

**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)

**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**

Daniel W. Douglass  
DOUGLASS & LIDDELL  
21700 Oxnard Street, Suite 1030  
Woodland Hills, California 91367  
Telephone: 818.961.3001  
Facsimile: 818.961.3004  
E-mail: [douglass@energyattorney.com](mailto:douglass@energyattorney.com)

Attorneys for the  
**ALLIANCE FOR RETAIL ENERGY MARKETS  
DIRECT ACCESS CUSTOMER COALITION  
WESTERN POWER TRADING FORUM**

October 5, 2012

**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)

**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**

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"). 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

---

<sup>1</sup> See OIR, page 1.

refine 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”) agree with the OIR and Joint Ruling that it is time for a comprehensive examination of the investor owned utilities’ (“IOUs”) residential rate structures. 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.

## **I. GENERAL COMMENTS**

Joint Parties provide responses to selected questions from the Joint Ruling in Section II below. Before that, however, Joint Parties offer these preliminary comments.

The permission that the legislature granted to the Commission to transition residential customers to time variant pricing as early as 2013 gives the Commission the opportunity to effectuate and support important transitions that are occurring in California’s energy markets, including (i) increasing amounts of intermittent resources supplying energy to the grid, (ii) decentralization of the transmission and distribution to accommodate the increased prevalence and customer desire for distributed generation, and (iii) the ability for demand response to grow

---

<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.

as smart grid technologies are developed and deployed. These issues are relevant not only to residential customers but to all users of the system, including small, medium and large businesses, schools and colleges, hospitals, and government facilities.

Joint Parties have long been at the forefront of advocacy that competition, rather than rate regulation, will lead to more technological innovation, downward pressure on prices, and better management of the risks inherent in such broad market transformations – all to the express benefit of rate payers. In the OIR and Joint Ruling, the Commission has already acknowledged that this proceeding must be closely coordinated with other ongoing proceedings and initiatives, a level of coordination that Joint Parties strongly endorse. In addition, Joint Parties urge the Commission to recognize from the outset that the implementation of time variant pricing at the retail level must carry with it the opportunity for residential customers to manage the risks associated with the variations that can occur in the short term markets, and pay mindful attention to what tools and choices residential customers can and should have.

Therefore, in its evaluation of rate design proposals, Joint Parties urge the Commission 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, including load auctions, that will facilitate customer choices that allow them to manage the risks of variable-priced default service.

## **II. RESPONSES TO QUESTIONS POSED IN THE JOINT RULING**

Against this backdrop, Joint Parties offer the following responses to selected questions posed in the Joint Ruling.

## **A. Coordination Questions**

The Joint Ruling asks parties to comment on whether the five questions it has posed adequately address the issue of coordinating this proceeding with legislation, policies, and other proceedings.”<sup>6</sup> Those questions are:

1. Please list the major energy proceedings with which this proceeding should coordinate and explain what kind of coordination is needed (e.g., actively coordinating, relying on findings, incorporating evidentiary record, monitoring).
2. How should customer outreach and education efforts in different proceedings be coordinating to maximize effectiveness and efficiency?
3. Should any of these proceedings be suspended, consolidated, or dismissed pending the resolution of this rulemaking?
4. What policies would help ensure that successful strategies will be shared between utilities?
5. Are there proceedings at other government agencies, or legislation that should be tracked in connection with this proceeding

Joint Parties believe that the coordination questions posed in the Joint Ruling provide a comprehensive framework for the Commission to ensure that this proceeding will properly and adequately inform, and be informed by, other ongoing proceedings and Commission policies. To the extent the Commission adopts the specific recommendations contained herein to evaluate the role that load auctions and retail choice could and should have as part of residential rate reform, Joint Parties note that coordination with Resource Adequacy (“RA”) and Long Term Procurement Plan (“LTPP”) proceedings will be of paramount importance.

With respect to legislation, Joint Parties note 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. The Commission should be prepared to engage with legislators actively on such matters to ensure that the deliberations contemplated in the OIR

---

<sup>6</sup> See Joint Ruling, page 6.

and the Joint Ruling will serve to inform, and will not unnecessarily delay or otherwise interfere with, any new legislative initiatives.

