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

February 15, 2005 Agenda ID #4327

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

This is the draft decision of Administrative Law Judge (ALJ) Pulsifer. 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 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 comments on the draft decision as provided in 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. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

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

ANG:tcg

Attachment

Decision **DRAFT DECISION OF ALJ PULSIFER** (Mailed 2 / 15 / 2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

OPINION IMPLEMENTING AFFIDAVIT PROCESS FOR DIRECT ACCESS ACCOUNTS

TABLE OF CONTENTS

OPINION IMPLEMENTING AFFIDAVIT PROCESS FOR DIRECT ACCESS ACCOUNTS

I. Introduction and Background

This decision implements affidavit requirements as prescribed in Decision (D.) 04-07-025, in which we adopted rules governing Direct Access load growth. We adopt the affidavit format as set forth in Appendix 1 of this decision.

In D.04-07-025, we directed that an affidavit process be implemented as a means for DA customers to verify, under penalty of perjury, that they are not exceeding their contractual limits for DA usage.[1] D.04-07-025 also determined that a customer's total DA load must not exceed the volumes set forth in its DA contract executed on or before September 20, 2001.[2]

In order to implement the affidavit process, we directed that a Rule 22 Working Group Meeting be convened. The Rule 22 Working Group meeting was convened on October 13, 2004, to address the implementation of the affidavit process. The Meeting was moderated by the Commission's Energy Division and attended by participants representing: Alliance for Retail Energy Markets (AReM), California Large Energy Consumers Association (CLECA), California Manufacturers and Technology Association (CMTA), Constellation New Energy, ElectricAmerica, Hitachi, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Sempra Energy Solutions, SBC, Southern

[1] D.04-07-025, p. 28 and FOF 14.

[2] D.04-07-025, p. 17 and CL 8.

California Edison, The Utility Reform Network (TURN), University of California/California State University, and Wal-Mart.

Meeting participants distributed and discussed two separate proposed versions of affidavits and implementation processes. One of the versions was sponsored by AReM. The other was sponsored jointly by the utilities. Meeting participants reached agreement on the majority of issues regarding the contents of the affidavit. The areas of parties' dispute are discussed below.

Participants submitted a Rule 22 Working Group Meeting Report (Report)[3] on October 28, 2004. The Report summarized: 1) discussions during the Meeting regarding the DA Load Growth Affidavit/Declaration, 2) areas of agreement and disagreement, and 3) communications subsequent to the Meeting. Copies of the two proposed affidavits were attached to the Report. Parties filed comments on the Report on November 15, 2004.

Based on our review of the Working Group Report and comments thereon, we resolve the disputes presented by parties, and adopt a final affidavit form as set forth in Appendix 1 for DA customers to attest that their DA load does not exceed permissible limits, as prescribed by Commission directives.

II. Affidavit Language and Format

A. Sections 1 and 2 of the Affidavit

Sections 1 and 2 of the Proposed Affidavit are not controversial, but merely set forth language concerning the customer's authority to execute the affidavit and personal knowledge of the facts contained in the affidavit.

[3] At the request of the participants, the Assigned Administrative Law Judge granted (via telephone) an opportunity to file comments on the Report by November 15, 2004.

B. Section 3 of the Affidavit

Section 3 of the proposed affidavit contains a sentence verifying that the customer entered into a DA service agreement with a certain Electric Service Provider (ESP) prior to the September 21, 2001 suspension date. Section 3 contains a second sentence verifying that the customer currently has a valid agreement for DA service in effect with either the same or a different ESP. All workshop participants agreed to this language, except as noted below.

1. Check-Box Requirement

After the workshop, PG&E recommended using a "check box" format for the affidavit instead of the "cross-out" format initially proposed. SDG&E supports PG&E's recommendation, arguing that the "check box" format is more understandable and easier for customers to complete. TURN does not contest PG&E's proposal to employ a "check box" format in Section 3 of the affidavit, but recommends that the line following the first check box in Section 3a be slightly revised to read as follows:

"Up to a maximum of _____ kW/kWh of load."

We shall adopt PG&E's check-box revision, and incorporate the above-referenced wording suggested by TURN. This wording will capture the possibility that the customer's DA contract provides for "full requirements" service, but only up to a stated ceiling amount. [For full requirements contracts that contain no stated ceiling amount, what is the customer to write in that blank, e.g., "full requirements," or are you asking the customer to make up a reasonable number?]

