

**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)

**COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS,
COMMERCIAL ENERGY, DIRECT ACCESS CUSTOMER COALITION, RETAIL
ENERGY SUPPLY ASSOCIATION, AND SCHOOL PROJECT FOR
UTILITY RATE REDUCTION TO THE PROPOSED DECISION OF
ADMINISTRATIVE LAW JUDGE THOMAS R. PULSIFER**

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AND ON BEHALF OF THE JOINT PARTIES

December 10, 2012

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SUBJECT INDEX AND RECOMMENDATIONS OF THE JOINT PARTIES

1. The Financial Security Requirement should apply only to direct access customers with demand of less than 20 kilowatts that are not affiliated with a large customer with demand of 20 kW or more.
2. Subject to the minor technical corrections described herein, the proposed decision should be adopted as written.

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In accordance with California Public Utilities Commission Rule 14.3, the Alliance for Retail Energy Markets (“AReM”),¹ Commercial Energy, Direct Access Customer Coalition (“DACC”),² Retail Energy Supply Association (“RESA”),³ and School Project for Utility Rate Reduction (“SPURR”)⁴ (hereafter collectively referred to as the “Joint Parties”) submit these opening comments on the proposed *Decision Regarding Electric Service Provider Financial Security Requirements For Incremental Procurement Costs* (“PD”) issued on November 20, 2012. Pursuant to Rule 14.3(c) comments on a proposed decision are to:

¹ AReM is a California mutual benefit corporation formed by electric service providers that are active in California’s direct access market. The positions taken in this filing represent the views of AReM but not necessarily individual members or the affiliates of its members with respect to the issues addressed herein.

² DACC is a regulatory alliance of educational, commercial and industrial customers that utilize direct access for all or a portion of their electrical demand. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage.

³ 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; Stream Energy; TransCanada Power Marketing Ltd. 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.

⁴ SPURR is a joint powers authority, a membership organization that aggregates utilities services purchasing power and expertise for over 200 California public K-12 school districts, county offices of education, and community college districts.

...focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record or applicable law. Comments which fail to do so will be accorded no weight. Comments proposing specific changes to the proposed or alternate decision shall include supporting findings of fact and conclusions of law.

The Joint Parties do not believe there are any factual or legal errors in the PD and urge its adoption by the Commission largely as written. We suggest herein a few minor technical clarifications pertaining to the affiliation issue discussed in Section 5 of the PD.

I. Comments on the Affiliation Issue, Section 5 of the PD

The Joint Parties offer herein technical clarifications pertaining to the affiliation issue. One such clarification pertains to the use of the phrase “large customer” in the PD. The PD clearly defines a large customer as being one with a demand in excess of 20 kilowatts (“kW”):

For purposes of calculating the ESP Financial Security Requirements in compliance with D.11-12-018, it is necessary to identify those customer accounts (and associated load) relating to small DA commercial customers (i.e., demand of less than 20 kw) that are not affiliated with *a large customer (i.e., demand of 20 kW or more)*.⁵

However, elsewhere in the PD there is discussion of “medium-sized customers” that are variably described as having demand between 20-199 kW⁶ or between 20-99 kW.⁷ The latter citation is simply a typographical error. The PD states at p. 13 that, “The IOUs claim, however, that the ESP financial security requirement (“FSR”) applicable to small customers should also apply to medium-sized commercial customers with load demand between 20 kW- 99 kW.” Actually, the IOUs’ March 16, 2012 Joint Proposal states in part at p. 7 that, “Medium sized businesses, ranging from *20 - 199 kW* in demand, may have a higher level of sophistication than those businesses with under 20 kW in demand...” (Emphasis added). Correction of the typo is simple.

⁵ PD, at p. 16 (emphasis added).

⁶ Id, at p. 9.

⁷ Id, at p. 13.

However, as discussed below, the distinction between medium and large customers has a larger significance with regard to the affiliation issue and needs to be clarified.

A. The Financial Security Requirement Should Apply only to Direct Access Customers with Demand of Less than 20 Kilowatts that are Not Affiliated with a Customer with Demand of 20 kW or More

The PD rejects the Joint Parties' proposal that "eligible small customers should simply be required to self-certify their affiliation with a medium or large commercial or industrial customer."⁸ Instead, the discussion in Section 5 proposes an alternative approach to the FSR which places the responsibility on the customer's electric service provider ("ESP") to certify the applicable information for its customers via information provided by the ESPs in the Standard Service Plan ("SSP") filings that they make each year. This approach is acceptable to the Joint Parties, subject to the following minor technical correction, and subject to the Energy Division providing further clarification discussed below on (i) whether and how this approach will require changes to the current SSP reporting protocols, and (ii) how other SSP information will be translated into a specific financial security requirement.

