

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

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

Rulemaking 19-03-009
(Filed April 5, 2019)

**JOINT COMMENTS OF ADVANCED ENERGY ECONOMY AND THE
ADVANCED ENERGY BUYERS GROUP ON THE ORDER INSTITUTING
RULEMAKING TO IMPLEMENT SENATE BILL 237 RELATED TO
DIRECT ACCESS**

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*On Behalf of Advanced
Energy Economy*

*On Behalf of Advanced
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Advanced Energy Economy (AEE) and the Advanced Energy Buyers Group (AEBG), on behalf of our collective member companies, are pleased to provide input on the California Public Utilities Commission’s (CPUC) March 18, 2019 Order Instituting Rulemaking to Implement Senate Bill 237 Related to Direct Access (hereafter “SB 237 OIR” or “OIR”). As explained in our comments, both of our organizations supported passage of SB 237 as a tool to give nonresidential customers access to advanced energy through tailored solutions that meet their individual needs. We recognize the importance of a balanced approach to SB 237 implementation that protects the needs of all California electricity customers while maintaining the state’s progress toward improved affordability, decarbonization, and reliability. We are encouraged by the expedient, straightforward approach to implement the first main requirement of SB 237 (expansion of direct access by 4 TWh) as presented in the OIR. Our comments demonstrate our support of the SB 237 OIR, and suggest small improvements to make the OIR more equitable.

I. About Advanced Energy Economy and the Advanced Energy Buyers Group

Advanced Energy Economy (AEE) is a national organization of businesses dedicated to transforming public policy to enable a prosperous world that runs on secure, clean, and affordable energy. AEE and its state and regional partner organizations, which are active in 27 states across the country, represent more than 100 companies and organizations that span the advanced energy industry and its value chains. Technologies represented include energy efficiency, demand response, natural gas, solar photovoltaics, solar thermal electric, wind, storage, biofuels, electric vehicles, advanced metering infrastructure, transmission and distribution efficiency, fuel cells, hydro power, nuclear power, combined heat and power, and enabling software. Used together, these technologies and services will create and maintain a higher-performing energy system—one that among other things is reliable and resilient, diverse and cost-effective —while also improving the availability and quality of customer-facing services. AEE promotes the interests of its members by engaging in policy advocacy at the federal, state, and regulatory levels, by convening groups of CEOs to identify and address cross-industry issues, and by conducting targeted outreach to key stakeholder groups and policymakers.

The **Advanced Energy Buyers Group** (AEBG) represents the views of a coalition of large electricity customers, with member companies spanning the retail, manufacturing, and technology sectors. Our companies are among the 71% of Fortune 100 companies and 43% of Fortune 500 companies that have established renewable and/or climate targets as part of our corporate sustainability commitments. We share a common interest in expanding our use of advanced energy, including renewable energy like wind, solar, geothermal, and hydropower; demand-side resources like energy efficiency, demand response, and energy storage; and onsite generation from

solar, advanced natural gas turbines, and fuel cells. In 2017, members of the AEBG totaled over \$1 trillion in revenue and collectively consumed over 18 TWh of electricity, including over 11 TWh of renewable electricity.

The electricity use of the AEBG includes a significant collective footprint in California, and our comments reflect our perspective as large electricity users, and as businesses committed to increasing our own use of advanced energy, including renewable energy, energy efficiency, energy storage, electric vehicles, and demand-side management solutions. Our companies have experience participating in the California market in many different ways: as customers of investor-owned utilities (IOUs), as direct access (DA) customers working with electric service providers (ESPs), as customers of Community Choice Aggregators (CCAs), as offtakers from large-scale renewable energy projects, and as hosts of behind-the-meter installations. While we have taken steps to meet our electricity needs in California with advanced energy, the market currently provides limited opportunities for customer choice relative to many other states, restricting our options to procure renewable and other advanced energy resources to meet our needs and make progress on our sustainability goals.

II. AEE and AEBG Supported Passage of SB 237, and Continue to Support its Expedient Implementation

AEE and AEBG share an interest in expanding opportunities for customer-driven advanced energy in California and states across the country. AEE and AEBG therefore supported SB 237 as it was introduced and passed in 2018, urging support by legislators and encouraging the Governor to sign the bill into law. As we explained to the Legislature in a joint support letter in July, passage of SB 237 would “make the state a more attractive place to do business and open up new opportunities for California’s nonresidential customers to meet their specific electricity needs

while driving innovation and supporting the reliability, affordability, and decarbonization of California’s electric grid.”

