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 IX and Decision 01-09-060.	R.07-05-025 (Filed May 24, 2007)

COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO ON THE JOINT PROPOSAL OF SOUTHERN CALIFORNIA EDISON COMPANY (U-388-E), PACIFIC GAS AND ELECTRIC COMPANY (U-39-E) AND SAN DIEGO GAS & ELECTRIC COMPANY (U-902-M)

The City and County of San Francisco ("CCSF") submits these comments in response to the Joint Proposal of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company ("IOUs"), dated March 16, 2012, on determining financial security requirements ("FSR") and re-entry fee obligations of Electric Service Providers (ESPs) (hereinafter "IOU Proposal").

While the Joint Proposal concerns FSRs and re-entry fee obligations for ESPs, CCSF is concerned that a Commission decision in this matter could influence the Commission's decision on FSRs and re-entry fee obligations for Community Choice Aggregators (CCAs), which is pending in R.03-10-003. For this reason, these comments highlight the inherent differences between CCAs and ESPs including the customer protections inherent in the CCA structure which obviate the need to apply to CCAs many of the provisions proposed by the IOUs.

THE COMMISSION SHOULD ESTABLISH DIFFERENT REQUIREMENTS FOR CCAS THAN THOSE IT ADOPTS FOR ESPS

First, the Commission has the discretion to establish different FSR and reentry requirements for CCAs and ESPs. Public Utilities Code Section 394.25(e) provides for a bond

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or insurance by a CCA and ESP sufficient to support the reentry fees deemed to be necessary by the Commission. The statute references "any reentry fee . . . that the Commission deems is necessary", without any indication that the Commission is obliged to use the same methodology to determine the necessary re-entry fees for CCAs and ESPs. Similarly, bonds are to be "sufficient to cover reentry fees," but there is no legislative direction to use the same bond methodology for CCAs and ESPs. The Legislature could easily have specified that the re-entry fee and bond methodologies be the same for CCAs and ESPs, but it chose not to do so. Thus, the correct reading of the statute is that whether the re-entry fee and bond methodologies should differ for ESPs and CCAs is an issue within the Commission's discretion.

Second, there are substantial policy reasons for treating CCAs and ESPs differently. CCAs are public entities accountable to public bodies whose activities are subject to open government laws. As explained previously by the Commission:

> Entities of local government, such as CCAs, are subject to numerous laws that will have the effect of protecting CCA customers and promoting accountability by CCAs. Under existing law, a CCA must conduct public hearings, operate within a budget and disclose most types of information to members of the public. To the extent that a CCA fails to consider the interests of its customers -- who are local citizens -- there is recourse in subsequent elections, the courts and before local government agencies. (D.05-12-041, mimeo, pp. 10-1 1).

In addition to the specific requirements of the Public Utilities Code applicable to CCAs, the public meeting laws applicable to local governments in California ensure that no CCA program will launch without significant public debate and review. In the development of CCAs, communities will hire staff or consultants with extensive energy market expertise, and design programs that match the desires of the community they wish to serve (whether that community values stable rates, or increased renewable content, etc).

In the context of re-entry fee and bond issues, the public scrutiny, oversight, and accountability of CCAs provides the necessary assurances that CCAs will be prudently managed

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and operated and that, in the unlikely event a CCA runs into financial difficulties, there will be significant advance notice to the public (and utilities) of such difficulties and the efforts of the CCA to address them. This oversight of CCAs significantly mitigates the risk that a CCA might fail and bundled customers might incur costs as a result, which in turn significantly tempers the basis and need for costly financial security requirements for CCAs due to their unique characteristics.

Considering a couple of specific examples from the IOU Proposal, it is obvious that the Commission should adopt different requirements for CCAs. For example, the IOU Proposal suggests that, as stated in D.11-12-018, the IOUs could terminate an ESP if the ESP fails to meet the FSR, in whole or in part.[1] But it would be contrary to state law to apply this provision to CCAs. In 2011, the California Legislature adopted SB 790 (Leno), which, among other things, required the Commission to vote in public to terminate any CCA.[2] This legal protection afforded to CCAs is important, and must be maintained.

A second example is the "Small Customer" definition. Although CCAs will enroll small customers who do not have the energy market sophistication of large industrial customers, the CCA itself, and the public process required for the formation of a CCA, will adequately protect CCA small customers from potential risks. Regardless of what definition and requirement for small customers the Commission adopts in this proceeding, no such definition or requirement is necessary or appropriate for CCAs.

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[1] *See* IOU Proposal at p. 14.

[2] SB 790 added Section 366.2(l) to the Public Utilities Code, which provides in part: "(1) An electrical corporation shall not terminate the services of a community choice aggregator unless authorized by a vote of the full commission. The commission shall ensure that prior to authorizing a termination of service, that the community choice aggregator has been provided adequate notice and a reasonable opportunity to be heard regarding any electrical corporation contentions in support of termination."

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For the reasons stated herein, and those already identified in the record in this proceeding and in R. 03-10-003, the Commission should not consider applying the FSR and reentry fee provisions its adopts for ESPs to CCAs.

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