2. Disclosure of Contractual Volumes in the Affidavit

In the version of the proposed affidavit in Attachment 3, the customer would not be required to disclose specific contractual volumes of load in its pre-suspension contract. AReM supports adoption of Attachment 3, arguing that the actual amount of DA load in the contract is not relevant, but that the key provision is the customer's attestation that it has not exceeded the contractual volume. TURN disagrees, however, arguing that Attachment 3 does not comply with D.04-07-025, which required the customer to "provide verification of the contracted amount of DA load" (D.04-07-025, Appendix 1, Principle 3). TURN instead offers language in Attachment 4, whereby the customer would be required to include the specific contracted kW or kWh volume in the affidavit, or else state that its contractual load is determined on a "full requirements" basis.

TURN argues that only Attachment 4 provides the correct form of affidavit for purposes of implementing D.04-07-025, which required that the affidavit provide both (1) verification of the contracted amount of DA load and (2) attestation that they have not exceeded contractual limits.

PG&E and SDG&E express no specific position on requiring contractual volumes to be disclosed in the affidavits, but seek clarification from the Commission as to whether or to its intent was to require disclosure of the quantity of the customer's contracted load in the affidavit. SCE originally took no position on requiring contractual volumes to be set forth in the affidavits. Given the conflicting information regarding the number of "full requirements"[4]

[4] A "full requirements" contract provision means that no specific numerical figure is set forth in the contract for maximum volumes, but that volumes are delivered as required to meet the customer's demand requirements.

contracts, however, as discussed below, SCE believes that TURN's proposed Section 3 may be appropriate.

More specifically, SCE expresses concerns about an apparent misstatement of fact made at a previous workshop on March 11, 2004, regarding DA Load Growth. At that workshop, one DA customer represented that all Electric Service Provider (ESP)/Customer contracts contained some indication of a maximum load amount. No other DA customer or ESP participant at the workshop disputed, denied, clarified or qualified this statement. SCE's previous endorsement of the DA Load Growth Principles adopted in D.04-07-025 was based on this representation. SCE also believes that reliance on this representation as fact helped lead to D.04-07-025, which essentially allows DA customers to increase their DA load up to the limit stated in their ESP/Customer contract.

At the October 13, 2004 Working Group Meeting to discuss implementation of the affidavit requirements set forth in D.04-07-025, however, all DA customers and ESPs present expressed the opposite view, indicating they were unaware of a single ESP/Customer contract that was not a "full requirements" contract. SCE argues that, as a result, there is essentially no limit on potential DA load growth on existing DA accounts in California. SCE believes that the Commission should determine how many "full requirements" ESP/Customer contracts currently are in effect, to assess whether D.04-07-025 and the DA Load Growth Principles need to be modified based on these subsequent factual revelations.

Other participants at the Rule 22 Meeting oppose required disclosure of a customer's contractual volume levels in the affidavit, claiming that the quantity terms of the ESP/Customer contracts constitute confidential and business

proprietary information. AReM, in particular, argues that requiring such a statement of the customer's specific contracted volume in the affidavit is also unnecessary and impractical. AReM contends that the Commission already has the necessary rights to conduct investigatory and spot audits without the need for disclosure in the affidavit of specific contract volumes.

We shall adopt as Section 3 of the affidavit, the form set forth in Attachment 4, requiring the customer either to specify contractual volumes, or indicating that the contract is on a "full requirements" basis.

As noted by TURN, in D.04-07-025, we expressly required that the affidavit provide *both* verification of the contracted amount of DA load *and* attestation to compliance with the load limit for customers exceeding a designated minimum load per customer, as set forth in Principle 3 of Appendix 1 of D.04-07-025. Parties do not have authority to unilaterally decide to delete a requirement from the affidavit that was imposed by the Commission in D.04-07-025.

Moreover, as a practical matter, it is not clear to what extent there would be a specific volume amount to disclose in a given affidavit. As noted by SCE, the most recent indications from DA parties are that most DA contracts do not set forth specific contractual volumes but merely specify a "full requirements" provision. In such a case, the customer would merely attest in the affidavit that its contractual volumes are determined on a "full requirements" basis.

