September 22, 2008

Jeffrey D. Byron
Chairman and Presiding Member
2009 Integrated Energy Policy Report Committee
California Energy Commission
1516 Ninth Street, MS-29
Sacramento, CA 95814-5512

James D. Boyd
Vice Chair and Associate Member
2009 Integrated Energy Policy Report Committee
California Energy Commission
1516 Ninth Street, MS-29
Sacramento, CA 95814-5512

RE: 2009 Integrated Energy Policy Report Scope
Docket No. 09-IEP-1

Dear Chairman Byron and Vice Chair Boyd:

The Alliance for Retail Energy Markets (AReM) respectfully submits the following comments on the scope of the 2009 Integrated Energy Policy Report (IEPR). AReM acknowledges that its comments are later than requested by the Energy Commission, but believes they will provide useful information during deliberations for the 2009 IEPR. AReM has only recently determined that its issue of concern – forecasts of departing load – is to be addressed in the 2009 IEPR, the results of which will be incorporated into the large California's investor-owned utilities' 2010 Long-Term Procurement Plans (LTPP) to be filed with the California Public Utilities Commission (CPUC) in late 2009.

For background, AReM is a California nonprofit association of electric service providers (ESPs) who collectively serve the majority of customers who procure electricity in the competitive retail market.[1] Retail competition in California accounts for approximately 9 percent of demand and serves all customer classes from residential to

[1] These customers are usually referred to as "direct access customers."

agricultural to commercial to industrial. Customer choice remains a valuable option for the fortunate individuals, institutions and businesses who are not subject to the current suspension of direct access (DA), which was imposed in September 2001.

The CPUC is currently considering actions that will remove legal barriers to lifting the DA suspension,[2] which in any event will terminate under current law once the last Department of Water Resource (DWR) power contract expires, and this eventuality must be accounted for within the scope of the 2009 IEPR. Re-opening the retail market to competitive suppliers will have a significant effect both on direct access loads and utility procurement. Indeed, reasonable forecasts of direct access load are essential to ensure that California's investor-owned utilities (IOUs) do not over-procure resources, thereby incurring costs they would then claim as "stranded" and for which they would seek compensation from departing load. Such burdensome cost-recovery policies harm competitive markets and significantly undermine the benefits such markets can bring to the state. To avoid such negative consequences, the 2009 IEPR process must include development of reasonable estimates of departing IOU load associated with direct access and incorporate those forecasts into the 2009 IEPR results. As an additional benefit of this approach, there would be no need for IOUs to "plan for" the load of retail customers expected to be served by ESPs, thereby reducing the burden on direct access customers of additional non-bypassable charges associated with unneeded IOU procurement.

Although AReM acknowledges that the timing and conditions of the market re-opening are not known with precise certainty at present, these variables are no more challenging to account for than fluctuations in natural gas prices, macro-economic conditions, and weather – all of which are routinely estimated as part of load forecasting and resource planning. In this spirit, AReM recommends that the Energy Commission adopt a 2009 IEPR load forecast that:

(1) Identifies direct access load as a separate line item;

[2] R.07-05-025.

(2) Estimates a baseline direct access load forecast that assumes the suspension is lifted as of mid-2012, when all but a few hundred megawatts of the DWR contracts have terminated; and

(3) Estimates high and low direct access load forecasts, assuming different market re-opening conditions, to reflect a reasonable range of outcomes.

AReM suggests that the Energy Commission base its estimates on historical trends and evidence about the retail market response in California since retail market opening in April 1998. Further, the Commission should enhance its analysis by evaluating retail market responses in other states with differing competitive retail models.

AReM conducted an historical analysis of the California retail market to support its testimony in the 2006 LTPP (R.06-07-013), which is provided as an Attachment to these comments.[3] When the retail market first opened in April 1998, direct access load increased quickly and reached 10% by October of that year. At that point, direct access load gradually increased, reaching a peak of about 16% in February 2003. Historical evidence shows that the period from June 1998 through June 2000 saw increases of between 2 to 4 percentage points per year in direct access load. The Commission can refine the historical analysis by evaluating market response by customer classes and for customers eligible to return to direct access under current regulations. These data are readily available from CPUC and IOU records.

