STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

December 10, 2007

**Agenda ID # 7229**
**Quasi-Legislative**

TO PARTIES OF RECORD IN RULEMAKING 07-05-025

This is the proposed decision of Commissioner Peevey. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Pulsifer at trp@cpuc.ca.gov and Commissioner Peevey's advisor Jackson Stoddard at fjs@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:avs

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER PEEVEY**
**(Mailed 12/10/2007)**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

| | |
|---|---|
| Rulemaking Regarding Whether, or Subject to What Conditions, the Suspension of Direct Access May Be Lifted Consistent with Assembly Bill 1X and Decision 01-09-060. | Rulemaking 07-05-025 (Filed May 24, 2007) |

# OPINION REGARDING COMMISSION AUTHORITY TO LIFT THE DIRECT ACCESS SUSPENSION

## TABLE OF CONTENTS

**Title** **Page**

## OPINION REGARDING COMMISSION AUTHORITY TO LIFT THE DIRECT ACCESS SUSPENSION

### 1. Introduction

Pursuant to Phase I of this rulemaking, we herein determine the nature, extent, and timing of the Commission's discretionary authority under applicable statutes to lift the suspension of direct access for retail electric service. The option for retail customers to purchase electricity on a direct access basis is currently suspended.

As explained below, we conclude that under the applicable statutory provisions, the Commission does not have authority to completely lift the suspension at present. Nonetheless, we remain committed to exploring proactive alternatives whereby the legal conditions allowing for the lifting of the suspension could be satisfied, thereby providing the potential for the Commission to implement retail choice for electric service on a more expedited basis.[1]

We disagree with parties that argue that this proceeding should not proceed forward. This proceeding shall move to Phase II to consider proactive alternative steps to satisfy the statutory requirements, thereby enabling the Commission to lift the suspension on an expedited basis if statutorily permissible. We shall address this issue in Phase II as a threshold matter. This rulemaking shall therefore proceed to Phase II as a forum for considering the

[1] While we shall explore alternative means to remove any legal constraints on the Commission's authority to lift the suspension, we make no prejudgment in this order concerning the substantive merits of doing so, or the manner in which any reinstituted direct access market should function, consistent with the public interest. Those issues will be addressed in Phase II.

appropriate conditions and market framework within which any renewed direct access program that may ultimately be implemented, and that will best serve the public interest.

As announced in opening this proceeding, we shall ensure that any program designed to reinstitute retail competition be guided by sound legal principles, carefully safeguarding relevant public policy interests. We shall conduct this rulemaking in a sequential, careful, and balanced manner, taking into account any lessons to be learned from previous efforts to bring competition to electric retail markets.

## 2. Background

As a context for addressing whether, or under what circumstances, the Commission has legal discretion to lift the direct access suspension, we review events leading up to this proceeding. We first implemented direct access in 1998, as an integral part of a restructuring program to bring retail competition to California electric power markets.[2] Through the direct access program, eligible retail customers had the option to purchase electric power from an independent electric service provider (ESP) rather than through an investor-owned utility (IOU).

The electric industry restructuring program was cut short, however, by events of 2000-2001 which led to extraordinary wholesale power costs increases, threatening the solvency of California's major public utilities and the reliability of electric service. On February 1, 2001, Assembly Bill 1 from the

[2] *See* Decision (D.) 95-12-063, as modified by D.96-01-009 (1995) 64 Cal. PUC 2d 1, 24 (Preferred Policy Decision).) The Legislature codified the Preferred Policy Decision in AB 1890, Stats. 1996, ch. 854 (AB 1890).

First Extraordinary Session (Ch. 4, First Extraordinary Session 2001) (AB 1X) was signed into law, implementing various measures to address the energy crisis. Among other measures to ensure the reliability of electric retail service, AB 1X required the California Department of Water Resources (DWR) to step in to procure electric power supplies sufficient to meet the net short for customers of the IOUs.[3]

Pursuant to AB 1X, DWR entered into a series of electric power supply contracts and also issued long-term bonds to support funding for the DWR power procurement program. DWR formally began procuring electric power for customers in the service territories of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) on January 17, 2001, and in the service territory of San Diego Gas & Electric (SDG&E) on February 7, 2001. AB 1X authorizes DWR to recover its power costs from electric charges established by the Commission (Water Code §80110). DWR also entered into servicing agreements with the IOUs to collect money on its behalf for power that DWR sells to the IOUs' customers.

To ensure that cost responsibility for the DWR procurement was assigned in a fair manner among retail electric customers, the Legislature instituted various measures, including the suspension of direct access. Pursuant to the legislative mandate of AB 1X, the Commission suspended the right to enter into new contracts for direct access after September 20, 2001.[4] We applied a "standstill approach," permitting no new direct access contracts, but allowing

[3] The net short is the difference between customer loads and the power already under contract to the utilities or generated from a utility-owned asset.

[4] *See* D.01-09-060 and Pub. Util. Code §§ 366 or 366.5.

preexisting contracts to continue in effect. Direct access customers who departed bundled IOU service between January 17, 2001 and September 20, 2001, were assessed a "cost responsibility surcharge" (CRS) for their fair share of DWR costs. We opened Rulemaking (R.) 02-01-011 to implement the necessary cost recovery mechanisms and billing processes to recover a fair share of DWR costs from direct access load as required by the statute. The suspension has continued in effect up until the present time.

On December 6, 2006, the Alliance for Retail Energy Markets (AREM) filed a Petition (P.06-12-002) pursuant to Pub. Util. Code § 1708.5 for a rulemaking to consider reopening electric retail markets to competition by lifting the direct access. AREM argued that the electricity crisis of 2000-2001 which gave rise to the direct access suspension had run its course, and that the purposes of direct access suspension had been served, addressed through other means, or no longer applied. In response to the Petition, parties expressed views ranging from strict opposition to full support for a rulemaking to address lifting the direct access suspension.

On May 24, 2007, the Commission granted the AREM Petition and concurrently issued the instant Order Instituting Rulemaking (OIR) to consider whether, when, or how direct access could (or should) be restored. The rulemaking is segmented into three sequential phases, as follows:

I – Commission Legal Authority to Lift the Direct Access Suspension in accordance with AB 1X.

II – Public Policy Merits of Lifting the Direct Access Suspension and Applicable Wholesale Market Structure/Regulatory Prerequisites.

III – Rules Governing a Reinstituted Direct Access Market: *e.g.*, Entry/Exit/Switching; Default Arrangements, and Cost Recovery Issues.

This decision resolves Phase I issues as to whether, or subject to what conditions, the Commission has (or may acquire) legal authority to lift the suspension on direct access. We also address whether, or to what extent DWR contract assignment or novation, as discussed above, would be necessary to satisfy the legal conditions under AB 1X to lift the direct access suspension.

Pursuant to the schedule in the OIR, comments on Phase I issues were filed on July 24, 2007. Comments by supporters of direct access were filed by AREM, California Alliance for Creative Energy Solutions (CACES), and Constellation NewEnergy, Inc (Constellation). PG&E, SDG&E, and SCE were the IOUs filing comments. Comments by parties opposed to lifting the direct access suspension were filed jointly by The Utility Reform Network, the Division of Ratepayer Advocates, the Coalition of California Utility Employees, Consumer Federation of California, and the Natural Resources Defense Council (collectively "TURN"). DWR also filed comments in the form of a memorandum.

As a basis for the instant decision, we have considered the comments filed in this OIR, as well as the pertinent comments that were previously filed by parties in reference to the AREM Petition for Rulemaking. No evidentiary hearings are necessary to decide Phase I issues.

## 3. Legal Basis for Commission Authority to Reinstitute Direct Access

### A. Analytical Framework for Reviewing Legal Basis for Suspension Under Water Code § 80110

#### 1. Relevant Provisions of AB 1X

As a basis for determining whether, as a matter of law, the Commission has authority to lift the suspension and reinstitute direct access, we examine the governing requirements set forth in AB 1X. The direct access suspension must continue until DWR "no longer supplies power" under the

provisions of AB 1X as codified in Water Code § 80110. The precise language prescribing this condition reads as follows:

> "After the passage or such period of time after the effective date of this section as shall be determined by the commission, the right of retail end use customers pursuant to Article 6 (commencing with Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code to acquire service from other providers shall be suspended until the department [the Department of Water Resources] no longer supplies power hereunder."

