

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 9, 2003

Agenda ID #2882

TO: PARTIES OF RECORD IN RULEMAKING 02-01-011

The revised draft decision of ALJ Pulsifer is enclosed. The revisions address comments filed and served on November 3, 2003, and reply comments filed and served on November 10, 2003, to the initial draft decision dated December 4, 2003. The revised draft decision is on the Commission's January 8, 2004 meeting agenda.

When the Commission acts on the revised draft 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 opening comments on the revised draft decision to be due on December 22, 2003 and reply comments on December 30, 2003. In other respects, comments shall conform with Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages.

Consistent with the service procedures in this proceeding, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ Pulsifer at trp@cpuc.ca.gov. Service by U.S. mail is optional, except that hard copies should be served separately on ALJ Pulsifer and Assigned Commissioners Brown and Wood, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service. In addition, if there is no electronic address available, the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternate service (regular U.S. mail shall be the default, unless another means—such as overnight delivery) is mutually agreed upon). The current service list for this proceeding is available on the Commission's web page, www.cpuc.ca.gov.

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

ANG:avs

Decision **DRAFT DECISION OF ALJ PULSIFER** (Mailed 12/9/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the
Implementation of the Suspension of Direct
Access Pursuant to Assembly Bill 1X and
Decision 01-09-060.

Rulemaking 02-01-011
(Filed January 2, 2002)

**OPINION DENYING PETITIONS TO MODIFY
DECISIONS (D.) 03-04-057 and D.02-03-055**

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**OPINION DENYING PETITIONS TO MODIFY
DECISIONS (D.) 03-04-057 and D.02-03-055**

By this decision, we resolve two related pleadings: (1) the Petition to Modify D.03-04-057¹ and the Petition for Clarification of D.02-03-055.² We deny both petitions, but provide opportunity for further comment regarding an alternative solution to the problems posed by parties' pleadings.

I. Positions of Parties

A. Position of Joint Petitioners

A joint petition to modify D.03-04-057 was filed on August 1, 2003 by SBC Services (SBC), University of California / California State University (UC / CSU), and California Large Energy Consumers Association (CLECA) (Joint Petitioners). The Petition was filed to prevent Pacific Gas & Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E) (*i.e.*, "utility distribution companies [UDCs]) from implementing a new policy which Petitioners claim would require pre-suspension direct access (DA) customers to install a second meter and establish a second, bundled account in the ordinary course of business whenever a meter change is required. Joint Petitioners believe this new requirement is based on an untenable interpretation of D.03-04-057, a decision establishing certain ground rules when customers want to move DA accounts.

¹ D.03-04-057 granted the Petition to Modify D.02-03-055 filed by Albertson's Inc. to allow direct access (DA) customers to add new locations or accounts to DA service provided there is no net increase in the amount of load served under DA as of September 20, 2001.

² D.02-03-055 set forth the Commission's policies concerning suspension of DA based on a September 20, 2001 suspension date.

Thus, Petitioners ask that the Commission modify D.03-04-057 to affirm that second meters and second, bundled accounts are not required when meters are changed. Moreover, because of the expense, increased operational complexity, failure risk associated with increased operational complexity, and disruption caused by this policy, Petitioners ask that the Commission act expeditiously. Pursuant to Rule 47, Joint Petitioners specifically request that D.03-04-057 be modified by changing the requirements of Rule 6 (in Appendix A, p. 2) as follows:

Rule 6 should not be construed to prevent, after September 20, 2001, the installation of meters or meter-reading equipment as necessary to initiate direct access service for eligible customers, or the replacement or upgrade of existing meters for existing direct access customers, including meter changes and upgrades caused by normal increases in load at pre-suspension accounts. (Proposed text additions underlined.)

The Joint Petitioners argue that the UDCs erroneously base their proposed two-account, two-meter policy on language in D.03-04-057 regarding “no net increase in DA load.” The Joint Petitioners argue this language was adopted by the Commission merely to ensure that the ability to move the location of DA-eligible accounts would not result in gaming the suspension order (*i.e.*, D.02-03-055), but that the issue of normal load changes, at stationary accounts was simply not before the Commission in D.03-04-057. Joint Petitioners believe their requested modification to Rule 6 will prevent the UDCs from implementing the two-meter, two-account policy for normal increases in load.

The economic and administrative disruption caused by the two-meter, two-account policy as identified by the Joint Petitioners fall into two categories: (1) expense; and (2) increased operating complexity and inefficiencies.

Joint Petitioners cite examples of the costs and disruptions that a two-meter, two-account policy would have on the UC/CSU system. As discussed in the declaration of Len Pettis, both UC/CSU, the systems are adding significant new facilities to existing campuses over the next decade to meet mandated enrollment growth. (Pettis Decl. ¶ 3.) Typically, these facilities are infill buildings that are not proximate to a campus' main service connection point. The campuses typically own the distribution system within the campus boundaries that supplies electricity to individual campus facilities. The normal practice of the campuses would be to serve these new facilities through the campus-owned distribution systems. Joint Petitioners claim the UDCs' policy would require that a campus install not only a separate meter but a separate feed to new facilities that would likely cost millions of dollars for each new facility.

For SBC, as claimed in the declaration of John Keller, more than 15% of SBC's DA loads will require a second meter this year. (Keller Decl., ¶ 9.) The additional energy costs to SBC will be \$3.6 million annually, which represents only the additional energy charges from the second account not being billed as DA service. Keller claims the SBC hardware and installation costs for the second meter and panel will increase by approximately \$460,000 for the work scheduled for 2003.

