October 2, 2009

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Chairman and Presiding Member
2009 Integrated Energy Policy Report Committee
California Energy Commission
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Vice Chair and Associate Member
2009 Integrated Energy Policy Report Committee
California Energy Commission
1516 Ninth Street, MS-29
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RE: 2009 Integrated Energy Policy Report -- Revised Demand Forecast
Docket No. 09-IEP-1C

Dear Chairman Byron and Vice Chair Boyd:

The Alliance for Retail Energy Markets (AReM) submits these comments on the Staff Final Report and discussions at the Committee Workshop held September 21, 2009. AReM previously submitted comments in this Docket on September 22, 2008 and July 9, 2009 requesting that the Commission's forecasts prepared for the 2009 Integrated Energy Policy Report (IEPR) include a reasonable assessment of future direct access load to be served by electric service providers (ESPs) during the 2010 to 2020 planning period.[1] As currently drafted, the Staff Final Report[2] does not include forecasts of direct access load.

Therefore, AReM again respectfully requests that the Commission prepare forecasts of direct access load for the 2010 to 2020 planning period and provide such forecasts, by year and utility, in the final results of 2009 IEPR process. Recognizing the

[1] *Letter to Chairman Byron and Vice-Chair Boyd on IEPR Scope*, Docket No. 09-IEP-1, September 22, 2008; and *Comments on 2009 IEPR Demand Forecast*, Docket No. 09-IEP-1, July 9, 2009.
[2] *California Energy Demand 2010-2020, Staff Revised Forecast*, September 2009, CEC-200-2009-012-SF.

short time remaining to prepare this forecast, AReM provides recommendations below to assist the Commission's Staff in this effort.

IEPR Direct Access Forecast Required by Public Resources Code

AReM notes that the Commission is obligated to include forecasts of direct access load in its IEPR pursuant to Public Resources Code 25302.5, which provides in relevant part:

> 25302.5. (b) The commission shall perform an assessment in the service territory of each electrical corporation of the loss or addition of load described in this section and submit the results of the assessment to the Public Utilities Commission.

The reference to "loss or addition of load" is defined in Section 25302.5 (a) (2) to include "[l]oad that will be served by an electric service provider." This code section clearly requires the Commission to "perform an assessment" as part of the IEPR process, which should reasonably include analysis of relevant factors that affect increases and decreases in direct access load during the planning period.

Direct Access Will Expand Due to New Legislation

Significantly, the California Legislature recently passed Senate Bill (SB) 695 (Kehoe), which permits expansion of direct access to non-residential consumers beginning no later than July 1, 2010 and likely earlier, as discussed below. At a minimum, the Commission's forecast must take this legislative change into account.

Direct Access Forecast Needed for Long-Term Procurement Plans

As noted in our previous comments and at the September 21st Workshop, the California Public Utilities Commission (CPUC) plans to rely on the 2009 IEPR forecasts for 2010-2020 peak demand and energy in the 2010 Long-Term Procurement Plans (LTPP) prepared by the large investor-owned utilities (IOUs). AReM understands that

the Commission Staff is currently preparing tables for the IEPR that will specify peak demand and energy consumption by year and month for each IOUs' service territory. These data will be disaggregated into demand and consumption for bundled IOU customers, direct access customers and customers of publicly-owned utilities (POUs). The CPUC will require the IOUs to use this information in preparing their long-term plans. Accordingly, it is critical that these tables include reasonable forecasts of direct access load based on the most up-to-date information available.

Reasonable forecasts of direct access load in the IEPR are essential to ensure that California's IOUs do not over-procure resources, thereby incurring costs they would later claim as "stranded" and for which they would seek compensation from departing load. This practice frustrates competitive markets by burdening direct access customers with costs that should not have been incurred had the utilities relied on accurate forecasts of their own bundled customers' projected demand. Further, there is no need for the IOUs to plan for the load of retail customers expected to be served by ESPs and, therefore, no need to plan to procure to meet such direct access load in the IOUs' 2010 LTPPs. To avoid such negative consequences, it is essential that the 2009 IEPR include reasonable forecasts of direct access load, including departing IOU load, and incorporate those forecasts into the 2009 IEPR results.

SB 695

As mentioned above, conditions regarding market re-opening for direct access have recently changed. The Legislature unanimously passed SB 695 as an urgency bill on September 8, 2009. Section 2 of the bill adds Section 365.1 to the Public Utilities Code, which permits expansion of direct access for non-residential consumers beginning in

2010 pursuant to Section 365.1 (b). AReM expects the bill to be signed by the Governor in early October. If not signed, the bill will automatically take effect on October 11, 2009.