### 2. Parties' Position

Parties disagree over the analytical framework that the Commission should apply in determining whether the Commission has statutory authority to lift the direct access suspension. AREM and CACES argue that language in AB 1X regarding the duration of the direct access suspension is ambiguous, and requires the Commission to exercise discretion to interpret its intended meaning. As possible meanings, CACES suggests that the phrase "no longer supplies power" could refer to the time (1) when DWR no longer contracts to supply power, (2) when DWR no longer operates or administers power supply contracts, or (3) when DWR no longer has financial responsibility for any power contracts to supply electric retail customers.

CACES argues that the Commission has broad discretion to interpret statutes by applying principles of statutory construction, and by considering extrinsic aides, including: the objectives that the Legislature sought to achieve, the evils sought to be remedied, the legislative history, public policy

contemporaneous administrative construction of the statute, and the broader statutory scheme of which the relevant statutory portions is a part.[5]

CACES argues that AB 1X was enacted on an emergency basis to deal with the power crisis of 2000-2001, but that such emergency no longer exists. AREM similarly argues that the direct access suspension was intended by the Legislature to be temporary, and that the condition precedent for lifting the direct access suspension has occurred. AREM believes that the status quo that existed prior to the crisis conditions of 2000-2001 has been restored, and that continued suspension of direct access is merely an historical "anachronism." CACES identifies three purposes cited by the Commission for suspending direct access:[6]

- Assuring a stable customer base from which DWR could recover its bond-related costs, thereby facilitating the bonds being issued at investment-grade ratings;
- Assuring a stable customer base from which DWR could recover its ongoing procurement-related costs of power, and

[5] AREM Comments at 7, citing *Golden State Homebuilding Ass'n v. City of Modesto*, (1999) 26 Cal. App. 4th 601, 608.

[6] *See* D.01-09-060, pp. 4, 5, and 8.

- Preventing costs relating to DWR procurement from being shifted from direct access to bundled IOU customers.

CACES cites language in a subsequent Legislative committee bill analysis which cited these factors as reasons for suspending direct access.[7] CACES argues that the reasons for the direct access suspension have now all been addressed. DWR bonds were issued at investment grade, and the Commission has established non-bypassable charges for recovery of the bond costs. The Commission has established cost recovery mechanisms for DWR to be reimbursed for its power costs from bundled, as well as direct access, customers. California energy markets have become stable and the Commission has adopted various policy reforms to eliminate the conditions that prompted the energy crisis.

CACES argues that the Commission has discretion to interpret the suspension on direct access as no longer applicable in the light of changed circumstances since AB 1X was enacted. AREM believes that there is no statutory impediment to the Commission's authority to reopen direct access.

The IOUs and TURN dispute the claim that AB 1X is ambiguous, but believe that the phrase "until DWR no longer supplies power" is clear on its face. TURN argues that there is no need to look past the "plain language of the statute" to determine whether DWR still supplies power.

### 3. Discussion

We first address whether ambiguity exists in the statute's use of the term "no longer supplies power," particularly in view of how DWR's role has changed since the statute was enacted. In 2001, there was certainly no question

[7] CACES cites to Senate Energy Committee Analysis of AB 428, dated July 8, 2003. AB 428 was never enacted into law. Thus the citation to this legislative history has little or no value for purposes of interpreting AB 1X requirements.

that DWR was supplying power. Prior to the energy crisis of 2000-2001, retail power was provided to customers by the IOU or (for direct access customers) by an ESP. There was no question that the IOUs or ESPs were supplying power to their respective retail customers. In order to address the power crisis of 2000-2001, however, a novel arrangement was devised whereby an agency of the State of California, the DWR, was delegated the role of supplying power for retail customers.

The specific functions performed by DWR under the statutory provisions of AB 1X have changed since 2001. Given the novel and unconventional circumstances surrounding DWR's role in resolving the energy crisis of 2000-2001, and the evolving nature of its role under AB 1X since then, certain parties claim that DWR is no longer supplying power.

We consider the merits of parties' legal theories underlying their interpretations of AB 1X, as a basis to determine whether DWR continues to supply power under the statute. The California Supreme Court has acknowledged this Commission's authority to interpret statutes and has affirmed the Commission's reasonable interpretation of statutes as long as such interpretation bears "a reasonable relation to statutory purposes and language."[8] Moreover, the Commission has exercised its authority to interpret statutes on a number of occasions. We have specifically held that Sec. 80110 "requires interpretation" at least in the context of applying switching exemptions.[9]

Certain parties argue that we should look to the underlying intent behind the direct access suspension, and whether the purposes for which

---

[8] *See e.g. Greyhound Lines, Inc. v. Public Utilities Commission*, 68 Cal. 2d 406, 410.

direct access was suspended have been satisfied. A reading of the language of AB 1X, however, reveals that the suspension is expressly linked to DWR supplying power. The Legislature imposed this specific condition as a prerequisite for lifting the suspension, but did not authorize the Commission to decide to lift the suspension based upon whether the presumed Legislative intent behind the suspension had been satisfied.

The California Supreme Court has held that "if the statutory language is clear and unambiguous, there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature."[10] Regarding the extent of inquiry required to ascertain the meaning of statutory language, "if the language is unambiguous, then the language controls and the inquiry is over."[11]

While there is a disagreement among parties concerning the meaning of the term "no longer supplies power," we conclude that the meaning is clear in AB 1X in the context of the directive for the direct access suspension. As such, there is no basis to look beyond the plain language, and to the legislative history regarding the Legislature's intent as to possible purposes for the direct access suspension. Other conditions besides DWR's supplying of power do not determine if direct access suspension must continue. We explain below the basis for our conclusion that the language of AB 1X is clear.

---

[9] D.03-06-035, *mimeo*, pp.4-5.

[10] *Lungren v. Deukmejian,* (1988) 45 Cal. 3d 727, 735.

[11] *See* D.04-04-029 on p. 4.

## B. Does DWR Currently Supply Power Under AB 1X?

### 1. Parties' Positions

Parties disagree as to whether DWR is still supplying power under AB 1X. As long as DWR is supplying power, the statute requires that the suspension continue in effect. Once DWR "no longer supplies power" under AB 1X, however, the Commission will then have the legal discretion to lift the suspension.

AREM challenges what it terms to be the "conventional wisdom" that, absent action by the Commission or legislature, the suspension of direct access will end with the expiration of the DWR contracts. AREM and CACES argue that the phrase "supplies power" should instead be interpreted to refer to DWR's role in *contracting* to supply power. DWR's authority to contract for the procurement of power supplies under AB 1X ended on January 1, 2003. In this regard, Water Code § 80260 provides that:

> On and after January 1, 2003, the department shall not contract under this division for the purchase of electrical power. This section does not affect the authority of the department to administer contracts entered into prior to that date or the department's authority to sell electricity.

AREM argues that the legislative history relating to AB 1X supports the interpretation that the suspension of direct access was linked to DWR's authority *to contract for t*he *procurement* of power. AREM points to the Enrolled Bill Report signed by then-Commissioner Loretta Lynch, which construed AB 1X

to "suspend the ability of retail customers from selecting alternative providers of electricity until such time as DWR ceases *procuring* power for retail customers."[12]

While DWR's authority to enter into new contracts for power expired on January 1, 2003, power continues to be sold to retail customers under DWR contracts executed prior to that date (Water Code §80260). DWR retains legal title to the power sold under such DWR contracts and is financially responsible for paying all contract-related bills. (Water Code, §80110.)

Constellation argues, however, that DWR is not supplying the power that continues to be sold to IOU retail customers under existing DWR contracts. Constellation argues that since the responsibility for scheduling, dispatching and delivering power under such contracts was transferred from DWR to the IOUs after January 2003, DWR no longer supplies such power.

Up until January 1, 2003, a two-tiered system had existed whereby DWR and the IOUs each separately dispatched power. This process was described in D.02-09-053:

> ". . . under the [then-]existing two-tiered procurement system in California, the utilities dispatch their own generating assets and contracts first to determine their net short position, and DWR dispatches its contracts and procures additional resources as necessary to meet the combined net short of all three utilities.
> (D.02-09-053 at 37.)