AReM has raised the concern that contractual volumes are commercially sensitive data and argues that such data should not have to be disclosed in the affidavit. Yet, D.04-07-025 has already determined that the contractual load data must be verified in the affidavit. Thus, the time has passed

for objection to inclusion of this data in the affidavit. The remaining question is what measures may be appropriate to protect the confidentiality of commercially sensitive data relating to contractual volumes set forth in the affidavit. To the extent that a DA customer and/or ESP considers contractual load amounts to be confidential, a nondisclosure agreement executed between the parties is a suitable way to protect such confidential data. The nondisclosure agreement may specify restrictions on what employees or agents of the IOU may be able to access the confidential data.

The Commission retains the option to conduct spot audits and investigatory inquiries, as deemed necessary, to assure that the attestation in the affidavit is true and correct. During such spot audits or investigatory inquiries, the Commission and its staff shall have the authority to obtain access to contractual volume data, consistent with Public Utilities Code Section 583.

C. Section 4 of the Affidavit

The Utilities' proposed language for Section 4 (set forth in Attachments 2 and 3 of the Report) would have the customer warrant that:

> "its total level of DA load on all DA accounts does not exceed the contracted level of load defined by the Agreement that was in effect as of September 20, 2001,….."

At the end of the Workshop, all participants agreed to this language. Although the Utilities and TURN continue to support the original language, AReM now proposes further changes to Section 4. Subsequent to the Workshop, AReM notified the other participants that it favored a deletion of the reference to the phrase: "Agreement that was in effect as of September 20, 2001." AReM argues that since the DA suspension decision was issued on September 20, 2001, it is illogical for the affidavit to state that a contract executed before that date

could have been "entered into" in accordance with the subsequent Commission decision.

AReM's proposed alternative language for Section 4 (set forth in Attachment 1 of Workshop Report) thus deletes reference to the September 20, 2001 date. The customer would only warrant that:

> "its total DA load does not exceed contracted level of DA load defined by the terms of the customer's DA service contract entered into consistent with the Commission's DA suspension decisions."

The Utilities and TURN disagree with AReM's proposal to remove the reference to the September 20, 2001 date, arguing that to do so makes the affidavit less clear and poses greater difficulty for DA customers in checking all potentially relevant DA suspension decisions for compliance.

We shall adopt the Section 4 language as proposed by the Utilities and TURN, preserving the reference to the suspension date of September 20, 2001. In D.04-07-025 (at p. 37), the Commission specified that DA load and DA load growth are limited to those volumes under contract as of September 20, 2001. As stated therein, "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. " (D.04-07-025 at 17.) Thus, it would be inconsistent with this intent to delete reference to the September 20, 2001 date in attesting to compliance under the affidavit process.

The Utilities' proposed language for Section 4 is sufficiently clear, and doesn't require the customer to review Commission decisions or ask the utility or ESP to explain the affidavit's intent. We do not believe that it is illogical to reference the date of September 20, 2001, in the Section 4 language, as argued by

AReM. Such language merely means that the contract volumes are those in effect prior to the suspension date and that the contract is therefore valid under the DA suspension decisions. As noted by TURN, it is simpler and clearer for the DA customer to affirm verification of the September 20, 2001 contractual volumes directly than to have to research all of the many DA suspension decisions in order to confirm its compliance. September 20, 2001 is the key date upon which this Commission has consistently relied in its interpretation of the DA suspension provisions of Water Code Section 80110.

D. Section 5 of the Affidavit

In Section 5 of the proposed affidavit, the customer affirms the understanding that the Commission may conduct spot audits or other inquiries regarding the contractual volumes in the customer's contracts. The customer also states that it understands that the Utilities may be required to provide certain information to the Commission. The customer agrees to maintain its pre-suspension contract, to the extent it has not previously been inadvertently lost or destroyed.

At the conclusion of the Workshop, participants agreed, in principle, to the language of Section 5, as included in Attachments 3 and 4 of the Workshop Report. Parties disagree, however, over the precise wording of the final sentence of Section 5 of the affidavit. Attachments 3 and 4 of the proposed affidavit both contain the following final sentence in Section 5:

> "Customer agrees to retain and make available, to the Commission, Customer's Agreement with ESP which was in effect as of September 20, 2001, as well as any subsequent DA agreements, to the extent not previously inadvertently lost or destroyed and currently not retrievable."

