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Decision 03-04-057 April 17, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.	Rulemaking 02-01-011 (Filed January 9, 2002)

OPINION GRANTING, IN PART, PETITION FOR MODIFICATION

I. Introduction

Albertson's, Inc. (Albertson's) filed a Petition to Modify Decision (D.) 02-03-055 (the "DA Suspension Implementation Decision") on October 11, 2002. Albertson's requests that the DA Suspension Implementation Decision be modified to allow direct access (DA) customers to add new locations or accounts to DA service provided there is no net increase in the amount of load served under DA as of September 21, 2001, the date that DA was suspended. This decision grants the Petition, in part, and modifies D.02-03-055 to the extent set forth below.

II. Position of Albertson's

Albertson's argues that D.02-03-055 should be modified to remove what it considers to be an unintended consequence. Under the DA Suspension Implementation Decision, customers are prohibited from adding new locations

or accounts to DA service after September 20, 2001,[1] regardless of whether they are permitted to do so under their DA contracts. DA customers are also prohibited from adding a new or additional account to DA service if doing so involves installation of additional meters or requires a new DA Service Request (DASR) to be submitted after September 20, 2001.[2] These rules were designed to prevent the addition of new DA load and the resulting shift of DWR costs to bundled service customers.[3]

Albertson's argues, however, that these rules go too far, in that they will cause DA customers to face a reduction in the amount of their load that is eligible for DA service every time they relocate or replace an existing facility. Albertson's claims that as a result, there will be an eventual "withering" of DA load, due to the closing or relocations of stores, factories or other facilities operated by DA customers. Albertson's contends that the result is not only harmful to DA customers, as well as the California economy, but also is contrary to the Commission's stated intent to allow DA to continue at pre-suspension levels. Unless the DA Suspension Implementation Decision is modified, Albertson's warns, the electric costs of Albertson's and similarly-situated customers will steadily increase as more of their load is forced to return to bundled service. In order to avoid that result, Albertson's seeks modification of the DA Suspension Implementation Decision to allow DA customers with multiple facilities to add new locations or accounts to DA service provided that there is no net increase in the amount of load served under DA.

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[1] D.02-03-055, *mimeo.*, p. 20 (Rule 5).

[2] *Id.* (Rule 6).

[3] *Id.*

Albertson's claims this modification is consistent with Legislative intent underlying the suspension of the DA program mandated in Assembly Bill (AB) 1X. Albertson's argues that the Legislature did not terminate DA, but rather, suspended the right of customers to enter into new DA arrangements as of a date to be determined by the Commission. In the Suspension Decision, the Commission focused on not having the amount of DA load increase over time in order to avoid the risk of cost shifting. Albertson's argues that by maintaining then-current levels of direct access, its proposed modification does not violate that principle.

Specifically, in its initial pleading, Albertson's requested that the following three modifications be made to the rules set forth in the DA Suspension Implementation Decision:[4]

A. Modification of Rule 5

Albertson's requested that Rule 5 as set forth in D.02-03-055 be modified to read:

> **5. ~~No customer is allowed to~~ Customers may add a new location to direct access service after September 20, 2001, <u>provided that there is no net increase in the customer load being served by direct access above that in effect as of September 20, 2001</u>.**

Albertson's also proposes the following modification to the text relating to Rule 5:

> "Consistent with the principle of attaining a standstill of direct access service, adding new locations (and thus new

[4] Proposed changes to the Implementation Decision are indicated through the use of strikeouts for deletions and underlining for additions.

load) to direct access service should be ~~prohibited~~ permitted only to the extent that the aggregate direct access load does not exceed that in effect as of September 20, 2001. As discussed above, ~~even if new locations are permitted under a direct access contract, a suspension as of September 20, 2001~~ it is reasonable and appropriate to prohibit increases in direct access load in order to balance important regulatory goals."

B. Modification of Rule 6

Albertson's requested that Rule 6 of D.02-03-055 be modified to read:

> **6. ~~No customer is allowed to~~ Customers may add a new or additional account to direct access service, provided there is no net increase in the amount of customer load being served by direct access as of September 20, 2001 ~~if that account involves installation of additional meters after September 20, 2001 or would require a new DASR to be submitted after September 20, 2001~~.**

Albertson's also proposed the following modification to the text relating to Rule 6:

> "Again, new or additional accounts or meters that cause an increase in the amount of direct access load as of September 21, 2001 would violate the standstill principle by adding new load, ~~and a prospective suspension is appropriate~~. In D.01-10-036, the Commission reaffirmed 'unless the Commission states otherwise in a subsequent decision' that utilities must process DASRs relating to pre-September 21,[5] 2001 direct access contracts or agreements. Rules 5 and 6 constitute such statement. However, new DASRs shall be processed by the utilities only if in accordance with the clarification of the standstill principle

[5] The original language in Rule 6 inadvertently referenced a pre-September 20, 2001 date, but should have referenced a pre-September 21, 2001 date, as corrected here.