However, this two-tiered procurement system ended as the utilities resumed control of all dispatch functions effective January 1, 2003. At that time, the DWR contracts were placed within the IOUs resource portfolios, under procedures adopted in D.02-09-053. Although DWR continued to hold legal title

[12] AREM Petition at 24 (emphasis added).

to the electricity sold under existing DWR contracts, responsibility for dispatching such power was assigned to the IOUs beginning in January 2003. D.02-09-053 directed the three major IOUs to integrate the DWR contracts into their respective generation resource portfolios, using a least-cost dispatch for the integrated portfolio, and to assume all operational, dispatch, and administrative functions for the DWR Contracts. As stated in D.02-09-053:

> "The utilities can now move forward with their procurement planning knowing exactly what DWR contracts they will need to integrate into their resource portfolios. Today's decision eliminates the current two-tier procurement system in California that was put in place on a temporary basis, and only under emergency circumstances, until the utilities could resume their procurement role. As described in this decision, the utilities will now perform all of the day-to-day scheduling, dispatch and administrative functions for the DWR contracts allocated to their portfolios, just as they will perform those functions for their existing resources and new procurements. Legal title, financial reporting and responsibility for the payment of contract-related bills will remain with DWR." (D.02-09-053 at 5.)

Constellation argues that while DWR still sells power in that it holds legal title to power dispatched under existing contracts, DWR is not supplying such power given the termination of its responsibilities for day-to-day scheduling, dispatch, and administrative functions for the power sold under DWR contracts. Constellation argues that the "common understanding" of the terms "supplying" and "selling" are different, and that if the Legislature wished to have direct access suspended while DWR was "selling" power, it could have easily said so. Constellation argues that the Legislature used the terms "delivery," "transmits," or "sells," when describing DWR's retail sales functions.

Constellation claims that there is no basis to equate the term "supplies" with DWR's retail sales function. Accordingly, AREM, CACES, and Constellation believe that there is no statutory impediment to the Commission's authority to reopen direct access.

Opposing parties argue, however, that DWR is currently supplying power, by virtue of having an ownership interest in the power sold under the DWR power contracts. TURN argues that the Commission has repeatedly characterized DWR as supplying power, as the owner and seller of the power that is delivered to retail customers under DWR contracts.[13] TURN argues that even though the utilities assumed responsibility for DWR contract administration after January 1, 2003, the Commission still referred to "energy supplied by DWR to the utility" in describing how the DWR energy payment was to be allocated after January 1, 2003.[14] TURN thus argues that DWR continued to supply power after January 1, 2003, based upon how the Commission has applied that terminology.

TURN further argues that DWR, itself, has characterized its function as that of supplying power in its own published annual "Revenue Requirements Determinations." For 2007, DWR identified the level of energy "projected to be supplied on behalf of the retail electric customers of the IOUs through [DWR's] long term power contracts." DWR also stated that if one or more of DWR's contracts are terminated, energy "no longer supplied by DWR" would need to be

---

[13] *See* TURN Brief, page 8-9, with various citations to D.01-03-081, D.01-04-005, D.01-05-064, and D.02-12-069, which refer to DWR supplying power by providing electricity for delivery to retail customers, not through the action of negotiating wholesale power contracts.

[14] D.02-12-069, Appendix C, pp. 6-7.

replaced.[15] TURN points to such statements as further confirmation that DWR still supplies power to retail customers under AB 1X. TURN also points to references in the Public Utilities Code where electric energy is deemed supplied when it is delivered to a customer, irrespective of how the retail provider obtained the electricity.[16] TURN thus argues that direct access suspension must continue as long as DWR has an ownership interest in *any* DWR power contract.

### 2. Discussion

As a basis for discerning whether or not DWR "no longer supplies power" under AB 1X, we begin with a consideration of the underlying context in which the statute was enacted. AB 1X was an urgency statute enacted to ensure the reliable delivery of power to the public to "to address the rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, that endanger the health, welfare, and safety of the people of this state…" (AB 1X, Section 7.)

Consistent with the stated focus of AB 1X on protecting the reliable continuity of electric service to end-use customers, DWR was authorized to (1) procure and (2) sell the power that had been procured directly to retail customers. Execution of contracts for the procurement of power was merely a means for DWR to secure contractual rights to sources of power supply to

---

[15] TURN Brief, page 10, citing DWR 2007 Revenue Requirements Determination, pp. 21-and 24.

[16] TURN cites, for example, Pub. Util. Code § 2827(h) which states that the net metering calculation applicable to certain renewable energy technologies is "the difference between the electricity supplied to the eligible customer-generator and the electricity generated by an eligible customer-generator and fed back to the electric grid over a 12-month period."

provide for ultimate sale to retail customers. Consistent with the focus of AB 1X on protection of the end-users' electric service reliability, the proper context within which to understand the directive for DWR to supply power is in reference to the retail end user. Power is thus supplied when it is made available for sale to the retail end user. Even though DWR ceased to contract for new sources of power supply after January 1, 2003, power has continued to be supplied through the scheduling, dispatch and delivery of power to retail customers under existing DWR contracts executed prior to 2003.

The term "power" in this regard is defined as "electric power and energy, including but not limited to, capacity and output or any of them." (Water Code Section 80010(f).) Based on its legal rights to the capacity under existing contracts, DWR still owns the power supplies that continue to be delivered to retail customers from existing contracts.

We disagree with Constellation's contention that the selling of power does not constitute the supplying of power. Power clearly continues to be dispatched and sold to retail customers under DWR contracts that have continued in effect since January 1, 2003. From the retail customer's perspective, it makes no difference that the power being supplied to them is dispatched and sold pursuant to DWR contracts that were executed prior to 2003. These contracts are still in effect. Power is still being supplied to retail customers pursuant to DWR contracts.

The remaining question is whether the entity currently supplying such power is DWR or the IOU. Constellation argues that it is relevant that the IOU, and not DWR, currently schedules and dispatches DWR power. Certainly, the IOU is now responsible for scheduling and dispatch of the DWR power, and in that capacity is instrumental in delivering the DWR power to retail

customers. DWR is no longer performing operational functions associated with the day-to-day scheduling, dispatch and delivery of DWR power to retail customers as it previously performed prior to 2003. Nonetheless, the power is ultimately "supplied" by the entity that legally "owns" and "sells" the power.

The legal responsibilities that still apply to DWR are described in D.02-09-053, as follows:

> Legal title to the contracts resides with DWR. Financial reporting responsibilities, including those associated with the DWR revenue requirements proceeding and Trust indenture reporting requirements, will also remain with DWR. In addition, DWR will be financially responsible for paying all contract-related bills. ….
>
> As financial obligor under the allocated contracts, DWR will also need to monitor performance of the generators under the contracts to enable DWR as the contract counter party to make decisions related to actions to be taken in the event of performance issues with generators, contract disputes, defaults, or to defend DWR in the event of counterparty claims against DWR. In undertaking these actions, DWR should work in concert with the utilities through provisions to be incorporated into the operating agreements. (D.02-09-053 at 46.)

Although the IOU performs the operational functions associated with dispatching DWR power supplies, as well as billing and collection, DWR retains the role of owner and seller of the power to retail customers. Water Code Section 80002.5 states that "[i]t is the intent of the Legislature that power acquired under this division shall be sold to all retail end use customers served by electrical corporations, …."

DWR is the entity that sells the power under the statute. Water Code Section 80104 explains that "[u]pon the delivery of power to them, the

retail end use customers shall be deemed to have purchased that power from [DWR]. Payment for any sale shall be a direct obligation of the retail end use customer to the department." Therefore, customers are supplied with power at the point of purchase. In turn, the purchase occurs "upon the delivery of power" pursuant to Water Code Section 80104. Therefore, DWR "supplies power" under the statute upon the sale of the DWR power to retail end use customers. In this regard, Water Code Section 80110 provides in relevant part:

> [DWR] shall retain title to all power sold by it to the retail end use customers. [DWR] shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate.

In D.02-12-069, the Commission clarified the distinct roles of the Commission and DWR under AB 1X and as implemented by D.02-02-051 (the Rate Agreement Decision). DWR recovers its costs through a revenue requirement that it submits to the Commission. The Rate Agreement establishes the process whereby DWR recovers its revenue requirement from the customers of the IOUs.[17] As noted in DWR's 2007 Revenue Requirement Determination, for example, approximately 53,749 (GWhs) of energy were projected to be supplied to IOU retail customers through the DWR contracts during 2007.