**B. Rate Design Evaluation Questions – Goals**

The Joint Ruling tentatively concludes “that the discussion and evaluation of rate designs can be divided into a discussion of the goals that a Commission approved rate design should advance and the discussion of the elements in such a rate design.”<sup>7</sup>

In the Joint Ruling, the Commission lists several goals that it has tentatively concluded will “ensure that the Commission develops a rate design consistent with long-standing legislative and policy goals”<sup>8</sup> as follows:

1. Low-income and medical baseline customers should have access to enough electricity to ensure basic needs (such as health and comfort) are met at an affordable cost;
2. Rates should be based on marginal cost;
3. Rates should be based on cost-causation principles
4. Rates should encourage conservation and energy efficiency;
5. Rates should encourage reduction of both coincident and non-coincident peak demand;
6. Rates should provide stability, simplicity and customer choice;
7. Rates should avoid cross-subsidies, unless the cross-subsidies appropriately support explicit state policy goals;
8. Rates should encourage economically efficient decision-making;
9. Incentives should be explicit and transparent; and
10. Transitions to the new rate structure should emphasize customer education and outreach that enhances customer understanding and acceptance of new rates, and minimizes and avoids the potential for rate shock.

---

<sup>7</sup> See Joint Ruling, page 6.

<sup>8</sup> See Joint Ruling, page 7.

The Joint Ruling asks that parties' comments provide "(a) recommended changes to these goals, including whether any of the goals are duplicative, and (b) what types of metrics could demonstrate that a rate design promotes a particular goal."<sup>9</sup>

In general, Joint Parties agree that adherence to the listed goals will serve to ensure that this proceeding leads to residential rate reform that will benefit rate payers while meeting the state's environmental and reliability policy objectives. Specific comments follow.

First, Goals number 2 (Rates should be based on marginal cost) and 6 (Rates should provide stability, simplicity and customer choice), as written present some conflicts that should be addressed. The conflict arises because "rates based on marginal costs" can be variable as market conditions and the supply and demand balance changes the supply resource that is at the margin. Therefore, rates that are based on marginal (or real time) costs will not provide "stability." Indeed, the purpose of real time pricing is to encourage reduction in demand during times of high prices.

Implementation of real time pricing as a default pricing mechanism, especially for residential load, should bring with it mechanisms by which customers can actively manage the risks inherent in real time pricing. Demand response and the deployment of smart meters and applications that allow residential load to use the data from their smart meters to manage their demand and provide demand response is one such mechanism. Another mechanism is to allow customers, including residential load, to hedge the risks of real time price volatility by choosing alternative service that provides longer term fixed prices service. Allowing customers to choose among competitively provided demand response and fixed price services, just as they choose among solar installation providers for their rooftop solar equipment, would provide a strong incentive for new products and services that utilize full range of potential of the smart grid and

---

<sup>9</sup> See Joint Ruling, page 7-8.

will ensure that customers have access to financial hedging mechanisms as well. Moreover, residential retail competition would enhance distributed generation options, by allowing customers to choose rate structures that best fit their solar production and load.

If the IOUs are going to offer demand response or other service alternatives to time of use default service, their offerings must be carefully structured so as to not undermine competitive markets for these products and services. The Joint Parties recommend that the IOUs should not be allowed to offer a fixed price supply option to residential customers, as this is a choice that can be provided by ESPs through the direct access program. The IOUs should only be the “default” supplier. Alternatively, we would recommend that the IOUs should not be allowed to offer a fixed price procurement option to residential customers until such time as the Commission or Legislature reopens the residential market to direct access.

If, however, the Commission wishes to consider allowing the IOUs greater flexibility in this respect, this can be accomplished in two different ways. One way would be to require the IOUs to offer such services only through a competitive affiliate. The second would be for the IOUs to be required to structure any fixed price offering for residential service through a load auction with specific parameters and terms of service. The efficacy of load auctions has been teed up for Commission consideration in several other proceedings, but for various reasons, have never had a full vetting. Joint Parties believe that this proceeding provides a forum where not only such vetting would be appropriate, but where it becomes essential if real time pricing becomes the default service for residential load to ensure that the new risks that such a default service will impose on residential load there can be appropriately managed.

Against this backdrop, Joint Parties recommend the following modification:

**Goal 6 should read as follows:** Customers should be able to choose alternative rates programs that allow them to manage price risks, including utility based alternatives and market based alternatives.



In addition, the wording of Goal #7 – “Rates should avoid cross subsidies, unless the cross-subsidies appropriately support explicit state policy goals”<sup>10</sup> – presents potential concerns in that it seems to invite an interpretation of policy goals to support subsidies. Joint Parties suggest that if there are specific state policy goals that the Commission has identified that require cross subsidization, it should specify them and then seek the optimal manner for implementing the necessary subsidy.

