BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
09/04/18
04:59 PM
P1809001

Petition of the Direct Access Customer Coalition to adopt, amend, or repeal a regulation pursuant to Pub. Util. Code § 1708.5.	Petition 18-09-___ (Filed September 4, 2018)

PETITION OF THE DIRECT ACCESS CUSTOMER COALITION TO ADOPT, AMEND, OR REPEAL A REGULATION PURSUANT TO PUB. UTIL. CODE § 1708.5

Gregory S.G. Klatt
DOUGLASS & LIDDELL
411 E. Huntington Drive
Suite 107-356
Arcadia, California 91006
Telephone: (626) 802-5733
Facsimile: (747) 222-1861
Email: klatt@energyattorney.com

Attorney for
DIRECT ACCESS CUSTOMER COALITION

September 4, 2018

TABLE OF CONTENTS

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Petition of the Direct Access Customer Coalition to adopt, amend, or repeal a regulation pursuant to Pub. Util. Code § 1708.5.	Petition 18-09-___ (Filed September 4, 2018)

PETITION OF THE DIRECT ACCESS CUSTOMER COALITION TO ADOPT, AMEND, OR REPEAL A REGULATION PURSUANT TO PUB. UTIL. CODE § 1708.5

In accordance with Rule 6.3 of the Commission's Rules of Practice and Procedure, the Direct Access Customer Coalition (DACC)[1] hereby submits this petition to adopt, amend or repeal a regulation pursuant to Public Utilities Code § 1708.5.

I. INTRODUCTION

This petition concerns certain provisions of the tariffs of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) that implement the Commission's "direct access" (DA) rules.[2] Over the past two decades, the Commission has adopted numerous rules to implement DA and govern various aspects of the DA program. DACC is not seeking any changes to those rules. Rather, DACC is seeking minor changes to very specific provisions of the utilities' tariffs that implement

[1] DACC is a regulatory advocacy group comprised of end-use customers from the educational, government, commercial and industrial sectors that utilize direct access service for all or portions of their electric power requirements. In the aggregate, DACC members represent over 1,900 MW of demand and approximately 11,500 GWH of annual usage.

[2] "Direct access" refers to arrangements whereby end-use customers access wholesale power markets through "direct transactions" with non-utility suppliers. *See* Pub. Util. Code §§ 331(c) (defining "direct transactions") and 365(b)(1) (requiring the Commission to authorize "direct transactions between electricity suppliers and end use customers").

a subset of those rules hereinafter referred to as the "Relocation Rules."

The Relocation Rules, as originally adopted, were intended to "permit DA customers to relocate any DA load from an active DA account to a proposed new account so long as there is no net increase across all eligible DA accounts."[3] The fundamental policy behind these rules is that a customer should be allowed to transfer its DA rights between the customer's service accounts and locations "to account for normal changes in business operations."[4] In this context (i.e., DA service relocations), the Commission has further held that "it [is] inappropriate to add administrative hurdles on business transactions that are unnecessary, and burdensome."[5]

This petition seeks changes to provisions of the utilities' tariffs implementing the Relocation Rules that are unnecessary and unduly impede the ability of customers to manage their DA arrangements to accommodate normal changes in their business operations. The provisions in question appear in the *Direct Access Customer Relocation Declaration*, a standard form which DA customers are required to submit when requesting a transfer of DA rights between accounts and/or locations.[6] DACC's proposed changes to the Relocation Declaration are intended to enable customers to exercise their DA rights in the manner the Commission intended.

DACC approached the utilities last year about making changes to the Relocation Declaration. Those discussions culminated in advice letter filings in which the utilities sought (and received) authorization to make several of the changes DACC had requested.[7] However,

---

[3] D.04-02-024, p. 11.

[4] D.03-04-057, p. 13.

[5] D.04-02-024, p. 7.

[6] PG&E Form 79-1014, SCE Form 14-756, and SDG&E Form 143-02759.

[7] PG&E Advice Letter (AL) 5179-E, SCE AL 3178-E, and SDG&E AL 3162-E. These advice letters were approved by the Energy Division in letter rulings.

the utilities believe they are precluded from making, or are presently unwilling to make, any further changes to the declaration form. Hence the need for this petition.

This petition serves four purposes. First, it identifies provisions of the Relocation Declaration that DACC believes act as unnecessary hurdles to DA relocations. Second, it proposes specific changes to the declaration form to remove those hurdles. Third, it initiates a formal process for stakeholders to comment on DACC's proposals. Lastly, it requests an order authorizing the utilities to make the subject proposed tariff changes.