We conclude that under AB 1X, DWR continues to supply power since it (a) owns the power that is dispatched under existing DWR contracts, and (b) sells such power to retail customers upon delivery of the power to them. This

[17] The central feature of the Rate Agreement was the irrevocable commitment by the Commission under PU Code §840 et seq., to set charges for electricity sold by DWR that would recover DWR's power-related and bond-related costs.

conclusion is consistent with the manner in which the term supplying power has been used in the prior Commission decisions in the context of AB 1X. In D.01-03-081, for example, we began to develop a method for remitting funds to DWR to pay for energy delivered to retail customers pursuant to DWR contracts. In that decision, we state that remittances to DWR should occur "no later than 45 days after *DWR supplies power* to the utilities' retail end-use customers." (Emphasis added.)[18] This reference to supplying power necessarily means the actual delivery of the power to retail customers, since it points to the time when power is dispatched, not to the date when the underlying supply contract was executed. In summary, although DWR ceased to procure new supplies of contract power after January 1, 2003, DWR still continues to "sell" power to retail customers under contracts that had been executed prior to January 1, 2003. By virtue of holding legal title to the power, DWR—not the IOUs-- supplies the power to retail customers. Although the IOU performs billing and collection functions associated with DWR power sales, the revenues associated with the sale of the power belong to DWR. Therefore, under the provisions of AB 1X, the Commission cannot lift the direct access suspension at this time because the suspension can only be lifted when DWR "no longer supplies power." (Water Code § 80110.) Such is not the case at present time.

### C. Can Direct Access Suspension Be Lifted in Stages as Individual DWR Contracts Expire?

As part of Phase I, we also consider whether AB 1X can be interpreted to permit the suspension of direct access to be phased out in stages as individual

[18] D.01-03-081, Conclusion of Law 9.

DWR contracts expire.[19] We solicited parties' legal arguments in Phase I as to whether such an interpretation is legally supportable under the provisions of AB 1X, whereby the statutory restriction that DWR no longer supply power would be construed on a contract-by-contract basis.

### 1. Parties Positions

Certain parties suggest that even if the statute is interpreted to refer to power supplied under existing DWR contracts, direct access could still be reinstituted on a partial basis prior to 2017, as contracts expire. The DWR contracts do not expire simultaneously, but expire in gradual increments over a period of years. Some of DWR contract quantities are exclusively subject to must-take clauses, some quantities are dispatchable on a least-cost basis, and others include a combination of both must-take and dispatchable purchases.

According to a DWR report issued in March 2006,[20] the number of active DWR contracts as of that date had been reduced from 59 to 33, with the cost of the portfolio reduced from $42.5 billion to $24.8 billion. By 2010, the cost of the remaining portfolio is expected to be $6.1 billion, or about one-seventh of the original liability. In 2001, DWR contracts covered 35% of the IOU's peak demand and energy requirements. By 2010, the remaining long-term contracts

[19] 2017 is the year the last DWR contract is scheduled to expire.

[20] *See* CACES Comments at 18, citing web site reference at http://wwwcers.water.ca.gov/energy_contracts.cfm.

will cover only 15% of the IOU requirements.[21] The vast majority of DWR contracts are scheduled to expire by 2011.[22]

AREM denies that the term "supplies power" requires direct access suspension until the very last DWR contract expires. AREM argues that such an interpretation is unreasonably extreme and would preclude resumption of direct access even if just one contract remained for Megawatts (MW).

CACES likewise argues that if the suspension were deemed legally binding until the very last DWR has expired, then the Commission's Constitutional authority could be undercut by private parties that could extend their DWR contracts for any time period. CACES argues that such an action would constitute a usurping of the Commission's decision-making authority. CACES argues, however, that California courts have held that the Commission's constitutional and regulatory authority cannot be limited by private contracts, especially where potential discriminatory results may occur. CACES argues that continued suspension of direct access based upon such action by private parties would unduly prolong the current restrictions on customer choice, which CACES characterizes as discriminatory.

Specifically, parties suggest that additional capacity might be opened up to direct access corresponding to the capacity in each respective DWR contract as it expires. CACES suggests that while the specific mechanics of a gradual lifting of the suspension between 2010 and 2015 could be addressed in

---

[21] *Id.* at 18.

[22] *See* the DWR Revenue Requirement Determination for 2007, submitted to the Commission on August 2, 2006, pursuant to Sec. 80110 and 80134 of the Water Code, pp. 22-24, TABLE D-5 LONG-TERM POWER CONTRACT LISTING.

Phase II of the proceeding, the Commission can confirm in Phase I that a partial lifting would be consistent with Water Code § 80110 and within the Commission's jurisdiction.

AREM and CACES thus argue that even if the Commission decides that a full lifting of the suspension is statutory precluded at this time, then a partial lifting of the suspension should be considered to be legally permissible as individual DWR contracts expire. In the event that the Commission elected to lift the suspension based on such a legal interpretation, AREM proposes that an initial increment of direct access be authorized up to the amount of MW capacity of terminated or expired DWR contracts as of the time of the order, with additional increases in allowable direct access transactions each year thereafter based on the amount of additional DWR contract amounts that expired or terminated in the preceding year. CACES believes that the specific mechanics of how such increased allowances would be allocated could addressed in Phase III of this proceeding.

TURN disagrees with the claim that there is any legal basis for a partial lifting of the suspension. TURN argues that there is no reference in the statute linking or relating the duration of the direct access suspension to the magnitude of annual quantities of power supplied by DWR. TURN argues that the notion that the suspension could be partially lifted based on annual fluctuations in DWR-delivered energy is at odds with the plain language of AB 1X as well as the reasonable expectations held by legislators at the time. TURN believes that the Commission has no legal authority to lift the direct access suspension until the last DWR contract expires, currently due to occur in 2017.

TURN attached, as Appendix B of its comments, a copy of a letter dated May 23, 2007, authored by four members of the California Legislature to Commissioner Michael R. Peevey. In the letter, the authors stated the following in reference to AB 1X:

> "There is nothing in this language to suggest that the legislature intended to allow the suspension to be lifted as individual DWR contracts expire. When AB 1X was enacted, the legislature could not have known the quantity or duration of the contracts that DWR would execute. Accordingly the statute provides no indication that the length of the suspension could be linked to the duration of a subset of the DWR contracts. The suspension can only be lifted once DWR no longer supplies any power at all."

TURN thus argues that this letter from legislators supports the view that AB 1X requires that the direct access suspension continue until DWR no longer supplies any power at all, which would only occur when the last DWR power contract expires.

### 2. Discussion

We decline to make a finding on this question at present. As discussed below, we choose for both policy and legal reasons to proceed with Phase II of this proceeding in which we will address proactive strategies whereby DWR can be removed from its role as power supplier under AB 1X on an expedited basis. Because a partial lifting of the ban on direct access would not achieve the desired result of removing DWR from its role as a power supplier, we decline to consider this approach.

## 4. Next Steps: Proceeding to Phase II of this Rulemaking

While we conclude that AB 1X requires that direct access remain suspended until DWR no longer supplies power under its provisions, there is

still much merit in proceeding forward expeditiously with Phase II of this rulemaking.[23] Even though conditions in effect today require that the suspension continue in effect for now, we recognize the value in moving ahead to address proactive strategies whereby DWR can be removed from its role as power supplier under AB 1X on an expedited basis. We do not believe that the only alternative is to wait until the last DWR contract expires. Pursuing a plan to accelerate the timeframe to remove DWR from supplying power under AB 1X is consistent with the policy that we previously articulated as noted below in D.02-12-069.

> Under ABX1-1, DWR's authority is not perpetual. Water Code Section 80260 provides that DWR's authority to contract for such purchases expired on January 1, 2003. Water Code Sections 80000 and 80003 further demonstrate that DWR's authority was an emergency measure designed to stabilize a crisis. Both the Commission and the Legislature have expressed their intent to eliminate the need for DWR to continue procuring power for the utilities after January 1, 2003, consistent with the utilities' statutory obligation to serve their customers.
>
> Consistent with the intent of ABX 1, one of this Commission's fundamental short-term goals is to transition full responsibility for energy market related activities back to the utilities as soon as possible. We should therefore make every effort to relieve DWR from the responsibility to perform any functions that should be performed in the long term by regular market participants. We note that this direction is consistent with the fact that the utility, and not DWR, continues to have a statutory responsibility to serve its customers. The utilities' obligation to serve their customers is

[23] We previously outlined in broad fashion the scope of issues to be addressed in Phase II in the OIR issued on May 24, 2007.

> mandated by state law and is part and parcel of the entire regulatory scheme under which the utilities received a franchise and under which the Commission regulates utilities under the Public Utilities Act. (*See, e.g.* Pub. Util. Code §§ 451, 761, 762, 768, and 770.) [footnote omitted] (D.02-12-069 at 7-8.)