> described above or if necessary to implement another provision herein (e.g., assignment, new customer name).
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> "Rule should not be construed to prevent, after September 20, 2001, the installation of meters or meter-reading equipment as necessary to initiate direct access service for eligible customers, or the replacement or upgrade of existing meters for existing direct access customers. ~~But again: no customer shall be allowed to add any new account that is not on the October 5th or November 1st lists reference above.~~"

C. Modification of Discussion Section of Rule 1

Albertson's proposed that the final sentence of the discussion section of Rule 1 be modified to read:

> "We will allow additions to the October 5th and November 1st lists [footnote omitted] for customers with a valid direct access contract as of September 20, 2001 (~~but not for~~ including additional meters, accounts or sites as provided in Rules 5 and 6 below), using the AReM process, along with an affidavit signed by both the Energy Service Provider (ESP) and the customer stating under penalty of perjury that the contract date is correct."

III. Positions of Parties in Response to the Petition

Comments on Albertson's petition were filed by multiple parties on November 8, 2002. Various parties representing DA interests, including 7-Eleven, Inc., Strategic Energy, the University of California/California State University (UC/CSU), and the Alliance for Retail Energy Markets and the Western Power Trading Forum (AReM/WPTF), support the petition.

Strategic Energy asked for additional modifications to remove the Rule 7 prohibition against large commercial and industrial customers moving between

geographic locations within the utility service territory while still remaining on DA. UC/CSU also support the Petition. but request modification of Rule 5 to reflect the language in Finding of Fact 12 which states: "It is reasonable to interpret a September 20, 2001 date for suspension of direct access to mean that the level of direct access load as of that date (irrespective of whether power had yet flowed under any direct access contract) should not be allowed to increase, *apart from normal load fluctuations*." (Emphasis added.)

Comments were also filed by the three investor-owned utilities: Pacific Gas & Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E).[6]

PG&E opposes the Petition. PG&E argues that the proposed revisions, if read literally, will swallow many of the rules or "criteria" articulated in D.02-03-055 and potentially result in a growth in DA load which would be impossible to manage or monitor. Nevertheless, PG&E does believe that a narrow but reasonable expansion of the current rules can be crafted to allow for normal business upgrades, remodeling, or relocations for specific DA accounts, from allowable levels as of the September 21, 2001 suspension date. PG&E believes these changes would be justified on fairness grounds but are not compelled by any Commission determination that DA load is a guarantee.

Toward this end, PG&E recommends that a Rule 22 Policy Working Group meeting be convened to develop such rule changes, including all details and protocols necessary to implement any subsequently approved modifications. PG&E proposes that the Working Group consider rule changes to permit a

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[6] SDG&E also requested, and was granted leave, to file a reply to parties' responses. SDG&E's reply was filed on November 19, 2002.

particular customer's facilities to be replaced and/or relocated and remain on DA service on a "one-for-one" or "account-by-account" basis to ensure consistency with the rationale of D.02-03-055. In other words, the intent would be to design rules to prevent any net increase in the amount of total DA load for each existing DA customer.

PG&E proposes that the workshop address at least the following issues: (1) scope of replacement or relocation permitted including geographic limitations, if any, (2) design of administrative procedures for requesting a DA replacement account, (3) development of a method for verifying that requirements are met (e.g., the development of a customer/ESP affidavit form) and, (4) coverage of potential interaction and harmonization with other DA suspension rules.

SCE also objects to the Petition, arguing that there is no practical way to easily determine and set an aggregate DA load in effect as of September 20, 2001, or that the utilities could assure that an aggregate cap is not exceeded on a day to day basis. Every day, new DA load is added to the system through both natural increases in load by existing DA customers and the addition of new DA accounts (within the limits of the suspension rules). SCE notes that California as a whole has experienced a DA load increase from 13.9 billion kWh in September 2001 to 22.4 billion kWh in August 2002.

Thus, SCE argues, the Commission cannot realistically cap the amount of eligible DA load at September 20, 2001 levels. Without a true cap and the ability to monitor on a real time basis the addition and deletion of DA load, SCE argues, it is impractical to implement a rule that allows for the addition of DA accounts if

"there is no net increase in the amount of customer load being served by direct access as of September 20, 2001."[7] SCE claims that there is no way to monitor DA activity across utility boundaries to ensure compliance with a cap, either on a state-wide, a utility-specific or customer-specific basis. As a result, SCE claims that the DA suspension rules would be rendered unenforceable, and the utilities would be placed in the position of having to accept all DASRs to add new accounts to DA service.

