

Decision **DRAFT DECISION OF COMMISSIONER CONLON (Mailed 12/23/97)****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.	Rulemaking 94-04-031 (Filed April 20, 1994)
Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.	Investigation 94-04-032 (Filed April 20, 1994)
Application of Pacific Gas and Electric Company to Identify and Separate Components of Electric Rates, Effective January 1, 1998. (U-39 E)	Application 96-12-009 (Filed December 6, 1996)
Application of San Diego Gas & Electric Company (U 902-M) for Authority to Unbundle Rates and Products.	Application 96-12-011 (Filed December 6, 1996)
In the Matter of the Application of Southern California Edison Company (U 388-E) Proposing the Functional Separation of Cost Components for Energy, Transmission, and Ancillary Services, Distribution, Public Benefit Programs and Nuclear Decommissioning To Be Effective January 1, 1998 in Conformance with D.95-12-036 as Modified By D.96-01-009, the June 21, 1996 Ruling of Assigned Commissioner Duque, D.96-10-074 and Assembly Bill 1890.	Application 96-12-019 (Filed December 6, 1996)
Application of PacifiCorp (U901E) for Approval of PacifiCorp's Transition Plan.	Application 97-05-011 (Filed May 5, 1997)
Application of Sierra Pacific Power Company for Approval of Its Transition Plan.	Application 97-06-046 (Filed June 27, 1997)

Application of Kirkwood Gas & Electric Company (U906E) for Compliance with the Requirements of AB 1890.	Application 97-07-005 (Filed July 3, 1997)
Southern California Water Company, for certain exemptions to California Public Utilities Commission Decisions 97-05-039, 97-05-040, and related Order Instituting Rulemaking (OIR) 94-04-031, and Order Instituting Investigation (OII) 94-04-032.	Application 97-08-064 (Filed August 22, 1997)

OPINION MODIFYING VARIOUS DECISIONS

Since the Commission announced its policy on restructuring the electric utility industry in Decision (D.) 95-12-063, as modified by D.96-01-009, the Commission, the Federal Energy Regulatory Commission (FERC), the Legislature, and the stakeholders in this effort have been working toward opening the electric generation and related markets to competition on January 1, 1998. As that date approaches, only a few steps remain to be taken to achieve that goal. The Legislature completed its work when it passed Assembly Bill (AB) 1890 and subsequent refinements. The Commission has to a large extent followed the schedule it set in the Roadmap decisions (D.96-03-022 and D.96-12-088), and has this month issued all remaining necessary decisions. FERC has granted conditional authority for the Independent System Operator (ISO) to begin operations and for the Power Exchange (PX) to charge market-based rates (*Pacific Gas and Electric Co.*, 81 FERC ¶ 61,122 (1997) “FERC October 30 Order”).

Electric restructuring, mandated by AB 1890, requires both state and federal regulatory action. All necessary FERC authorizations must be fulfilled prior to the commencement of ISO and PX operations. Although the necessary work is nearly done, on December 22, 1997, the ISO Board of Governors announced a delay of its operations and formal assumption of control of the transmission systems of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E). The PX Board of Governors made a similar

announcement. Specifically, the Chief Executive Officers (CEOs) of the ISO and the PX cannot make a certification required by FERC. The FERC October 30 Order requires that the CEOs of the ISO, the PX and Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) each certify that “all of the necessary features are in place to ensure reliable grid operations when the ISO and PX commence operations, and that sufficient pre-operational testing will be performed.” (*Id.*, mimeo. at p. 2.)

Fortunately, as a matter of prudence, the Commission has undertaken an effort to identify any actions it would have to take in the event that the operation of the ISO or PX, or both of them, were delayed past January 1. At the request of the Commission, conveyed at the meeting of November 5, members of the Commission staff have considered this issue, and have advised us that the primary action the Commission might have to take if the ISO or PX were delayed would be to preserve the regulatory status quo in certain respects. That preservation would be accomplished by modifying certain decisions and resolutions that require actions to be taken on January 1, 1998. This decision makes these modifications.