Consistent with D.02-12-069, alternative approaches should therefore be proactively explored to remove DWR from the role of supplying power to retail customers under AB 1X on an expedited basis. We shall consider in Phase II the most appropriate process to examine alternative approaches.

CACES offers two approaches for accelerating the timeframe in which DWR no longer supplies power under AB 1X. One approach would be through the novation and assignment of existing DWR contracts, as suggested in the OIR, whereby DWR would be taken out of the power supply chain entirely. Although DWR continues to supply power as long as it has ownership interests in the power contracts, alternatives may be available whereby DWR could terminate its ownership interests earlier than the current contract expiration dates. If its ownership interests were to be terminated, the condition that DWR no longer "supplier power" would be satisfied. The Commission would then be legally authorized to lift the suspension on direct access. Another approach suggested by CACES is to alter the flow of power from the DWR contracts whereby title to the power would move to a third-party before any possible resale to retail customers. As a strategy to accomplish such a goal, CACES points to the approach applied in D.06-07-029, where the utilities secure resources for system need rather than for bundled retail customers.

Under such an approach, DWR would no longer sell power directly to retail customers, but would make the power available to the wholesale power

market. CACES argues that the following advantages could be realized through this approach:

(1) DWR would no longer directly provide power to retail customers because the IOUs could assume the contracts;

(2) The IOUs would not need to operate as "limited agents" of DWR under the Rate Agreement and Operating Agreements;

(3) An energy auction could open up access to the DWR contract power to all load serving entities and the regional markets in a way that would negate the need for new or more complex non-bypassable charges, and

(4) The utilization of power under the DWR contracts could be better optimized as the contracts were secured for statewide loads rather than any specific IOU residual net short that existed at the time the contract was executed.

DWR would continue to own the power delivered under the contracts, but the flow of power would be altered in a way that would keep DWR whole while having legal title to the power move to a third party before any possible sale to retail customers. By treating DWR contracts in the same manner as other resources procured for system needs, CACES argues, the revenue stream to pay for the DWR contracts would be protected, and the IOUs would be indifferent to load migration that could occur with the reopening of direct access. The IOUs could make the DWR power available to the system by simply bidding the energy into the California Independent System Operator day-ahead market based on each contract's underlying economics, rather than self-scheduling it without economic bids, as is the case for resources in the IOU portfolios. In this way, the energy value can be used to offset the capacity cost of the contracts.

Through this approach, CACES argues, there would be no need for multiple contract negotiations with DWR suppliers as would be the case with

assignment and novation, because there is no change in the underlying existing commercial arrangements. CACES argues that this approach offers an additional tool should the IOUs decline to pick up the DWR contracts through assignment/novation, either because they do not fit well into the IOUs resource portfolios, or due to financial implications, such as debt equivalency.

CACES notes that Water Code Sec. 80116 specifically permits DWR to direct the output of its contracts to entities other than retail customers when there is a sufficiency of resources, stating:

> However, to the extent that any acquired power that is not required for use within the state, *if it is otherwise advantageous and necessary, the power may be sold, transferred, or otherwise disposed of, or an option may be granted with respect to the power, to any person or public or private entity*." (Sec. 80116, emphasis added.)

This provision allows for either the assignment of the contracts to the IOUs through novation, or by treating the power in the same manner as other IOU-procured system resources. Alternatively, DWR could auction off the rights to the contract output in a manner similar to that contemplated for the IOUs.

As a threshold issue for Phase II, we shall consider whether the CACES concept of redirecting the flow of DWR power to the wholesale market has merit from a legal as well as an operational perspective. Alternatively, we also shall explore whether, in order to satisfy legal requirements, it may be appropriate for DWR to terminate its ownership interests by assignment of its existing contracts to one or more of the IOUs, or other credit-worthy third parties through novation or other assignment.

If we deem this option to have potential merit we shall further consider how such assignment could affect various interests. In addition to the contracting parties, other relevant interests include those of bundled and direct

access customers, the IOUs, and the DWR bondholders. We shall provide parties an opportunity to address such impacts on the relevant affected interests in Phase II of this proceeding.

We would need to consider whether or to what extent, power costs charged to retail electric customers, or service reliability, would be affected as a result of assignments of DWR contracts. We also would consider whether, or to what extent, the IOUS' assumption of additional financial obligations of the DWR Contracts could adversely affect their debt equivalence, credit ratings, or costs of capital. The potential effects on utility procurement planning would also be considered.

We also recognize the necessity to protect the interests of DWR Bondholders. Water Code § 80110 expressly entitles DWR to recover in electricity charges amounts sufficient to enable it to comply with Water Code § 80134, which provides for the revenues to be pledged for support of the bonds that DWR was authorized to issue pursuant to Water Code § 80130. Bond proceeds were used to repay the debt that DWR incurred to finance power purchases during the electricity crisis, including amounts owed to the State of California General Fund. D.02-02-051 prescribed the terms and conditions applicable to the DWR bonds, as set forth in the "Rate Agreement" adopted therein. The provisions of the "Rate Agreement" do not terminate until the bonds and associated financial obligations have been paid or otherwise funded.[24]

[24] Sections 5.1(a) and 5.1(b) of the Rate Agreement have the force and effect of an irrevocable financing order issued by the Commission pursuant to Pub. Util. Code § 840 *et seq*., and these sections may not be amended after the bonds have been issued.

As explained in D.02-02-051, the DWR bonds are supported by (a) a revenue stream comes from Bond Charges imposed on electric customers, designed to pay for bond-related costs, and (b) a second revenue stream from DWR Power Charges imposed on electric customers, designed to pay the commodity costs of DWR power. Both streams of revenue provided necessary support for DWR to issue bonds with investment-grade ratings.

The DWR bonds were marketed and sold based in part on representations regarding the suspension of direct access and the reserves that DWR would maintain for operating expenses and debt service. DWR points out that if, or to the extent, that lifting the direct access suspension could create a material shift in the sources of DWR's revenue streams, it could require changes in the method of determining and the amount of DWR reserves. Such changes could be required to protect against the risk of significant load migration from bundled service to direct access, as well as any other relevant risks. Any possible contract assignment would need to consider the effects on the DWR bonds and bondholders, including reserve requirements, bond ratings, interest charges, and any other relevant concerns.

As noted in its 2007 Revenue Requirement Determination,[25] DWR has renegotiated 19 of the original contracts from 2001 that currently remain in effect, and has terminated five additional contracts for cause. DWR has continued efforts to renegotiate additional contracts, and regularly monitors its contracts to determine if there are opportunities for bilateral negotiation which could lead to more favorable terms and costs.

---

[25] *See* the DWR Revenue Requirement Determination for 2007, submitted to the Commission on August 2, 2006, pursuant to §§ 80110 and 80134 of the Water Code.

A number of the renegotiated DWR contracts contain novation clauses which may be exercised at the discretion of DWR. Under a novation clause, upon a written request by DWR, the counterparty to a contract must enter into a replacement agreement with one or more qualified electric suppliers.[26] The execution of such a replacement agreement would thereby constitute a novation that would relieve DWR of any liability or obligation arising under the new agreement.

For DWR contracts that do not contain novation clauses, the contracting parties may still negotiate contract assignment, but DWR may not unilaterally require the counterparty to enter into a replacement agreement. As a vehicle for relieving DWR of all ownership obligations under the power contracts so that the direct access suspension can be lifted, we will consider measures to facilitate contract novation or other negotiated assignments to a third party. The terms of any renegotiated and/or reassigned contract would require Commission approval based upon review and determination under the "just and reasonable" standards of Pub. Util. Code § 451.

Assuming that DWR were to proceed with the assignment of DWR Power Contracts, we envision that the following steps:

(1) The Commission may request that DWR enter into discussions with qualified entities regarding a process to assign its DWR contract interests.

(2) Upon reaching agreement with one or more qualified entities for the assignment of rights and obligations, DWR provides written request to counterparties to contracts

[26] In order to be qualified to take over the rights and obligations of a DWR contract, the supplier's long-term unsecured senior debt must meet specified minimum credit rating standards.

with novation clauses to enter into a replacement agreement with one or more of the designated entities. Pursuant to the novation clause, before a supplier may be compelled to enter into a replacement agreement, the Commission must determine that its terms are "just and reasonable" pursuant to Pub. Util. Code § 451.

