

October 12, 2001

PUC 110  
X - PUF 000  
A.98-07-006

**ADVICE LETTER 1369-E**  
(U 902-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**SUBJECT: IMPLEMENTATION OF THE SUSPENSION OF DIRECT ACCESS IN  
COMPLIANCE WITH DECISION 01-09-060**

**PURPOSE**

This Advice Letter is being prepared jointly and concurrently submitted by San Diego Gas and Electric Company (SDG&E) and Pacific Gas and Electric Company (PG&E) (collectively, "the UDCs") to advise the Commission of the implementation steps the UDCs are taking to effectuate D.01-09-060 (the Decision). In the Decision, the California Public Utilities Commission (Commission) suspended the right of the UDCs' customers to acquire direct access service. Specifically the Decision directed that:

The execution of any new contracts, or the entering into, or the verification of any new arrangements for direct access service pursuant to Public Utilities Code Sections 366 or 366.5, after September 20, 2001, is prohibited . . . and [t]he utilities should not accept any DASRs [Direct Access Service Requests] for any contracts executed or agreements entered into after the effective date of this decision.

D.01-09-060, Ordering Paragraphs 4 and 7.

The Commission's intent in issuing the Decision was that "A stable customer base is required to ensure a continuous revenue stream to repay the revenue bonds. Furthermore, as explained above, now is the time to prevent customers from switching from utility bundled service to electric service providers in order to shift to others some of the impact of higher rates." *Id.* at 8.

In this compliance filing, the UDCs have made every attempt to meet the Commission's ordering paragraph and intent of the Decision. In particular, the UDCs have striven to reconcile the directive that continued direct access participation be based on contracts in effect on September 20, with the intent that direct access be stabilized and not expanded. This Advice Letter contains a specific process, timeline, and rules for suspending direct access. The UDCs

are not proposing any tariff language changes at this time but will do so, if required by the Commission, following the Commission's resolution of this Advice Letter.

The protest process will allow all interested parties to comment and enable the Commission to expeditiously provide additional guidance to the UDCs if the compliance filing does not meet the Commission's intent.<sup>1</sup>

## **BACKGROUND**

On October 4, 2001 the UDCs submitted to Energy Division Director Paul Clanon a joint letter in accordance with Ordering Paragraph 8 of the Decision. The UDCs pointed out that implementing the September 20, 2001 cut-off date is more complex than is recognized by the Decision. The UDCs notified the Commission that, with encouragement of Energy Division staff, they were initiating further efforts to resolve the remaining issues in a fashion that will give full effect and clarity to the Decision. The UDCs also indicated that further specific Commission guidance on these issues would be necessary. Accordingly, in an effort to obtain that guidance and also resolve those issues with other market participants, and after consulting with the Commission's Energy Division, a group of UDCs and Energy Service Providers (ESPs) commenced a process to develop a specific proposal and schedule that would either provide or elicit guidance on the procedures the UDCs should implement to give effect to the September 20, 2001 cut-off date. The UDCs stated that the group's intent was to file an implementation proposal with the Commission in the very near future.

However, after several conference calls and exchanges of documents, it became clear that the group would not reach agreement on the core issue: should there be a cut-off date for submission of DASRs? This issue is critical since the UDCs see no other way to ensure that new direct access load is not added, given the apparent open-ended nature of many service contracts between ESPs and their customers. The UDCs' general view is that a DASR submission cut-off date is the best and only vehicle available to the utilities to give effect to the Commission's directives. Accordingly, the UDCs and several ESPs agreed that the most useful way to proceed would be for the UDCs to submit a proposal by way of an advice letter, and have opposing parties file protests, thus providing to the Commission the various opposing viewpoints and arguments.

## **THE UDCS' IMPLEMENTATION STEPS**

The UDCs propose the following process, timeline and rules for DASR acceptance as a reasonable manner in which to implement the Decision. The UDCs intend to implement this proposal unless and until advised otherwise by the Commission.

The UDCs have attempted to craft implementation steps for all scenarios which might arise in which utilities would be called upon to increase its direct access load or take action that might

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<sup>1</sup> The UDCs are aware that on October 4, 2001 Southern California Edison Company (SCE) submitted a description of the steps it was taking to implement the Decision. SCE's proposal is similar to the UDCs' proposal presented herein. However, SCE proposes a significantly earlier DASR cut-off date (October 20, 2001 vs. December 3, 2001 for the UDCs). The UDCs urge the Commission to notify the UDCs as soon as possible if the Commission believes SCE's cut-off date is preferable.

conflict with the general intent of D.01-09-060. In filing this Advice Letter, the UDCs request that the Commission specifically approve each of the proposed implementation steps, or provide clear guidance on an alternative implementation procedure.

#### 1. Lists

The UDCs have required ESPs to provide, by October 5, 2001, a list of names of all customers with direct access contracts in place as of September 20, 2001 which would allow accounts not currently on direct access to switch to direct access. No new customer names will be added to the lists after October 5. By November 1, 2001, ESPs must submit all account details for customers identified on the October 5 lists; i.e., lists of all account numbers, service addresses, and meter numbers for accounts that are eligible to go on direct access under contracts in place as of September 20, 2001. No changes to the November 1 list will be accepted after November 1, 2001.