SDG&E agrees in principle with modification of D.02-03-055 to allow existing DA customers to do such things as upgrade their facilities due to a retrofit, relocate due to a lost lease, or relocate to a more energy efficient building, provided that there is no net increase in the customer's load. SDG&E is concerned, however, that Albertson's proposed language could be construed as a request that load could be aggregated on a widespread—even statewide—basis, provided that there is no net increase in total DA load. SDG&E argues that such a broad formulation conceivably could allow one DA customer's load to increase substantially provided that another's DA load decreases substantially. SDG&E does not consider such aggregation of DA load to comport with the Commission's "Standstill Principle."

SDG&E thus proposes alternative formulations of the rules and a process to permit existing DA customers to replace or relocate provided the changes occur on a per-account basis, rather than on an aggregated customer, ESP, utility-wide, or even statewide basis. SDG&E proposes that a particular customer be permitted to replace and/or relocate facilities only on a "one-for-one" or

[7] See Petition to Modify at p. 5 (Proposed Rule 6).

"account-by-account" basis to ensure consistency with the rationale of D.02-03-055. Thus, no net increase would be permitted in the amount of total DA load for each existing DA customer.

SDG&E also expresses concern that the utility not be put in the position of having to monitor whether there is a net increase in DA load, whether on a customer-specific basis or not. Thus, SDG&E proposes that both the DA customer and its ESP sign a form (yet to be designed) that would state, under penalty of perjury, that the DA customer's load will not increase by virtue of the relocation or replacement of facilities.

With these concerns in mind, SDG&E proposed the following Rule modifications to permit DA customers to replace or relocate their facilities on a customer-specific basis:

A. Rule 5 Revision:

> **A direct access ~~No~~ customer may ~~is allowed to~~ relocate to a new location or rebuild at that customer's existing location provided that there is no net increase in that customer's load[8] being served by direct access above that in effect as of ~~to direct access service after~~ September 20, 2001.**

As modified, SDG&E believes this Rule permits seamless moves, as was permitted by Rule 7, and incorporates the no-new-load concept on a per-customer basis.

B. Rule 6 Revision:

> **Unless expressly authorized by Rule 5, above, n~~N~~o customer is allowed to add a new or additional account to**

[8] Customer or customer load as used by SDG&E denotes the specific DA account/meter, not the customer's aggregated load from all the customer's locations.

direct access service if that account involves installation of additional meters after September 20, 2001 or would require a new DASR to be submitted after September 20, 2001.

C. Rule 7 Deletion:

In view of its proposed revisions to Rule 5, SDG&E proposes to delete Rule 7 as redundant.

~~7. Direct Access Residential and small commercial customers may move from one address to another address to another within the UDC service area and continue to be served by the ESP serving them prior to the move.~~

IV. Third-Round Replies

Albertson's was permitted to file a third-round reply in response to comments. SDG&E was also permitted to file a third-round reply. Both replies were filed on November 19, 2002.

Albertson's argues that the objections of PG&E and SCE can be accommodated by adopting the revisions suggested by SDG&E. In general, Albertson's agrees with the SDG&E changes to the rules, except as noted below.[9] SDG&E proposed changes to the suspension rules, but did not indicate any modifications to the explanatory language relating to each rule, as contained in the Implementation Decision. Albertson's continues to recommend that the explanatory language in the Implementation Decision relating to each of the modified rules also should be revised in order to be internally consistent.

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[9] Using SDG&E's proposed modifications as a starting point, Albertson's additional proposed changes are indicated through the use of strikeouts for deletions and underlining for additions.

Albertson's disagrees with SDG&E's proposal that customer load as used in the Implementation Decision should be read as denoting the specific DA account/meter, rather than the customer's aggregated load from all of the customer's locations within a utility's service territory. Albertson's claims that such a restriction is unnecessary and would be more complicated to implement.

Therefore, in its third-round reply, Albertson's proposed reformulations of SDG&E's modifications to replace the language proposed in Albertson's original petition, as set forth below:

(a) Rule 5 Proposed Modifications

5. A direct access customer may relocate to a new location <u>within its existing service territory</u> or rebuild at that customer's existing location provided that there is no net increase in that customer's load [footnote deleted] <u>within that existing service territory</u> being served by direct access <u>above in excess of</u> that in effect as of September 20, 2001.

Consistent with the principle of attaining a standstill of direct access service, adding new locations (and thus new load) to direct access service <u>should be</u> ~~prohibited~~ <u>permitted only to the extent that the customer- specific aggregate direct access load within the customer's existing service territory does not exceed that in effect as of September 20, 2001</u>. As discussed above, ~~even if new locations are permitted under a direct access contract, a suspension as of September 20, 2001~~ <u>it</u> is reasonable and appropriate to <u>prohibit increases in direct access load in order to</u> balance important regulatory goals.

(b) Rule 6 Proposed Modifications

6. Unless expressly authorized by Rule 5, above, no customer is allowed to add a new or additional account to direct access service if that account involves installation of additional meters after September 20, 2001 or would require a new DASR to be submitted after September 20, 2001.