TURN suggests the following alternative wording:

> "Customer agrees to retain, and make available to the Commission upon request, Customer's Agreement with ESP, which was in effect as of September 20, 2001, as well as any subsequent DA agreements, and to make a good faith effort to obtain a copy of the Agreement if such a copy is not currently in Customer's possession."

AReM proposes to amend the Section 5 language to delete specific reference to September 20, 2001 date in reference to contractual agreements because a customer may have executed subsequent DA contract(s), in accordance with the terms of the Commission's previous DA suspension decisions.

We shall adopt language for the last sentence of Section 5 in the form proposed in Attachments 3 and 4, as set forth in the Workshop Report. This language appropriately preserves references the September 20, 2001 date as the basis for contractual limits, while acknowledging that any subsequent DA agreements are also covered under the affidavit.

E. Section 6 of the Affidavit

In Section 6 of the proposed affidavit, the customer acknowledges that it must take such actions as necessary to comply with existing DA-related decisions and requirements. All participants agreed to the language of Section 6, as included in both Attachments 3 and 4 of the Workshop Report. We approve the proposed language in Section 6.

III. Other Affidavit Implementation Issues

A. Limitations on Customer Requirement to Provide Contract Copy

AReM argues that the requirement for a customer to provide the Commission a copy of a contract should be restricted only to the situation referenced in Section 5 where "the Commission may conduct spot audits or informal investigative inquiry, as it deems necessary, to deal with any potential

disputes concerning the accuracy of Customer's claims concerning contractual volumes."

AReM argues that the requirement to provide a contract should not enable the Commission to request contracts for any reason whatsoever. Just as the utilities are concerned about any disclosure of the terms of their procurement contracts, AReM argues that DA customers and their suppliers are similarly concerned about the confidentiality of their contracts. AReM thus asks that in the final form of approved affidavit, the Commission should limit the requirement to provide contracts to the case where there are, "disputes concerning the accuracy of Customer's claims concerning contractual volumes."

We acknowledge the concerns of AReM as to the confidentiality and commercial sensitivity of information contained in DA /ESP contracts. Accordingly, in connection with any action by the Commission to obtain access to such contracts in connection with spot audits or other investigatory action relating to the affidavit and load growth provisions of this decision, we shall take into account such concerns and apply appropriate confidentiality protections with respect to contract data.

Nonetheless, AReM's proposed restrictions on Commission authority to obtain access to DA contracts would unduly impede the Commission in carrying out its responsibilities. On the one hand, AReM seeks to limit Commission access to confidential data to those instances where there is a dispute as to contract amounts. Yet, AReM also opposes disclosure of specific contract amounts in the affidavit. Thus, AReM fails to explain how it would be possible for a utility even to form a basis for a dispute to the extent that specific contractual volumes are not disclosed in the affidavit.

To the extent the Commission was to be precluded from access to confidential contracts, it would unduly impede our ability to conduct spot audits. While the Commission must exercise due discretion in carrying out its oversight responsibilities, we must not adopt restrictions that will impede our ability to carry out necessary responsibilities. Moreover, restricting our authority to conduct spot audits only to those instances where a specific dispute had arisen would unduly impede the Commission in its ability to enforce applicable DA load growth rules in the context of DA suspension of new contracts. DA customers have an enhanced incentive to comply with the affidavit and related load growth rules knowing there is a possibility of a spot audit, not just in those limited cases where a specific dispute has arisen.

B. Restrictions on DA Customers that Must Sign the Affidavit

All workshop participants agreed that a minimum load requirement for customer affidavits should be imposed, such that only customers with at least one DA account in excess of 500 kW in demand would be required to sign an affidavit. TURN agreed to this threshold based on SCE's prior filings stating that approximately 70% of DA load in its service territory is due to accounts in excess of 500 kW demand. PG&E and SDG&E confirmed that their percentages are similar.

Parties disagree, however, concerning whether, in addition to the minimum load requirement, a minimum load growth trigger should be applied as a threshold to determine when a customer should be required to submit an affidavit.