These timelines require ESPs to specify (within 15 days after the decision) by name those customers whose contracts qualify them to submit additional DASRs. The additional time after October 5 to submit account-specific data provides ESPs with further opportunity to gather and accurately submit this more detailed information.

#### 2. ESP Eligibility to Submit Lists

In order to submit lists of customer names or accounts, or to submit DASRs for those accounts, an ESP must (1) have in effect a valid ESP/UDC Service Agreement as of September 20, 2001 and (2) ESPs serving small customers must have in effect valid registration as required by law. The UDCs will not execute any new ESP/UDC Service Agreements after September 20, 2001, nor will they review new ESP/UDC Service Agreements sent to the UDCs after September 20, 2001 that were executed by an ESP on or before September 20, 2001. Additionally, for those ESPs who have master agreements with certain entities (other than the customers of record) whose terms and conditions allow specific customers to elect direct access in the future (through execution of individual implementing agreements with customers), the UDCs will reject new requests for direct access for those customers unless those new customers signed implementing agreements and elected direct access under the terms of the master agreement on or before September 20, 2001.

#### 3. DASR Submittal Only Allowed For Names And Accounts On Lists

To ensure control over qualified accounts, effective September 20, 2001, DASRs to switch a customer on bundled UDC service with direct access will only be accepted/processed for account numbers appearing completely and accurately on the October 5 and November 1 lists. The UDCs will not permit ESPs to update or "correct" the names and account information on those lists after October 5 and November 1, respectively.

#### 4. Multiple DASRs For Same Customer Will Be Processed Under Normal Rules

If the same customer/service account appears on multiple ESP listings, normal processing rules will apply. For pending DASRs the first DADR will be accepted; others will be rejected. Once a customer is switched to direct access, new DASRs for that customer before the DADR cut-off date will switch the account to the new ESP (as long as the account was validly submitted on a timely list by the new ESP).

#### 5. December 3, 2001 Will Be Cut-off Date To Submit DASRs For Accounts On ESP Lists

DASRs to switch customers to direct access will only be accepted for names and accounts on the ESPs' October 5 and November 1 lists *and only until December 3, 2001*. The UDCs are proposing a DADR cut-off date as the only feasible way to ensure that direct access load is stabilized as intended by the Commission. If this is not the Commission's intent, the DADR cut-off date can be eliminated or delayed. However, if the December 3 date (or similar date) is not enforced, the UDCs are not able to control the DADR submittals into the future and the Commission must rely on ESP affidavits or some other 3<sup>rd</sup> party review of contracts. Even then, existing contractual arrangements without a cut-off date could result in new customer load going on direct access for months or even years to come.

The UDCs' December 3 DADR cut-off proposal honors the reasonable expectations of customers following the September 20 Decision. It also achieves the Commission's objective that the growth of direct access is limited so that a "stable customer base from which to . . . recover costs" be established for the State of California Department of Water Resources. Finally, the date was chosen in part to allow the Commission a realistic opportunity to adopt or reject the cut-off date and at the same time, implement the Decision as quickly as possible.

#### 6. No DADR Resubmittal After December 3

If a DADR submitted on or before the cut-off date is rejected, it must be resubmitted before the cut-off date in order for new direct access service to take effect. If a DADR rejects and is not accepted on or before December 3, it will not be qualified to be resubmitted after that date. This rule is designed to ensure that ESPs submit complete and accurate DASRs and plan ahead to allow adequate time to resubmit rejected DASRs.

#### 7. ESP Metering For New Accounts Required Within 180 Days

Normal direct access procedures will apply for ESP installation of meters where needed by the customer. If the ESP has not installed the required metering to switch the account to direct access within 180 days of a DADR acceptance, the DADR will be voided.

#### 8. No Third Party Verification Allowed After September 20

Decision 01-09-060 states: "The execution of any new contracts for direct access service, or the entering into *or verification of*, any new arrangements for direct access service pursuant to Public Utilities Code 366 or 366.5, after the effective date of this order is prohibited."

Conclusion of Law 3. Accordingly, only residential and small commercial accounts that were verified on or before September 20, 2001 in accordance with the relevant statutes qualify for inclusion on the ESP lists provided to the UDCs and for DADR submission by December 3.

#### 9. Customer May Not Switch From One ESP To Another After December 3

The UDCs believe that customers should not be allowed to switch from one ESP to another after September 20 unless the new ESP had a valid service contract in place on or before September 20, 2001 and the customer's name appears on the new ESP's lists submitted by October 5 and November 1, in which the switch would be allowed through December 3. Such a change agreed to after September 20 would be a "new arrangement" for direct access service prohibited by the Decision.

#### 10. Seamless Moves Allowed

The UDCs propose to allow existing direct access small customers moving from one address to another within the UDC area to do so after December 3, 2001 under the so-called "seamless move" process developed by the Rule 22 working group. In this case, because new direct access service would not be contemplated by the move, no new DASR is required.

