Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY
Chris Holden, Chair
SB 237 (Hertzberg) – As Amended June 13, 2018

SENATE VOTE: 37-0

SUBJECT: Electricity: direct transactions

SUMMARY: Requires the California Public Utilities Commission (CPUC) to eliminate the cap over three years, commencing on July 1, 2019, on the "direct access" (DA) program for nonresidential, end-use customers allowing those customers to acquire electric service from other providers in each IOU's distribution service territory.

EXISTING LAW:

1) Suspends the ability of retail end-use customers of the investor-owned utilities (IOU) to receive electrical service from an entity other than an IOU unless authorized by the Legislature. This arrangement commonly is referred to as DA. (Public Utilities Code § 365.1[a])

2) Allows a limited enrollment into DA for new nonresidential customers based on historical enrollment volumes. (Public Utilities Code § 365.1[b])

3) Requires DA providers to meet the same requirements as the IOUs for resource adequacy, the RPS, and the requirements for the electricity sector adopted by the California Air Resources Board (CARB) pursuant to the California Global Warming Solutions Act of 2006. (Public Utilities Code § 365.1 [c])

4) States the intent of the Legislature to prevent any shifting of recoverable costs between IOU customers. (Public Utilities Code § 366.1[d][1])

5) Defines "direct transaction" as a contract between any one or more electric generators, marketers, or brokers of electric power and one or more retail customers providing for the purchase and sale of electric power or any ancillary services. (Public Utilities Code § 331)

6) Defines an electric service provider (ESP) as a non-utility entity that offers electric service to customers within the service territory of an electric utility and requires each ESP to register with the CPUC. (Public Utilities Code § 394[a])

FISCAL EFFECT: Unknown.

BACKGROUND:

Deregulation – California's experiment with deregulation was launched in 1996 when the Legislature passed AB 1890 (Brulte, 1996) to restructure the electric industry. One of the key features of electrical restructuring was the authorization of retail competition within IOU service

areas. AB 1890 ended the service monopoly of utilities and authorized retail customers to purchase energy directly from suppliers. These transactions are known as "direct access."

Before the energy crisis in 2001, non-IOU providers (direct access or energy service providers) had enrolled customers but then failed to provide the power ordered. The customers returned to the IOUs for service but the utilities did not have the electric generation resources to serve those customers because they had left IOU service. In response the Legislature mandated that the IOUs maintain resource adequacy for current customers and those customers that could return to IOU service. The ability to choose DA service was officially suspended on September 20, 2001. However, CPUC rules allowed certain "eligible" customers to begin DA service after the suspension date and switch between bundled service and DA service.

At the time of the energy crisis, enrollment was statutorily capped in the DA program. In 2010 the cap was revisited by the Legislature and expanded to its current level which is approximately 13% of retail electric load with 41,975 enrolled customers comprising 0.3% of customer accounts in the state according the CPUC. The majority of DA customer accounts are commercial customer accounts (about 17,223) with load between 20 and 500 kilowatts (kW) per month. However, industrial customers with load over 500 kW per month are the largest DA customers in terms of kilowatt hours provided (about 35.5% of total load served by electric service providers.

Since the cap on DA was expanded and re-opened in 2011, demand for DA service has remained high with requests for DA service outpacing availability. Any openings are filled in a matter of seconds. The vast majority of customers using DA are commercial businesses, including hospitals, grocery stores, schools, universities, and retailers.

Community Choice Aggregation – Community aggregation is a form of DA where, for example, a city may act as a purchasing agent on behalf of its residents. CCAs are governmental entities formed by cities and/or counties to serve the electricity requirements of their local residents and businesses. The state Legislature has expressed the state's policy to permit and promote CCAs by enacting AB 117 (Migden, 2001) which authorized the creation of CCAs at the time that DA was capped. The bill described essential CCA program elements, required the state's IOUs to provide certain services, and established methods to protect existing utility customers from liabilities that they might otherwise incur when a portion of the IOU's customers transfer their energy services to a CCA. The CCA program was revisited in the Legislature in 2011 at which time the definition of CCA was expanded, the CPUC was required to initiate a code of conduct rulemaking for IOUs, and CCAs were permitted to apply for public purpose funds to administer energy efficiency programs.