In support of that request, Section II of this petition provides an overview of the DA rules and DA load growth principles reflected in the Relocation Declaration. Section III explains how certain provisions of the Relocation Declaration unduly impede customers from managing their DA arrangement to accommodate normal changes in their business operations. Section IV presents DACC's proposed changes to the declaration form. Section V explains why DACC's proposed changes to the declaration form are consistent with the relevant DA rules and Commission policies. Lastly, Section VI presents DACC's proposed process and schedule for the Commission to adjudicate this petition.

II. BACKGROUND

The Commission first implemented "direct access" on April 1, 1998, as part of a comprehensive restructuring of California's electricity industry. Under restructuring, customers of PG&E, SCE and SDG&E had the choice to either (a) subscribe to traditional "bundled" utility service or (b) purchase electricity on a competitive basis from a non-utility "electric service provider" (ESP).[8] In the following years, DA grew to approximately 16% of California's retail

[8] See Pub. Util. Code § 218.3 (definition of "electric service provider").

load. The DA program was derailed, however, by events in 2000-2001 that lead to exponential increases in wholesale power costs and the State's intervention in the wholesale and retail power markets, including a legislative directive to "suspend" direct access. The "suspension" of DA forms the backdrop for the Relocation Rules discussed in this petition and DACC's proposed changes to the Relocation Declaration.

A. DA Suspension

On January 17, 2001, the Governor issued a proclamation declaring the California electricity markets to be in a state of emergency that threatened the solvency of PG&E, SCE and SDG&E. Shortly thereafter, the Legislature passed emergency legislation authorizing the Department of Water Resources ("DWR") to procure wholesale power on behalf of the utilities' bundled service customers.[9] The emergency legislation also directed the Commission to suspend the right of customers to "acquire" DA service for as long as DWR supplied power to the utilities under that authorization.[10] Pursuant to that directive, the Commission issued an interim order prohibiting customers from entering into "new" contracts or agreements for DA service, effective September 20, 2001, while allowing customers with existing direct access arrangements to continue on DA.[11]

B. DA Suspension Rules

In March 2002, the Commission issued a decision affirming the September 20, 2001 effective date for the suspension of DA and adopting rules implementing the suspension.[12] The Commission's approach in developing the DA suspension rules was to effect a DA market

[9] Assembly Bill 1X (AB 1X), Stats. 2001 (1st Extraordinary Sess.), ch. 4.

[10] AB 1X, § 4 (adding Water Code § 80110).

[11] D.01-09-060.

[12] D.02-03-055.

"standstill."[13] In simple terms, the Commission allowed customers with DA contracts in place as of September 20, 2001 to continue their participation in the DA market, while prohibiting those customers from placing additional load on DA service.[14]

To those ends, the Commission required ESPs to provide a list of the names of all customers that had DA service agreement in place as of September 20, 2001.[15] The customer names on that list were then cross-referenced with the utilities' lists of service accounts for which valid Direct Access Service Requests ("DASRs") had been submitted by the applicable cut-off date.[16] Customers whose DA eligibility was verified through this two-step process were then free to exercise their DA rights for the verified accounts in accordance with the terms of their DA contracts, subject to the provisions of the DA suspension rules.[17]

Under the suspension rules, DA customers are allowed to switch ESPs without limitation.[18] In addition, a DA customer is allowed to assign its DA rights to another customer, provided the customer to which the DA rights are assigned is at the same location and represents approximately the same load as the customer making the assignment.[19] In their original form, however, the suspension rules prohibited DA customers from adding "new" locations to DA service.[20] They also prohibited DA customers from adding "new" accounts to DA service if it

[13] D.02-03-055, p. 19.

[14] *Id.*, p. 19.

[15] *Id.*, p. 20 (Rule 1).

[16] *Id.*, pp. 20-21. "DASR" is the name for the form, whether printed or electronic, that a customer or its ESP must submit to the customer's electric utility to request an account (or accounts) be transferred to DA service, transferred to a different ESP, or transferred back to bundled service.

[17] *Id.*, p. 21.

[18] *Id.*, p. 22 (Rule 4).

[19] D.02-03-055, p. 24 (Rule 8).

[20] D.02-03-025, p. 23 (Rule 5).

involved the installation of additional meters or would require the submission of a new DASR.[21]

1. First Albertsons Petition

In October 2002, Albertsons petitioned the Commission to modify the DA suspension rules to allow DA customers with multiple facilities to add locations or accounts to DA service, provided there would be no net increase in the customer's DA load.[22] Albertsons' argument, as summarized by the Commission, was that the suspension rules' blanket prohibition on customers adding locations to DA service, and the rules' prohibition on adding accounts to DA service if it involved the installation of additional meters or required the submission of a new DASR, went "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.[23]

The Commission agreed with Albertsons, holding that the DA suspension rules should be modified "to account for normal changes in business operations, provided that there be no resulting net increase in each business customer's DA load."[24] The suspension rules were therefore modified "to permit DA customers to relocate or replace existing facilities within a given service territory without losing DA service in the process."[25]

---

[21] D.02-03-055, p. 23 (Rule 6).