In addition, the second meter proposal will require a second House Service Panel (HSP) to keep the two systems separate, as well as additional equipment which will cost from \$50,000 to \$300,000 per project.

B. Position of SCE

SCE opposes the Petition to Modify D.03-04-057.³ SCE denies Joint Petitioners' claim that SCE relied on the "no net increase in DA load" language in D.03-04-057 to implement its procedures for increases in DA load. SCE argues that its procedures are intended to implement the Commission's "standstill approach" to DA load and to prevent "add-ons of new DA load," as promulgated in D.02-03-055, prior to D.03-04-057.

SCE also denies Joint Petitioners' claim that SCE is "taking the position that routine meter changes can trigger the loss of DA service" and that SCE is requiring DA customers to install a second bundled account "whenever a meter change is required." (Jt. Petition, p. 1.) SCE argues that it has implemented procedures to respond to requests by DA customers to "significantly increase" DA load, which may or may not require a meter change.⁴ In fact, SCE believes existing metering for most large customers, is adequate for the increased load.

³ SCE filed its response in opposition to the Joint Parties' Petition on September 2, 2003. SCE also filed a third-round reply in support of its own Petition for Clarification on September 15, 2003. The Joint Petitioners, on September 18, 2003, filed a motion to strike the third-round reply, arguing that SCE failed to obtain advance permission and that the reply improperly challenged the "standstill principle." SCE filed a response to the Joint Motion to strike on September 25, 2003. SCE argues that its failure to obtain advance permission was inadvertent, and no party is prejudiced thereby. SCE denies that it is challenging the "standstill principle." The motion to strike the third-round reply is denied. SCE should have asked for permission in advance pursuant to Rule 47(g), although SCE did belatedly seek permission after the fact to file the third-round reply. Its receipt will not prejudice any party. Permission to receive the third-round response is granted.

⁴ SCE's proposed implementation procedures are discussed in the following section of this order relating to SCE's Petition for "clarification" of D.02-03-055.

SCE does not agree with the Joint Petitioners' conclusion that the Commission limited its prohibition of new DA load to only new accounts. SCE argues that the Commission's "standstill approach" was intended to prohibit growth in DA load, and that the term "add-ons of new load" clearly contemplates adding load to an existing DA account, not solely opening a new account. SCE argues that allowing DA accounts to add-on new load without limitation would be a giant loophole in the Commission's "standstill approach" and would render the entire approach meaningless.

As a related matter, SCE filed on August 4, 2003, a Petition for Expedited Clarification of D.02-03-055." SCE seeks clarification from the Commission regarding the appropriate procedures for implementing the "standstill approach" adopted in D.02-03-055 in connection with requests received from DA customers to increase their DA load. SCE seeks the Commission's approval of its proposed procedures to respond to such requests. SCE seeks timely resolution of this issue to minimize potential future costs increases to DA customers if it becomes necessary for them to reconfigure their electric facilities to separate their existing DA load from any significant incremental load.

Pursuant to Assembly Bill (AB) 1X (Cal. Water Code, Section 80110), which requires that "the right of retail end users to acquire service from other providers shall be suspended until the department [DWR] no longer supplies power hereunder," the Commission issued a series of decisions implementing DA suspension. On September 20, 2001, the Commission issued D.01-09-060, suspending the right of customers to acquire DA service on or after September 21, 2001. Subsequently, the Commission issued D.02-03-055, which confirmed the September 21, 2001 suspension date and articulated a general

“standstill approach” which enabled current DA customers to preserve their DA service while assuring that overall DA load would not increase.

Under the Commission’s “standstill approach,” DA load is not permitted to grow, “apart from normal load fluctuations.” However, in attempting to implement the “standstill policy,” SCE argues that it is difficult to differentiate “normal load fluctuations” (due to factors such as weather changes or seasonal businesses) from the “addition of new load” (due to factors such as the addition of new equipment). Therefore, SCE is proposing to use an objective criterion (500 kilowatt (kW) or 10% threshold) that it believes is large enough that it will not be confused with a “normal fluctuation” in load. SCE selected a 500 kW threshold because an increase of 500 kW is equivalent to adding a large industrial customer to SCE’s system.

SCE explains that it files its Petition over a year after D.02-03-055 was issued because DA load growth and requests for increases in DA load did not occur immediately. Given the increase in the volume of requests over the past year, however, SCE developed certain interim procedures to respond to such requests, and is now filing its petition to obtain the Commission’s approval of those procedures, as summarized below:

- Determine when additions of load on existing DA accounts will result in a “significant increase” is defined as an increase greater than 500 kW or 10% over current load, whichever is greater.
- Where it is determined that the load on a DA account has significantly increased (or will significantly increase), provide the customer with the option of returning to bundled service or separately metering the new load as a new bundled service account.

- Monitor cumulative DA load for large power customers. If it is determined that DA load is increasing significantly (*e.g.*, an increase of 10% above the level of DA load as of the beginning of 2003) then re-evaluate these procedures.
- Exclude DA customers that maintain DA demand of less than 500 kW from the second meter requirement.

C. Position of PG&E and SDG&E

On September 2, 2003, PG&E and SDG&E (the utilities) filed a joint response to the Petition to Modify D.03-04-057, and on September 3, 2003, filed a joint response to the SCE Petition to Modify D.02-03-055. In their joint response to SCE's Petition, the utilities agree with SCE that the Commission's DA suspension decisions limit load growth on existing DA accounts to "normal usage variations" and "normal load fluctuations," but disagree with SCE in terms of how to address the DA load growth that exceeds such "normal" variations.