Extensive growth in CCAs in recent years which, when coupled with rooftop solar, community and existing DAs were estimated to make up about 25% of retail in 2017; a number that is estimated to reach up to 85% by the mid-2020s.

IOU Responsibility Does Not End – A critical driver of CCA and DA policies is that any CCA or DA customer can terminate service on a moment's notice and return to IOU service. Should they do so, or should the DA or CCA provider fail to provide sufficient power, the IOU is always and ultimately responsible to provide that power.

The California Customer Choice Project – A project of the CPUC, a draft paper entitled, *California Customer Choice: An Evaluation of Regulatory Framework Options for an Evolving Electricity Market* was issued in May. This draft paper is also referred to as the "Green Book." The Green Book is designed to initiate a policy conversation among a wide range of stakeholders and interests about the future of California's electricity market, rather than make specific recommendations. Over the past year, the CPUC has reviewed the history of competition and choice in California, including the California Energy Crisis, evaluated the current regulatory construct, and analyzed selected markets to provide lessons learned for California. This draft paper will inform the next stage of the process to gather input before issuing a final paper. The CPUC has stated that California must consider how to shape this new environment in a way that continues to ensure reliable, clean, and affordable electricity for customers and equitable treatment for all market participants.

COMMENTS:

1) Author's Statement. As the state's electrical system continues to evolve, customers are learning to connect with and obtain the power mix they want when and where they need it. From roof-top solar and advanced battery systems to waste-heat generators, California's businesses make cost-effective and environmental energy decisions every day, but lack the ability to fully customize their electricity mix to meet their unique needs.

   Senate Bill 237 allows commercial and industrial customers to choose alternative electricity service, called Direct Access, and sign contracts separate from the local utility company. The bill will encourage competition, which reduces prices. This, in turn, will give California businesses the necessary tools to make comprehensive cost-effective energy decisions and make California more business friendly, while providing new flexible options for meeting the state's renewable energy and greenhouse gas reduction goals.

2) Resource Adequacy. The RA program has its origins in the energy crisis of 2001 and has two goals. First, it provides sufficient resources to the CAISO to ensure the safe and reliable operation of the grid in real time. Second, it is designed to provide appropriate incentives for the siting and construction of new resources needed for reliability in the future.

   The CPUC adopted a RA policy framework in 2004 in order to ensure the reliability of electric service in California and the obligations are applicable to all LSEs within the CPUC's jurisdiction. The RA program guides resource procurement and promotes infrastructure investment by requiring that LSEs procure capacity so that capacity is available to the CAISO when and where needed.

   Over the last ten years, California has maintained adequate reserves under the CPUC's RA program to ensure reliable grid operation. However, California's electric system is undergoing significant structural changes that include integrating greater numbers of intermittent renewable resources, repowering or retiring over 16 gigawatts of gas-fired power plants that rely on once-thorough cooling (OTC) technology, and an increasing number of resources that will surpass their design life in the coming years. In addition to these changes, the California electric system is also witnessing rapid expansion of CCAs.

Within the past year in particular, several new challenges have arisen within the RA program. They include: (1) an apparent decrease in forward procurement; (2) LSE requests for local requirement waivers; (3) growth in CAISO back-stop procurement, including three RMR contracts and two CPM designations; (4) acceleration in load migration from the IOUs to new and existing CCAs; and (5) divergent trends in local procurement activity, notwithstanding.

Given the shaky status of RA, is this the right time to contribute to the destabilization of the market by removing the cap on DA?

3) ISO Sounds Alarm. Under Federal Energy Regulatory Commission (FERC) rules, the CAISO, like all other balancing authorities, must ensure system reliability or face penalties by FERC. If California RA policies fail to provide sufficient resources, the CAISO may be forced to utilize centralized backstop procurement mechanisms whereby the CAISO enters into contract to address the shortfall in order to maintain electric system reliability. CAISO backstop procurement had been on the decline but in the fall of 2017, CAISO contracted for more than 1,500 megawatts of natural gas fired generation from five different plants. This is notice that RA is not working. The CPUC has initiated a thorough review of RA which is reflected in a staff white paper and an ongoing rulemaking (R.14-10-010).