[22] While the Commission's decision on the petition refers to the company as "Albertson's," the apostrophe was subsequently removed from the company's name.

[23] D.03-04-057, p. 2.

[24] *Id.*, p. 13.

[25] *Id.*, pp. 13-14.

Under the modified rules, DA customers were allowed to place additional facilities on DA service "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."[26] In addition, the modified rules exempted transfers of DA rights to relocated or replacement facilities from the prohibition on transfers involving the installation of additional meters or the submission of a new DASR.[27] However, to address "the risk that the DA load suspension levels might be exceeded under Albertson's proposed modification," the Commission added 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"[28] In addition, the Commission required both the customer requesting a replacement/relocation transfer and its ESP to sign an affidavit stating, under penalty of perjury, the customer's DA load would not increase by virtue of the relocation or replacement of facilities.[29]

2. Second Albertsons Petition

In September 2003, Albertsons, the Alliance for Retail Energy Markets (AReM) and the Western Power Trading Forum (WPTF) filed a petition to further modify the DA suspension rules. As summarized by the Commission, this second petition requested the rules be revised to "eliminate the requirement that a customer may relocate DA load to a new location only on a 'one-for-one' or 'account-by-account' basis" and to "instead permit relocations of DA load so long as there is no net increase in the customer's amount of total eligible DA load within each

[26] D.03-04-057, p. 14.

[27] *Id.*, Appendix A, p. 2 (modified Rule 6 and related text).

[28] *Id.*, p. 21, Finding of Fact 5, and Appendix A, p. 1 (modified Rule 5).

[29] *Id.*, pp. 16-17 and Appendix A, p. 3.

utility service territory."[30] The petition further requested elimination of the requirement for ESPs to sign the affidavit attesting to the DA customer's compliance with the rule limiting DA load at its relocation or replacement facilities to pre-suspension levels.[31] In February 2004, the Commission granted both requests and modified the DA suspension rules accordingly.[32]

C. DA Load Growth Principles

In July 2004, the Commission issued a decision resolving petitions concerning restrictions under the DA suspension rules that served to limit DA load to pre-suspension levels. The decision adopted "certain near-consensus principles governing direct access (DA) load growth …in a manner consistent with the Commission's suspension rules."[33] Under those principles, DA load cannot exceed "the contracted level of DA load defined by the terms of customer's DA service contract entered into consistent with the Commission's DA suspension decisions."[34] The rules otherwise allow for growth in a customer's DA load that occurs in the normal course of business.

D. DA Relocation Declaration

DACC's proposed tariff changes are limited to provisions of the *Direct Access Customer Relocation Declaration*. The utilities developed the Relocation Declaration to accommodate customer requests to relocate DA service as allowed under the modified suspension rules. In its original form, the declaration form listed three "options" from which the submitting customer could select to describe the nature of the requested transfer. In 2012, a fourth "option" was

[30] D.04-02-024, p. 1.

[31] *Id.*, p. 4.

[32] *Id.*, pp. 6-7 and 10; and pp. 15-16, Ordering Paragraphs 1, 2 and 4.

[33] *Id.*, pp. 1 and 22.

[34] *Id.*, Appendix 1, Principles 1 and 10.

added as the result of discussions between the utilities and ESPs related to DA enrollment process improvements.[35] The situations covered by the four options, and the conditions and requirements attached to each option, are as follows:

- **Option A:** The customer is making a "one-to-one" transfer of all the DA rights associated with a single account *to* a different account at the same location or a different location. The account *to* which the DA rights are being transferred is a facility that was "newly constructed or acquired" by the customer shortly before the transfer. The account *from* which the DA rights are being transferred must be closed or returned to bundled service coincident with the transfer.

- **Option B:** The customer is transferring all the DA rights *from* one or more accounts at single location *to* one or more accounts at the same or a different location. The accounts *to* which the DA rights are being transferred are facilities that were "newly constructed or acquired" by the customer shortly before the transfer. The accounts *from* which the DA rights are being transferred must be closed or returned to bundled service coincident with the transfer.

- **Option C:** The customer is transferring DA rights *from* one or more accounts at one or more locations *to* one or more accounts at one or more different locations. Under this option, the customer is not required to close or return the transferring account(s) to bundled service but may instead "split" the DA rights between accounts and locations, provided the customer warrants that its DA load at the different (i.e. new) account(s) or location(s) will be substantially the same as loads represented by the original account(s) or location(s).