PG&E and SDG&E agree that SCE's proposed approach would reduce administrative burden to the extent it focuses load growth limits only on the largest DA customers. PG&E and SDG&E oppose the SCE approach, however, arguing that it still would require considerable "policing" by the utilities, and would require uneconomic load splitting expenses to be incurred by large customers. PG&E and SDG&E thus ask the Commission to modify its "standstill approach" to eliminate restrictions on DA load growth on accounts in existence and under contract on September 20, 2001, in view of significant cost impacts on individual customers of splitting load. The utilities continue to support the prohibition in D.02-03-055, however, on *new* DA accounts being added after September 20, 2001. The utilities thus propose language changes to D.02-03-055 for this purpose.

PG&E and SDG&E, however, do not believe modification of D.03-04-057 is necessary or appropriate to accomplish this result. D.03-04-057 is a decision modifying one aspect of D.02-03-055 and does not change the underlying “standstill” policy adopted in D.02-03-055. While the utilities do not believe any changes to D.03-04-055 are necessary, they propose that the Commission convene a Rule 22 Working Group meeting to determine whether the affidavit developed by the utilities to implement D.03-04-055 needs further revision in light of a modification of the DA load growth rules.

The utilities claim their proposed D.02-03-055 modification to the Commission’s “standstill” policy would minimize monitoring and policing of DA load by the utilities, while accommodating “reasonable” load growth. PG&E and SDG&E propose that load on DA accounts be allowed to grow to the point where the distribution facilities serving the customer (*i.e.*, wires, transformers, panels) need to be upgraded (referred to as a “panel upgrade”) to accommodate the increasing load. Once a panel upgrade is requested, the customer would be required to physically divide the load allowing the original load amount as of September 20, 2001 to remain on DA with the increment being metered separately as a bundled service load.

Even though the utilities agree with petitioners that load on DA-eligible accounts should be allowed to grow, the utilities disagree with many of the statements and characterizations made in the Petition to Modify D.03-04-057. The utilities argue that petitioners obscure the real issue of allowable DA load growth by alleging that the utilities require a DA customer to install two meters whenever it changes its existing meter. At least for PG&E and SDG&E, however, only when a customer seeks a panel upgrade (which often does not require an upgraded meter) do the utilities seek to require that loads be split between DA

and bundled service charges. A panel upgrade means that significant load growth has occurred. The utilities would allow DA load to fluctuate within the limits of the capacity of distribution lines and equipment serving the load which PG&E and SDG&E believe more than accommodates daily and seasonal load variations.

The utilities argue that Petitioners' proposed change to Rule 6 in D.03-04-057 does not address the core question, namely, determining the allowable load growth for DA accounts. The proposed Rule 6 change would allow for "the installation of meters or meter reading equipment as necessary to initiate direct access service for eligible customers, or the replacement or upgrade of existing meters for existing direct access customers, including meter changes and upgrades caused by normal increases in load at pre-suspension accounts."

The utilities argue that granting this modification will lead to considerable confusion and new disputes over the meaning of the word "normal." The proposed modification to D.03-04-057 moreover, ignores the provisions of D.02-03-055 limiting DA load growth to "normal load fluctuations" and "normal usage variation." D.02-03-055 makes it clear that existing DA load growth is limited to "normal load fluctuations" or "normal usage variations" on existing DA accounts. New accounts are prohibited. Subsequent clarifications in D.03-04-057 state that that "normal load fluctuations" means "daily and seasonal load fluctuations" and that the Commission standstill policy is aimed at maintaining DA levels as they existed on September 20, 2001. Thus, the utilities argue, adopting the proposed modification to D. 03-04-057 would create an internal inconsistency with D.02-03-055.

D. Position of Other Parties

On September 3, 2003, other parties also filed responses to the SCE Petition.⁵ The Joint Parties (AREM and Albertson's) oppose the SCE proposal, but support the modified approach proposed by PG&E and SDG&E in response to the petition of SBC *et al.* to modify D.03-04-057. The Joint Parties claim that complying with SCE's two-meter policy would cause DA customers to incur significant costs without any corresponding benefit. The Joint Parties oppose SCE's Petition to Clarify D.02-03-055 and instead favor lifting the restrictions on load growth for "grandfathered" DA accounts⁶ as suggested by PG&E and SDG&E.

The Joint Parties view the PG&E/SDG&E approach to the DA load growth issue as being simple, easy to implement, and less confusing than the SCE approach. In addition, the Joint Parties ask the Commission to clarify that the DA suspension rules should not be construed to prevent changes in the "normal course of business" including but not limited to changes in DA account or meter numbers, implementation of temporary accounts, or consolidation of multiple DA-eligible accounts into a smaller number of new DA accounts. Joint Parties argue that such changes in the identification of DA accounts do not affect the total amount of DA-eligible load and thus should not trigger a loss of a

⁵ Responses to the SCE Petition were filed by SBC Services, Inc., University of California/California State University, and California Large Energy Consumers Association (collectively, the "Joint Petitioners"); Pacific Gas and Electric Company and San Diego Gas & Electric Company; Strategic Energy L.L.C.; and the California Independent Petroleum Association.

⁶ "Grandfathered" DA accounts refer to those accounts in effect prior to February 1, 2001, the effective date of AB 1X.

customer's DA rights, regardless of whether the Commission adopts the SCE approach or the PG&E/SDG&E approach.