The bill allows additional direct access up to a maximum annual kilowatt-hour limit and requires a phase-in to begin the sooner of six months after the effective date or July 1, 2010. AReM expects retail customers to be able to switch to direct access service by no later than April 10, 2010, which is six months after the effective date.[3] The CPUC will conduct a proceeding to determine: (a) the maximum allowable annual kilowatt-hour limit for each IOU's service territory; (b) the phase-in schedule that will take place over a period of "not less than three years, and not more than five years;" and (c) whether the current direct access rules require any modification.[4] The maximum allowable annual limit is to be determined based on the maximum kilowatt-hours supplied to direct access customers during any sequential 12-month period from April 1, 1998, when the retail market first opened, to the effective date of the bill (October 2009).

Proposed Forecast Approach for Direct Access Load

While certain specifics must await the outcome of the forthcoming SB 695 implementation proceeding at the CPUC, sufficient information is known for planning purposes to enable Commission Staff to quickly prepare a reasonable forecast of direct access load for the 2010 to 2020 IEPR planning period by determining the following variables:

1. Initiation date of expanded direct access;
2. Maximum allowable annual kilowatt-hour limit for each IOU;

[3] If the Governor signs the bill before its October 11th automatic effective date, the phase-in would begin sooner.
[4] SB 695, Section 365.1 (b).

3. Phase-in schedule of not less than three years and not more than five years;
4. Expected direct access participation by customer class during the planning period; and
5. Expected change in direct access load growth once the maximum allowable annual limit is reached.

AReM recommends an approach below for each of these variables, and simplifying assumptions, that will enable Commission Staff to quickly prepare reasonable estimates of expanded direct access load.

Initiation Date of Expanded Direct Access

As discussed above, SB 695 provides that direct access will be opened to new retail customers no later than six months after the effective date of the bill. For IEPR purposes, AReM recommends that the Staff assume April 1, 2010, as the re-opening date for direct access pursuant to SB 695. This means that, as of that date, retail consumers who had been prohibited since September 2001 from choosing an alternative supplier for electricity may do so. Because the IOUs' direct access enrollment procedures have remained operational during the suspension period, Commission Staff should assume a smooth transition to market re-opening.

Maximum Allowable Annual Kilowatt-Hour Limit For Each IOU

AReM does not have access to IOU-specific data. The only data publicly available is aggregated for the three IOUs' service territories and has not been reported using the same criteria required in SB 695.[5] Specifically, SB 695 requires the CPUC to determine the annual kilowatt-hour limit for each IOU based on a sequential 12-month period and the "maximum total kilowatthours supplied by all other providers to

[5] The CPUC web site posts Direct Access Activity Reports monthly at: http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/Electric+Markets/Direct+Access/thru2008.htm

distribution customers" of the IOU. As mentioned above, these precise calculations will be determined in a forthcoming CPUC proceeding. However, for the IEPR analysis, AReM recommends the Commission Staff adopt a more general guideline appropriate for planning purposes.

The Table below shows four snapshots in time: (1) August 1998, five months after market opening; (2) May 2000, the month that statewide direct access load peaked as a percentage of load; (3) February 2003, the month that direct access load peaked in kilowatt-hours served; and (4) June 2009, the most recent month for which direct access data are available.

In May 2000, slightly more than 27 million megawatt-hours (MWh) were supplied statewide to direct access customers. In February 2003 27.5 million MWh were supplied to direct access customers. For IEPR planning purposes, AReM recommends that the Commission Staff assume 30 million MWh as the statewide maximum allowable annual limit.

To disaggregate the statewide data by IOU service territory, AReM recommends that the Staff use the direct access load data collected from the IOUs in the 2009 IEPR process to determine the proportional share of the current statewide direct access load attributed to each IOU. The Staff would then apply those same percentages to the 30 million MWh maximum allowable annual limit to determine each IOU's share.

		Statewide Direct Access (DA) Load (MWh)*					
Date	% DA Load	Residential	Commercial < 20 kW	Commercial 20-500 kW	Industrial > 500kW	Agricultural	TOTAL
August 1998	8.6	435,628	435,255	3,685,218	8,982,604	109,414	13,648,119
May 2000	16.0	1,268,776	817,243	7,618,366	16,638,036	672,448	27,014,869
Feb 2003**	15.9	420,642	253,729	8,836,750	17,787,450	162,886	27,503,775
June 2009	8.5	123,161	99,599	6,237,519	9,954,153	95,586	16,510,018

* Data from CPUC Direct Access Activity Reports available on on CPUC web site at: http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/Electric+Markets/Direct+Access/thru2008.htm

** The CPUC data also include 42,319 MWh of "unknown" direct access, which is not listed separately in the table but included in the total.