- **Option D:** The customer is transferring all the DA rights *from* one or more accounts at one or more locations *to* a single account at a different location. The account *to* which the DA rights are being transferred must be an existing bundled service account under the customer's name. All the account(s) *from* which the DA rights are transferred must be closed *before* the transfer, and the transfer request must be submitted within 90 days thereafter.

[35] D.12-12-026, p. 12. The modified Relocation Declaration was attached to D.12-12-026 as Appendix 2, thus making it a part of the decision.

III. UNNECESSARY AND UNDULY RESTRICTIVE PROVISIONS OF RELOCATION DECLARATION

DACC members have encountered numerous situations in which the utilities have refused to allow DA relocations based solely on conditions and requirements that appear only in the Relocation Declaration and not in the DA suspension rules. In many such cases, DACC members were forced to choose between (a) optimizing their business operations and forfeiting their DA rights and (b) preserving their DA rights at the expense of optimizing their business operations. While it is impossible to catalogue all the situations in which customers have been confronted with this dilemma, the following is a sampling of some of the ways in which the "options" listed in the Relocation Declaration impede, rather than facilitate, the ability of customers to manage their DA arrangements to accommodate normal changes in their business operations.

A. Time Limit on Bundled Service at New Location (Options A, B and C)

Under Options A, B and C, the service account(s) to which a customer is transferring DA service cannot have been under the customer's name for more than 90 days.[36] This condition prevents a customer from transferring DA service to any facilities that have been receiving bundled service under the customer's name for more than three months. The 90-day limit, however, seems to be completely arbitrary.

The only reason DACC can think of for having the 90-day limit is that it is meant to ensure customers can only relocate DA service to "newly constructed or acquired" facilities—i.e., it serves to define whether a facility is "newly constructed or acquired." Yet even if that was the intended purpose, one is left searching for a rational basis for setting the time limit at 90 days

[36] Relocation Declaration, p. 3, § B.5.

(as opposed to 60 days, 180 days, or some other period). The time required to secure permits and satisfy other requirements plus the time required to renovate (much less construct) a commercial facility typically exceeds 90 days. And while a customer could possibly delay the start of the 90-day period by having service at the site disconnected before taking possession of the "new" facility, the lack of electric service would make it difficult if not impossible to complete the facility's construction or renovation.

The supposition that the 90-day limit is intended to define "newly constructed or acquired" is further undermined by the fact that it not only applies to Options A and B, which describe situations where a customer is relocating DA service to a "newly constructed or acquired" facility, but also applies to Option C, which describes situations where a customer is transferring DA rights between physically separate locations. Under Option C, however, there is no requirement that a facility to which DA rights are being transferred be "newly constructed or acquired." We can thus safely eliminate a definitional purpose for the 90-day limit.

The 90-day limit not only acts as an arbitrary barrier to DA transfers, it can also serve to disadvantage DA customers that take active measures to reduce consumption or deploy distributed generation. For example, it precludes a customer from transferring DA rights from an "old" account where demand at that account has been significantly reduced via DER (e.g., EE, DR, or DG), effectively punishing the customer for taking actions that further the State's energy and environmental policies (e.g., actions that will reduce coincident peak loads and/or electric sector GHG emissions). Take the case of a customer that may be considering installing solar PV and a fuel cell at a site that is served by DA, such that 90% of the usage at the site could be sourced by these resources: Why should that customer be precluded from transferring its DA

rights to a different facility (i.e., one not currently on DA), given that the customer's DA profile would not be changed from the utility's perspective?

For all these reasons, DACC proposes the elimination of the current 90-day limit on the amount of time customers can have been on bundled service at the accounts to which they are transferring DA rights.

B. Requirement to Terminate Service at Current Location (Option D)

While the aforesaid 90-day limit does not apply to Option D, customers that intend to transfer DA rights under a scenario covered by Option D are required to terminate the accounts from which they are transferring DA service.[37] Option D is unique in that it covers situations where a customer is transferring DA service to a facility it has owned or operated for more than 90 days. However, the account termination requirement attached to Option D is problematic for at least two reasons.

First, it prevents a customer from selecting Option D where the customer is going to continue operating at the location to which its DA rights are currently attached. That leaves Option A, B or C for the customer to select. But, as discussed above, those "options" are not available if the customer has been taking bundled service for more than 90 days at the location to which it wants to transfer DA service.