Strategic Energy also opposes the SCE proposal and supports the PG&E/SDG&E approach. Strategic Energy argues that SCE's proposed two-meter policy would be unworkable and unenforceable with respect to splitting load between bundled and DA service. Strategic Energy argues that SCE has not demonstrated that DA load growth within its service territory has exceeded levels attributable to "normal load fluctuations" that are allowable under Commission rules, thus calling into question whether there is any shortcoming in the existing DA rules. Strategic Energy notes that the DA load figures posted on the Commission's website show that statewide DA load in May 2003 is virtually the same as in January 2002.

California Independent Petroleum Association (CIPA) also opposes the SCE proposal at least until certain issues are clarified or modified. CIPA characterizes the SCE proposal as establishing a precedent ultimately requiring CIPA members to bifurcate their load growth and begin receiving separate bills as bundled customers. CIPA views such a result as inconsistent with the Commission's original intention, and argues that this proposal appears to have serious implications for self-generation. For example, if a gas producer installs a self-generation facility and zeroes out load growth, it is unclear whether the producers should be required to pay any CRS. CIPA also questions when the clock would start for the purposes of assessing load growth under the SCE proposal.

II. Discussion

Because of their interrelated nature, we address herein: (1) the SCE Petition to Clarify D.02-03-055, (2) the Joint Parties' Petition to Modify D.03-04-057 and (3)

the Joint Utilities' Response to the above pleadings in which it proposes alternative modifications to D.02-03-055.

A. Petition to Modify D.03-04-057

We agree with Petitioners that second meters and second bundled accounts should not be required for DA customers simply because meters are changed for any reason. Yet, we disagree that Petitioners' claim that modification or clarification to D.03-04-057 is necessary or warranted to "make clear" that such is the Commission's policy. Existing Commission rules already articulate this policy clearly. Moreover, based on the pleadings by the UDCs, there is no indication that they are seeking to require DA customers to install second meters with bundled accounts any time a meter is changed. SCE denies that it is requiring DA customers to install a second bundled account "whenever a meter change is required," but only seeks to require a second bundled account to respond to requests by DA customers to "significantly increase DA load" based on criteria defined in its proposal.

Joint Petitioners infer that SCE's rationale for requiring a second meter is based on a misinterpretation of D.03-04-057 regarding "no net increase in DA load." Petitioners argue that because the issue of "normal load changes" at stationary DA accounts was not before the Commission in D.03-04-057, no basis is provided in that decision for SCE's practice of requiring a second meter based on a "significant increase" in DA load at a stationary DA location.

SCE, however, does not rely on the "no net increase in DA load" language in D.03-04-057 as a basis for its second-meter policy. SCE relies instead upon the Commission's "standstill approach" to prevent "add-ons of new DA load" as required by D.02-03-055. Thus, even if we granted the modifications to D.03-04-057 sought by Petitioners, the "standstill" requirements of D.02-03-055

would still prohibit increases in DA load in excess of September 20, 2001 authorized levels. D.02-03-055 prohibits load on existing DA accounts from growing substantially above levels in effect as of September 20, 2001, with the only allowable growth on these accounts being limited to “normal usage variations.” In this regard, D.02-03-055 states that:

We favor a balanced approach which allows existing direct access customers to continue in the direct access market, *but limits additional load moving to direct access to load changes associated with normal usage variations on direct access accounts in effect as of September 20, 2001. . . .* Under the standstill approach . . . we will permit assignments and renewals, but not add-ons of new load. D.02-03-055, mimeo., at 18. (Emphasis added.)

Likewise, Finding of Fact 12 in D.02-03-055 states:

It is reasonable to interpret a September [21], 2001 date for suspension of direct access to mean that the level of direct access load *as of that date* (irrespective of whether power flowed under any direct access contract) *should not be allowed to increase, apart from normal load fluctuations.* (Emphasis added.)

In addition, in AB 117, signed into law on September 24, 2002. (Stats 2002, ch. 838), the Legislature amended Public Utilities Code Section 366.2 to add subsection (d) in order to clarify its intent concerning the prevention of cost shifting relating to DWR cost recovery. This subsection states:

“It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the [DWR’s] electricity purchase costs, as well as electricity purchase contract obligations incurred. . . that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature *to prevent any shifting of recoverable costs between*

customers.” (Pub. Util. Code, § 366, subd. (d)(1).)
(Emphasis added.)

In comments on the Draft Decision, joint parties argue that the standstill principle equates ineligible new DA load growth only with *new* accounts, but not with increased load at *existing* accounts. Joint parties’ argue that the prohibition in D.02-03-055 on additional load “moving to” direct access does not refer to the load already being served through existing DA accounts. We disagree. The references in D.02-03-055 to limitations on load “moving to” direct access do, in fact, refer to existing DA accounts. The Joint Parties referenced language in D. 02-03-055, as cited above, stating that the DA suspension “limits additional load *moving to* direct access to load changes associated with *normal usage variations* on direct access *accounts in effect as of September 20, 2001.*” (Emphasis added.) The “movement” of load thus is specifically referenced to changes within existing accounts as of the suspension date.

Also, as defined in Finding of Fact 12 of D.02-03-055, quoted above, it is the overall level of DA load that is not allowed to increase, apart from normal load fluctuations. There is no separate exclusion from the suspension rules in Finding of Fact 12 for growth in DA load in existing accounts. The limitations prescribed by D.02-03-055 therefore do not allow for unlimited growth in DA load served at existing accounts, but only growth within “normal usage variations.” As affirmed in D.02-03-055, while “assignments and renewals” were permitted under the standstill principle, “add-ons of new load” were not. Joint parties’ proposed modification would be inconsistent with this restriction by permitting unlimited “add-ons of new load.” Under the parties proposed modifications, there would be no limit in “add-ons of new load” that could be

negotiated with an ESP as long as the new load was linked to an DA existing account.