Finally, AReM notes that a significant benefit of retail competition is that it allows regular people to: (1) exercise choice regarding the source of their electricity; and (2) decide how much of their electricity should come from renewable sources. In fact, it was ESPs who developed the first green market in California more than ten years ago, when the competitive retail market opened in April 1998. At that time, for example, ESPs offered residential customers a range of options and prices, such as 100% renewable, 100% wind, and a myriad of variations. However, access to renewable

[3] The AReM analysis in the Attachment covers July 1998 through December 2006. Load migration data through July 2008 are now available on the CPUC web site at:
http://www.cpuc.ca.gov/PUC/energy/electric/Electric+Markets/Direct+Access/thru2008.htm

energy for today's IOU customers (91% of load) is *invisible* and those who wish to procure more renewables have no ability to do so. AReM strongly believes that lifting the suspension of the competitive retail market can play a significant role in meeting California's ambitious goals for greenhouse gas and renewables. If we are to empower Californians to take an active, personal role in the benefits of renewable energy, we must give them a means to achieve this desired end, and that means is customer choice.

AReM appreciates the opportunity to offer these comments on the scope of the 2009 IEPR. Integrated resource planning can only succeed in California if a full range of options is explored and debated. Retail choice can play a significant role in improving California's competitive success and in meeting its energy goals. The first step, however, is to ensure that the 2009 IEPR incorporates expanded retail choice as a foundational assumption. AReM stands ready to assist the Commission in this effort.

Respectfully,

Sue Mara /s /

Sue Mara
RTOAdvisors, L.L.C.
164 Springdale Way
Redwood City, CA 94062

CONSULTANT TO THE ALLIANCE FOR RETAIL ENERGY MARKETS

cc: Suzanne Korosec, Assistant Director for Policy Development, CEC
Dockets Office

ATTACHMENT

EXCERPT FROM AReM's TESTIMONY IN CPUC R.06-07-013 REGARDING

FORECASTING DIRECT ACCESS LOAD

D. Projections of Direct Access Load — Sue Mara

1. Need for Reasonable Assumptions

As mentioned in Section C above, projections by the utilities must include reasonable estimates of direct access load migration. Inaccurate forecasts could cause under- or over-procurement, improper application of the cost allocation mechanism and excessive claims of stranded costs. In particular, under-projections of direct access load lead to utility over-procurement and requests for excessive exit fees that undercut competition and interfere with markets.

At a minimum, the forecasts and the scenarios examined must project the effects of market re-opening on bundled customer load. On December 6, 2006, nearly 200 parties filed at the Commission requesting an end to the suspension of direct access and an investigation of market re-opening.[4] Even if the Commission or Legislature do not act earlier to reopen the DA market, once the contracts entered into by the California Department of Water Resources on behalf of the IOUs terminate, the market suspension will end.[5] In that event, the market would likely re-open no later than 2012, which is within the 10-year LTPP time frame. Chapters 2 and 4 below describe the failure of SCE and PG&E to make reasonable forecasts of direct access load.

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[4] *Petition of the Alliance for Retail Energy Markets et al for an Order Instituting Rulemaking and Investigation on Reopening the Retail Electricity Market,* P.06-12-002, December 6, 2006.
[5] *Ibid*, see discussion at pp. 16-20.

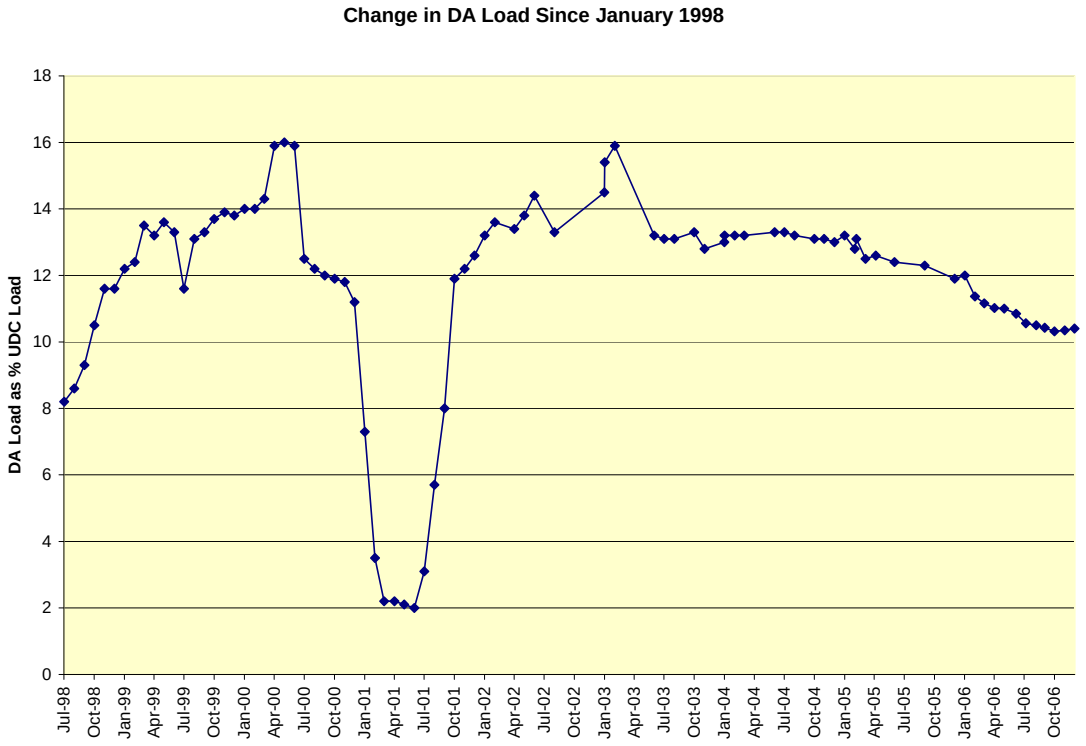
2. Historical Evidence of Direct Access Load Migration