~~Again~~Except as provided in Rule 5 above, new or additional accounts or meters that cause an increase in the amount of direct access load as of September 20, 2001 would violate the standstill principle by adding new load~~, and a prospective suspension is appropriate~~. In D.01-10-036, the Commission reaffirmed, "unless the Commission states otherwise in a subsequent decision" that utilities must process DASRs relating to pre-September 21, 2001[10] direct access contracts or agreements. Rules 5 and 6 constitute such statement. However, new DASRs shall be processed by the utilities only if in accordance with the clarification of the standstill principle described above or if necessary to implement another provision herein (e.g., assignment, new customer name).

Rule 6 should not be construed to prevent, after September 20, 2001, the installation of meters or meter-reading equipment as necessary to initiate direct access service for eligible customers, or the replacement or upgrade of existing meters for existing direct access customers. ~~But again: no customer shall be allowed to add any new account that is not on the October 5th or November 1st lists reference above.~~

(c) Rule 7 Deletion

~~**7. Direct Access Residential and small commercial customers may move from one address to another address to another within the UDC service area and continue to be served by the ESP serving them prior to the move.**~~

[no explanatory wording required]

Albertson's agrees with the SDG&E recommendation that Rule 7 be deleted, as it is now redundant of Revised Rule 5.

(d) Text Modification Relating to Rule 1

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[10] See footnote on page 4.

Finally, Albertson's continues to recommend that the final sentence of the discussion section of Rule 1 should be modified to read as follows:

> We will allow additions to the October 5th and November 1st lists [footnote omitted] for customers with a valid direct access contract as of September 20, 2001 (~~but not for~~ including additional meters, accounts or sites as provided in Rules 5 and 6 below), using the AReM process, along with an affidavit signed by both the ESP and the customer stating under penalty of perjury that the contract date is correct and/or that the amount of customer-specific aggregate direct access load within the customer's existing service territory that is related to the new meters, accounts or sites does not exceed that in effect as of September 20, 2001.

Albertson's additional wording as suggested above, is in accordance with the SDG&E recommendation that, "both the DA customer and its ESP sign a simple form (yet to be designed) that would state, under penalty of perjury, that the DA customer's load will not increase by virtue of the relocation or replacement of facilities."[11]

V. Discussion

We acknowledge the concerns raised by Albertson's regarding the detrimental effects of the prohibitions set forth in D.02-03-055 on a DA customer's ability to transfer or rebuild facilities while continuing under DA. In the interests of fairness, we agree that modifications to D.02-03-055 are appropriate in order to account for normal changes in business operations, provided that there be no resulting net increase in each business customer's DA load. We shall therefore modify the rules in D.02-03-055 to permit DA customers to relocate or replace existing facilities within a given service territory without

losing DA service in the process. While we believe the language originally proposed by Albertson's to implement such modifications was overly broad and impractical, the reformulated language offered by SDG&E generally provides a more acceptable alternative to accomplish the essential objective sought by Albertson's. SDG&E's proposed modifications reasonably address the concerns raised by SCE in its opposition to the Petition for Modification. We therefore adopt modifications to the relevant rules contained in D.02-03-055 based largely on SDG&E's proposed reformulations, as set forth in Appendix A of this order. We shall also incorporate related modifications to the text accompanying the rules.

Based on the reformulated modifications we adopt, DA load may not be transferred between customers, (except for DA contract assignment, as provided for in D.02-03-055). A DA customer may place additional facilities on DA service only to the extent that the customer had already closed or relocated previously existing facilities served by an equivalent DA load based on September 20, 2001 demand levels. We find these reformulations reasonable. The modifications that we adopt shall thus apply on a customer-specific and utility-specific basis.

Accordingly, the modifications we adopt maintain the intent of AB 1X with respect to the suspension of DA as of September 20, 2001, while preserving then-existing DA load. In implementing this provision of AB 1X in D.02-03-055, we expressly stated our intent to allow DA to continue at pre-suspension levels, thus ensuring the continued viability of the DA market, while preventing growth in DA load that would result in costs being shifted to bundled service customers.

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[11] SDG&E comments at p. 3.

The modifications we adopt here merely allow for the maintenance of then-current levels of DA, and as such do not violate the Standstill Principle.

Only replacements or relocations of facilities shall be eligible for DA treatment, as opposed to any new facilities that cause a net increase in DA load above September 20, 2001 suspension levels. We shall require that there be a correspondence between a new facility for which DA service is provided and a closing facility (or facilities) that it replaces. Albertson's objects to SDG&E's proposed language implementing this recommendation as impractical since it would presumably require an existing account/meter to be transferred from one location to another within the same service territory.