If unlimited load growth on existing accounts was intended by D.02-03-055, it would have been superfluous to add language limiting load growth eligible for DA only to “normal usage variations.” Petitioners’ requested modification to allow unlimited load growth on existing DA accounts is thus clearly in conflict with D.02-03-055.

Limiting load growth on existing DA accounts in this manner is required to “alleviate the significant cost-shifting of DWR costs onto bundled service customers.” D.02-03-055 *mimeo.*, at 18. We confirmed this load growth limitation by clarifying in D.03-04-057 that the “standstill” policy is aimed at “maintaining the then-current levels of DA” as of September 20, 2001. (D.03-04-057, *mimeo.*, at 14.) We also clarified that “normal usage variations” means “daily and seasonal load fluctuations.” (D.03-04-057, *mimeo.*, at 17.) Thus “normal load variations” cannot refer to unlimited growth of load on DA accounts from expanding customer operations, but instead refers to the daily and annual load shape or profile associated with DA load authorized under contract as of September 20, 2001.

Petitioners argue that placing DA eligibility limits on the growth of new load at existing DA accounts would disrupt the DA market and customer service. Parties argue that many DA contracts are “full requirements arrangements” that cover “incremental load,” if any, since September 20, 2001. Parties argue that requiring such customers to place that incremental load on bundled utility service is a “substantial interference” with those contracts.

We recognize that under the standstill principle, DA load volumes under contract as of the suspension date are permitted even though the actual

level of DA power flowing on September 20, 2001 may have been below the total contracted volumes in effect on the suspension date. Thus, we do not intend to prevent DA customers from increasing load on existing DA accounts so long as any such load increases do not exceed the volumes that were authorized under contractual arrangements executed on or before September 20, 2001. The fact that DA power had not yet flowed under a particular ESP contract as of September 20, 2001, would not preclude increases in DA load deliveries on an existing account up to the level provided for under contracts in effect on that date. The governing criteria under the standstill principle, therefore, is whether the load had been contracted for as of the suspension date. This principle is articulated in Finding of Fact 12 of D.02-03-055 where the Commission stated that suspension applied to the level of direct access load in effect as of September 20, 2001 *“irrespective of whether power had yet flowed under any direct access contract.”*

Thus, even to the extent the actual growth in DA load occurred after September 20, 2001, the standstill principle still is observed as long as the contractual commitment associated with the load growth was made on or before September 20, 2001. On the other hand, the suspension rules adopted in D.02-03-055 preclude contractual “add-ons” of DA load commitments entered into after September 20, 2001 even if such increases are assigned to an existing DA account. Thus, permitting incremental load growth at existing DA accounts attributable to “add-ons” of new load that were executed under contract after September 20, 2001 would conflict with the suspension rules adopted in D.02-03-055.

Thus, we conclude that the modifications sought by Petitioners would violate the “standstill principle” and related statutory requirements to suspend

DA to the extent they allow unlimited DA load growth beyond authorized contract volumes as of the suspension date. Moreover, the modification of D.03-04-057 proposed by Petitioners is overly broad and vague. Petitioners' proposed modification refers to "meter changes and upgrades caused by normal increases in load." Yet, Petitioners fail to define what constitutes "normal" increases in load, as distinguished from "abnormal" or "supernormal" increases. Given this ambiguity, allowing DA billing to apply to "normal increases in load" fails to provide safeguards to enforce the mandated suspension of new direct access volumes as adopted in D.02-03-055. To the extent such "normal" increases in load fail to delineate the constraints imposed by our suspension rules, permitting such load increases to qualify for direct access would violate our statutory mandate to suspend direct access, and related Commission decisions implementing that suspension. Accordingly, we deny the Petition to modify Rule 6 of D.03-04-057.

Joint Petitioners suggest that the utilities may be relying on a typographical error in Conclusion of Law of D.03-04-057. Although we do not believe SCE relied on a typographical error for its position, we do agree that a typographical correction is appropriate to insert the word "not" into Conclusion of Law 8 in D.03-04-057 as follows:

"The limitations on DA eligibility of load from replacement or relocation of facilities as adopted in the modifications herein to D.02-03-055 are not intended to prohibit load changes associated with normal usage variations for accounts at other locations that are eligible for DA as of September 20, 2001." (Correction underlined.)

This typographical correction, however, has no substantive effect on the disposition of either of the Petitions at issue here.

B. SCE Petition to Modify D.02-03-055

While we agree with SCE that unlimited load growth experienced by DA customers that exceeds authorized limits in effect as of September 20, 2001, beyond “normal load fluctuations,” does not qualify for DA service, we disagree with the means by which SCE proposes to implement its “two-meter” policy.

As noted by opponents, there are detrimental effects in terms of the cost, disruption, and confusion that the second metered account would cause. SCE provides no refutation that at least some additional customer cost and disruption would likely result from the installation of second meters, even if the specific magnitude may be questioned.

Moreover, while SCE’s procedures would impose additional burdens on DA customers, its proposed criteria for installing second meters fail to correspond to DA suspension levels. SCE’s proposed procedures to install a second meter would merely be activated upon detection of a “significant increase” in DA load in any given account beyond “current” levels. SCE would separately meter “new load” that is in excess of 500 kW or 10% of “current load.”

It is unclear as to what data SCE would use to determine “current load” or to what extent “current load” for any given authorized DA account is an appropriate baseline proxy for the maximum level of DA contract load as of the September 21, 2001 suspension date. SCE’s mere reference to “current levels” of load provides no means of determining whether such load levels necessarily correspond to the authorized contract limits in effect as of September 20, 2001, taking into account “normal load fluctuations” as allowed under existing suspension rules. A more meaningful approach would be to measure growth in DA load in relation to the authorized maximum level of authorized DA load as of the September 20, 2001 suspension date.