Ordering Paragraph 3 of the PD says "For purposes of identifying Electric Service Provider re-entry fee and financial security amounts to cover incremental procurement costs for Direct Access (DA) small commercial customers set forth in Appendix 1 of this decision, the calculation shall apply only to those DA business customers with demand less than 20 kilowatts and that are not affiliated with a *large* customer" (emphasis added). Joint Parties believe this should be clarified to read, "...and that are not affiliated with a large customer, i.e., a customer with demand of 20 kW or more."

⁸ PD, at p. 15.

If the PD is not modified as suggested, it is possible that the investor-owned utilities (“IOUs”) might seek to impose the FSR on small accounts that are affiliated with a medium account as opposed to a large account. This result would be incongruous and inconsistent with the PD’s discussion of the definition of small customers in Section 4 of the PD. Also, it would impose undue burdens in particular on schools and school districts that have adopted direct access (“DA”).

Each of these issues is discussed briefly below.

1. The PD Clearly Provides that Customers with Demand of 20 Kilowatts or Greater are Sophisticated and Should Not Have Financial Security Requirements Imposed Upon Them.

The PD clearly rejects the IOUs’ argument that ESPs should bear the same financial security requirements for incremental procurement costs for medium-sized customers as for small customers.

In D.11-12-018, we determined that ESP security requirements for incremental procurement costs should apply to small commercial customers. The IOUs claim, however, that the ESP financial security requirements applicable to small customers should also apply to medium-sized commercial customers with load demand between 20 kW- 99 kW. In support of their claim, the IOUs cite Finding of Fact 48 of D.11-12-018, which reads in part:

Because residential and small commercial customers subscribing to direct access may not possess the same business sophistication as large commercial and industrial customers in terms of protecting themselves in the event of a breach by their ESP, additional measures are appropriate to protect residential and small commercial customers from the risk of higher procurement costs resulting from an involuntary return to bundled service.

The language cited expressly references “small commercial” customers, but makes no reference to “medium-sized” commercial customers. Although the IOUs infer that the references to “small” commercial customers should also apply to medium-sized customers, the IOUs identify no valid basis or evidence to justify such inference. *There is no language or reference in D.11-12-018 where the Commission concluded that medium-sized commercial customers lack sufficient business sophistication to bear responsibility for procurement cost impacts resulting from an involuntary return to bundled service.*

The Commission likewise made no finding in D.11-12-018 that the financial security protections applicable for small commercial customers were intended to apply also for medium-sized commercial customers. *The IOUs present no evidence to support an assumption that medium-sized customers lack business sophistication sufficient to bear the responsibility for potential procurement cost impacts in the event of an involuntary return to bundled service. Accordingly, ESP financial security requirements for incremental procurement costs shall not apply to either medium or large commercial customers (i.e., those with load demand of 20 kW or greater).*⁹

The PD finds that customers with demand of 20 kW or greater have the requisite business sophistication to bear the responsibility for potential procurement impacts in the event of an involuntary return to bundled service. In light of this finding, it would be incongruous to impose the financial security requirement on small customers that are affiliated with these same customers. Moreover, it would impose undue hardship in particular on educational DA customers as discussed below.

2. School Districts and Other DA Customers Frequently Have Many Accounts Over 20 kW but under 200 kW.

Many school districts and other end-users frequently use millions of kWh per year through accounts over 20 kW but under 200 kW. Unless the minor technical correction proposed herein is adopted, it is possible that the IOUs would attempt to subject these customers to the same financial security requirement rules as are to be adopted for a single small commercial customer. This result should be avoided, for the sake of permitting school districts and other similarly-situated customers from being forced to pay for costs that are unnecessary given their acknowledged business sophistication. As noted above, the PD expressly says that customers with demand of 20 kW or greater are able to protect themselves just like large commercial customers. Therefore, it should be sufficient for a small customer to be affiliated with such a customer to avoid being subjected to the FSR rules.

⁹ PD, at pp. 13-14 (emphasis added).

B. Neither Residential nor Commercial Customers that are Affiliated with a Customer with Demand of 20 Kilowatts or Greater Should Have Financial Security Requirements Imposed Upon Them.