We agree with Albertson's that billing confusion might result for both the customer and its ESP if the exact account and/or meter had to be literally transferred from one location to another. We shall not require that the same account or meter from the discontinued location literally be moved to the new facility. Albertson's expresses concern that allowing replacement only on a facility-for-facility basis could be problematic if the new location's load were either slightly smaller or slightly larger than its predecessor. We shall address this concern by permitting the DA customer to calculate the net change in DA load from all replacements and relocations in facilities within its utility-specific service territory. In this manner, if individual replacement facilities are slightly larger than their predecessor's, those DA loads may be netted against the DA load from other replacement facilities that may be slightly smaller than their predecessor's (or vice versa). The net effect of the changes in DA load for all such facilities that are relocated or replaced shall not exceed the customer's aggregate DA load in effect for those facilities as of the September 20, 2001 suspension date.

On the other hand, appropriate documentation is warranted to verify that DA load associated with a new location or facility is in fact replacing DA load from one or more previous facilities that are no longer in service. The DA customer should not be permitted simply to add new DA load at a new location merely to make up for slower business and reduced electricity consumption at other facilities that continue to operate. Thus, the DA customer shall be required to keep appropriate records of discontinued or relocated facilities, including applicable meter and account number(s), and the associated DA load. The DA customer shall also keep records of each new facility that represents a replacement or relocation of the predecessor facility subject to DA service. The Commission reserves the option to audit any such records as deemed appropriate. To the extent there are variations between the load at the replacement locations and discontinued load at the closed locations due to size differences, DA service will be authorized as long as the net effect on DA load from all facilities that have been relocated or replaced does not exceed the customer's load for those facilities eligible to be served by DA as of September 20, 2001.

We shall grant the proposal of SDG&E to delete Rule 7, as redundant, in view of the modifications we adopt to Rule 5. As modified, Rule 5 permits seamless moves, as was permitted by Rule 7, and incorporates the no new load concept on a per customer basis. The proposal to apply the seamless move concept to all customers, rather than simply to residential and small commercial is a simple and convenient way of addressing this issue.

We shall also adopt language to incorporate the requirement proposed by SDG&E calling for the DA customer and its ESP to sign an affidavit that would state, under penalty of perjury, that the DA customer's load will not increase by

virtue of the relocation or replacement of facilities. This requirement appropriately places the legal responsibility on the DA customer to ensure that any relocation or replacement of facilities subject to DA service is in compliance with the suspension requirements of D.02-03-055 as modified by today's order.

SDG&E notes that the form of the affidavit has yet to be designed. PG&E believes that a Rule 22 meeting is necessary to agree on the form of the affidavit. We decline to grant the proposal of PG&E to convene Rule 22 Working Group workshops prior to implementing the modifications we adopt herein. We conclude that such a workshop could lead to an unnecessary expansion of the issues to be considered, and delay the implementation of the specific modifications at issue here. The design of an affidavit form is a sufficiently straightforward matter so that a Rule 22 workshop is not required. The utility and the DA customers should be able to mutually agree on the form of affidavit that incorporates the intent of the restrictions adopted in this order.

As precautionary measure, however, we shall leave open the option for the utilities, interested customer groups, or other parties to informally ask the Director of the Commission's Energy Division to convene a Rule 22 Working Group meeting to the extent they believe that subsequent implementation issues relating to this order require such a process. We shall leave it to the discretion of the Energy Division Director to determine if such a Rule 22 Working Group meeting is warranted.

There is no need to expressly incorporate modifications as proposed by UC/CSU, regarding limitations on DA load increases "*apart from normal load fluctuations*." As noted by SDG&E, this language is already part of the Commission's means of implementing DA suspension, and existing rules already accommodate daily and seasonal load fluctuations. The modifications that are

the subject of this order do not change this principle, and there is no need to add such language to the adopted modifications merely for the sake of repetition.

In its comments on the Draft Decision, SCE makes the observation that if Albertson's Petition were to be granted, the effective date of the Direct Access Service Request (DASR) for a customer's replacement service account would not be the same as the service account it replaced. SCE thus infers that if an account that is considered as applicable to "continuous DA service" (as defined in D.02-11-022)[12] is closed and relocated, the new service account would no longer qualify as "continuous" and would thus become subject to DWR charges. We conclude that it would be unfair and contrary to the intent of D. 02-11-022 to change a customer's status as "continuous" DA merely because of a relocation or replacement of facilities pursuant to the restrictions of this order. Such relocation would not cause any cost shifting, and thus does not entail any new obligation to pay DWR charges. Accordingly, to prevent any such inference from being drawn, we hereby clarify that for purposes of determining DA CRS liability, the DASR effective date for replacement facilities shall be the same as the DASR effective date of the replaced account. In this way, the replacement of facilities will not impact a DA customer's status as "continuous" for purposes of applying the February 1, 2001 cut off date.