While we agree with SCE's ultimate goal of adhering to the "standstill principle" in D.02-03-055 regarding DA suspension, we disagree with its proposed method of determining what constitutes "excess" load, and its approach of requiring separate metering of such "excess" load. Requiring an extra meter as proposed by SCE is not the most efficient or beneficial way by which load growth in DA accounts beyond the level authorized as of September 20, 2001 could be recognized.

Conformance with the Commission's standstill principle does not require separately metered data to the extent that a process can be used to avoid cost shifting and to maintain bundled customer indifference.

C. Proposed PG&E/SDG&E Modifications to D.02-03-055

While the modifications to D.02-03-055 proposed by PG&E and SDG&E would entail less cost and disruption to customers, we still find the PG&E/SDG&E proposal would conflict with the statutory suspension of direct access and would risk cost shifting prohibited by D.02-03-055, and thus, in violation of AB 1X and AB 117. Although the PG&E/SDG&E proposal would prevent DA customers from adding new accounts for DA service beyond the DA load in effect as of September 20, 2001, those at existing locations and meters would be allowed to grow beyond September 20, 2001 levels. The current policy of the Commission, as discussed above, however, limits load growth on both existing DA accounts as well as prohibiting new DA accounts after September 20, 2001.

Under the PG&E/SDG&E proposal, a second meter would still be required for certain incremental load growth, but only at the point where distribution facilities capacity growth required a panel upgrade. PG&E and SDG&E concede, however, that a panel upgrade signifies that peak load has

grown substantially, typically more than 10 %, and probably exceeds what might be considered a “normal load fluctuation.” Thus, the PG&E /SDG&E proposal would allow DA load to grow beyond legally permissible limits under the “normal load fluctuation” standard in violation of the statutory suspension mandate.

Such proposed modifications would fundamentally change the “standstill principle” adopted in D.02-03-055 to implement DA suspension. Parties have not justified the legal permissibility of lifting the suspension on DA load growth under the statutory requirements of AB 1X and AB 117. Our DA “standstill” policy, adopted in compliance with these statutory requirements mandating the suspension of DA, prohibits cost shifting among customer groups, and holds DA load responsible for its fair share of DWR and related utility procurement costs.

PG&E and SDG&E argue, however, that the resulting incremental shift of DWR costs from their proposal should be “relatively insignificant” for bundled customers, *“provided that the DA load pays its share of the cost responsibility surcharge (CRS).”* The utilities also argue that any cost shifting that results from a capped DA CRS will be temporary and ultimately, DA loads will pay their full share of DWR’s costs over time even if one assumes that the incremental DA load would otherwise have been bundled load if the “no growth” policy were maintained.

Ignoring growth limits on existing DA accounts would conflict with the requirement to keep bundled customers indifferent between DA suspension as of July 1, 2001 versus September 20, 2001. Likewise, retention of the 2.7 cents / kWh surcharge, as adopted in D.03-07-030 was predicated on payback of the DA cost responsibility undercollection no later than the termination date of the DWR

contracts. The payback analysis, in turn, relied upon the indifference cost approach between authorized DA load levels at September 21, 2001 versus July 1, 2001 as adopted in D.02-11-022. Thus, the assumptions underlying D.03-07-030 regarding the adequacy of the 2.7 cents cap could be undermined by removal of DA suspension limits.

While more DA load would pay the 2.7 cents surcharge, unrestricted growth in DA load would simultaneously increase the DA cost responsibility undercollection (to the extent actual DA cost responsibility exceeds 2.7 cents / kWh). The incremental 2.7 cents / kWh surcharge collections thus would not capture the increased DA undercollection triggered by the incremental DA load growth that is based upon *total* cost shifts under a DA-in / DA-out comparison, not just the fraction covered by the surcharge cap.

We therefore decline to grant parties' requested modifications to Rule 6 of D.03-04-057 in view of our statutory obligations to prevent cost shifting and to hold DA load responsible for its "fair share" of DWR costs. Likewise, we find the proposed procedures offered by SCE, as well as the alternative offered by PG&E / SDG&E inappropriate as a means of enforcing the "standstill principle."

D. Addressing "Load Growth" Consistent with the "Standstill Principle"

With the denial of the respective modifications proposed by the parties, we are left with the question of how to deal with potential increases in DA load beyond what the suspension rules allow. Strategic Energy notes statistics indicating that the overall level of DA load has not grown appreciably in the past year. We believe, however, that some additional Commission guidance is warranted in terms of what levels of load growth would exceed permissible limits under mandated suspension rules and what means should be used to identify and assign cost responsibility to such load.

We favor a practical process for applying and enforcing the suspension rules that is fair to DA customers while guarding against cost shifting to bundled customers.

The ALJ's draft decision raised the issue of whether the utilities could incorporate modifications into their own billing and accounting systems to subtract out a predetermined allowable DA load cap based upon DA amounts authorized as of the September 20, 2001 suspension date, taking into account "normal load fluctuations." Then, to the extent the total metered sales from the DA account exceed the authorized predetermined suspension amount as of September 20, 2001, the residual load balance subject to bundled service billing would be mathematically calculated without the need for a second meter. The incremental load in excess of the authorized suspension load level could then be billed at the equivalent bundled service rate applicable to the bundled tariff counterpart to the DA customer in question.