The PD specifies that the affiliation issue applies either to residential or commercial customers that are affiliated with a customer of 20 kW or greater. For example:

Large DA customers typically have a number of customer accounts, **some of which potentially include small residential and small commercial accounts.** Thus, those affiliated small customer accounts would be classified with the large commercial customer contract, and thus not included in the small customer account categories.¹⁰

And shortly thereafter:

The next SSP filings are due to be received by January 2, 2013. Accordingly, we shall utilize the information in the SSP report filings for calculating the applicable energy usage data **for DA residential and small commercial customers not affiliated with a large customer.**¹¹

However, there are a few locations where the words “commercial” or “business” are used to modify the word “customer.” For the sake of clarity and eliminating any future confusion, Appendix A hereto suggests revisions to correct this.¹²

II. Further Guidance Is Necessary With Respect to the Use of the SSP as the Foundation for Determining the Residential and Small Commercial Customer Financial Security Requirements.

The PD chose not to adopt the Joint Parties’ proposal that “eligible small customers should simply be required to self-certify their affiliation with a medium or large commercial or industrial customer.”¹³ Instead, the PD places the responsibility on the customer’s ESP to certify the applicable information for its customers via information provided by the ESPs in the SSP

¹⁰ Id, at p. 17 (emphasis added).

¹¹ Id, at pp. 17-18 (emphasis added).

¹² A further minor clarification is needed in Step 6 in Appendix 1 to the PD as it defines a customer with load precisely at 20 kW as being both subject to and not subject to the FSR. In accordance with the discussion in the PD, the FSR should be applicable only to customers with demand less than 20 kW.

¹³ PD, at p. 15.

filings that they make each year. The Joint Parties do not object to this element of the PD, but believe that the details of this approach must be further elucidated. Specifically, the Joint Parties request that the Commission direct the appropriate staff of the Energy Division to confer with ESPs on (i) whether and how this approach will require changes to the current SSP reporting protocols, and (ii) how the SSP information will be translated into a specific financial security requirement. We make this request to limit the potential for any non-compliance by ESPs, and to ensure that they are prepared to make the required financial security arrangements, when and if those become necessary.

III. Conclusion

The Joint Parties commend ALJ Pulsifer for a thoughtful and well-reasoned proposed decision. We urge its adoption by the Commission subject to the minor technical clarifications discussed herein. In accordance with Rule 14.3(b), Appendix A attached hereto provides proposed wording changes to accomplish these suggestions.

The Joint Parties thank the Commission for its attention to these comments and request that the Commission adopt the foregoing recommendation as it approves the PD at the meeting of December 20, 2012.

Respectfully submitted,



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December 10, 2012

Appendix A
Recommended Changes to the Proposed Decision

Page 13: The IOUs claim, however, that the ESP financial security requirements applicable to small customers should also apply to medium-sized commercial customers with load demand between 20 kW- ~~99~~ 199 kW.

Page 16: For purposes of calculating the ESP Financial Security Requirements in compliance with D.11-12-018, it is necessary to identify those customer accounts (and associated load) relating to small DA ~~commercial~~-customers (i.e., demand of less than 20 kw) that are not affiliated with a large customer (i.e., demand of 20 kW or more).

Page 17: We conclude that ESPs, in their SSP filings, should be able to identify and certify the customer accounts and related energy usage that apply to small ~~commercial~~-DA customers that are not affiliated with a large customer, i.e., a customer with demand of 20 kW or more.

Pages 17-18:

The next SSP filings are due to be received by January 2, 2013. Accordingly, we shall utilize the information in the SSP report filings for calculating the applicable energy usage data for DA residential and small commercial customers not affiliated with a large customer. The Commission shall direct the appropriate staff of the Energy Division to confer with ESPs on (i) whether and how this approach will require changes to the current SSP reporting protocols, and (ii) how the SSP information will be translated into a specific financial security requirement.

Pages 34-35: Ordering Paragraph 3:

3. For purposes of identifying Electric Service Provider re-entry fee and financial security amounts to cover incremental procurement costs for Direct Access (DA) small commercial customers set forth in Appendix 1 of this decision, the calculation shall apply only to those DA ~~business~~-customers with demand less than 20 kilowatts and that are not affiliated with a large customer, i.e., a customer with demand of 20 kW or more.

Appendix 1, at p. 3, Step 6:

For purposes of calculating the incremental procurement cost exposure, only customers with load ~~equal to or~~ less than 20 kW shall be included. Customers with load equal to or greater than 20 kW (and small customers affiliated with large customers) shall not be included in the calculation of incremental procurement cost exposure.