VI. Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of AB 1X (Chaper 4 of the Statutes of 2001-02 First Extraordinary Session).

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[12] In D.02-11-022, "continuous" DA customers were defined as those taking DA service continuously prior to February 1, 2001. Such customers were not required to pay the DWR bond or power charge component of the DA CRS.

Therefore, Public Utilities Code Section 1731(c) (applications for rehearing are due within 10 days after the date issuance of the order or decision) and Public Utilities Code Section 1768 (procedures applicable to judicial review) are applicable.

VII. Comments on the Draft Decision

The Draft Decision of Administrative Law Judge Thomas R. Pulsifer was filed and served on parties on March 4, 2003. Comments on the Draft Decision were filed on March 31, 2003. We have reviewed parties' comments and taken them into account, as appropriate in finalizing this order.

VIII. Assignment of Proceeding

Carl W. Wood and Geoffrey F. Brown are the Assigned Commissioners and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Customers are prohibited from adding new locations or accounts to DA service after September 20, 2001 under the DA Suspension Implementation Decision, regardless of whether they have such rights under their DA contracts.

2. DA customers are prohibited from adding new or additional accounts to DA service if doing so involves installation of additional meters or requires a new DA Service Request (DASR) to be submitted after September 20, 2001.

3. The existing prohibitions against adding new DA load due to the closing or relocation of stores, factories or other facilities operated by DA customers will lead to a continual reduction in the amount of load that is eligible for DA service every time the customer relocates or replaces an existing facility.

4. Albertson's proposed modification of the DA Suspension Implementation Decision would allow multi-facility DA customers to add new locations or accounts to their DA service provided that there is no net increase in the aggregate amount of that customer's load served under DA within each utility service territory.

5. The risk that the DA load suspension levels might be exceeded under Albertson's proposed modification can be addressed by adding restrictions requiring a customer to obtain DA service only for new facilities that represent a replacement and/or relocation of existing facilities only on a "one-for-one" or "account-by-account" basis.

6. Determining whether DA load was within existing limits exclusively on a facility-for-facility basis could be problematical if the new location's load was either slightly smaller or slightly larger than its predecessor.

7. By permitting the DA customer to calculate the net change in DA load from all replacements and relocations in facilities within its utility-specific service territory, individual variations between old and replacement facilities can be accommodated, as long as there is no increase in the total net DA load between all of the original and their replacement facilities.

8. A Rule 22 Working Group meeting is not required to implement the rule revisions adopted in this order.

Conclusions of Law

1. In implementing AB 1X, the Commission's intent was to allow DA to continue at pre-suspension levels, thus ensuring the continued viability of the DA market, while preventing growth in DA load that would result in costs being shifted to bundled service customers.

2. The modifications sought by Albertson's would not violate the DA suspension provisions of D.02-03-055 since no net increase in DA load beyond the pre-suspension levels would result.

3. Each DA customer seeking to add new facilities or accounts should be required to provide verification in the form of a sworn affidavit by a responsible

company officer affirming that such additions do not result in any net increase in DA load beyond pre-suspension levels as required by D.02-03-055.

4. Appropriate documentation should be maintained by the DA customer to provide verification that aggregate changes in DA load associated with new locations or facilities is in fact replacing or relocating DA load from previous facilities that are no longer in service.

5. The DA customer may not add new DA load where there is no offsetting reduction in load due to relocated or replaced facilities within the utility's service territory, or merely to make up for reduced DA consumption at its other facilities that continue to operate.

6. The modifications to D.02-03-055 as adopted below merely allow for the maintenance of pre-suspension levels of DA load in connection with replacements or relocations of a business customer's facilities in the normal course of operations, and as such do not violate the standstill principle articulated in D.02-03-055.

7. A Rule 22 Working Group meeting need not be scheduled at this time as a basis for implementing the rule modifications adopted herein. As precautionary measure, however, the utilities, interested customer groups, or other parties may informally ask the Director of the Commission's Energy Division to convene a Rule 22 Working Group meeting to the extent they believe that subsequent implementation issues relating to this order require such a process. The Energy Division Director will have the option to determine if such a Rule 22 Working Group meeting is warranted.

8. The limitations on DA eligibility of load from replacement or relocation of facilities as adopted in the modifications herein to D.02-03-055 are intended to

prohibit load changes associated with normal usage variations for accounts at other locations that are eligible for DA as of September 20, 2001.

9. The Petition to Modify D.02-03-055 as filed by Albertson's should be granted, in part, to the extent authorized in the ordering paragraphs below.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision (D.) 02-03-055, as filed by Albertson's, Inc. is hereby granted, in part, with the reformulated language applicable to the rules and related explanatory text, to the extent set forth in Appendix A of this order.

2. D.02-03-055 is hereby modified to incorporate the revisions to the designated rules and associated text, as set forth in Appendix A of this order. Deletions are shown with strike-outs and additions are shown with underlinings.