In their comments on the draft decision, joint parties pointed out that the problems and complexities of devising billing modifications to split load between DA and bundled would entail considerable cost and delay. We agree that the suggested approach of splitting load through utility billing system modifications may not be a practical remedy. We shall therefore not authorize any new billing or metering mechanisms to split DA load to delineate growth that may exceed permissible suspension limits.

We conclude that the most efficient and practical way to account for potential load growth beyond permissible levels under the suspension rules is through the periodic process for reviewing and adjusting the CRS cap and undercollections. The process adopted by the Commission in D.03-07-030 requires periodic review of the adequacy of the DA CRS cap to recover all CRS

undercollections by the end of the DWR contract term. We conclude that to the extent that growth in DA load exceeds permissible levels under the suspension rules, any resulting potential for cost shifting can be addressed through adjustment either to the DA CRS cap or to the accrued undercollection.

In order to use the DA CRS cap review process to adjust for the effects of DA load growth beyond authorized suspension limits, ineligible incremental DA load must be properly accounted for in the DA-in / DA-out calculations of cost responsibility. Under the adopted “bundled indifference cost” methodology, the DA cost responsibility obligation applies to incremental migrations in DA load between July 1, 2001 and September 20, 2001. The magnitude of DWR cost responsibility is based on changes in load between July 1 and September 20, 2001. “Continuous DA load” that existed before DWR began its power procurement program, by contrast, is not subject to cost responsibility for DWR costs. The modification sought by Petitioners would treat growth in DA load in existing accounts as “continuous” DA load. As such, under their proposal, incremental load added after September 20, 2001 would escape cost responsibility.

As noted above, DA load growth that relates to contracted volumes that were in effect as of September 20, 2001, properly falls within the suspension limits even if full power levels did not flow under the contract volumes until a later date. On the other hand, incremental DA load growth that had *not* been contracted for as of September 20, 2001 constitutes excess load beyond permissible suspension levels in making the indifference cost calculations.

In order to assure that increased DA load growth beyond the suspended limits bears its “fair share” of cost responsibility, any necessary adjustments shall be made through the calculation of “indifference” costs to take

into account such incremental volumes. As such, a cost responsibility provision must be applied to load increases attributable to new contract “add-ons” executed after September 20, 2001 as required to keep bundled customers indifferent to such DA load growth under the standstill principles outlined in D.02-03-055. We shall therefore require appropriate recognition of such add-ons of new load due to contractual commitments for new DA load volumes entered into subsequent to the suspension date of September 20, 2001, as part of the next periodic review of DA CRS cap levels. We shall assess the extent to which increases in DA load volumes have occurred in excess of the authorized amounts under contract as of September 20, 2001, taking into account, as appropriate, “normal load fluctuations,” as allowed under the standstill principle.

To the extent that we determine that excess load exists beyond “normal load fluctuations” as part of our next reassessment of the DA CRS cap, we shall make an adjustment, if necessary, either through an increase in the DA CRS cap or by increasing the cost responsibility undercollection accrual to maintain bundled customer indifference. In any event, we shall maintain the requirement adopted in D.03-07-030 that any DA CRS undercollections be paid off no later than the end of the DWR contract term.

In making such adjustments, we shall consider “normal load fluctuations” as permitted under the standstill principle. We shall also consider a materiality threshold with respect to specific DA accounts that warrant adjustment for exceeding authorized suspension volumes in the DA in/out calculation. As noted in its comments on the draft decision (p. 3), SCE expected only about 20 DA customers to be affected under its proposed “two-meter” procedure. By contrast, a total of approximately 40,000 DA accounts are served within the SCE territory, the vast majority of whom have small individual loads.

Load growth in such small DA accounts are not expected to have any material effect on bundled customer cost shifting. Thus, we agree that it is reasonable to consider a materiality threshold by focusing only on the larger DA accounts as being subject to adjustment for increases in load beyond permissible suspension limits, and to exclude the majority of DA customer accounts. We shall entertain proposals concerning appropriate materiality thresholds for this purpose at the time we take up this analysis in the next DA CRS cap reassessment proceeding.

III. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on November 3, 2003, and reply comments were filed on November 10, 2003. We have taken the comments into account, as appropriate, in finalizing this order.

IV. Assignment of Proceeding

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

V. Findings of Fact

1. In D.03-04-057, the Commission clarified that the “standstill” policy is aimed at “maintaining the then-current levels of DA” (*i.e.*, as of September 20, 2001).

2. In D.03-04-057, the Commission clarified that “normal usage variations” means “daily and seasonal load fluctuations,” and thus does not include growth of load on DA accounts from expanding customer operations, as proposed by Petitioners’ modification.

3. Joint Parties' proposed modification to Rule 6 of D.03-04-057 fails to provide a definition of "normal increases in load" that would permit enforcement of the "standstill principle" adopted in D.02-03-055.

4. Granting the requested Modification of Rule 6 of D.03-04-057 would not address the concerns raised by Joint Parties opposed to SCE's two-meter policy.

5. The proposal of PG&E and SDG&E (*i.e.*, to permit DA load growth up to the point where capacity requires a panel upgrade) would violate the standstill principle under D.02-03-055.

6. A panel upgrade request signifies that peak load has grown substantially, typically more than 10 %. At least in some cases, such growth probably exceeds what might be considered a "normal load fluctuation."

7. SCE's proposal would impose additional burdens on DA customers, but its proposed criteria for installing second meters fail to relate to any relevant benchmark that corresponds to September 20, 2001 DA suspension levels.

