

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Conduct a  
Comprehensive Examination of Investor  
Owned Electric Utilities' Residential Rate  
Structures, the Transition to Time Varying and  
Dynamic Rates, and Other Statutory  
Obligations.

Rulemaking 12-06-013  
(Filed June 21, 2012)

**REPLY COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS,  
THE DIRECT ACCESS CUSTOMER COALITION AND THE WESTERN POWER  
TRADING FORUM ON ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW  
JUDGES' JOINT RULING INVITING COMMENTS AND  
SCHEDULING PREHEARING CONFERENCE**

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October 19, 2012

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On September 20, 2012, Commission President Michael R. Peevey, the Assigned Commissioner for this Proceeding, and Administrative Law Judges Jeanne McKinney and Timothy J. Sullivan, issued a *Joint Ruling Inviting Comments and Scheduling Prehearing Conference* ("Joint Ruling") that posed specific questions to which interested parties were asked to respond. Similar questions had been posed in the original Order Instituting Rulemaking ("OIR"), issued on June 28, 2012 on the Commission's own motion to "examine current residential electric rate design, including the tier structure in effect for residential customers, the state of time variant and dynamic pricing, potential pathways from tiers to time variant and dynamic pricing, and preferable residential rate design to be implemented when statutory restrictions are lifted."<sup>1</sup> The Joint Ruling modified those original questions based on input received at a workshop conducted on August 27, 2012, that allowed parties to "discuss and refine

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<sup>1</sup> See OIR, at p. 1.

the questions in order to insure that the scope of this proceeding is clear to all parties and sufficient to create a record for the adoption of new policies.”<sup>2</sup>

The Alliance for Retail Energy Markets,<sup>3</sup> the Direct Access Customer Coalition<sup>4</sup> and the Western Power Trading Forum<sup>5</sup> (collectively, “Joint Parties”) noted in our October 5, 2012 opening comments that the issues that will be considered in this proceeding will have important implications for California’s competitive wholesale and retail markets and whether California meets its environmental and reliability initiatives through efficient competitive markets or through more costly and inefficient means. In our opening comments, the Joint Parties urged the Commission, in its evaluation of rate design proposals, to:

1. Include evaluation of the feasibility and efficacy of retail choice at the residential level as provided for in Senate Bill (“SB”) 695.
2. Evaluate utility procurement approaches such as load auctions that will facilitate customer choices that allow them to manage the risks of variable-priced default service.

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<sup>2</sup> See Joint Ruling, page 3.

<sup>3</sup> The Alliance for Retail Energy Markets is a California mutual benefit corporation formed by Electric Service Providers (“ESPs”) that are active in California’s Direct Access retail electric supply market.

<sup>4</sup> The Direct Access Customer Coalition is a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements.

<sup>5</sup> The Western Power Trading Forum (“WPTF”) is a California non-profit, mutual benefit corporation dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

## **I. REPLY COMMENTS**

Joint Parties provide responses here to selected statements in the opening comments of Pacific Gas & Electric Company (“PG&E”), The Utility Reform Network (“TURN”) and the Marin Energy Authority (“MEA”).

### **A. Reply to PG&E**

In its opening comments, PG&E refers to “the prohibitions on rate reforms contained in Senate Bill (SB) 695...”<sup>6</sup> in its descriptions of the current regulatory environment, and describes in detail the cross subsidies created by the current tiered rate structure. Further, “PG&E recommends that the Commission ask the Legislature to restore the Commission’s basic authority to review and determine ‘just and reasonable’ electric rates and rate structures, without the constraints imposed on that authority by SB 695.”<sup>7</sup> The Joint Parties noted in our opening comments that this proceeding will overlap with a new legislative session that will start in January, 2013, which could of course bring new initiatives that would impact rate reform and retail choice. We reiterate our original recommendation that the Commission should be prepared to engage with legislators actively on such matters to ensure that the deliberations contemplated in the OIR and the Joint Ruling will serve to inform, and will not unnecessarily delay or otherwise interfere with, any new legislative initiatives.<sup>8</sup>

PG&E’s recommendation that the Commission actively engage the Legislature to seek new legislation to “restore the Commission’s basic authority to review and determine ‘just and reasonable’ electric rates and rate structures, without the constraints imposed on that authority by

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<sup>6</sup> Comments of Pacific Gas and Electric Company (U 39 E) on Refined List of Questions and Scope of Proceeding (“PG&E Comments”), at p. 1.

<sup>7</sup> Id at p. 7.

<sup>8</sup> Joint Parties Comments at pp. 4-5.

SB 695”<sup>9</sup> goes further than the Joint Parties recommendation in that it calls for a more proactive stance by the Commission at the Legislature, while Joint Parties only recommended that the Commission be prepared to carefully coordinate the activities in this proceeding with any new legislative initiatives that may arise.