The direct access market was suspended in September 2001 in the aftermath of the California Energy Crisis. After an initial drop and rebound, the percentage of load served by ESPs has gradually declined since 2003. To properly forecast future load migration, we should first review the historical load shifts that occurred in California since the inauguration of retail choice in 1998. In Figure 1, we present the change in percentage of load served through direct access suppliers since July of 1998. These data were obtained from the Commission's web site and provide the summary results of the monthly reporting by the utilities of customers switched.[6] The highest percentage achieved in any month was 16% in May 2000. In February 2003, 15.9% of load was served by direct access suppliers. Since then, direct load has declined to the current 10.4%.

[6] At present, the Commission posts summary direct access data monthly from 2000. The reports can be viewed at http://www.cpuc.ca.gov/static/energy/electric/electric+markets/direct+access/00thru05.htm.

EXCERPT FROM AReM TESTIMONY IN CPUC R.06-07-013
March 2, 2007
Chapter 1, Section II.D, pp. 18-25

FIGURE 1



In Figure 2, we provide a few snapshots of the percentage of direct access load by customer class since January 2000. For purposes of comparison, we show the customer breakdown for each January from 2000 to 2006 and, because January 2007 data are not yet available, the most recent data, from December 2006. Direct access penetration is much higher in the larger customer classes, but all show the same general trend of a gradual decline since 2003.