Phase-In Schedule

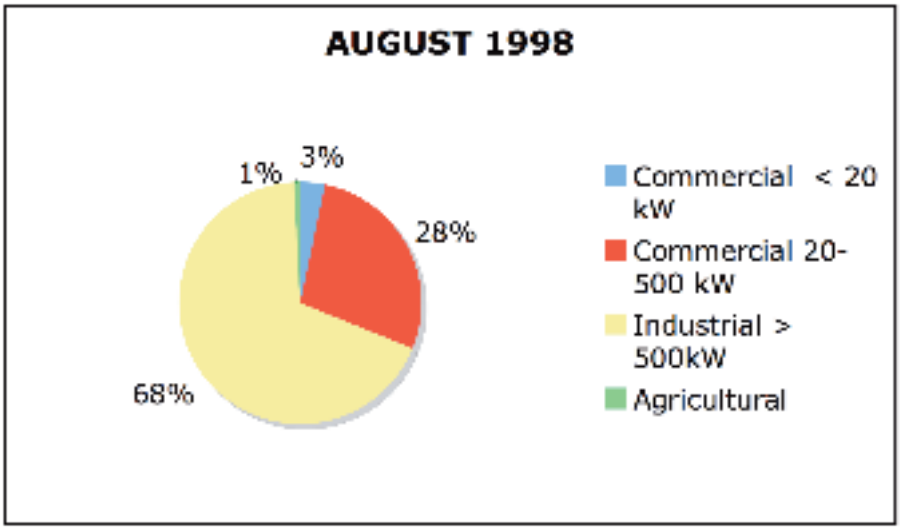
AReM recommends that the Staff assume that the maximum allowable annual limit will be reached within three years, which is the minimum phase-in permitted. This assumption is supported by historical evidence. As shown in the Table, August 1998 had direct access load of 8.6% of total IOU load, which is similar to today's level. The peak (based on percentage of load served) was reached in May 2000, only 21 months later. Also, from the time the market opened on April 1, 1998, it took a total of only 26 months to reach the 16% peak. Further, during the energy crisis and a few months before the suspension, statewide direct access load had declined to just 2.1%, but again grew to 15.9% of statewide load in just 22 months by February 2003. While the CPUC will determine the precise phase-in schedule, a reasonable assumption is that the minimum three-year period will be adopted and achieved.

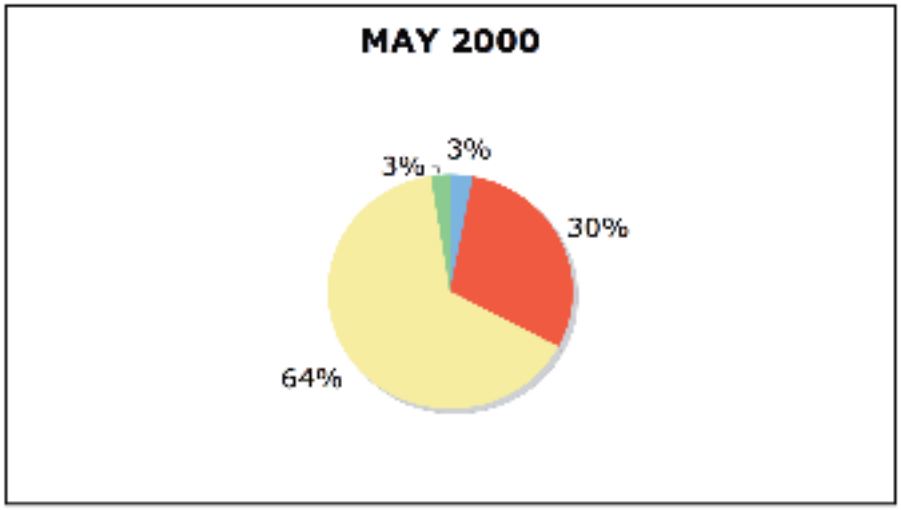
Expected Direct Access Participation by Customer Class

AReM recommends that the Staff evaluate direct access participation by customer class to provide a more accurate assessment of annual peak demand and consumption for direct access load as it grows through the planning period. SB 695 prohibits expanded direct access for residential customers, so the projected increase in direct access load would apply solely to other customer classes. While the CPUC only publishes aggregated statewide data of direct access participation by customer class (as shown in the above Table), AReM understands that the Commission has collected such customer-class data for each IOU in the 2009 IEPR process.