Second, the account termination requirement effectively prevents a customer from transferring DA rights under a scenario covered by Option D if the customer needs to maintain a minimum amount of utility service at the location from which the customer intends to transfer DA service (i.e., the location undergoing some disposition like a real estate sale or facility closure). There are many reasons why the customer may need to maintain electrical service at a

[37] Relocation Declaration, p. 3, § B.4.

reduced level during the disposition of the "old" property, the most common being safety and security (e.g., where local ordinance requires the customer to maintain internal and external lighting, a fire-suppression system and a security system at the "closed" location—all of which need electric power to operate).

These are very common problems, especially in retail. Take, for example, a retail company that holds a long-term lease for a store that is no longer profitable. The company may close the store but retain the property in its portfolio for years until the lease expires, the property can be subleased, or the company finds someone to assume the lease. When the store was open, it may have had a regular load of 400 kW. After the store is closed, the load may drop to 5 kW or less (with the power mainly used for lighting and a fire suppression system). Since the store is not allowed to go completely dark, the company's DA rights would become essentially worthless (i.e., since they could not be transferred to another store).

As with the 90-day limit under Options A, B and C, the account termination requirement under Option D serves no clear purpose and impairs the ability of customers to manage their DA rights to accommodate changes in their business operations. DACC therefore proposes that it be eliminated.

C. Deadline for Submitting Relocation Declaration

Under Options A, B and C, the customer is required to submit its Relocation Declaration within 60 days after the account from which DA is being transferred is closed or returned to bundled service,[38] while under Option D the customer is allowed 90 days.[39] These deadlines are highly problematic, in that they can cause a customer to forfeit its DA rights if it does not have

[38] Declaration form, § B.9.

[39] Declaration form, § B.4(D).

another facility or location immediately available to transfer those rights. Yet DACC can discern no requirement in the DA suspension rules for these time limitations.

If the deadlines cannot be eliminated altogether, the Relocation Declaration be modified to allow a customer that closes a DA account to hold onto the DA rights for that account until the next annual DA lottery.[40] DACC therefore proposes that the current deadlines be changed to a minimum time allowance, such that a customer is given the longer of 180 days or the start of the next DA lottery to submit its Relocation Declaration and thereby initiate a DA service transfer request.

D. Same Ownership Requirement

Previously, the utilities would only allow transfers of DA service between accounts that were under the name of the same "customer," as determined by the customer's federal tax identification ("FTI") number. In practice, that meant all the accounts involved had to be under the name of the same corporate entity. However, as the result of the previously mentioned discussions, the utilities agreed to amend the Relocation Declaration to allow transfers of DA service between accounts that are under the names of different "companies," so long as they are "under the same ownership" or are "wholly-owned subsidiaries of the same parent corporation."[41]

Except for transfer requests made under Option D, however, the utilities still require that both "companies" have the same FTI number. Since corporations of every form are assigned unique FTI numbers, the "same ownership" requirement effectively prevents transfers of DA rights between affiliated companies or between affiliated nonprofit entities in most situations.

[40] Customers should, of course, be allowed to relinquish their DA rights if they so choose.
[41] Declaration Form, p. 4, § B.12.

Moreover, the utilities will often not allow public agencies to transfer of DA rights between affiliated locations or accounts (e.g., between affiliated school or university campuses), even though they are "owned" by the same entity (i.e., the same public agency, public school district, or public university system).

Even under Option D, the situations in which DA rights can be transferred between affiliated entities are quite limited. For one thing, transfers involving a "wholly-owned subsidiary" are relatively rare. Moreover, the "wholly-owned" requirement precludes transfers to subsidiaries that are controlled but not wholly owned by the entity holding the DA rights: In many cases, companies own their facilities through "special purpose entities" ("SPEs") such as limited liability companies. Where an ownership SPE is in turn "owned" by more than one entity (e.g., where an investment partner owns a minority share of the SPE), the "same ownership" requirement precludes transfers of DA rights to or from that facility.

A more reasonable requirement—i.e., one that better comports with modern business practices and allows for transfers involving public agencies—would be a requirement for the two entities involved in the transfer to be under common ownership *or* control. DACC has incorporated this refinement in the proposed changes to the Relocation Declaration set forth in Section IV.

IV. PROPOSED CHANGES TO RELOCATION DECLARATION

Rather than taking a piecemeal approach to revising the four "options" listed in the Relocation Declaration, DACC proposes that they be deleted and replaced with clear and concise definitions of "Current Location" and "New Location" that serve as a comprehensive description of the scenarios under which a customer may transfer DA rights between locations and affiliated accounts. The specific changes to the declaration form that DACC proposes are as follows:

- Delete and replace the four "options" listed in Section B.4 with the following description of Current Location and New Location:

  "Current Location" means one or more existing customer Premises where the electric load of one or more service accounts is currently being served under DA. "New Location" means the same or different Premises from the Current Location, at which the customer intends to relocate all or part of its business and operations from the Current Location. The New Location may consist of one or more service accounts at a single or multiple Premises.