This order is effective today.

Dated April 17, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I will file a dissent.

/s/ CARL W. WOOD
Commissioner

I dissent.

/s/ LORETTA M. LYNCH

Commissioner

APPENDIX A
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Adopted Modifications to Decision (D.) 02-03-055

The following modifications to D.02-03-055 are hereby adopted.

Rule 5, including the related discussion of it, is modified as follows:

A direct access ~~No~~ customer may ~~is allowed to~~ relocate to a new location only on a "one-for-one" or "account-by-account" basis within its existing service territory, or rebuild at that customers existing location provided: (1) the replacement or relocation is in the normal course of business, and (2) that there is no net increase in that customer's total direct access load from all such facilities that were eligible to be ~~being~~ served by direct access within its utility-specific service territory between all of the original ~~from all such~~ facilities that were ~~being~~ eligible to be served by direct access ~~above that in effect~~ as of September 20, 2001 and the replacement or relocation facilities. ~~above that in effect as of to direct access service after September 20, 2001.~~

Consistent with the principle of attaining a standstill of direct access service, adding new locations (and thus new load) to direct access service should be ~~prohibited~~ permitted only to the extent that the customer- specific aggregate direct access load at those facilities that were replaced or relocated within the customer's existing service territory does not exceed that in effect for the old ~~those~~ facilities as of September 20, 2001. As discussed above, ~~even if new locations are permitted under a direct access contract, a suspension as of September 20, 2001~~ it is reasonable and appropriate to prohibit increases in direct access load in order to balance important regulatory goals. Rule 5 should not be construed, however, to prohibit load changes associated with normal usage variations on direct access accounts in effect as of September 20, 2001.

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Rule 6, including the underlying discussion of it, is modified as follows:

Unless expressly authorized by Rule 5, above, n~~No~~ customer is allowed to add a new or additional account to direct access service if that account involves installation of additional meters after September 20, 2001 or would require a new DASR to be submitted after September 20, 2001.

~~Again~~Except as provided in Rule 5 above, new or additional accounts or meters that cause an increase in the amount of direct access load as of September 20, 2001 would violate the standstill principle by adding new load~~, and a prospective suspension is appropriate~~. In D.01-10-036, the Commission reaffirmed, "unless the Commission states otherwise in a subsequent decision" that utilities must process DASRs relating to pre-September 20, 2001 direct access contracts or agreements. Rules 5 and 6 constitute such statement. However, new DASRs shall be processed by the utilities only if in accordance with the clarification of the standstill principle described above or if necessary to implement another provision herein (e.g., assignment, new customer name).

Rule 6 should not be construed to prevent, after September 20, 2001, the installation of meters or meter-reading equipment as necessary to initiate direct access service for eligible customers, or the replacement or upgrade of existing meters for existing direct access customers. ~~But again: no customer shall be allowed to add any new account that is not on the October 5th or November 1st lists reference above.~~

Rule 7 shall be deleted, as it is now redundant of Revised Rule 5.

~~7. Direct Access Residential and small commercial customers may move from one address to another address to another within the UDC service area and continue to be served by the ESP serving them prior to the move.~~

[no explanatory wording required]

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The final sentence of the discussion section of Rule 1 is modified as follows:

> We will allow additions to the October 5th and November 1st lists [footnote omitted] for customers with a valid direct access contract as of September 20, 2001 (~~but not for~~ including additional meters, accounts or sites as provided in Rules 5 and 6 below), using the AReM process, along with an affidavit signed by both the ESP and the customer stating under penalty of perjury that the contract date is correct and/or that the amount of customer-specific aggregate direct access load for facilities that have been relocated or replaced within the customer's existing service territory that is related to the new meters, accounts or sites does not exceed that in effect as of September 20, 2001. and that the DA customer's load will not increase by virtue of such relocation or replacement of facilities.

(END OF APPENDIX A)

Commissioner Wood's Dissent to D.03-04-057
Adopting Albertson's Petition to modify D.02-03-055

I dissent from D.03-04-057 adopting Albertson's Petition to Modify D.02-03-055, because Albertson's has failed to explain how the rules adopted in our DA Suspension Implementation Decision lack clarity. The decision we adopt today fails to provide the regulatory consistency we need as we proceed to develop a full record in the DA proceeding and as the utilities develop and refine their long-term procurement plans. Further, Albertson's claim that the rules adopted in D.02-03-055 would have the unintended consequence of reducing direct access is false and without basis. I am further concerned that adopting the modifications sought by Albertson's would simply have the effect of further diluting the "Standby Principle" adopted by this Commission to ensure that the level of direct access does not increase over the level as of September 20, 2001.