AReM proposed originally that an affidavit not be required until the serving utility's DA load had exceeded a 15% growth trigger in 4 of the

preceding 12 months, and then only for DA accounts that had demonstrated "significant" growth during the prior year (defined as greater than 15%). Other DA parties support AReM 's proposal, arguing that the affidavit requirement should not apply unless and until the "trigger" amount for overall DA load growth has been exceeded.

TURN and SCE disagree, arguing that nothing in D.04-07-025 supports such requirement. SCE believes the Commission only intended that a 15% aggregate growth trigger apply to the recalculation and reassessment of the 2.7 cents/kWh DA CRS cap under Principle 7. SCE argues that a 15% growth trigger would send the wrong signal to DA customers, erroneously leading them to believe that existing DA load may grow without restriction until the 15% threshold is exceeded.

In comments filed November 15, 2004, AReM offered a compromise between its original position and that of the utilities. Instead of its original proposal for a 4-out-of-12- month requirement for hitting the 15% trigger to account for seasonality, AReM now proposes simply that affidavits be required only in the event the 15% load growth "trigger" is activated.

As a further compromise, AReM proposes that if the load growth trigger is activated, then the affidavit process be applied to those customers over 500 kW shown to have experienced any load growth during the last year, rather than only to those who had experienced 15% load growth.

AReM advocates its proposed load growth trigger, particularly in view of the fact that DA load growth has not been observed on a statewide basis since the Commission suspended DA effective September 21, 2001. AReM thus argues that no actual problem with DA load growth exists, and consequently, the

Commission should not mandate affidavit processes that may be unnecessary and unduly burdensome.

We decline to apply a 15% load growth trigger for purposes of limiting whether a DA customer must sign an affidavit. The affidavit shall be mandatory for customers with annual demand over 500 kW, as stated in D.04-07-025. D.04-07-025 specifies that the appropriate criterion for applying the affidavit requirement is a minimum load per customer, irrespective of the utility's aggregate system-average load growth. In this regard, D.04-07-025, Conclusion of Law 11 states:

> 11. A Rule 22 Working Group Meeting should be scheduled to develop an affidavit process whereby DA customers beyond a designated minimum load **must attest** to their contractual DA load limits, and that they have not exceeded contractual limits. The Working Group should seek consensus on the appropriate **minimum load per customer** per utility for applying the affidavit. (Emphasis added.)

The use of the word "must" implies a mandatory attestation, with only the *level* of the minimum load per customer cut-off left to be decided. Finding of Fact 14 of D.04-07-025 also affirms the mandatory nature of the affidavit:

> 14. An affidavit requirement for large DA customers provides a reasonable process for verification of contracted load and attention [*sic*, should read "attestation"] of compliance with contractual limits. (*Id.* at 41.)

The issue of a load growth "trigger" appears in an entirely separate section of D.04-07-025 (at pp. 29-30) and, as indicated in Principle 7, deals with the question of when the DA CRS accrual and cap should be subject to review.

Thus, in order to comply with the requirements of D.04-07-025, all DA customers that meet the minimum load threshold must submit an affidavit. By limiting the affidavit requirement to customers with annual demand over 500 kW, we avoid imposing undue burdens on the large numbers of DA customers with demand below the 500 kW threshold. AReM's proposal to further limit the affidavit requirement only to instances where a 15% load growth trigger is met goes beyond what is permitted under D.04-07-025, and thus shall not be adopted.

C. IOU Obligations to Review Submitted Affidavits

TURN takes exception to the IOUs' statement, at page 4 of the Working Group Report, indicating that they will not be "reviewing, monitoring, interpreting or making recommendations regarding *such volumes*" (emphasis added). TURN argues that the IOUs' statement goes well beyond Principle 2 adopted in D.04-07-025, which indicates only that: "Utilities are not required to review, monitor, interpret or make recommendations regarding *ESP/customer DA contracts*" (emphasis added).

While the IOUs are not expected to review actual contracts, we agree with TURN that the IOU should review the affidavits and notify the Commission of any discrepancies between actual customer usage and the contract maximums stated in the affidavits. Of course, where the customer merely indicates that DA contracts are executed on a "full requirements" basis, there would not be specific numerical figures against which a comparison with contractual totals could be readily made. In any event, we retain the discretion to conduct spot audits on any DA customer contract as a measure to promote compliance and to ensure that DA load growth is consistent with Commission directives.