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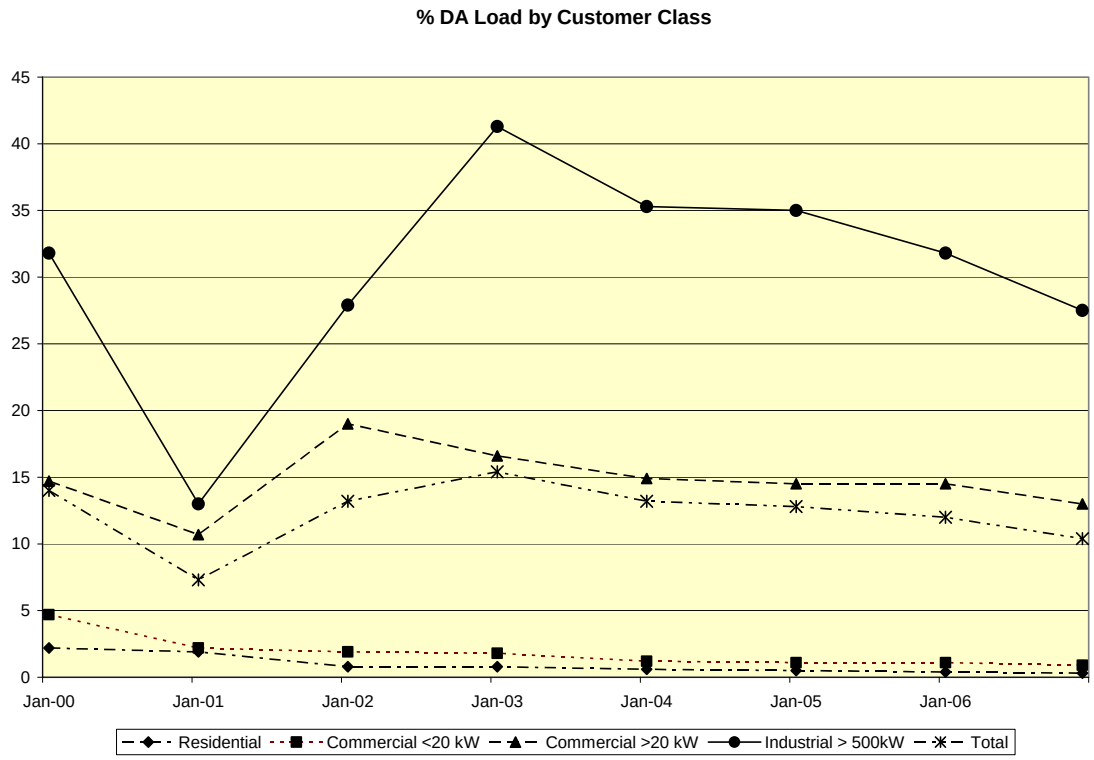
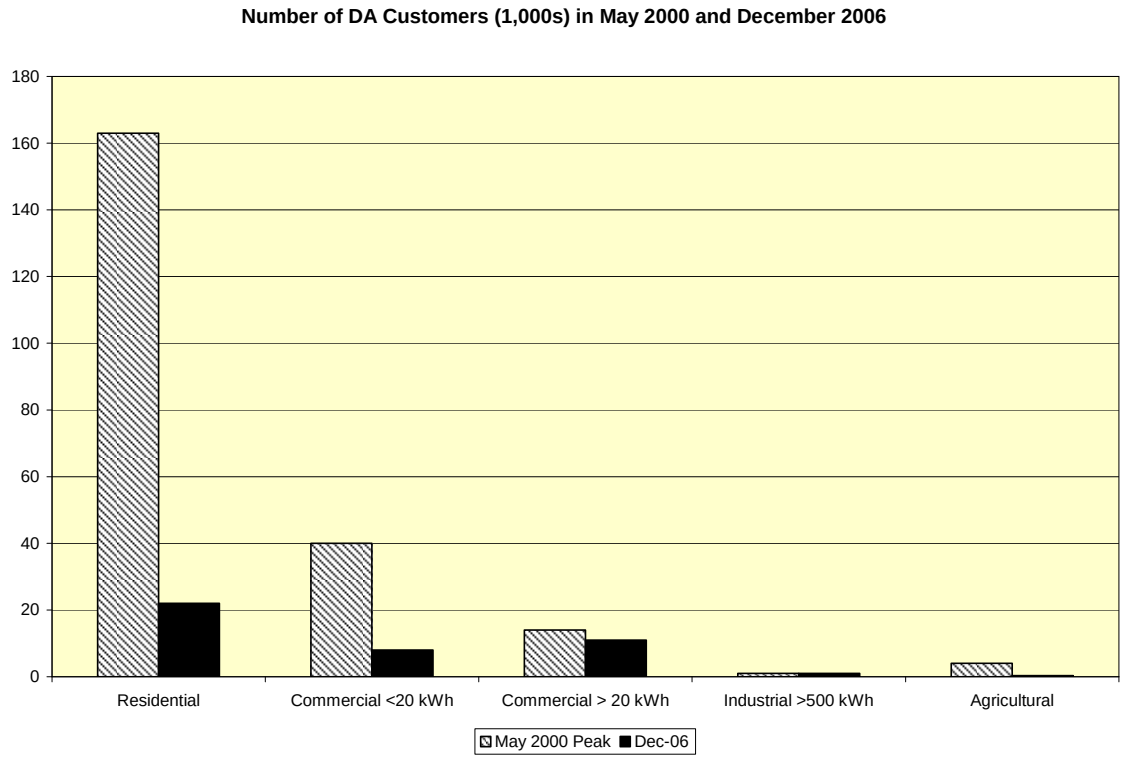
FIGURE 2



Figures 3 and 4 also compare two snapshots in time – the peak month for direct access in May 2000 and the most current month for which we have data, December 2006 – and show the changes in the number of direct access customers and direct access load by customer class. At the May 2000 peak, about 223,000 customers had elected retail choice, which represents 2.2% of the total utility customer base. Because of the higher percentage election of larger customers, however, this represented 16% of the utility load, or about 27 billion kilowatt-hours. As of December 2006, only 0.4% of