The Joint Parties do not necessarily object (and may even support) PG&E’s recommendation that the Commission directly engage in the legislative process to restore their historic role in the rate making process and reduce/eliminate legislative mandates in this regard. However, Joint Parties note that SB 695 was a complex piece of legislation that not only mandated specific rate reforms that are of concern to PG&E in this proceeding, but that have had far reaching impacts electricity market structures and competition. In short, the bill represented a compromise of many interests. Any Commission effort seeking legislative changes to the provisions enacted in that bill should include attention to these broad interests, including issues affecting the further reopening of direct access (“DA”) rights. For instance, part of the overall package of reforms implemented in SB 695 was a limited reopening of Direct Access for non-residential customers; if the Commission seeks further rate reform at the legislature, it should include in its advocacy that implementation of such reforms must carefully consider further expansion of DA for commercial and industrial customers. The provisions of SB 695 that mandate imposition of non-bypassable charges on customers who are not taking supply service from the IOUs should likewise be carefully reconsidered.

Additionally with respect to PG&E’s comments, the Joint Parties note that the utility also says:

The “Rate Design Evaluation Questions” in the ACR should be revised to include, as a priority rate design goal, an evaluation of direct opinion and feedback from a

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<sup>9</sup> PG&E Comments, at p. 7.

statistically significant sample of California IOU residential electricity customers regarding their preferences and needs for electricity pricing and choices. Understanding the perspective of customers about the proposed rate structures, as well as about the transition process from one rate structure to another, can help ensure engagement with all of the other goals of this proceeding.<sup>10</sup>

The Joint Parties suggest that such a survey would fit as part of the residential choice feasibility study called for by SB 695, which the Joint Parties have recommended be completed in the context of this proceeding.

### **B. Reply to TURN**

Among the comments offered by TURN is the recommendation that the principles that rates should be based on marginal costs and cost causation principles should each be modified by the words, “to the extent reasonable.”<sup>11</sup> Further, TURN also wants to change the principle that “Rates should avoid cross-subsidies” to “Rates should minimize cross-subsidies.”<sup>12</sup> The Joint Parties believe that parties can (and will) make arguments for more (or less) “reasonable” application of marginal cost and cost causation, and more (or less) “avoidance” of cross subsidies. Nevertheless, the Commission should be precise about its principles and avoid qualifiers such as those recommended by TURN that will do little more than provide a recipe for undercutting regulatory certainty and efficient proceedings, and increasing contentious and unproductive debate.

### **C. Reply to MEA**

In its opening comments, MEA reminds the Commission that the statutory modifications provided by the recent approval of SB 790 must be considered within the scope of the

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<sup>10</sup> PG&E Comments, at pp. 8-9.

<sup>11</sup> Opening Comments of the Utility Reform Network in Response to the 9/20/12 Ruling of the Assigned Commissioner and Administrative Law Judges (“TURN Comments”), at pp. 7-8.

<sup>12</sup> Id at p. 8.

rulemaking. It notes as well that SB 790 enacted numerous modifications to the California Public Utilities Code are directly relevant to the scope of the rulemaking including the:

- (i) Prohibition of “shifting of costs” between bundled and unbundled customers;
- (ii) Protection of CCA control over its own generation services and procurement;
- (iii) Collection of non-bypassable charges (“NBCs”) and administration of these funds; and
- (iv) Allocation of “unavoidable electricity costs” to CCA customers.<sup>13</sup>

The Joint Parties agree with MEA that these statutory requirements are designed to “facilitate the consideration, development, and implementation of community choice aggregation programs, to *foster fair competition*, and to *protect against cross-subsidization* by ratepayers” (SB 790 at Section 2 (h)).<sup>14</sup> The Commission must be sure to observe and comply with these requirements as it moves forward with this rulemaking. The Commission has made a commitment to the furtherance of community choice aggregation in California and it is statutorily obligated to facilitate its development. Given the fact that community choice aggregators are required to serve all customers within their service territories, from the smallest residential to the largest industrial customer, issues affecting residential ratemaking are obviously of paramount importance both to current CCAs and those governmental entities that are giving serious consideration to its development. The Joint Parties therefore endorse the recommendations made by MEA with respect to the proposed questions and goals of the rulemaking.

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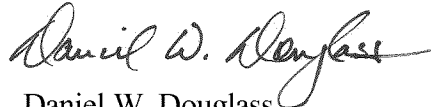
<sup>13</sup> Opening Comments of Marin Energy Authority on Matters of Scope for the Residential Ratemaking Proceeding (MEA Comments”), at pp. 2-3 (footnotes omitted).

<sup>14</sup> Id at p. 3 (emphasis added).

## II. CONCLUSION

The Joint Parties look forward to participating in this important proceeding, and thank the Assigned Commissioner and the Administrative Law Judges for their consideration of the reply comments provided herein.

Respectfully submitted,



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