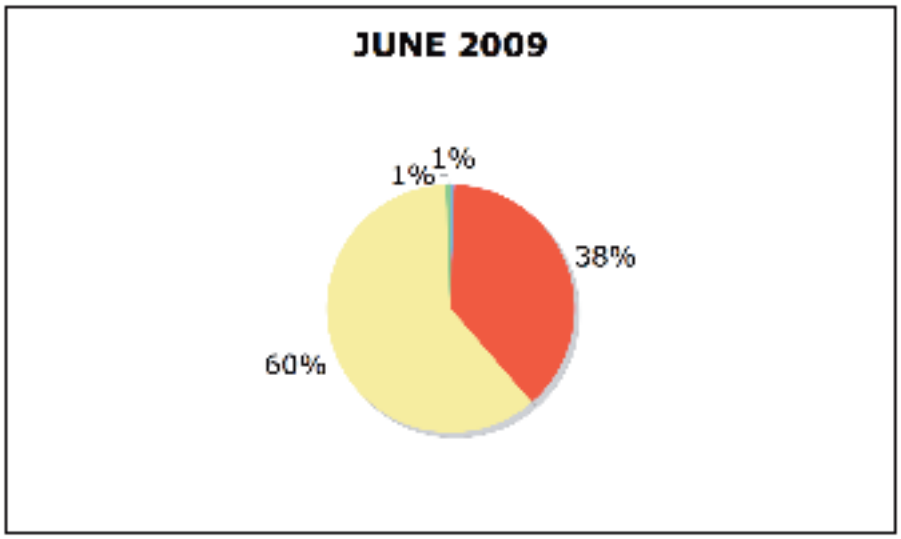
Statewide data for three months are provided in the pie charts on the next page.[6] They show that the large customer classes have comprised 94 – 98% of direct access load since 1998 (excluding residential direct access). Industrial customers with demand greater than 500 kilowatts have ranged from about 60 to 70% of annual direct access consumption and large commercial customers with demand of 20 kilowatts or more have ranged from 30 to 40%. AReM recommends that the Staff compare these data to the IOU-specific customer-class data submitted for the 2009 IEPR and determine the appropriate percentage by customer class during the 2010 to 2020 planning period.

[6] Data obtained from the CPUC's Direct Access Activity Reports and listed in the preceding Table.





Direct Access Load by Customer Class



Change in Direct Access Load Growth Once Limit Is Reached

SB 695 requires Legislative action to remove or raise the annual limit or fully re-open the direct access market to all California consumers, including residential.[7] AReM believes that: (a) consumers will continue to press for expanded retail choice; and (b) expanded retail choice will provide consumers and regulators another critical tool they need to address the challenges of meeting Assembly Bill (AB) 32.

In fact, retail choice has been a demonstrated success for all customer classes throughout the country, as documented in a number of published reports.[8] Moreover, retail competition has spurred an explosion in new product offerings and services in these states that were previously unavailable, and unthinkable, from traditional utilities. These include sustainable and carbon-neutral energy packages, numerous demand response offerings and energy efficiency services.[9] With California's focus on combating climate change, fully re-opened retail choice is necessary to help meet this challenge.

Therefore, AReM recommends that Staff assume continued expansion in direct access load beginning April 2013, with the end of the minimum phase-in period. AReM further recommends using historical averages as a guide in selecting a reasonable annual percentage increase in direct access load. AReM presented testimony in the 2006 LTPP (R.06-07-013), which included an assessment of direct access load growth since market opening in April 1998. AReM submitted this testimony as an attachment to its

[7] As shown in the above Table, 123,000 MWh of residential load is served through direct access today. At the May 2000 peak, residential customers were supplied more than one million MWh through direct access service. Indeed, ESPs were the first to offer "green" power options to residential customers, which became a key incentive for residential customers to switch to direct access service.

[8] See, for example: *Annual Baseline Assessment of Choice in Canada and the United States (ABACCUS) – Commercial and Industrial,* Energy Retailer Research Consortium, December 10, 2008; *Annual Baseline Assessment of Choice in Canada and the United States (ABACCUS) – Residential,* Energy Retailer Research Consortium, December 10, 2008; and *Embrace Electric Competition or its Déjà vu All Over Again*, The NorthBridge Group, October 2008.

September 22, 2008 comments in this docket. When the retail market first opened in April 1998, direct access load increased quickly and reached 10% by October of that year. Thereafter, and before the brief downturn during the 2000-2001 energy crisis, direct access load grew between two and four percentage points per year during the period from June 1998 through June 2000. AReM recommends that Commission Staff assume this level of annual load growth for direct access following the completion of the three-year phase-in period.

Conclusion

AReM appreciates the opportunity to offer these recommendations to enable Commission Staff to quickly prepare a reasonable forecast for direct access load as part of the 2009 IEPR. AReM would be pleased to work with Commission Staff to answer any questions or assist their efforts in any way. 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.

Respectfully,

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