4) CPUC President's Warning. The CPUC reports that it is seeing some of the same trends in the electricity marketplace that preceded the last energy crisis in California. Specifically, in a forward to what is called "The Green Book,"[1] released in May, CPUC President Michael Picker made the following statement. In light of this concern that procurement is already unstable in the state, should the Legislature compound the instability by removing the cap on DA at this time?

   In the late 1990s, California deregulated the electric industry, allowing customers to choose their power supplier. But in 2000 and 2001, the new electric system collapsed, saddling customers with high costs and rolling outages. The California Legislature reset the large regulated utilities as the dominant providers of electric service, although the utilities no longer owned most power generators.

   Customers are once again departing from the utilities as providers of their electricity. They are getting power from rooftop solar panels, from local agencies called Community Choice Aggregators or from private electric re-sellers called Direct Access providers. Large industrial customers are buying power directly from renewable generators, sometimes serving several locations from a distant wind farm or solar plant. Fewer and fewer customers are getting power from the traditional large regional utilities and the central decision making that we use for keeping the grid reliable, safe and affordable is splintering, becoming the task of dozens of decision-makers.

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[1]The Green Book is available at:
http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy_-_Electricity_and_Natural_Gas/Cal%20Customer%20Choice%20Report%20%20v5-17-18.pdf

In the last deregulation, we had a plan, however flawed. Now, we are deregulating electric markets through dozens of different decisions and legislative actions, but we do not have a plan. If we are not careful, we can drift into another crisis.

This paper is produced by the California Public Utilities Commission's Policy and Planning Division. While much of our work here is focused on current activities and implementing various laws, the Policy and Planning Division looks forward and conducts policy research on new and emerging trends. It researched the experience of other states and governments to see what has worked to give customers more control over how they get their electricity, and to evaluate what might be best for California.

The paper asks us to consider such question as:

- How do we protect safe delivery of electricity to meet customer demand in an increasingly fragmented market?
- How will we ensure that increasing fragmentation of suppliers and buyers will add up to meet our ambitious clean energy goals?
- How will we make sure that different players are meeting their responsibilities to provide all the energy resources we need to make the grid work?
- How will we protect customers from the unfair behavior like "slamming" and "cramming" that we saw during deregulation of telecommunications?
- What preparations should we make for customers who might become stranded without service if their electric provider fails, as many did in the previous California deregulation?
- What is the best way for a fair, affordable and durable transition?

Some of these decisions will require leadership from the Legislature, although others must be solved by the California Public Utilities Commission, with the help of our partners at the California Energy Commission and the California Independent System Operator. We plan to follow the publication of this white paper with a public workshop to hear comments and responses from the players who are driving this transformation of our electricity supply. And then we will dig deeper into solving the questions that the issues raised in this white paper demand that we answer.[2]

5) Support for Eliminating the DA Cap. A leading advocate of the expansion of DA is the "Direct Access Customer Coalition" which was one of several parties which filed comments in response to the Green Book earlier this month. In response to the question "How does the increased customer choice occurring in the electric sector impact California's ability to achieve its policy objectives of affordability, decarbonization, and reliability?" DACC opined:[3]

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[3] Available at the CPUC at:
http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy_-_Electricity_and_Natural_Gas/Direct%20Access%20Customer%20Coalition%20(DACC)_DraftGreenBookComments.pdf

DACC believes increased customer choice should not frustrate California's achievement of the state's policy objectives of Affordability, Decarbonization and Reliability, due to actions already undertaken by the Legislature that are being implemented by this Commission, as well as actions taken on the Commission's own initiative along with those of other state agencies. If, however, the order of these policy objectives is meant to imply prioritization, DACC would suggest that in order of importance, the appropriate listing should read Reliability, Affordability and Decarbonization. While all three are of course important, reliability must be paramount, followed closely by affordability. Decarbonization is a worthwhile goal, but not at the expense of either of the other two policy objectives. DACC next looks at each of these objectives in turn:

Reliability – Both ESPs and CCAs are subject to the same resource adequacy ("RA") standards as the IOUs and are also subject to the integrated resource planning ("IRP") requirements imposed by the Commission's recent issuance of D.18-02-018 in Rulemaking ("R") 16-02-007.5 As noted in the February 19, 2016, Rulemaking:

> The general issues to be addressed for the 2016 procurement planning cycle are as follows:
>
> > (1) Assess the impact of SB 350 on future procurement needs and develop the process and requirements for the IRPs to be filed by load-serving entities (LSEs). This includes bringing together or taking to the next level a number of efforts that have been underway in previous LTPP proceedings or other related resource proceedings, including developing and refining modeling assumptions to assess the need for additional flexible resources to integrate variable renewable energy resources.
> >
> > (2) Develop or refine procurement rules for non-investor-owned utility (IOU) LSEs now required to develop IRPs who did not previously submit LTPPs and consider cost allocation and competitiveness issues between IOUs and other LSEs.
> >
> > (3) To the extent necessary, identify CPUC-jurisdictional needs for new resources to meet local, flexible, or system resource adequacy (RA) requirements and to consider authorization of procurement to meet that need.

In summary, by ensuring that all LSEs are subject to these requirements, concrete steps have already been taken by the Commission to ensure that expanded customer choice does not impede achievement of these policy goals.

Affordability – Customers elect direct access service for many reasons, including the opportunity for cost savings offered by ESPs when compared to utility bundled service rates. DACC also believes that many CCAs also undercut utility bundled rates. Affordability, then, does not appear to be an issue that the Commission need to be concerned about when addressing the implications

of customer choice.

Decarbonization – Both ESPs and CCAs are subject to the same greenhouse gas ("GHG") and renewable portfolio standards applicable to the more heavily regulated IOUs. DA customers are also frequently subject to California Air Resources Board ("CARB") standards such as cap-and trade. Furthermore, in the IRP proceeding, activity is being conducted pursuant to Public Utilities Code Section 454.51 that directs the Commission to:

> Identify a diverse and balanced portfolio of resources needed to ensure a reliable electricity supply that provides optimal integration of renewable energy in a cost-effective manner. The portfolio shall rely upon zero carbon-emitting resources to the maximum extent reasonable and be designed to achieve any statewide greenhouse gas emissions limit established pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) or any successor legislation.

The same decision also cites Public Utilities Code Section 454.52 that requires each LSE to file an integrated resource plan to ensure that they do the following:

> (A) Meet the greenhouse gas emissions reduction targets established by the State Air Resources Board, in coordination with the commission and the Energy Commission, for the electricity sector and each load-serving entity that reflect the electricity sector's percentage in achieving the economy-wide greenhouse gas emissions reductions of 40 percent from 1990 levels by 2030.

6) Prior Legislation.

SB 695 (Kehoe) Among the provisions, allowed the expansion of direct-access service to individual retail non-residential end-use customers up to the total annual kilowatt-hours supplied by electric service providers for any year after April 1, 1998 approximately doubling enrollment in the DA program. (Chapter 337, Statutes of 2009)

AB 1X (Keely) Suspended direct access until the Department of Water Resources no longer provides power. (Chapter 4, Statutes of 2001)

SB 286 (Hertzberg) Required the CPUC to allow individual retail nonresidential end-use customers to contract directly for their electricity supplies, also known as DA. Status: Held in Assembly Appropriations Committee, 2015.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance For Retail Energy Markets
Bell Foundry Company
California Grocers Association
California League Of Food Producers
California Manufacturers & Technology Association
California Retailers Association
Clean Energy
Constellation Newenergy, Inc.
Crothall Laundry Services, Inc.
Damar Plastics
Darling Ingredients Inc.
Delano Growers Grape Products
Direct Access Customer Coalition
Direct Energy
Enernoc, Inc.
Engenuus Energy LLC
Ever-bloom, Inc.
Fontana Paper Mills, Inc.
Heck Cellars
Huhtamaki
Just Energy
Retail Energy Supply Association
School Project For Utility Rate Reduction (SPURR)
Shell Energy North America
Silicon Valley Leadership Group
Swisstex California
Tes
Zanker Road Recycling

Opposition

Carbon Free Mountain View
Carbon Free Silicon Valley
Climate Action Campaign
Eco-sustainability Professionals
Organizing For Action East Bay Central Chapter
The Utility Reform Network
5 Individuals

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