DA gives nonresidential customers—who vary greatly in their electricity load, geographic spread, operational needs, and resource preferences—the opportunity to manage their electricity needs through tailored solutions. Importantly, being served by DA gives companies many more options to contract for the specific advanced energy resources they want to serve their needs. In particular, customers in California can access long-term renewable energy contracts through DA, and they are only likely to do so if they have a sufficient portion of their load under the DA cap and sufficient confidence that their DA load is not at risk. Customers under DA can also competitively procure demand response, energy storage, and other cost-saving clean energy resources.

The implementation of SB 237 will bring these benefits to more California customers through the immediate expansion of DA by 4 TWh (referred to in the OIR as the “first main requirement” of SB 237), and then through recommendations for expansion to all nonresidential customers (the “second main requirement”). Expedient implementation of SB 237 is key to avoid delays in these benefits; at the same time, great care must be taken to ensure a fair rollout for all customers—including residential customers who do not have access to DA.

III. Comments on Order Instituting Rulemaking to Implement SB 237

A. AEE and AEBG Urge CPUC to Strike a Balanced Approach to the Lottery for the 4 TWh expansion

The OIR proposes to make use of the existing January 1, 2019 DA waiting list to allocate the additional 4 TWh of DA availability. AEE and AEBG recognize that there are valid arguments

for utilizing the existing waiting list; namely, that doing so is administratively straightforward, and also rewards those customers who have indicated most recently that they have interest in DA by participating in the lottery even when the chances of success were very low. However, we encourage the CPUC to balance these priorities with the concerns of customers who have elected not to participate in past auctions, but that have a strong interest in participating as DA customers. For such customers, their decision to not participate was made with the knowledge that the DA queue has been oversubscribed for many years and that very little, if any, new DA load would be made available through that lottery. For some customers, including customers who would place high value on participating in the DA market, the administrative burden of entering the lottery may not have been justified given the extremely low likelihood of being selected. Some customers may even have participated in past lotteries but elected to not participate in the most recent lottery for this same reason. Passage and implementation of SB 237 changes these circumstances substantially.

AEE and AEBG therefore encourage the CPUC to allow at least some of the additional 4 TWh to be served by a new lottery, held at the same time and through the same process as the routine DA lottery. This would be consistent with the CPUC's policy of holding a new lottery on an annual basis each time any available DA load is reallocated. This need not cause delays in the schedule for implementation of the 4 TWh expansion, and indeed AEE and AEBG urge the CPUC to maintain the service start date of January 2020, which we support for reasons outlined below. There also would be no need to hold a separate lottery to allocate any available load under the existing DA cap; this could be allocated through the same lottery process.

Holding a new lottery for at least a portion of the 4 TWh expansion would also generate useful information for the second main requirement of SB 237 by providing a more accurate queue

of interested DA customers to inform the CPUC’s recommendations to the Legislature. According to the CPUC, the current queue is approximately 8 TWh—already double the amount available through the SB 237 reopening.¹ The actual demand for DA is assuredly higher than 8 TWh given that at least some interested customers have opted not to participate in past lotteries due to low likelihood of success. As discussed below, the strong demand for DA underscores the importance of timely compliance with the requirement to provide recommendations to the Legislature regarding full reopening of DA to all nonresidential customers.

B. AEE and AEBG Otherwise Support the Proposed Approach to SB 237 Implementation

AEE and AEBG support CPUC’s straightforward approach to SB 237 implementation in the OIR, which relies on existing protocols and procedures wherever possible. DA has been successfully expanded in the past², and except in limited instances we do not see justification for deviating from the approach taken in the past. We also support those elements of the OIR that ensure smooth and efficient implementation, and provide the following feedback in response to Staff’s Proposal and the other related questions raised in the OIR.

First, AEE and AEBG support CPUC’s proposal to allocate the 4 TWh increase by IOU load share, excluding residential and existing DA customers. This approach is equitable, logical, simple, and consistent with past practice.