The Commission voted to implement the provision of AB1x which suspends as of September 20, 2001, the right of retail customers the ability to acquire service from alternate service providers. As part of adopting the September 20th suspension date the Commission stated that "…it is critical that the Commission adhere to a stable set of rules which affect customers, ESPs, and the utilities. The Commission has an obligation to employ regulatory consistency…" Guided by the need to alleviate cost-shifting onto bundled customers, again the Commission adopted a set of 12 rules which limits additional load moving to direct access and prevents add-ons of new load. Recognizing that we would be proceeding to calculate and impose a Direct Access Customer Responsibility Surcharge, the

Commission adopted a "Standstill Principle" to ensure that the level of direct access did not increase above that as of September 20, 2001. In D.02-03-055, the Commission articulated a general "Standstill Principle" pursuant to which it would provide some flexibility for DA customers to preserve their DA service while assuring that over-all DA load would not increase, consistent with the statue. That decision proposed to adopt a cost responsibility surcharge applicable to the bills of existing DA customers, to accomplish the objectives of assuring DWR cost recovery and to prevent cost shifting among customers that could result from migration of customers to DA after the bulk of the costs had been incurred by the state through the long-term power contracts or bonds.

While we understand the apparent concern raised by Albertson's, we are not persuaded that the rules set forth in D.02-03-055 require further clarification or modification. D.02-03-055 is clear in its intent to prohibit the addition of new locations or new accounts. This Commission's obligation is to fulfill its statutory responsibilities. The law does not direct this Commission to ensure that direct access load either increases or decreases. The Commission, however, is directed to ensure that customers' ability to "acquire service form other providers shall be suspended until the department no longer supplies power…." This provision in AB 1X was needed to ensure the broadest base upon which to build the repayment structure required to meet the DWR obligations and to prevent further cost shifts. This Commission stated its intentions quite clearly when it noted that the standstill concept adopted in D.02-03-055 "…is consistent with our policy reasons for imposing direct access surcharges or exits (sic) fees, in lieu of an earlier suspension date, as an

appropriate way to *alleviate the significant cost-shifting* of DWR costs on to bundled service customers."[1] (emphasis added)

A quick review of the utilities' DASR filings to the Commission reveals that the total level of direct access load has steadily increased since September, 2001. Not surprisingly, the largest increases have occurred within the large commercial, industrial and agricultural customers. Indeed, the total level of direct access load amongst large commercial and agricultural customers has increased by 60% from the September 20th levels. Industrial customers' direct access load has increased approximately 25% but represents approximately 3,500 GWh – the largest overall increase in load. Further, the actual number of direct access customers has continued to increase over the September 20, 2001, levels. Table 1 below shows the number of direct access customers for the Large Commercial, Industrial, and Agricultural customer classes for October 20, 2001, and February 28, 2003. These numbers, obtained from the utilities own DASR filings to the Commission's Energy Division, shows that despite the "Standstill Principle," direct access load continues to increase.

[1] D.02-03-055, p.18

Table 1 Direct Access Continues To Increase				
	October 2001		February 2003	
	Total # of Direct Access Customers	Total Direct Access Load (GWh)	Total # of Direct Access Customers	Total Direct Access Load (GWh)
Large Commercial	8,566	5,526	10,603	8,837
Industrial	908	14,312	1,139	17,787
Agricultural	506	100	325	163

Albertson's fails to explain how the rules established in D.02-03-055 lack the clarity it requires to prevent what it claims are "unintended" consequences. D.02-03-055 could not be more clear in its intention to prevent new locations or accounts to be added, even if current DA contracts allow it. Rule 5 states that "…even if new locations are permitted under a direct access contract, a suspension as of September 20, 2001, is reasonable and appropriate to balance important regulatory goals." Rule 6 states that "again, new or additional accounts or meters would violate the standstill principle…." Rule 8 again states that "…no new locations or additional meters may be added. Assignments to a new customer is limited to the *same load at the same location*." (emphasis added) These rules are explicitly clear and unequivocal. No new accounts or locations are to be added.

Even with the provision that there be no net increase in the amount of load served under direct access, the proposed modifications to the rules would simply create new loopholes that would allow DA load to grow even further over time. Our primary concerns should be to avoid additional cost shifts to bundled ratepayers and to facilitate utility

planning as we ensure that DWR power costs are recovered. Further, this Commission is currently in the process of determining whether, or to what extent, the DA CRS cap we imposed last year should be revised. This process requires a firm grasp of the level of direct access load. Albertson's proposed modifications, as adopted, will simply create further uncertainty as to the actual future level of direct access load. The actions taken by the

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majority of this Commission simply adds uncertainty to the level of actual direct access load. We will find this uncertainty problematic for ourselves as we attempt to calculate the actual undercollection or DA shortfall and for the utilities as they develop long-term procurement plans.

/s/ CARL W. WOOD
Carl Wood
Commissioner

San Francisco, California
April 17, 2003