It is important to stress that many of the restructuring initiatives that are scheduled for January 1, 1998, could go forward even if the ISO or PX has not commenced operations. The rate freeze required by Public Utilities Code § 368 and put in effect by D.96-12-077, the collection of “headroom” revenues to offset transition costs, the 10% rate reduction called for in § 368(a), the rate unbundling required by § 368(b),¹ the market valuation of utility-owned generation plants, and the education of consumers can and should continue regardless of the status of the ISO and PX.

The focus of these modifications is on the requirements that would be directly affected if the ISO or PX is unable to go forward on schedule. In particular, direct access is affected because of the statutory requirement for direct access to commence simultaneously with the ISO and PX (§ 365(b)(1)) and because the calculation of the

¹ While the unbundling of rates can go forward and the components of this service may be delineated in unbundled rate components, customers will continue to receive bundled service.

nonbypassable Competition Transition Charge (CTC) and the direct access credit depends on the market price established in the PX. Since the ISO is the means to connect energy service providers with their direct access customers by scheduling all direct access transactions on the transmission grid, a fundamental element of the direct access program is absent. Also, the utilities obviously would not be able to buy and sell through a nonexistent PX, as required in the Policy Decision, and the elimination of the Energy Cost Adjustment Clause (ECAC) would have to be deferred as a result.

Therefore, we will stay Resolution E-3514.

Although there may be creative ways to overcome these problems, the goal of this decision is to maintain the regulatory status quo for a short time until the ISO and PX are ready to commence operations, consistent with FERC authorizations. The following list identifies the significant passages of Commission decisions that must be modified to accomplish this goal. Incidental references to the January 1, 1998 target date appear throughout many decisions, but these need not be changed now. The focus of this list is on ordering paragraphs, findings of fact, and conclusions of law where the Commission has required action by January 1 that may not be accomplished due to the delay of operation of the ISO or PX.

This list is shorter than it otherwise would be because of the rate freeze. Until direct access is available, all customers will continue to receive bundled utility service at frozen rates, and the utilities will continue to collect their full, bundled revenues. Discrepancies resulting from changes made to rate elements within the frozen rate and any cost adjustments necessitated by the delay can be accommodated as part of the Revenue Allocation Proceeding. We authorize the electric utilities to track, as appropriate, costs and revenues that may require later adjustment because of the delay.²

Once the ISO and the PX are ready to commence operations and all five CEOs provide their certifications before FERC, direct access should begin within a specified

² Our authorization to track costs carries no guarantee that these costs will be recovered. The issue of recovery of these costs will be addressed as part of the Revenue Allocation Proceeding.

number of business days. We delegate to the Coordinating Commissioner the task of issuing a ruling which will order when direct access should commence. Consistent with AB 1890, once such certifications take place, direct access shall begin simultaneous with the announcement of ISO and PX operations, per the Coordinating Commissioner's ruling.

Findings of Fact

1. The CEOs of the ISO, the PX, PG&E, Edison, and SDG&E have not yet certified that they have met all the conditions of the FERC authorization.

2. On December 22, 1997, the governing boards of the ISO and PX informed us of a delay in operations.

3. The calculation of the nonbypassable CTC and the direct access credit depends on the market price established in the PX.

4. The ISO is the means to connect energy service providers with their direct access customers by scheduling all direct access transactions on the transmission grid.

Conclusions of Law

1. The Commission should act to preserve the regulatory status quo during the delay in the start of operations of the ISO and the PX.

2. The commencement of direct access is affected by the delay in the start of operations of the ISO and PX.

3. Public Utilities Code § 365(b)(1) requires direct access to commence simultaneously with the ISO and PX.

4. The electric utilities should be authorized to track, as appropriate, costs and revenues that may require later adjustment because of the delay in the start of operations of the ISO and PX.

5. When the ISO and the PX are ready to commence operations and all five CEOs provide their certifications before FERC, direct access should begin within a specified number of business days, simultaneously with the commencement of ISO and PX operations.

