

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



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Order Instituting Rulemaking to
Implement Senate Bill 237 Related to
Direct Access.

Rulemaking 19-03-009

**OPENING COMMENTS OF ADVANCED ENERGY ECONOMY AND
ADVANCED ENERGY BUYERS GROUP ON THE PROPOSED DECISION
RECOMMENDING AGAINST FURTHER DIRECT ACCESS EXPANSION**

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I. INTRODUCTION

Advanced Energy Economy (AEE) and Advanced Energy Buyers Group (AEBG) hereby submit these opening comments on the Commission’s proposed decision recommending against further Direct Access (DA) expansion. AEE and AEBG have engaged extensively in this ongoing proceeding and have provided their unique perspective on a range of issues pertaining to the expansion of DA – including those raised in Energy Division’s *Report Providing Recommendations on the Schedule to Reopen Direct Access* (Staff Report) from September 2020. While AEE and AEBG understand and appreciate the overlapping policy objectives the Commission considers in its proposed decision, we oppose the Commission’s recommendation against DA expansion and reiterate from our comments on the Staff Report that the reopening of

DA is not in conflict with these broader policy objectives. Our opening comments can be summarized as follows:

- **The proposed decision fails to comply with the statutory requirements of Senate Bill (SB) 237 and specifically Public Utilities Code section 365.1(f)(1);**
- **The proposed decision conflates the separate issues of retail choice and grid reliability;**
- **DA offers a proven pathway for large customers to accelerate renewable energy development; and**
- **AEE and AEBG respectfully request the Commission meet the statutory requirements of SB 237 and recommend the expansion of DA in a manner aligned with the recommendations in the Staff Report.**

II. OPENING COMMENTS

- i. The proposed decision fails to comply with the statutory requirements of Senate Bill (SB) 237 and specifically Public Utilities Code section 365.1(f)(1).**

As explained in the Staff Report, SB 237 was approved in 2018 and required the Commission to increase the DA cap for Electricity Service Providers (ESPs) as well as issue recommendations to the Legislature on further reopening of DA for non-residential customers.¹ As a result of SB 237's passage, Public Utilities Code section 365.1(f)(1) states that:

On or before June 1, 2020, the commission shall provide recommendations to the Legislature on implementing a further direct transactions reopening schedule, including, but not limited to, the phase-in period over which the further direct transactions shall occur for all remaining nonresidential customer accounts in each electrical corporation's service territory.²

¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB237

² Public Utilities Code section 365.1(f)(1)

This provision of the Public Utilities Code plainly requires the Commission to develop recommendations on a DA “reopening schedule,” which explicitly includes a “phase-in period” in which further DA expansion shall occur. In compliance with this statutory requirement, the Staff Report provided a recommended initial DA reopening schedule, which would amount to an expansion of 10 percent of eligible customer load per year; the Staff Report also provided additional recommendations on the conditions under which DA should be reopened.³

However, the proposed decision offers no such recommendations on a reopening schedule for DA. Indeed, the ordering paragraphs of the proposed decision are devoid of any schedule or further guidance to the Legislature on a “phase-in period” by which DA expansion would occur. For this reason, AEE and AEBG observe that the proposed decision as written does not comply with Public Utility Code 365.1(f)(1) and does not meet the legislative intent of SB 237, which clearly directs the Commission to provide guidance on the continued growth of DA for non-residential customers.

ii. The proposed decision conflates the separate issues of retail choice and grid reliability.

We strongly agree with the proposed decision that grid reliability should be among the Commission’s primary responsibilities. However, we respectfully disagree that reliability concerns justify the Commission’s proposed recommendation to not allow any further DA expansion, and we maintain that DA expansion is not itself an inherent threat to maintaining reliability. While the Commission is right to be focused on resource adequacy, addressing resource adequacy concerns by limiting DA is a misdiagnosis of the problem. Instead, we encourage the Commission to focus on applying and enforcing consistent resource adequacy requirements on all LSEs—including direct access providers.

California’s core energy agencies appear to agree that DA expansion is not a source of reliability and resource adequacy concerns: the comprehensive root cause analysis published by the

³ Staff Report at 4-5.

Commission, the California Independent System Operator (CAISO), and California Energy Commission (CEC) in response to the August 2020 rolling outages identifies a number of improvements that would address emerging reliability challenges in California, including near, medium, and long-term reforms to resource adequacy parameters and planning, CAISO market rules, operational practices, and increased coordination between CAISO, CEC, and CPUC. The report does not cite the number and diversity of LSEs, nor the impact of load migration between LSEs, as impediments to maintaining reliability moving forward. In contrast, the report points to several existing practices aimed at maintaining reliability in a fragmented partial-choice marketplace, including the process of adjusting individual LSE forecasts to meet the aggregate reference forecast and the process of regularly updating LSE load forecasts to account for load migration.⁴ These measures to support resource adequacy are in place today and will continue to apply if DA is expanded.