Accordingly, Joint Parties recommend the following modification:

**Goal 7 should read as follows:** Rates should avoid cross subsidies, except in circumstances where the Commission has identified a specific need for cross-subsidies to appropriately support an explicit state policy goal.

### **C. Rate Design Evaluation Questions – Rate Design Proposals**

While the Joint Ruling states that additional workshops and comment periods will occur before specific design proposals are due, it also tentatively concludes “that the following list of questions will elicit a full rate-design policy that the Commission can consider and adopt.”<sup>11</sup>

1. Please describe in detail an optimal residential rate design structure based on the goals listed above and the additional goals, if any, that you recommend. For purposes of this exercise, assume that there are no legislative restrictions. **Support your proposal with evidence citing research conducted in California or other jurisdictions.**
2. Explain how your proposed rate design meets each goal and compare the performance of your rate design in meeting each goal to current rate design. Please discuss any cross-subsidies potentially resulting from the proposed rate design, including cross-subsidies due to geographic location (such as among climate zones), income, and load profile. Are any such cross subsidies appropriate based on policy goals? Where trade-offs were made among the goals, explain how you prioritized the goals.
3. How would your proposed rate design affect the value of net energy metered facilities for participants and non-participants compared to current rates?
4. How would your proposed rate design structure meet basic electricity needs of low-income customers and customers with medical needs?

---

<sup>10</sup> See Joint Ruling, page 7.

<sup>11</sup> See Joint Ruling, page 8.

5. What unintended consequences may arise as a result of your proposed rate structure and how could the risk of those unintended consequences be minimized?
6. Is your proposed rate structure compatible with innovative technologies that can help customers reduce consumption or shift consumption to a lower cost time period?
7. Describe how you would transition to this rate structure in a manner that promotes customer acceptance. Should customers be able to opt to another rate design other than the optimal rate design you propose? If so, briefly describe the other rate or rates that should be available? Discuss whether the other rate(s) would enable customers opting out to benefit from a cross-subsidy they would not enjoy under the optimal rate.
8. Are there any legal barriers that would hinder the implementation of your proposed rate design? If there are barriers, provide specific suggested edits to the sections of the Public Utilities Code. Describe how the transition to your proposed rate design would work in light of the need to obtain legislative and other changes and upcoming general rate cases.
9. How would your proposed rate design adapt over time to changing load shapes, changing marginal electricity costs, and to changing customer response?

The Joint Ruling then asks parties to “comment on whether these questions should be modified to ensure that proposals contain the information needed for the Commission to consider and adopt a specific proposal.”<sup>12</sup>

The list of questions posed for rate design proposals is sufficient to allow for full evaluation of the load auction and customer choice parameters introduced here. Joint Parties also note that SB 695 has provided a statutory framework and clear authority for the Commission to undertake these evaluations in Section 365.1(e), which states:

The commission may report to the Legislature on the efficacy of authorizing individual retail end-use residential customers to enter into direct transactions, including appropriate consumer protections.

While the reauthorization of retail choice for residential load will require legislative action, the Commission should take proactive steps now in this proceeding to pave the way for residential customers to have meaningful choices to manage their energy costs as time variant

---

<sup>12</sup> See Joint Ruling, page 9.

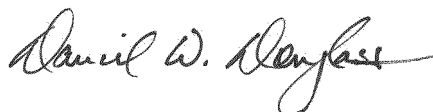
pricing is introduced and as smart grid technologies are deployed. Moreover, examination of load auctions to fulfill utility fixed price service to residential load will reveal how that approach ensures that customers who do not choose or have access to alternative competitive supply get the benefits of the downward price pressure that such auctions can bring to wholesale supply.

Finally, Joint Parties note that Attachment A to the Joint Ruling is an initial compilation of questions and topics for future workshops that would be designed to elicit issues and information about specific potential residential rate designs. Joint Parties would request that the workshop questions be expanded to include thorough review of the load auction approach and other issues necessary to determine the feasibility and efficacy of retail choice for residential load.

### III. 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 comments provided herein.

Respectfully submitted,



Daniel W. Douglass  
DOUGLASS & LIDDELL  
21700 Oxnard Street, Suite 1030  
Woodland Hills, California 91367  
Telephone: 818.961.3001  
Facsimile: 818.961.3004  
E-mail: [douglass@energyattorney.com](mailto:douglass@energyattorney.com)

Attorneys for the  
**ALLIANCE FOR RETAIL ENERGY MARKETS**  
**DIRECT ACCESS CUSTOMER COALITION**  
**WESTERN POWER TRADING FORUM**

October 5, 2012