#### 11. ESP's Former Book of Business Returned to Bundled Service Before September 20, 2001 Should Not Be Allowed Back On Direct Access

This is an area where the UDCs seek specific Commission guidance. Each UDC has certain ESPs who returned all their customers (no active customers) to bundled service prior to September 20, 2001. These ESPs have now submitted the entire list of former customers as customers which may potentially be placed back on direct access. The customers on these lists are all residential and small commercial and number from several thousand, in the case of SDG&E, and over twenty thousand, in the case of PG&E. One of the ESPs trying to re-start direct access for its customers purportedly still under contract has advised Rule 22 working group it does not intend to submit DASRs for these customers but wishes to assign the contracts to another ESP.

The UDCs propose to reject the lists submitted by these ESPs because (1) placing a customer on direct access a second time can be regarded as a "new arrangement for direct access service" prohibited by the Commission and which therefore requires independent verification; (2) in the case of the ESP proposing to assign its customers, since these are residential and small commercial customers, assignment to another ESP would require the new ESP to perform verification after September 20, which is prohibited by the Decision. Furthermore, the new ESP would be agreeing to provide direct access service after the September 20 cut-off date in violation of the Decision; (3) unless some termination date is enforced, ESPs who still have bundled service customers under contract could move those customers back to direct access conceivably at any time in the future.

#### 12. Assignment of all ESP Contracts To Another ESP As Part Of Merger Or Acquisition Allowed After December 3.

This situation occurs when one ESP transfers all of its direct access accounts to another ESP, necessitating a global name change of the ESP. This situation would be allowed since no new DASRs would be required. This situation has occurred in the past where an ESP sells its business to another existing ESP with the UDC and is normally publicized through news releases. Allowing this transfer would not result in any growth of direct access load.

#### 13. Assignment of a portion of ESP contracts to another ESP Not Allowed After December 3

When ESPs assign one customer or a subset of customers to another ESP, the new ESP must agree to provide the service. If such an agreement is entered into after September 20, it is thus a new arrangement for direct access service prohibited by the Commission. In addition, DASRs are required for such transfers. Accordingly, the UDCs propose not to allow such switches after December 3.

#### 14. Changes in Customer Identity Allowed On A Case-By-Case Basis

Changes in customer identity will be permitted on case-by-case review. In general, if a direct access customer changes its identity but remains essentially the same customer (i.e. type of load, business, location etc.) the customer may remain on direct access. However, if the customer changes its type of business, e.g. hotel to tire company, the customer will be returned to bundled service. The UDCs will require the customer to show (1) that a purchase or sale of its business occurred; (2) that the former customer assigned its direct access rights to the new customer in accordance with its direct access service agreement and (3) that the new customer is continuing the same business at the same location as the original customer.

#### 15. No Transfer of Direct Access Service From One Customer Account to Another

The UDCs propose to prohibit one customer from transferring or assigning its direct access rights to another customer. For example, a grocery store chain could not transfer its direct access contract to a department store chain (or any other customer even if it is the same type of business), even if the customers and ESP agree to the transfer. Such an option would require a DASR and, in effect, the agreement of the seller and new buyer, thus violating both the Decision as well as the UDCs' implementation through a DASR cut-off.

### **REQUEST FOR EXPEDITED APPROVAL**

The UDCs respectfully request that the Commission act promptly on this Advice Letter, either by its approval or by providing such other specific guidance that will permit the UDCs to implement the Commission's September 20, 2001 directives. Nonetheless, the UDCs intend to implement the above procedures even if the Commission is unable to act on this Advice Letter before the dates specified in the proposed procedures, e.g., the DASR cut-off date is December 3, 2001. The UDCs urge the Commission to act soon so that all participants can fully understand and begin to abide by the Commission's stated intention to suspend direct access.

### **EFFECTIVE DATE**

In accordance with D.01-09-060, this filing shall become effective September 20, 2001.

### **PROTEST**

Anyone may protest this Advice Letter to the Commission. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. The protest must be made either in writing or by facsimile and received within 20 days of the date this Advice Letter was filed with the Commission. There is

no restriction on who may file a protest. The address for mailing or delivering a protest to the Commission is:

IMC Branch Chief  
Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue, Room 4002  
San Francisco, CA 94102

A copy should also be mailed to the attention of the Energy Division-IMC Branch, Room 4005 (at the address shown above). It is also requested that a copy of the protest be sent via both e-mail and facsimile to the address shown below on the same date it is mailed or delivered to the Commission.

Attn: C. Richard Swanson  
Regulatory Tariff Manager  
101 Ash Street, HQ 14B  
San Diego, CA 92101-3017  
Facsimile No. (619) 696-4027  
E-Mail: rswanson@sempra.com

#### **NOTICE**

In accordance with Section III-G of General Order 96-A, a copy of this filing has been served on the utilities and interested parties shown on the attached list, including interested parties in A.98-07-006 et. al., by providing them a copy hereof electronically or via the U.S. Mail, properly stamped and addressed.

Address changes should be directed to Martha Ulloa by facsimile at (619) 696-4027 or by e-mail at mulloa@sempra.com.

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LEE SCHAVRIEN, Director  
Regulatory Case Management &  
Tariff Administration

Enclosures

(cc list attached)