(3) Since DWR may not have unilateral discretion to require counterparties to enter into replacement contracts for contracts without novation clauses, DWR would enter into negotiations with the counterparties for such contracts to adopt amendments to allow the substitution of another credit-worthy entity to assume the rights and obligations of DWR under such contracts. Upon reaching mutually agreeable terms, the parties would submit the renegotiated contract to the Commission for review and approval pursuant to Pub. Util. Code § 451. Pursuant to Pub. Util. Code § 451, the Commission conducts a review, develops a record, and issues a decision concerning whether the replacement contracts and other renegotiated contracts are "just and reasonable" pursuant to Pub. Util. Code § 451, and

(4) DWR executes the replacement contracts with the applicable entities where novation clauses apply. DWR executes renegotiated contracts where novation clauses do not apply.

As noted previously, by 2010, the remaining long-term DWR contracts are expected cover only 15% of the IOU requirements. The vast majority of DWR contracts are scheduled to expire by 2011.[27] Therefore, depending on the time table for the lifting of direct access, the number of remaining power contracts (and associated capacity) that would require reassignment may be substantially

[27] *See* the DWR Revenue Requirement Determination for 2007, submitted to the Commission on August 2, 2006, pursuant to Sec. 80110 and 80134 of the Water Code, pp. 22-24, TABLE D-5 LONG-TERM POWER CONTRACT LISTING.

less than what exists today. The task of DWR assigning its remaining contract interests may become more manageable as a result.

Consistent with the directives herein, we authorize the assigned Commissioner to promptly issue a scoping memo to provide guidance regarding the development of issues designated for Phase II of this proceeding, as previously outlined on the OIR.

## 5. Comments on Proposed Decision

The proposed decision of the assigned Commissioner in this matter was mailed to the parties in accordance with § 311 of the Pub. Util. Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

## 6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

## Findings of Fact

1. On December 6, 2006, the Alliance for Retail Energy Markets *et al.* filed a petition pursuant to Pub. Util. Code § 1708.5 requesting that the Commission institute a rulemaking to consider rules for lifting the suspension on direct access.

2. The market and regulatory conditions in effect at the time that direct access was suspended in 2001 have continued to evolve.

3. Although DWR's authority to enter into new power contracts terminated as of January 1, 2003, DWR's authority to sell electric power to retail customers pursuant to previously executed DWR contracts continues in effect.

4. Water Code Section 80110 provides that DWR shall retain title to all power sold by it to the retail end use customers, and is entitled to recover, as a revenue

requirement, amounts and at the times necessary to enable it to comply with Section 80134.

5. Financial reporting responsibilities associated with the DWR revenue requirements proceeding and Trust indenture reporting requirements, remain with DWR. DWR is also financially responsible for paying all DWR contract-related bills.

6. DWR is the "supplier" of this power by holding legal title to the power, and by "selling" the power to retail customers. Water Code Section 80104 explains that "[u]pon the delivery of power to them, the retail end use customers shall be deemed to have purchased that power from [DWR]."

7. The Commission designated Phase I of this rulemaking for the purpose of determining whether, or subject to what timing or other conditions, legal authority exists for the Commission to lift the suspension on direct access.

## Conclusions of Law

1. Although the Commission has broad authority to interpret governing statutes, such authority is to be applied so as to bear a reasonable relation to the statutory purpose and language.

2. The general rule of statutory construction is that if statutory language is clear and unambiguous, there is no need to look beyond the plain language of the statute and the legislative history.

3. The question of whether the Commission has legal authority to lift the suspension on direct access turns on whether DWR continues to supply power under AB 1X.

4. Before the direct access suspension may be lifted under existing statutory authority, the Commission must first determine that such action is compliant

with the condition in AB 1X mandating the suspension continue until DWR "no longer supplies power" pursuant to the statute.

5. Once DWR "no longer supplied power" under AB 1X, the Commission then has the legal authority to lift the direct access suspension.

6. The provisions underlying AB 1X provide the requisite clarity to discern the meaning of the language referencing whether DWR continues to supply power.

7. DWR supplies power in AB 1X in its capacity as legal owner holding title to the power under DWR contracts that is scheduled, dispatched and delivered to retail customers of the IOUs.

8. The Commission currently cannot lift the suspension on direct access because DWR supplies power under the provisions of AB 1X by virtue of owning the power dispatched under DWR contracts and selling it to retail customers.

9. As part of the inquiry into how the Commission could legally lift the suspension, it is reasonable to proceed in Phase II to consider the merits of alternatives to terminate DWR's role as supplier of energy under existing contracts.

10. The Commission should continue proceedings in this rulemaking in Phase II in accordance with the scope set forth in the OIR, subject to any subsequent rulings.

11. As an element of Phase II, the Commission should consider ways to remove DWR from its role as supplier, such as through the reassignment of DWR contracts or other means.

12. As a precondition of DWR implementing renegotiation or novation of any of its contracts, the Commission would be required to make findings that such revised contracts were just and reasonable pursuant to Pub. Util. Code § 451.

## O R D E R

**IT IS ORDERED** that:

1. Phase I of this proceeding is hereby resolved pursuant to the determination herein that the Commission does not currently have authority to lift the direct access suspension because California Department of Water Resources (DWR) currently supplies power under Assembly Bill (AB) 1X. Phase II of this proceeding shall consider ways to meet the legal conditions for lifting the suspension on an expedited basis through alternative means.

2. Phase II of this proceeding shall move forward consistent with the general scope as defined in the OIR (R.07-05-025) dated May 24, 2007. The preliminary goal of Phase II shall be to consider alternative approaches to remove DWR from the role of supplier of power to allow for lifting the direct access suspension under AB 1X on a expedited basis.

3. The assigned Commissioner shall promptly issue a scoping memo prescribing how Phase II issues shall be coordinated and sequenced consistent with the further inquiry relating to termination of DWR's power supply role.

This order is effective today.

Dated _____, at San Francisco, California.

## INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated December 10, 2007, at San Francisco, California.

/s/ ANTONINA V. SWANSEN
Antonina V. Swansen

********** PARTIES **********

## ********** SERVICE LIST **********
## Last Updated on 30-NOV-2007 by: AJH
## R0705025 INITIALLIST

Marc D. Joseph
Attorney At Law
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., STE. 1000
SOUTH SAN FRANCISCO CA 94080
(650) 589-1660
mdjoseph@adamsbroadwell.com
For: CUE

Michael Lamond
ALPINE NATURAL GAS OPERATING COMPANY
PO BOX 550
15 ST. ANDREWS ROAD, SUITE 7
VALLEY SPRINGS CA 95252
(209) 772-3006
Mike@alpinenaturalgas.com

Donald R. Schoonover
Attorney At Law
AT&T SERVICES, INC.
2600 CAMINO RAMON, 2W805
SAN RAMON CA 94583
(925) 823-8389
ds1957@att.com

Michael E. Boyd
CALIFORNIANS FOR RENEWABLE ENERGY, INC
5439 SOQUEL DRIVE
SOQUEL CA 95073
(408) 465-9809
michaelboyd@sbcglobal.net

Lynne Brown
Vice President
CALIFORNIANS FOR RENEWABLE ENERGY, INC.
24 HARBOR ROAD
SAN FRANCISCO CA 94124
(415) 285-4628
l_brown369@yahoo.com
For: Californians for Renewable Energy, Inc. (CARE)

Mary Lynch
Vp - Regulatory And Legislative Affairs
CONSTELLATION ENERGY COMMODITIES GROUP
2377 GOLD MEDAL WAY, SUITE 100
GOLD RIVER CA 95670
(916) 526-2860
mary.lynch@constellation.com

Sara O'Neill
Vp - Regulatory And Government Affairs
CONSTELLATION NEW ENERGY, INC.
SPEAR TOWER, 36TH FLOOR
ONE MARKET STREET
SAN FRANCISCO CA 94105
(415) 293-8003
sara.oneill@constellation.com

Lisa Zycherman
Attorney
DAVIS WRIGHT TREMAINE LLP
NW, SUITE 200
1919 PENNSYLVANIA AVENUE
WASHINGTON DC 20006
(202) 973-4280
lisazycherman@dwt.com
For: the Alliance for Retail Energy

Steven F. Greenwald
EDWARD W. O'NEILL
Attorney At Law
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6500
stevegreenwald@dwt.com
For: The Alliance for Retail Energy

Daniel W. Douglass
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS CA 91367-8102
(818) 961-3001
douglass@energyattorney.com
For: Alliance for Cooperative Energy Solutions and Alliance for Retail Energy Markets

Gregory S.G. Klatt
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS CA 91367
(818) 961-3002
klatt@energyattorney.com
For: Alliance for Retail Energy Markets

Andrew B. Brown
Attorney At Law
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO CA 95814
(916) 447-2166
abb@eslawfirm.com
For: Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.