In addition to the August outages in California, the Commission cites the recent winter reliability crisis in Texas as another data point leading it to recommend against DA expansion. While the proposed decision acknowledges that the “the root cause of the Texas outages is still under review,” it nonetheless strongly suggests that the state’s retail market structure is at fault.⁵ While the events in Texas certainly highlighted some retail practices that harmed customers financially that should and could have been avoided, there is no reason to believe that retail choice itself led to the widespread outages, nor that such practices would be replicated in California. Indeed, while Texas legislators have taken many steps to address issues exposed by the winter crisis, they have not taken action to restrict retail choice.

It also bears mentioning that Texas and California have completely different approaches to ensuring resource adequacy. Texas relies on an energy-only market structure and associated price spikes that exacerbated the financial and customer impacts of the winter event. California, in contrast, ensures resource adequacy through a capacity procurement structure overseen by the Commission in coordination with CAISO. Other regions utilize other approaches, often with a mix of retail choice and non-retail choice jurisdictions participating under a single resource

⁴ CPUC, CAISO, CEC, *Final Root Cause Analysis* at 14, published January 13, 2021.

⁵ Proposed Decision at 3.

adequacy construct as is the case in PJM’s capacity market. As described more below, resource adequacy concerns in California can and should be addressed by the CPUC and CAISO through existing processes and investigations, regardless of the proliferation of community choice aggregation and any expansion of DA.

Additionally, the proposed decision suggests that ESPs are not positioned to enter into long-term contracts, which the Commission claims would in turn threaten grid reliability. Here, the Commission confuses past ESP behavior with future ESP performance. 2021 is the first year that SB 350’s long-term RPS contracting requirements come into effect for LSEs; rather than prejudging ESPs’ ability to comply with RPS requirements, the Commission should evaluate ESPs’ and all other LSEs’ performance on a level playing field in R.18-07-003, the Commission’s RPS proceeding. As noted in the Staff Report, the Commission would also retain adequate authority to enforce compliance with the RPS and other state policy goals in the event of DA expansion, and repeated noncompliance among ESPs should be dealt with appropriately. Furthermore, ESPs have ample experience pursuing long-term contracts in other markets and have already made progress toward long-term contracting in California. In addition, as previously noted, many non-residential customers are interested in DA for the express purpose of entering into long-term renewable energy contracts, creating a natural alignment with ESP compliance requirements.

Finally, AEE and AEBG reiterate that the expansion of DA is not inherently in conflict with grid reliability and that the Commission has a number of ongoing proceedings that address reliability in various forms. To address short-term reliability, D.21-02-028 and D.21-03-056 in R.20-11-003 order certain LSEs to take a series of supply and demand-side measures to help ensure the grid is capable of meeting summer loads.⁶ To address long-term reliability and resource planning, the Commission recently released a proposed decision in R.20-05-003 that would authorize LSE procurement of over 11,500 MW of new net qualified capacity to meet grid needs – which includes capacity allocations for ESPs.⁷ It is important to note that this proposed

⁶ It is worth noting that D.21-02-028 authorized utility procurement of incremental capacity from fossil generation that will have a negative impact on California’s GHG emission goals.

⁷ *Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026)* at 55-57, R.20-05-003, issued May 21, 2021.

decision also directs utilities to procure more than 500 MW of fossil gas generation by 2025, which the Commission asserts is necessary to maintain grid reliability.⁸ None of these decisions or proposed decisions point to ESPs or load migration more generally as inherent threats to grid reliability. Moreover, the proposed decision in R.20-05-003 explicitly states that the Commission’s existing power charge indifference adjustment process “will address any future load migration away from IOU service.”⁹ Put plainly, the Commission already has processes in place to ensure all LSEs – including ESPs – are contributing to the state’s resource planning and long-term reliability goals. To the extent the Commission has concerns about grid reliability vis-à-vis ESPs or load migration, they would be more appropriately addressed in other ongoing dockets. However, the expansion of DA does not inherently run counter to the Commission’s ongoing efforts to ensure reliability.

iii. DA offers a proven pathway for large customers to accelerate renewable energy development.

AEE and AEBG have explained in detail that expansion of DA will create additional opportunities for large customers to accelerate their own renewable energy procurement above and beyond state requirements, as well as to support innovative new technologies and services.¹⁰ The Commission, in its proposed decision, acknowledges but does not give weight to this argument, stating that it does not have “specific information to support [the] claim” that “ESPs can offer products that enable their large commercial and industrial customers to achieve a sustainability [*sic*] or energy management goals and that this allows Direct Access providers to implement energy management tools that help grid needs – such as demand response programs.”¹¹ The PD further claims “we do not have insight into the extent to which customer arrangements support sustainability goals.”¹²

⁸ *Id.* at 43.

⁹ *Id.* at 80.

¹⁰ Joint Opening Comments of Advanced Energy Economy and Advanced Energy Buyers Group on the Staff Report Providing Recommendations on the Schedule to Reopen Direct Access at 3, R.19-03-009, filed October 16, 2020.

