

**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)

**MOTION OF THE
RETAIL ENERGY SUPPLY ASSOCIATION,
ALLIANCE FOR RETAIL ENERGY MARKETS AND
DIRECT ACCESS CUSTOMER COALITION
REGARDING DIRECT ACCESS IMPLEMENTATION**

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Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure, the Retail Energy Supply Association (“RESA”),¹ Alliance for Retail Energy Markets (“AReM”),² and Direct Access Customer Coalition (“DACC”)³ (collectively, the “Joint Parties”) submit this motion (“Motion”) requesting: (a) a status report on direct access implementation, in accordance with Decision (“D”) 10-03-022, that set forth the rules for the transitional reopening of direct access provided for in Senate Bill (“SB”) 695, which was signed into law on October 11, 2009; and (b) direction from the Commission to the investor-owned utilities (“IOUs”) to comply with the web posting requirements in D.10-03-022. In addition, because parties have had to file a motion each year to obtain a status report on direct access implementation, the Joint Parties

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; 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 AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California’s direct access market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

³ DACC is a regulatory alliance of education, commercial and industrial customers that utilize direct access for all or a portion of their electricity requirements.

respectfully request a blanket waiver from having to submit a new motion to request any such status report in the future.

I. BACKGROUND

On June 4, 2010, the California Alliance for Choice in Energy Solutions (“CACES”) and AReM submitted a motion requesting that the Commission direct the IOUs to submit reports on the Notice of Intent (“NOI”) process for Year 1 (2010) and utility compliance with D.10 -03-022. In response to the motion, Assigned Commissioner Michael Peevey directed on June 23, 2010 that “Energy Division [was] to produce a status report on its internal review of utility compliance.”⁴ Energy Division provided the report on July 16, 2010 and updated it on August 2, 2010 (“2010 Report”).⁵ The 2010 Report included an analysis of the IOUs’ process, quantified the extent of the over-subscription and concluded that the IOUs were compliant with D.10 -03-022.

On April 20, 2011, the Joint Parties filed a motion requesting a similar status report with respect to enrollment for Year 2 and Year 3 to ensure continued compliance with the first come/first served requirements of D.10-03-022, provide information needed to determine whether and how enrollment processes can be improved in the future, and inform the public about the demand for retail choice. On July 1, 2011, Administrative Law Judge Thomas Pulsifer issued a ruling granting the motion and Energy Division produced the requested status report on

⁴ See *Assigned Commissioner’s Ruling Denying Motion Requiring Utility Report and Directing Production of Energy Division Report*, R.07-05-025, June 23, 2010, p. 1.

⁵ *Status Report on the Results of Energy Division’s Review of the Utilities’ Senate Bill 695 Implementation for 2010 Per D.10-03-022*, R.07-05-025, July 16, 2010 and updated August 2, 2010.

July 15, 2011.⁶ The Joint Parties are requesting a similar status report for Year 3 and Year 4 with this Motion, as described below.

In addition, the Energy Division's July 15, 2011 status report noted that the IOUs are required to update their web pages at least monthly to keep customers apprised of room available under the direct access load cap.⁷ The Energy Division's review of the utility web pages indicated that the pages were not kept up to date and customers were thus unable to determine whether room under the cap was available or whether the IOUs were accepting six-month notice requests. Consequently, as discussed below, the Joint Parties also request that the Commission direct the IOUs to comply with the web posting requirements in D.10-03-022.

II. REQUEST FOR STATUS REPORT

At present, no public information is available regarding: (1) the results of the direct access enrollment process for Years 3 and 4 that occurred on January 13, 2012 and thereafter; or (2) the number of customers that submitted a notice to switch for Year 3, but failed to complete the Direct Access Service Request ("DASR") process and were placed on Transitional Bundled Service ("TBS"). Each request is described below.

First, the Joint Parties request that Energy Division provide a status report on the results of the 2012 enrollment process, in which customers or their agents submitted six-month notices on January 13, 2012 to switch to direct access service in either 2012 (if room becomes available under the Year 3 load limit) or in 2013 up to the Year 4 load limit for 2013. This enrollment period completes the final phase-in of direct access ordered in D.10-03-022. The specific

⁶ *Status Report on the Results of Energy Division's Review of the Utilities' Senate Bill 695 Implementation for 2011* Per D.10-03-022, R.07-05-025, July 15, 2011.

⁷ July 15, 2011 Status Report, *loc. cit.*, p. 4.

information to be provided, in a tabular format, includes the number of customers submitting six-month switching notices, the load associated with those submissions, the number of customers and the associated load that was rejected, and the amount of time it took to fill the caps for Year 3 and Year 4. The requested information is the same type provided in the 2011 Energy Division status report, which can be used as a template.⁸ The time period for the IOUs to respond to the six-month switching notices for this final phase will conclude by the end of February 2012.⁹ Therefore, the requested information should be available to Energy Division Staff by no later than March 1, 2012.