- Delete Section B.5.

- Revise Section B.8 by deleting the parenthetical reference therein to Section B.4.C.

- Revise Section B.9 as follows:

  Customer understands that this declaration must be submitted before the last day of the submission period for Six-Month Notices for the next DA Lottery or within 180 days, whichever comes later, of ~~closing~~ the date its service account at the Current Location is closed or returned to bundled service ~~moving part of its business or operations from the Current Location to a New Location~~.

  Revise the "same ownership" requirement set forth in Section B.12 as follows:

  Customer understands that the Current Location and New Location must be affiliated. ~~under the same ownership or must be wholly-owned subsidiaries of the same parent corporation.~~ For this purpose, "affiliated" means either (a) both locations are under common ownership or control, or (b) the entity that owns or controls one location owns or controls the other location. ~~Under Option 4.D, above, a~~ A Customer may request to assign DA eligibility and transfer its DA service between affiliated entities ~~wholly-owned subsidiaries~~ with different Federal Taxpayer Identification Numbers, as specified ~~below~~ above, by completing the Affidavit in Attachment 2 and submitting it with this request.

V. CONSISTENCY WITH COMMISSION POLICY

None of the changes that DACC is proposing be made to the Relocation Declaration are precluded by the Commission's DA suspension rules. Moreover, DACC's proposed changes are consistent with the Commission's current policy that customers should be free to exercise their DA rights to accommodate normal changes in business operations, provided their actions do not cause their DA load to exceed any contractual limitations. Iterative statements of that policy

appear throughout the Commission's orders adopting and modifying the DA rules discussed in this petition. Examples include:

- D.03-04-057, in which the Commission modified the DA suspension rules in response to the first Albertsons petition. In this order, the Commission held (at p. 13): "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." The Commission further held (at p. 21, Conclusion of Law 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…would result."

- D.04-02-040, in which the Commission granted the petition to modify D.03-04-057 filed by Albertsons, AReM and WPTF. In this order, the Commission held (at p. 1): "[W]e grant the requested modification seeking to eliminate the requirement that a customer may relocate DA load to a new location only on a "one-for-one" or "account-by-account" basis. We instead permit relocations of DA load so long as there is no net increase in the customer's amount of total eligible DA load within each utility service territory."

- Also, in D.04-02-040, the Commission noted (at p. 10) that allowing relocations of DA load "so long as there is no net increase in…DA eligible load" was "a fundamental theme throughout D.03-04-057." The Commission further stated (at p. 11) that "the Commission's intent [in D.03-04-057] was to permit relocations and replacements of facilities as long as there is no increase in the total net DA load between *all of the original and their replacement facilities*." (Emphasis in original.)

- D.04-07-025, wherein the Commission adopted its DA load growth principles. In this order, the Commission held (at p. 41): "With respect to relocations and replacements of DA accounts addressed in Decision 04-02-024, such replacements and relocations shall be permitted as long as the customer's total DA load after a replacement or relocation does not exceed the contracted level of DA load defined by the terms of customer's DA service contract entered into consistent with the Commission's DA suspension decisions."[42]

- Resolution E-3872, wherein the Commission adopted (with modifications) the IOUs' advice letters revising the Customer Affidavit to implement D.04-07-025 (re DA Load Growth). In this order, the Commission held (at p. 7): "DA relocation/replacement rules applicable to existing DA loads should facilitate sound business decisions. … [W]e will allow transfers of DA load, in whole or in part, from one location to another newly acquired or reconstructed location or to reconstructed facilities at the same location. …

[42] In adopting this principle, the Commission expressly rejected an alternative formulation of the principle proposed by SCE and supported by TURN that would have (i) required a DA customer to close its facilities and operations at the old account as part of its "relocation" process and (ii) prevented a DA customer from increasing its DA load beyond the actual level of load on all existing and DA-eligible accounts as of the date of the relocation. *See* D.04-07-025, pp. 24-25, 31 and 33.

> [A] DA customer will have the flexibility to locate its DA eligible loads to their best advantage with DA service, within the load limitations provided in its contract."

Considering these clear policy pronouncements, there should be no ideological objections by the utilities to the changes to the Relocation Declaration that DACC is proposing.[43] If the utilities or any other interested party have *practical* objections to any of DACC's proposed changes, DACC submits that they should bear the burden of demonstrating exactly how DACC's proposal would produce a result that is inconsistent with the Commission's stated policy. Moreover, they should present an alternative formulation of the proposed change that imposes the minimum amount of restrictions they believe are necessary to prevent that result.