6. It is reasonable to delegate to the Coordinating Commissioner the task of issuing a ruling which will order when direct access should commence.

7. Resolution E-3514 should be stayed.
8. Pending advice letters regarding direct access tariffs should not become effective until further Commission action is taken.
9. Notice of this matter was not provided with the agenda of the Commission meeting on December 30, 1997. This matter is being taken up on less than 10 days notice pursuant to Government Code Section 11125.3(a)(2), in that there is a need for immediate action and events leading to this action did not become known until subsequent to the mailing of the agenda for the December 30 meeting.
10. This decision should be made effective immediately because of the importance to the public interest of opening the electric generation market to competition as soon as possible.

O R D E R

IT IS ORDERED that:

1. Ordering Paragraph 11 of Decision (D.) 95-12-063 as modified by D.96-01-009 (the Policy Decision) is modified to read:

“As of the date the Commission or its delegate declares to be the start date for direct access, the distribution utilities shall offer tariffed electric service which references the real-time market-clearing price as published by the Power Exchange.”

2. Conclusion of Law 7 of D.96-04-054 (PG&E’s Interim CTC) is modified to read:

“Interim CTC should be collected from any customers who leave the system after December 20, 1995 and before the date the Commission or its delegate declares to be the start date for direct access.”

3. D.97-05-040 (Direct Access Threshold Issues) is modified as follows:

- a. Conclusion of Law 13 is modified to read:

“Direct access should be made available to all California electricity consumers on the date the Commission or its delegate declares to be the start date for direct access, regardless of customer class or size of load.”

- b. Ordering Paragraph 5.a is modified to read:

“Direct access should be made available to all California electricity consumers on the date the Commission or its delegate declares to be the start date for direct access, regardless of customer class or size of load.”

c. Ordering Paragraph 5.e(4) is modified to read:

“Each UDC shall begin accepting direct access requests on November 1, 1997, which shall become effective on or after the date the Commission or its delegate declares to be the start date for direct access.”

4. D.97-08-056 (Unbundling), as modified, is modified as follows:

a. Finding of Fact 10 is modified to read:

“The utilities will discontinue their role in electric dispatch and system control beginning the date the Commission or its delegate declares to be the start date for direct access. Nevertheless, the utilities seek to recover revenue requirements previously authorized to conduct generation dispatch and control activities.”

b. Finding of Fact 11 is modified to read:

“The utilities have not demonstrated that the revenue requirements for dispatch and control will be required beginning the date the Commission or its delegate declares to be the start date for direct access.”

c. Conclusion of Law 9 is modified to read:

“After the date the Commission or its delegate declares to be the start date for direct access, the utilities should be prohibited from entering into their CEMA accounts any costs associated with generation.”

d. Conclusion of Law 10 is modified to read:

“After the date the Commission or its delegate declares to be the start date for direct access, the utilities should be prohibited from entering into their HSCLS accounts any costs associated with generation.”

e. Ordering Paragraph 9 is modified to read:

“After the date the Commission or its delegate declares to be the start date for direct access, PG&E, Edison, and SDG&E shall not enter into their respective Catastrophic Events Memorandum Accounts any costs related to generation.”

f. Ordering Paragraph 10 is modified to read:

“After the date the Commission or its delegate declares to be the start date for direct access, PG&E, Edison, and SDG&E shall not enter into

their respective Hazardous Substance Clean-up and Litigation Cost Accounts any costs related to generation.”

g. Ordering Paragraph 12(g) is modified to read:

“Provide that customer bills will include rates, charges and other information consistent with this decision no later than June 1, 1998. After the date the Commission or its delegate declares to be the start date for direct access and prior to the time the utilities unbundle rates, the utilities shall specify PX prices as set forth in this decision.”

5. Finding of Fact 14 of D.97-08-064(Customer Education Program) is modified to read:

“Direct access is to be made available to all on the date the Commission or its delegate declares to be the start date for direct access.”