Second, the Joint Parties request information on the number of customers and their associated load that submitted six-month switching notices, but failed to complete the DASR process in the time required and were, therefore, transferred by the IOUs to TBS. The Joint Parties request this information to be provided in tabular format for Year 1, Year 2, and Year 3 of direct access implementation pursuant to D.10-03-022. This information would be valuable in determining whether any changes should be made to the enrollment process in the future should the Legislature authorize further expansion of direct access and in providing insight regarding the effect of regulatory uncertainty regarding non-bypassable charges and other direct access regulatory requirements.

Because much of the information requested is no different from what has been provided previously by the Energy Division, this request for an updated status report should not be

⁸ The Joint Parties request, however, that the Energy Division provide an explanation about some of the terms used in Table 1, such as how “customer” is defined under “Accepted Customers” (*i.e.* one account or one entity with multiple accounts) and if (or how) the term “Rejected Notices” accounts for multiple notices from one customer and for notices submitted before 9:00 am on the specified date they are due.

⁹ See letter from Executive Director Paul Clanon, November 4, 2011, granting the IOUs’ requested extension to provide 30 business days from January 13, 2012 to respond to the switching notices. Accounting for the Presidents Day holiday on February 20, the 30 business-day period should end on February 27, 2012.

burdensome. Accordingly, the Joint Parties respectfully request that the status report be provided by March 30, 2012.

III. REQUEST TO DIRECT IOUS TO COMPLY WITH WEB POSTING REQUIREMENTS

D.10-03-022 required the IOUs to update their web sites continually to keep customers apprised of whether room is available under the load cap and whether the utility is accepting six-month notices to switch.¹⁰ As mentioned above, the Energy Division's status report issued July 15, 2011 noted that the IOUs were not in compliance with this requirement and stated that the IOUs are obligated to update their web sites at least monthly.¹¹ The report further noted that the IOUs' web pages did not seem up-to-date with the latest information on direct access switching.

The Joint Parties' review of the IOUs' web pages confirms the Energy Division's 2011 findings. In particular, the Joint Parties were unable to find any information on the IOUs' web sites specifying the available room under the cap. If such information does indeed exist, it is not easily found. In addition, some of the posted information is significantly out of date. For example, clicking on "frequently asked questions" under "background" on Pacific Gas and Electric Company's direct access web page takes you to a page explaining why direct access was suspended in 2001 without mentioning that it was re-opened in 2010.

While the Energy Division posts monthly reports of available cap room for each IOU about 15 days after the end of each month, these postings do not provide timely notice to customers when cap room becomes available for each IOU.¹² Moreover, the monthly postings by Energy Division do not absolve the IOUs of their obligation to comply with D.10 -03-022 to

¹⁰ D.10-03-022, p. 18.

¹¹ July 15, 2011 Status Report, *loc. cit.*, p. 4.

¹² For example, the January 15, 2012 report provides the status of the cap room for each IOU as of December 31, 2011.

update their web pages. Accordingly, the Joint Parties respectfully request that the Commission direct the IOUs to update their web pages promptly to: (1) reflect the current status of direct access; (2) provide no less than monthly notice to customers of available cap room; and (3) post when each IOU is accepting six-month notices from customers to apply for available cap room.

IV. REQUEST FOR BLANKET WAIVER

In 2010, 2011 and now 2012, parties have been required to submit a motion to obtain information on the status of the enrollment of direct access customers pursuant to SB 695 and D.10-03-022. The requirement to file a motion to obtain such information wastes both resources and time. The requested information is not available to the public unless provided, in aggregated fashion, by the IOUs or the Commission. Release of this information is in the public interest, because it demonstrates compliance with the law and Commission order and indicates the demand for retail choice by California consumers. While the 4-year phase-in of direct access under D.10-03-022 is now complete, the Joint Parties envision that they may wish to request status reports on direct access implementation at times in the future. Time and resources of Commission staff and other parties can be saved if such requests can be made and promptly fulfilled without requiring submission of a motion. Accordingly, the Joint Parties respectfully request that the Commission grant a blanket waiver from requiring a motion to request a status report on future direct access implementation results.

V. CONCLUSION

As described in more detail above, the Joint Parties respectfully request that the Commission:

- Direct Energy Division to provide a status report no later than March 30, 2012, to provide the requested information on direct access implementation as described herein;
- Direct the IOUs to update their web pages to comply with D.10 -03-022 as described herein; and
- Grant a blanket waiver from having to submit a motion to obtain direct access status reports in the future.

Respectfully submitted,



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