parties.”

See pp. 21-24

9. CLECA/CMTA Opening Brief

“CLECA and CMTA object to the utilities' efforts to impose on ESPs potentially huge bonding requirements as a condition of providing service in California. It seems to us that this is nothing more than an anti-competitive effort to make DA service more costly and less competitive. Further, it seems unnecessary.”

See pp. 12-13

10. Commercial Energy Opening Brief

“The proposed security requirement is so potentially costly that it represents a substantial financial barrier to the growth of DA and will result in the pass through of unnecessary costs to either the ESP and/or Direct Access customers.”

See p. 4

“The proposed bond is so potentially costly that it would result in a substantial financial barrier to ESPs. Such a bond would also cause potential harm to current and prospective DA customers because the costs associated with the financial security requirements will likely be passed through to DA customers.”

See p. 12

“In addition, the potential cost of the security sought by SCE and PG&E could be so large in a volatile market that it represents a substantial financial barrier to DA, and is further proof that PG&E and SCE are trying to create regulatory barriers to the use of DA, in violation of Commission and Legislative policy.⁵⁵ As already noted, the bond calculation could result in bond amounts that are potentially insurmountably high⁵⁶ and vary by hundreds of millions of dollars over the course of a year.”

See p. 18

11. CCSF Opening Brief

“In sum, the proposed CCA settlement is unworkable and incomplete, relies on unreliable inputs, and would produce excessive bond requirements. Accordingly, CCSF urges the Commission to reject the use of the proposed CCA settlement for purposes of establishing ESP security requirements.”

“The perverse effect of such unreasonable bond amounts would be to increase the likelihood that an ESP that is fully meeting its other financial commitments would fail to meet the bond requirement and thereby be subject to termination. In this way, the proposed CCA settlement would have the counter-productive effect of making involuntary returns more likely. The bond is supposed to protect the utility and bundled customers from bona fide risks, not be so excessive as to increase those risks.”

See p. 2; see also pp. 9-10