¹¹ Proposed Decision at 17.

¹² Proposed Decision at 17.

First, to the Commission's statement that it cannot evaluate the extent of customer impacts on sustainability outcomes, there is clear evidence that large non-residential customers are responsible for significant renewable energy deployment across the country; while the emissions reductions and economic impacts of these purchases varies according to local conditions, these impacts are quantifiable, and indeed many companies track the impact of their sustainability activities.¹³ Since 2013, large C&I buyers have signed long-term contracts for more than 35 GW of large-scale wind and solar projects across the country¹⁴ and it follows logically that additional corporate renewable and advanced energy deployment in California through direct access providers would have comparable sustainability impacts.

With respect to California-specific sustainability impacts of corporate renewable and advanced energy procurement enabled by ESPs, we also note that the limitations of the DA program have constrained companies' use of this pathway to meet their sustainability goals to date. Many companies have only part of their load in DA; because long-term renewable energy contracts require scale and take significant time and resources to pursue, such customers may be unable to enter into such contracts as part of their current DA arrangement. Similarly, companies with growing profiles in the state are unable to subscribe their new load to a DA program, and therefore cannot work with an ESP to develop a cohesive long-term strategy to meet their sustainability goals. Given the current limited scope of the DA program in California, such customers face a fragmented set of options to meet their sustainability goals, which often precludes them from entering into long-term renewable energy contracts as part of an arrangement with an ESP.

Second, we note that DA, and retail choice more broadly, have served as important enablers of corporate renewable and advanced energy procurement in California and across the country. Over the course of more than a decade of renewable energy procurement, large companies have found that, in addition to good resource potential, the key enablers of corporate renewable energy procurement are (1) availability of a liquid, transparent wholesale market to facilitate a

¹³ For example, Facebook recently commissioned a third-party report outlining the economic impacts of its renewable energy procurement activity. <https://www.rti.org/publication/facebook-us-renewable-energy/fulltext.pdf>.

¹⁴ <https://rebuyers.org/deal-tracker/>

competitive market for renewable energy deployment, and (2) the ability to connect these wholesale transactions to a customer's retail energy purchases. This second criterion is what direct access unlocks. The opportunity to align corporate procurement activity with companies' operational needs and business interests is critical to facilitating sustainable and scalable options for corporate procurement. Without this alignment, companies face greater risk and complexity that is difficult to manage and sustain.

There are numerous examples from across the country of retail choice or DA enabling companies to pursue projects and purchasing strategies that would not otherwise have been available to them. For example, within California, Apple, Inc. was able to sign a power purchase agreement (PPA) with First Solar for 130 MW of the California Flats project in Monterey County because of its participation in the direct access market. Participation in Oregon's direct access market similarly enabled Apple to purchase 200 MW of wind from the Montague Wind Power facility and 56 MW of solar from the Solar Star Oregon II solar farm. The University of California system, also a direct access customer, signed two solar PPAs totaling 80 MW, and also registered as an ESP in order to sell the output from these projects to its various campuses under direct access. These customers would not have been able to pursue these large-scale projects without their direct access status because the option to sign direct bilateral contracts is not otherwise available to customers.

Outside of California, direct access has played a significant role in renewable energy deployment. For example, in Illinois, large customers with loads under direct access have signed significant long-term contracts; to date, voluntary renewable energy commitments have already facilitated approximately one-third of the roughly 5,000 MW of total wind and solar energy in Illinois.

Given the strong demand for renewable energy among non-residential customers who would become eligible for DA if it were expanded and given California's increasingly stringent renewable portfolio standard targets, it is safe to assume that ESPs would be driven to provide such offerings in an effort to outcompete each other and remain in compliance with state policy.

These kinds of expanded offerings will therefore almost certainly emerge in California if direct access expansion allows companies to enroll more of their load with ESPs.

- iv. AEE and AEBG respectfully request the Commission meet the statutory requirements of SB 237 and recommend the expansion of DA in a manner aligned with the recommendations in the Staff Report.**

To meet the statutory requirements prescribed by SB 237 and support California's ongoing efforts to encourage customer choice that aligns with the state's energy policy goals, AEE and AEBG request that, at a minimum, the Commission revise its proposed decision and recommend the expansion of DA in a manner consistent with the recommendations in the Staff Report. Specifically, the Commission could recommend that DA reopening proceed in initial increments equivalent to 10 percent of utilities' eligible non-residential load annually. In addition, we agree with the Staff Report that the Commission should enforce ESP compliance with its RPS, integrated resource planning, and resource adequacy requirements.¹⁵

III. CONCLUSION

AEE and AEBG appreciate the opportunity to provide opening comments and respectfully request that the Commission modify its proposed decision to meet the requirements of SB 237, support the state's ongoing DA efforts, and accelerate the development of renewable energy to achieve the state's policy goals.

¹⁵ Staff Report at 5.

Respectfully submitted,

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