Ronald Moore
GOLDEN STATE WATER/BEAR VALLEY ELECTRIC
630 EAST FOOTHILL BOULEVARD
SAN DIMAS CA 91773
(909) 394-3600 X 682
rkmoore@gswater.com

Gregg Morris
Director
GREEN POWER INSTITUTE
2039 SHATTUCK AVENUE, STE 402
BERKELEY CA 94704
(510) 644-2700
gmorris@emf.net

Edwin W. Duncan
Attorney At Law
GREENBERG & BASS
674 COUNTY SQUARE DRIVE, SUITE 302-A
VENTURA CA 93003
(805) 654-7066
ewdlaw@sbcglobal.net
For: Direct Access Residential Energy

David L.. Huard
MANATT PHELPS & PHILLIPS LLP
11355 W. OLYMPIC BLVD.
LOS ANGELES CA 90064
(310) 312-4247
dhuard@manatt.com
For: Indicated Commercial Parties/County of Los Angeles/Los Angeles Unified School Dist.

Randall W. Keen
MANATT PHELPS AND PHILLIPS LLP
11355 W. OLYMPIC BLVD.
LOS ANGELES CA 90064
(310) 312-4361
pucservice@manatt.com
For: Indicated Commercial Parties/Los Angeles Unified School District/Los Angeles County

S. Nancy Whang
Attorney At Law
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES CA 90064
(310) 312-4000
nwhang@manatt.com
For: Indicated Commercial Parties/Lowe's Home Improvement/Del Taco

Peter W. Hanschen

John Jensen
President
MOUNTAIN UTILITIES
PO BOX 205
KIRKWOOD CA 95646
(209) 258-7444
jjensen@kirkwood.com

Sheryl Carter
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
scarter@nrdc.org

Charles R. Middlekauff
Attorney
PACIFIC GAS & ELECTRIC COMPANY
PO BOX 7442 B30A
SAN FRANCISCO CA 94120
(415) 973-6971
CRMd@pge.com
For: Pacific Gas and Electric Company

Brian Cherry
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MAIL CODE B10C
PO BOX 770000
SAN FRANCISCO CA 94177
(415) 973-4977
bkc7@pge.com

Mark R. Huffman
CHRISTOPHER J. WARNER,WILLIAM V. MANHEIM
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET
SAN FRANCISCO CA 94105
(415) 973-3842
mrh2@pge.com
For: Pacific Gas and Electric Company

Cathie Allen
Ca State Mgr.
PACIFICORP
825 NE MULTNOMAH STREET, SUITE 2000
PORTLAND OR 97232
(503) 813-5934
californiadockets@pacificorp.com
For: Pacificorp

Attorney At Law
MORRISON & FOERSTER, LLP
101 YGNACIO VALLEY ROAD, SUITE 450
WALNUT CREEK CA 94596
(925) 295-3450
phanschen@mofo.com
For: Constellation Energy Commodities Group, Inc./Constellation Generation Group, Inc.

Michael S. Hindus
Attorney At Law
PILLSBURY WINTHROP SHAW PITTMAN LLP
50 FREMONT STREET
SAN FRANCISCO CA 94105-7880
(415) 993-1000
michael.hindus@pillsburylaw.com
For: AT&T Services

Reid A. Winthrop
PILOT POWER GROUP, INC.
8910 UNIVERSITY CENTER LANE, SUITE 520
SAN DIEGO CA 92122
(858) 678-0118
rwinthrop@pilotpowergroup.com
For: Pilot Power Group Inc.

Karen P. Paull
Legal Division
RM. 4300
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2630
kpp@cpuc.ca.gov
For: DRA

Gina M. Dixon
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, MS CP32D
SAN DIEGO CA 92123
(858) 654-1782
gdixon@semprautilities.com

J. Steve Rahon
SAN DIEGO GAS ADN ELECTRIC
8330 CENTURY PARK COURT CP32C
SAN DIEGO CA 92123-1548
srahon@semprautilities.com

Kelly M. Foley
Attorney At Law
SEMPRA ENERGY
101 ASH STREET, HQ12
SAN DIEGO CA 92101-3017
(619) 696-4287
kfoley@sempra.com

Trevor Dillard
SIERRA PACIFIC POWER COMPANY
PO BOX 10100
6100 NEIL ROAD, MS S4A50
RENO NV 89520
(775) 834-4011
tdillard@sierrapacific.com

Akbar Jazayeri
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-3630
AdviceTariffManager@sce.com

Deanna M. White
Attorney
SOUTHERN CALIFORNIA EDISON COMPANY
LAW DEPARTMENT
2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770
(626) 302-1936
deanna.white@sce.com
For: Southern California Edison Company

Michael D. Montoya
ANN P. COHN
Attorney At Law
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-6057
mike.montoya@sce.com

Debra S. Jacobson
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS NV 89150
(702) 876-7396
debra.jacobson@swgas.com

Keith R. Mccrea
Attorney At Law
SUTHERLAND, ASBILL & BRENNAN, LLP
1275 PENNSYLVANIA AVE., N.W.
WASHINGTON DC 20004-2415

For: San Diego Gas & Electric Company

Kim Hassan
Attorney At Law
SEMPRA ENERGY
101 ASH STREET, HQ12
SAN DIEGO CA 92101
(619) 699-5006
khassan@sempra.com

Matthew Freedman
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876
freedman@turn.org
For: The Utility Reform Network

Michel Peter Florio
Attorney At Law
THE UTILITY REFORM NETWORK (TURN)
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876
mflorio@turn.org

Ray Czahar
WEST COAST GAS COMPANY
9203 BEATTY DRIVE
SACRAMENTO CA 95436
(916) 364-4100
westgas@aol.com

********** **STATE EMPLOYEE** **********

Kathryn Auriemma
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2072
kdw@cpuc.ca.gov

Iryna Kwasny
DEPT. OF WATER RESOURCES-CERS DIVISION
3310 EL CAMINO AVE., STE.120
SACRAMENTO CA 95821
(916) 574-2226
ikwasny@water.ca.gov

Matthew Deal
Executive Division
RM. 5215
505 VAN NESS AVE
(202) 383-0100
keith.mccrea@sablaw.com
For: California Manufacturers & Technology Association

April Mulqueen
Division of Strategic Planning
RM. 5119
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2329
am4@cpuc.ca.gov

Thomas R. Pulsifer
Administrative Law Judge Division
RM. 5016
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2386
trp@cpuc.ca.gov

Kellie Smith
SENATE ENERGY/UTILITIES & COMMUNICATION
STATE CAPITOL, ROOM 4038
SACRAMENTO CA 95814
(916) 651-4107
kellie.smith@sen.ca.gov

Christopher R Villarreal
Division of Strategic Planning
RM. 5119
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1566
crv@cpuc.ca.gov

Amy C. Yip-Kikugawa
Administrative Law Judge Division
RM. 5135
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2004
ayk@cpuc.ca.gov

********* **INFORMATION ONLY** **********

Malcolm Reinhardt
ACCENT ENERGY
1299 FOURTH STREET, SUITE 302
SAN RAFAEL CA 94901

San Francisco CA 94102 3298
(415) 703-2576
mjd@cpuc.ca.gov

Brewster Fong
Division of Ratepayer Advocates
RM. 4209
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2187
bfs@cpuc.ca.gov

Jon M. Casadont
Senior Vice President & General Counsel
BLUE STAR ENERGY SERVICES INC
363 WEST ERIE STREET, SUITE 700
CHICAGO IL 60610
(312) 628-8666
jcasadont@bluestarenergy.com

Scott Blaising
Attorney At Law
BRAUN & BLAISING, P.C.
915 L STREET, STE. 1270
SACRAMENTO CA 95814
(916) 326-5812
blaising@braunlegal.com

Sarah Beserra
CALIFORNIA REPORTS
39 CASTLE HILL COURT
VALLEJO CA 94591
(707) 645-7361
sbeserra@sbcglobal.net

Kevin Duggan
CALPINE COPRORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON CA 94588
(925) 479-6648
duggank@calpine.com