6. D.97-09-048 (Capital Additions) is modified as follows:

a. The first sentence of Finding of Fact 4 is modified to read:

“As of the date the Commission or its delegate declares to be the start date for direct access, the ISO assumes responsibility for operating the state’s transmission system in the restructured industry environment.”

b. Finding of Fact 6 is modified to read:

“As of the date the Commission or its delegate declares to be the start date for direct access, the ISO will be responsible for evaluating the relative costs and reliability benefits of all must-run units and for negotiating appropriate reliability contracts with the owners of those facilities.”

7. Add Ordering Paragraph 3.a to D.97-10-057 (Streamlining) as follows:

“PG&E, Edison, and SDG&E are authorized to supplement the advice letter filings ordered in Ordering Paragraphs 2 and 3 to delay the effective date to the date the Commission or its delegate declares to be the start date for direct access. The Executive Director is authorized to change the effective date of these advice letters to the date the Commission or its delegate declares to be the start date for direct access.”

8. D.97-10-086 (Load Profiling) is modified as follows:

a. Conclusion of Law 3 is modified to read:

“The UDCs’ proposal to use static load profiles on an interim basis for the majority of the customer classes, and Edison’s use of dynamic load profiles for its residential and small commercial and industrial customers, should be adopted and made effective the date the

Commission or its delegate declares to be the start date for direct access.”

b. The first sentence of Ordering Paragraph 2 is modified to read:

“The interim load profile approach that was proposed by Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E), and as discussed in this decision, is approved and made effective the date the Commission or its delegate declares to be the start date for direct access.”

c. Ordering Paragraph 4.b is modified to read:

“The 20 to 50 kW load profiles shall be made available for use no later than the date the Commission or its delegate declares to be the start date for direct access, and shall remain in effect until September 30, 1998 unless extended by the Commission.”

9. Ordering Paragraph 3.e(3) of D.97-10-087 (Direct Access Implementation) is modified to read:

“The effective date of the advice letter shall be the 40th day after the filing of the advice letter, unless the Commission acts upon the advice letter filing, or the date the Commission or its delegate declares to be the start date for direct access, whichever date occurs later.”

10. D.97-12-093 (Small and Multijurisdictional Utilities) is modified as follows:

a. Finding of Fact 33 is modified to read:

“It is necessary to make a clear distinction between possible transition cost recovery as of December 31, 1997 and what should be recovered as a going-forward cost in the marketplace as of the date the Commission or its delegate declares to be the start date for direct access.”

b. Ordering Paragraph 1 is modified to read:

“As of the date the Commission or its delegate declares to be the start date for direct access, Southern California Water Company’s Bear Valley Electric (Bear Valley), Kirkwood Gas and Electric Company (Kirkwood), PacifiCorp and Sierra Pacific Power Company (Sierra) (collectively, the applicants) shall provide their electric customers with direct access to competitive energy services in a manner consistent with this order and Decision (D.) 97-10-087.”

c. The first sentence of Ordering Paragraph 3 is modified to read:

“From the date the Commission or its delegate declares to be the start date for direct access through no later than May 31, 1998, PacifiCorp

and Sierra Pacific shall provide energy credits on the bills of direct access customers as proposed in their transition plans.”

11. Ordering Paragraph 4 of D.97-12-090 (Retail Settlements and Information Flow) is modified to read as follows:

“The distribution loss factor methodologies of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison company, as described in this decision, are adopted for use beginning on the date the Commission or its delegate declares to be the start date for direct access, in their respective service territories.”

12. Resolution E-3514 is stayed until the date the Commission or its delegate declares to be the start date for direct access.

13. Pending advice letters regarding direct access tariffs shall not be effective until further Commission action is taken.

14. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, PacifiCorp, Sierra Pacific Power Company, Southern California Water Company, and Kirkwood Gas & Electric Company are authorized to track, as appropriate, costs and revenues that may require later adjustment because of the delay in the startup of the Power Exchange and the Independent System Operator.

This order is effective today.

Dated _____, at San Francisco, California.