VI. PROPOSED PROCESS AND SCHEDULE

DACC anticipates the issues raised by this petition can be resolved without the need for evidentiary hearings. To the extent the Commission desires input on DACC's proposals beyond that offered by parties in their written responses to this petition, DACC proposes the Commission have the Energy Division hold a workshop, to be followed by a workshop report and an opportunity for parties to submit written comments on the report. DACC's proposed schedule for this proceeding, including the aforesaid workshop and comment process, is as follows:

[43] DACC's proposed changes to the Relocation Declaration are not intended to alter or supplant any declaration forms that have already been accepted or the resulting DA arrangements, as that could be disruptive to customers' current business operations. However, to the extent previously denied DA relocation requests would be allowed under the revisions to the Relocation Declaration form resulting from this petition, the Commission should direct the utilities to accept any resubmitted DA relocation requests.

Petition noticed in Daily Calendar	Day 1
Responses to Petition	Day 1 + 30
Petitioner's Reply to Responses	Day 1 + 40
Prehearing Conference	Day 1 + 50
Scoping Ruling	Day 1 + 70
Workshop	Day 1 + 100
Workshop Report	Day 1 + 130
Comments on Workshop Report	Day 1 + 140
Proposed Decision	Day 1 + 170
Comments on Proposed Decision	Day 1 + 190
Reply Comments on Proposed Decision	Day 1 + 195
Final Decision	Day 1 + 200

VII. CONCLUSION

The Commission has clearly stated that "DA relocation/replacement rules applicable to existing DA loads should facilitate sound business decisions."[44] In its current form, however, the Relocation Declaration creates unnecessary and burdensome hurdles to the ability of customers to manage their DA arrangement to accommodate normal changes in their business operations—i.e., to exercise and enjoy the benefits of their DA rights in the manner the Commission intended. DACC's proposed changes to the Relocation Declaration form are intended to remove such impediments, no more and no less.[45] DACC therefore requests the Commission grant the relief requested herein.

Respectfully submitted,

Gregory S.G. Klatt
DOUGLASS & LIDDELL

Attorneys for
DIRECT ACCESS CUSTOMER COALITION

September 4, 2018

[44] Resolution E-3872, p. 7.

[45] A redlined version of the Relocation Declaration showing DACC's proposed changes is attached hereto as Appendix A. Note that since DACC is not proposing any changes to Attachments 1 and 2 of the Relocation Declaration, those attachments are not included in Appendix A.

VERIFICATION

I, Gregory Klatt, am the attorney of record for the Direct Access Customer Coalition (DACC) and am authorized to make this verification on its behalf. The statements in the foregoing petition are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 4, 2018, at Arcadia, California.

Gregory Klatt

APPENDIX A

DIRECT ACCESS CUSTOMER RELOCATION DECLARATION

A. Electric Service Provider (ESP) Declaration

I, _____, state as follows:

1. I am an authorized representative of _____ (Name of ESP) ("ESP") authorized to make this declaration. I have personal knowledge of the matters set forth herein and if called upon as a witness could and would testify competently thereto.

2. Pursuant to a valid agreement (Agreement) by and between _____ (Name of ESP) and _____ (Name of Customer) ("Customer"), ESP provides electric power service to Customer at the Current Location, as specified below.

3. As stated herein, Customer requests to transfer its direct access (DA) service provided by PG&E and electric power service provided by ESP at the Current Location, to the New Location, as specified in this document. This relocation is requested in the normal course of business.

4. Under the provisions of the Agreement, the Customer has the right to receive electric power service from ESP for electric service loads located at the New Location.

5. All conditions of the Agreement necessary for a transfer of electric service from Current Location to New Location have been satisfied, including any necessary approvals by ESP.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this _____ day of _____, at _____ (City), _____(State).

Signature:_____
(Authorized Representative of ESP)

Title:_____

Date:_____

DIRECT ACCESS CUSTOMER RELOCATION DECLARATION

B. Customer Declaration

I, _____, state as follows:

1. I am an authorized representative of _____ ("Customer") and I am authorized to make this declaration.

2. I have personal knowledge of the matters set forth herein and if called upon as a witness could and would testify competently thereto.

3. Customer has entered into an agreement for direct access service (Agreement) with the ESP as identified above.

4. Customer requests to transfer its DA service provided by PG&E and its electric power service provided by ESP from Current Location to New Location, as noted on Attachment 1. This relocation is requested in the normal course of business.