Manuel Ramirez
CITY AND COUNTY OF SAN FRANCISCO
1155 MARKET STREET, 4TH FLOOR
SAN FRANCISCO CA 94103
(415) 554-1538
mramirez@sfwater.org
For: San Francisco Public Utilities Commission

Bill Chen
Director - Gov'T. And Reg. Affairs
CONSTELLATION NEWENERGY, INC.
SPEAR TOWER, 36TH FLOOR
ONE MARKET STREET
(415) 453-3341
malcolm@ae2.com

Philippe Auclair
11 RUSSELL COURT
WALNUT CREEK CA 94598
(925) 588-9109
philha@astound.net

E. Garth Black
Attorney At Law
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO CA 94111
(415) 433-1900
gblack@cwclaw.com
For: COOPER, WHITE & COOPER, LLP

Marcie A. Milner
CORAL ENERGY RESOURCES, LLC
4445 EASTGATE MALL, SUITE 100
SAN DIEGO CA 92121
(858) 526-2106
marcie.milner@shell.com

Judy Pau
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6587
judypau@dwt.com

Ann L. Trowbridge
Attorney At Law
DAY CARTER & MURPHY, LLP
3620 AMERICAN RIVER DRIVE, SUITE 205
SACRAMENTO CA 95864
(916) 570-2500
atrowbridge@daycartermurphy.com
For: Sacramento Municipal Utility District

Donald C. Liddell
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO CA 92103
(619) 993-9096
liddell@energyattorney.com

Samara Mindel
Regulatory Affairs Analyst
FELLON-MCCORD & ASSOCIATES
9960 CORPORATE CAMPUS DRIVE, SUITE 2000

SAN FRANCISCO CA 94105
(415) 293-8007
bill.chen@constellation.com

Alexis Widtke
CONSUMER FEDERATION OF CALIFORNIA
520 S. EL CAMINO REAL, SUITE 340
SAN MATEO CA 94402
(650) 373-7847
lex@consumercal.org

Diane I. Fellman
Director, Regulatory Affairs
FPL ENERGY PROJECT MANAGEMENT, INC.
234 VAN NESS AVENUE
SAN FRANCISCO CA 94102
(415) 703-6000
Diane_Fellman@fpl.com

Karen Lindh
LINDH & ASSOCIATES
7909 WALERGA ROAD, NO. 112, PMB 119
ANTELOPE CA 95843
(916) 729-1562
karen@klindh.com

John W. Leslie, Esq.
Attorney At Law
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO CA 92130
(858) 720-6352
jleslie@luce.com

Adam J. Katz
MCDERMOTT WILL & EMERY LLP
600 13TH STREET, NW.
WASHINGTON DC 20005
(202) 756-8088
ajkatz@mwe.com

Erin M. Murphy
MCDERMOTT WILL & EMERY LLP
600 THIRTEENTH STREET, N.W.
WASHINGTON DC 20005
(202) 756-8000
emmurphy@mwe.com

Michael A. Yuffee
MCDERMOTT WILL & EMERY LLP
600 THIRTEENTH STREET, N.W.
WASHINGTON DC 20005-3096
(202) 756-8066
myuffee@mwe.com

LOUISVILLE KY 40223
(502) 214-6303
smindel@knowledgeinenergy.com

Stephen D. Baker
Senior Regulatory Analyst
FELLON-MCCORD AND ASSOCIATES
CONSTELLATION NEW ENERGY-GAS DIVISION
9960 CORPORATE CAMPUS DRIVE, STE. 2000
LOUISVILLE KY 40223
(502) 214-6313
stephen.baker@constellation.com

Joy A. Warren
Regulatory Administrator
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95354
(209) 526-7389
joyw@mid.org

Roger Van Hoy
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95354
(209) 526-7464
rogerv@mid.org

Steven Huhman
MORGAN STANLEY CAPITAL GROUP INC.
2000 WESTCHESTER AVENUE
PURCHASE NY 10577
(914) 225-1592
steven.huhman@morganstanley.com

MRW & ASSOCIATES, INC.
1814 FRANKLIN STREET, SUITE 720
OAKLAND CA 94612
(510) 834-1999
mrw@mrwassoc.com

Harry Kingerski
Sr. Director Regulatory Affairs
MX ENERGY
711 LOUISIANNA STREET, SUITE 1000
HOUSTON TX 77210-4402
(713) 357-2629
HKingerski@mxenergy.com
For: MX Energy

Stacey Rantala
NATIONAL ENERGY MARKETERS ASSOCIATION
3333 K STREET, N.W., SUITE 110
WASHINGTON DC 20007
(202) 333-3288
srantala@energymarketers.com

Blair Jackson
MODESTO IRRIGATION DISTRICT
1231 ELEVENTH STREET
MODESTO CA 95354
(209) 526-7505
blairj@mid.org

Julie L. Martin
West Iso Coordinator
NORTH AMERICA GAS AND POWER
BP ENERGY COMPANY
501 WESTLAKE PARK BLVD.
HOUSTON TX 77079
(281) 366-8840
julie.martin@bp.com

Aldyn Hoekstra
PACE GLOBAL ENERGY SERVICES
420 WEST BROADWAY, 4TH FLOOR
SAN DIEGO CA 92101
(619) 847-6791
aldyn.hoekstra@paceglobal.com

Jenny Gluzgold
PACIFIC GAS & ELECTRIC CO.
77 BEALE STREET, B9A
SAN FRANCISCO CA 94105
(415) 973-0347
yxg4@pge.com

Roger Goldstein
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B9A, PO BOX 770000
SAN FRANCISCO CA 94105
(415) 973-2328
rfg2@pge.com

Paul Holton
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B9A
SAN FRANCISCO CA 94105
(415) 972-5708
pvh1@pge.com

Michelle Mishoe
PACIFICORP
825 NE MULTNOMAH STREET
PORTLAND OR 97232
(503) 813-5854
michelle.mishoe@pacificorp.com

Gurcharan Bawa
Director - Power Supply
PASADENA WATER AND POWER

Audrey Chang
Staff Scientist
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
achang@nrdc.org

Lisa Weinzimer
Associate Editor
PLATTS MCGRAW-HILL
695 NINTH AVENUE, NO. 2
SAN FRANCISCO CA 94118
(415) 387-1025
lisa_weinzimer@platts.com

Robert Rynearson
2132 BELLOC COURT
SAN DIEGO CA 92109
(585) 220-6995
rob@teamryno.com

Theresa Burke
Regulatory Analysti
SAN FRANCISCO PUC
1155 MARKET STREET, 4TH FLOOR
SAN FRANCISO CA 94103
(415) 554-1567
tburke@sfwater.org

Phillip Muller
SCD ENERGY SOLUTIONS
436 NOVA ALBION WAY
SAN RAFAEL CA 94903
(415) 479-1710
philm@scdenergy.com

Dave Smith
SEMPRA ENERGY
101 ASH STREET, HQ-18
SAN DIEGO CA 92101
(619) 699-5013
wdsmith@sempra.com

Lisa Urick
SEMPRA ENERGY
101 ASH STREET, HQ-12
SAN DIEGO CA 92101
(619) 699-5070
lurick@sempra.com

Steven C. Nelson
SEMPRA ENERGY
101 ASH STREET HQ-12
SAN DIEGO CA 92101-3017

150 S. LOS ROBLES, SUITE 200
PASADENA CA 91101
(626) 744-7598
gbawa@cityofpasadena.net

Christopher A. Hilen
Assistant General Counsel
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD
RENO NV 89511
(775) 834-5696
chilen@sppc.com

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
LAW DEPARTMENT
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-3101
Case.Admin@sce.com

Patricia Thompson
SUMMIT BLUE CONSULTING
2920 CAMINO DIABLO, SUITE 210
WALNUT CREEK CA 94597
(925) 935-0270
pthompson@summitblue.com

Regina Costa
Research Director
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876 X312
rcosta@turn.org

Michael Shames
Attorney At Law
UTILITY CONSUMERS' ACTION NETWORK
3100 FIFTH AVENUE, SUITE B
SAN DIEGO CA 92103
(619) 696-6966
mshames@ucan.org

Ourania M. Vlahos
Legal Division
RM. 5127
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2387
omv@cpuc.ca.gov

Kevin T. Fox
WILSON SONSINI GOODRICH AND ROSATI
ONE MARKET, SPEAR TOWER
(619) 699-5136
snelson@sempra.com

SAN FRANCISCO CA 94105-1126
(415) 947-2042
kfox@wsgr.com