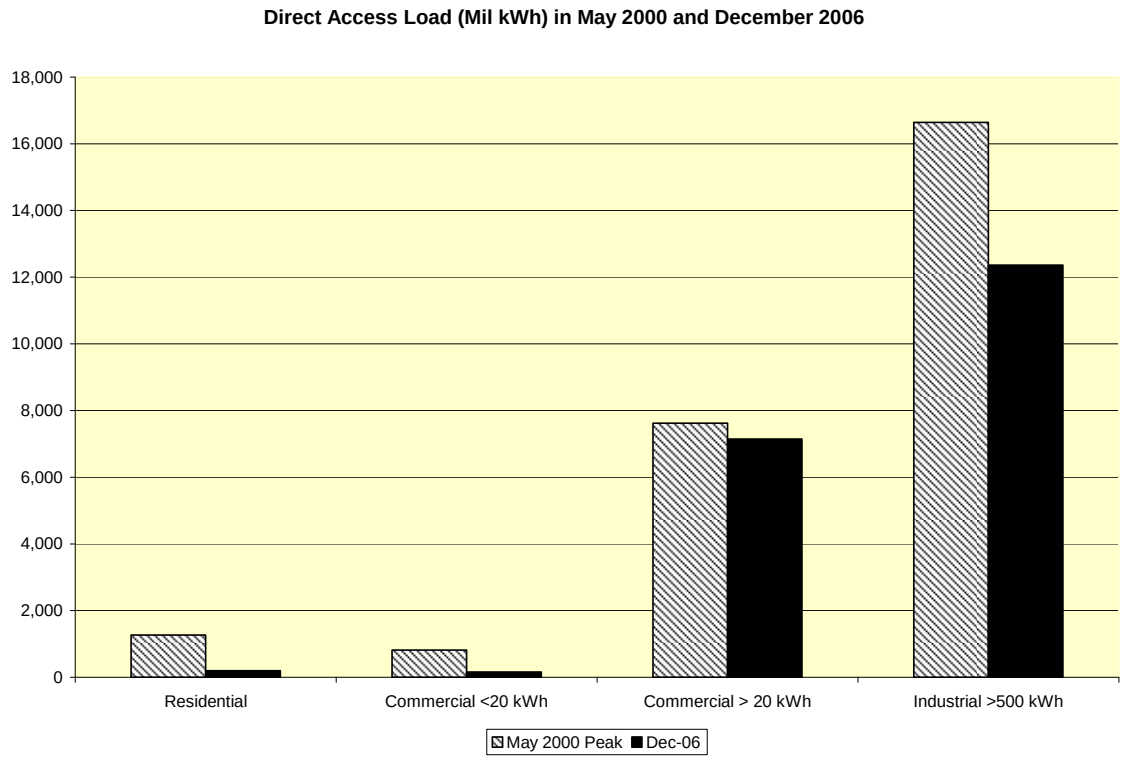
utility customers (43,000) had elected retail choice, representing about 20 billion kilowatt-hours.[7]

FIGURE 3



[7] Agricultural data are not shown in Figure 4 because they were well below 1 million kWh.

FIGURE 4



4. Reasonable Assumptions in Forecasting Future Direct Access Load

We acknowledge that forecasting is very much an art. Nevertheless, as indicated in the previous section, we can and should learn from what transpired in the past and use our best assessment of how new anticipated events will affect the future. Given what we know today, we can expect the following:

- The current suspension of the direct access market will likely end within the LTPP time period. It is reasonable to expect the suspension to be lifted by no later than 2012 and that the Commission will entertain an

earlier market re-opening as requested in P.06-12-002. Accordingly, the utility forecasts and associated scenarios should assume a market re-opening as early as 2008 but no later than 2012.

- Since 2003, certain customers who returned to bundled service were required to remain with utility service for three years.[8] This three-year period is now coming to an end and it is reasonable to assume that some percentage of those customers will re-elect direct access service. The utilities should review their current records of departing direct access customers to make a reasonable assessment of this percentage.
- We do not know if a new retail market structure will be implemented as a result of P.06-12-002, but we can expect that at least larger customers will likely be allowed to resume election of retail choice when the market re-opens.
- In April 1998, the entire market opened at once, yet load was fairly slow to migrate. The historical data show that it took seven months, until October 1998, for direct access load to exceed 10% of overall utility load (please refer to Figure 1). The direct access market never surpassed 16% of load at any time, but problems in the wholesale market first began appearing in summer of 2000. When the market re-opens, it would be reasonable to expect a slow gradual increase over time.

[8] D.03-05-034.

EXCERPT FROM AReM TESTIMONY IN CPUC R.06-07-013
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Taken together, these assumptions would form the foundation of a reasonable forecast of direct access load migration. AReM is unable to provide its own forecast of direct access load by utility service area, because utility-specific data are unavailable. Consequently, the historical comparisons provided in the previous section can only be made for the three IOUs taken together. The utilities, however, do possess such data and could have made similar evaluations and more precise comparisons to put forth a reasonable forecast of direct access load migration for their service areas. As will be discussed in the following Chapters, only SDG&E made a reasonable attempt to do so. The Commission should require the utilities to use these reasonable assumptions in adjusting their bundled and system load forecasts to reflect expected direct access load migration accurately.