8. SCE's reference to "current levels" of load in its proposed process for second meters is unduly vague and provides no means to determine whether such levels necessarily correspond to the authorized contract limits in effect as of September 20, 2001, taking into account "normal load fluctuations" as allowed under existing suspension rules.

9. SCE has not justified that its proposed modifications are an appropriate way to implement the Commission's standstill principle, or that the modifications are fair to DA customers.

10. The most efficient and practical way to account for any potentially excess DA load growth beyond the levels that are permissible under the DA suspension rules is through the periodic process for monitoring and adjusting the DA CRS cap.

11. In order to capture the effects of any impermissible DA load growth beyond the authorized levels under contract as of September 20, 2001, such growth in load levels must be included as incremental load subject to an assessment of DWR-related costs in performing the DA-in / DA-out indifference cost calculations.

12. To the extent that the effects of including such impermissible DA load growth in the DA-in / out incremental volume calculation affects the overall DA cost responsibility obligation, an adjustment in either the DA CRS cap or DA CRS undercollection would provide a reasonable vehicle to maintain bundled customer indifference.

Conclusions of Law

1. The modifications to D.03-04-057 sought by Petitioners would violate the “standstill principle” adopted in D.02-03-055 and related statutory DA suspension requirements of AB 1 X and AB 117.

2. The modifications of D.03-04-057 proposed by Petitioners is overly broad and vague with respect to the definition of “normal load growth.”

3. Without adequately addressing the bundled customer cost impacts of removing DA load restrictions, parties have not justified the proposed modification to D.03-04-057.

4. The Joint Parties’ Petition to Modify Rule 6 of D.03-04-057 should be denied, but the typographical error in Conclusion of Law 8 in that decision should be corrected.

5. SCE has failed to justify that its proposed procedures for requiring a second metered account for DA customers is an appropriate way to enforce the Commission’s “standstill” rule.

6. SCE’s Petition to clarify D.02-03-055 should be denied.

7. PG&E and SDG&E have failed to justify that their alternative criteria for requiring DA customers to install a second meter are consistent with the Commission's "standstill principle."

8. To the extent that increases in the load level served through a DA account subsequent to September 20, 2001 are based upon contractual load commitments that were executed on or before September 20, 2001, such load levels thus are properly entitled to DA treatment since they were negotiated prior to the date of suspension.

9. Incremental load growth at existing DA accounts attributable to "add-on" commitments for new DA load that were executed by contract after September 20, 2001 would violate the DA suspension rules adopted in D.02-03-055.

10. In order to capture the effects of any impermissible DA load growth beyond the authorized levels under contract as of September 20, 2001, such growth in load levels should be examined and accounted for as part of the Commission's periodic assessment of the DA CRS cap and cost responsibility undercollection.

11. Incremental DA load growth identified as being in excess of permissible volumes under the Commission's suspension rules should be treated as incremental load subject to an assessment of DWR cost responsibility in performing the DA-in / DA-out indifference cost calculations.

12. In determining any adjustment to the DA cost responsibility obligation for the effects of load growth beyond permissible suspension limits, it is reasonable to apply an appropriate materiality threshold to consider only DA accounts whose load demand is large enough to make a significant difference with respect to bundled customer indifference.

13. The DA CRS cap should be adjusted as part of the DA CRS periodic review process, to the extent necessary to recognize the effects of DA load growth in excess of authorized suspension limits and to maintain the Commission's goal of achieving full DA CRS payback no later than the end of the DWR contract term.

O R D E R

IT IS ORDERED that:

1. The Petition to Modify Rule 6 in Decision (D.) 03-04-057 filed by SBC Services, University of California / California State University, and California Large Energy Consumers Association (CLECA) (Joint Petitioners) is hereby denied.

2. The following typographical correction is hereby made to Conclusion of Law 8 of D.03-04-057, inserting the word "not":

"The limitations on DA eligibility of load from replacement or relocation of facilities as adopted in the modifications herein to D.02-03-055 are **not** intended to prohibit load changes associated with normal usage, variations for accounts at other locations that are eligible for DA as of September 20, 2001."
(Correction in bold face.)

3. The Petition to clarify D.02-03-055 filed by Southern California Edison is hereby denied.

4. The modifications to the Commission's standstill policy proposed jointly by Pacific Gas & Electric Company and San Diego Gas & Electric Company are hereby denied.

5. Comments shall be filed 15 business day after the effective date of this order to develop the record on the issues outlined above regarding a process to distinguish or delineate "normal load fluctuations" from load growth in excess of

permissible Direct Access suspension limits, and means by which to recognize, measure, and bill such excess load on a bundled service basis. Reply comments shall be due 10 business days thereafter.

6. As part of the next periodic review of DA CRS cap levels pursuant to D.03-07-030, we hereby require that increases in DA load volumes shall be examined (subject to a reasonable materiality threshold on DA account size) to ascertain if any have occurred that exceed the authorized amounts under contract as of September 20, 2001, taking into account, as appropriate, “normal load fluctuations,” as allowed under the standstill principle.

7. In conjunction with the review process, the ALJ shall provide opportunity for parties to comment on appropriate processes for identifying an appropriate materiality threshold for each utility for purposes of evaluating excess DA load, if any, subject to “normal load fluctuations.”

8. To the extent that it is found that any such excess load volumes beyond permissible limits under the Commission's standstill principles are receiving DA billing treatment, an appropriate adjustment shall be required, either to the DA CRS cap or to the cost responsibility undercollection accrual, as necessary to account for such excess DA load and to maintain bundled customer indifference consistent with the principles adopted in D 02-03-055 and related orders.

This order is effective today.

Dated _____, at San Francisco, California.