   "Current Location" means one or more existing customer Premises[46] where the electric load of one or more service accounts is currently being served under DA. "New Location" means the same or different Premises from the Current Location, at which the customer intends to relocate all or part of its business and operations from the Current Location. The New Location may consist of one or more service accounts at a single or multiple Premises.

   ~~Please check one:~~

   ~~_____ A. "Current Location" means one existing customer Premises[4] where the electric load of one service account (which may consist of one or more electric meters) is currently being served under DA. "New Location" means the same or different Premises from the Current Location which has been newly acquired or constructed by customer, at which the customer intends to relocate all or part of its business and operations from the Current Location. The New Location may only consist of one service account.~~

   ~~_____ B. "Current Location" means one existing customer Premises where the electric load of one or more service accounts are currently being served under DA. "New Location" means the same or different Premises from the Current Location which has been newly acquired or constructed by customer, at which the customer intends to relocate all or part of its business and operations from the Current Location. The New Location may consist of one or more service accounts at a single Premises.~~

   ~~_____ C. "Current Location" means one or more existing customer Premises where the electric load of one or more service accounts is currently being served under DA. "New Location" means a different Premises from the Current Location to which the customer intends to relocate all or part of its business and operations from the Current Location. The New Location may consist of one or more service accounts at a single or multiple Premises. Customer warrants that the total DA load of all active accounts at New Location after the relocation has been completed is limited to loads the same as, or substantially the same as, the loads represented by the Current Location.~~

[46] Premises is defined in Rule 1.

~~_____ D. "Current Location" means one or more existing customer Premises where the electric load of one or more service accounts is currently being served under DA. "New Location" means a different Premises than the Current Location to which the customer intends to relocate all or part of its business and operations from the Current Location. The New Location may only consist of one service account at which the customer has been receiving bundled service. The New Location shall not be eligible for DA service until all electric service accounts billing under the same customer of record at the Current Location have been terminated. Customer must submit this request to PG&E no later than ninety (90) days from the date all the service accounts at the Current Location have been terminated.~~

~~5. Customer understands that a New Location cannot include bundled service accounts that have been in the customer's name for more than ninety (90) days. This section is not applicable if Section 4.D. above is selected.~~

6. Customer warrants its total DA load as a result of the relocation does not exceed the load limitations provided in the Agreement.

7. Customer agrees to maintain, and make available to the California Public Utilities Commission (CPUC) upon request, all records associated with its electricity service and consumption at Current Location and New Location, including, but not limited to, the applicable meter and account numbers, and the associated direct access load.

8. Customer agrees to (Check One):

   _____ Close its service account(s) at Current Location on _____ [Expected date].

   _____ Return its service account(s) at Current Location(s) to bundled service on _____ [Expected date].

   _____ Split the load on the service account(s) at Current Location as follows. ~~(this section is only applicable if Section 4.C above is selected).~~ Identify service account(s) by PG&E Service Agreement Number in the space below.):

   _____

   _____

9. Customer understands that this declaration must be submitted <u>before the last day of the submission period for Six-Month Notices for the next DA Lottery or</u> within ~~sixty (60)~~ 180 days of closing its service account at the Current Location, <u>whichever comes later</u> ~~or moving part of its business or operations from the Current Location to a New Location~~.

10. Customer understands that a DASR must be submitted within sixty (60) days of either a) this relocation declaration's acceptance by PG&E or b) establishment of electric service at the New Location, whichever is later, for this relocation to be valid.

11. Customer understands that continuous direct access status pursuant to Ordering Paragraph 4 of CPUC Decision 02-11;022 (exemption from paying the DWR components of the DA Cost Responsibility Surcharge) will transfer to a relocation account only if each service account at the Current Location(s) being combined for the relocation service account qualifies as continuous direct access. If the customer elects to combine a number of service accounts that do not qualify as continuous direct access, then the relocation service account will not qualify as continuous direct access.

12. Customer understands that the Current Location and New Location must be affiliated. ~~under the same ownership or must be wholly-owned subsidiaries of the same parent corporation.~~ For this purpose, "affiliated" means either (a) both locations are under common ownership or control, or (b) the entity that owns or controls one location owns or controls the other location. ~~Under Option 4.D, above, a~~ A Customer may request to assign DA eligibility and transfer its DA service between affiliated entities ~~wholly-owned subsidiaries~~ with different Federal Taxpayer Identification Numbers, as specified above below, by completing the Affidavit in Attachment 2 and submitting it with this request.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this _____ day of _____ at _____ (City), _____ (State).

Signature:_____
(Authorized Representative of ESP)

Title:_____

Date:_____

[Attachments 1 and 2 omitted]