¹ California Public Utilities Commission, *California Customer Choice: An Evaluation of Regulatory Framework Options for an Evolving Electricity Market* (August 2018), available at [http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy - Electricity and Natural Gas/Cal%20Customer%20Choice%20Report%208-7-18%20rm.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy_-_Electricity_and_Natural_Gas/Cal%20Customer%20Choice%20Report%208-7-18%20rm.pdf), at 8.

² Through enactment of SB 695 and D.10-03-022, D.10-05-039, D.12-12-026

Second, AEE and AEBG support the procedural and implementation timeline as proposed in the OIR. The procedural timeline, with a final order by June 1, 2019, is both achievable and consistent with the requirements of SB 237. We also support CPUC's proposed service start date of January 2020. This date aligns with year-ahead resource adequacy requirements, and as such will address cost-shifting and reliability concerns that might otherwise arise, allowing for a smoother transition. In addition, as the next filing date for LSE's individual integrated resource plans (IRPs) for the next cycle is not until May 1, 2020, it should give LSEs sufficient time to incorporate any changes into their plans. The use of January 2020 as a start date therefore addresses in large part CPUC's question regarding any "timing or process issues related to the increase in Direct Access load and the Commission's rules and regulations for Resource Adequacy, the Integrated Resource Plan, and the Power Charge Indifference Adjustment."

Third, AEE and AEBG support adoption of the Direct Access Customer Coalition Petition filed in September 2018, which would clarify and streamline the process for customer switching and reduce unnecessary confusion. Specifically, we support revising the Direct Access Monthly Report to denote DA load that is reserved and not available to waitlisted customers, and we also support allowing DA customers to relocate to a new location on the same premises. These changes will improve the DA customer experience for both existing and waitlisted customers while reducing confusion for service providers.

Fourth, AEE and AEBG support the initial focus on the first requirement of SB 237, expansion of DA by 4 TWh, in advance of and separate from CPUC's work on the second requirement, recommendations for expansion to all nonresidential customers. While the latter requirement is extremely important to successful and complete implementation of SB 237, the first

holds more immediate deadlines. Once a final order is issued for the 4 TWh expansion, the CPUC should redirect its focus to its recommendations to the Legislature.

C. AEE and AEBG Remain Committed to Implementation of the Second Main Requirement of SB 237 Consistent with Statutory Requirements

While AEE and AEBG support the CPUC's initial focus on the 4 TWh DA expansion, we emphasize the importance of shifting quickly upon completion of the initial expansion to address the recommendations owed to the Legislature in a timely manner to ensure the June 1, 2020 deadline will be met. AEE and AEBG support broader expansion of DA to make this option available to all C&I customers that choose to make use of it. Indeed, the 8 TWh queue for DA indicates that demand far outstrips the initial 4 TWh opening; actual demand is likely even higher than the current queue indicates given that interested customers may have opted not to participate in recent auctions due to the low likelihood of success.³

In addition, we are concerned that the OIR appears to deviate from the clearly stated requirements of SB 237 with regard to the recommendations the CPUC must provide to the Legislature. Specifically, SB 237 requires:

“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.”

This language clearly requires that the CPUC provide recommendations for further reopening. In contrast, the OIR describes says that it will “provide recommendations to the Legislature on *whether and how* it should resume the Direct Access program for all interested non-residential customers” [emphasis added]. The language of SB 237 clearly directs the CPUC to

³ See *supra* n. 1.

provide recommendations on *how* DA expansion to all remaining nonresidential customers should occur, leaving to the Legislature the decision of *whether* further phase-ins should occur. This is an important distinction with implications for how the CPUC sets about forming the specific recommendations required by SB 237 (that they be consistent with the state’s greenhouse gas emission reduction goals, that they ensure electric system reliability, etc.). AEE and AEBG urge the CPUC to stick to the clearly stated directive of SB 237.

IV. Conclusion

AEE and AEBG view expansion of DA as an important tool to meet the state’s goals of affordable, reliable, and decarbonized electricity while also encouraging economic development. Expedient and fair implementation of SB 237 will maximize the benefits of DA expansion. Our organizations appreciate the opportunity to provide comment, and look forward to remaining engaged throughout the implementation process.

Dated: April 5, 2019

Respectfully Submitted,

/s/ Coley Girouard

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