D. Schedule for Sending, Completing, and Submitting Affidavits

The utilities' proposed affidavit process also included the following steps:

- Utilities will coordinate the date on which affidavits are sent to customers, and will communicate the affidavit requirement to applicable customers within 60 days of the Commission's adoption of the affidavit and implementation process.
- Customers will have 60 days to complete and return the affidavit to the utilities.
- At the conclusion of the 60-day period, each utility will file a report to the Commission within 30 days. The report will contain the number of customers contacted, the number of completed affidavit forms returned, and a listing of customers that did not return or refused to sign the affidavit.

The utilities also proposed that if the utility is made aware of a load growth situation (for a customer with at least one DA account with demand in excess of 500 kW) due to a service upgrade (i.e., a service panel upgrade, a larger transformer, etc.) and the customer has not previously signed an affidavit, the customer will be required to sign an affidavit.

All participants expressed agreement with these processes. We find these proposed processes and schedule to be reasonable and accordingly adopt them.

E. Recourse for Noncompliance with Affidavit Requirements

Workshop participants seek Commission guidance as to the process to be applied if customers do not return or refuse to sign the affidavit. The utilities seek to determine whether they should take further action in such a situation as sanctions. The utilities would like to include a statement in their cover letter describing the consequences of failing to return the affidavit so that customers are aware of what might occur if they do not return the affidavit.

Although parties seek Commission guidance as to the recourse for customers refusing to comply with the affidavit requirements, they have offered no proposals as to what they believe appropriate recourse would be. In the absence of any other record on this issue, we rely upon our statutory authority to impose penalties on corporations and persons, other than public utilities, which or who knowingly violate or fail to comply with an order or decision of this Commission. As prescribed in Public Utilities Code Section 2111, the Commission has the authority in such a case to impose a penalty of not less than $500 dollars nor more than $20,000 for each offense. The utilities should include a statement in their cover letter concerning the Commission's authority and willingness to impose and enforce payment of penalties as prescribed in Section 2111 for DA customers that refuse or fail to comply with the adopted affidavit requirements. Also, the Commission has other remedies available, including contempt under Section 2113, and may do all things necessary to enforce the law and its decisions (Public Utilities Code Section 701).

IV. Comments on Draft Decision

The Draft Decision of Administrative Law Judge (ALJ) Thomas R. Pulsifer in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Pub. Util. Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____ and reply comments on _____.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Thomas Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. D.04-07-025 adopted rules that required an affidavit process be implemented to provide confirmation that load growth on existing non-continuous DA accounts does not result in customer's total load exceeding the contracted level of DA load defined by the terms of customer's DA service contract.

2. The alternative draft affidavit versions provided by parties through the Rule 22 Working Group process provide a basis for determining and finalizing the language to be contained in the affidavit.

3. The language in Sections 1 and 2 of parties' proposed affidavit is not controversial, but merely describes the customer's authority to execute the affidavit and the customer's personal knowledge of the facts contained in the affidavit.

4. Section 3 of the proposed affidavit verifies that the customer entered into a DA service agreement with an Electric Service Provider (ESP) on or before the September 20, 2001 suspension date, and that the customer currently has a valid agreement for DA service in effect with either the same or a different ESP.

5. The addition of PG&E's proposed "check box" format, with the revisions offered by TURN, provides a more understandable and easier affidavit form for customers to complete.

6. Section 4 of the proposed affidavit verifies that the customer's total level of DA load on all DA accounts does not exceed the contracted level of load defined by the Agreement in effect as of September 20, 2001, and entered into consistent with the Commission's suspension decisions.

7. Section 5 of the proposed affidavit affirms that the customer understands that the Commission may conduct spot audits or other inquiries regarding the

contractual volumes in the customer's contracts, and that the utilities may be required to provide certain information to the Commission.

8. Section 6 of the proposed affidavit requires that the customer acknowledge that it must take such actions as necessary to comply with existing DA-related decisions and requirements.

9. A minimum load per customer of annual demand over 500 kW provides a reasonable threshold for purposes of determining which DA customers must sign the affidavit.

Conclusions of Law

1. The affidavit to be adopted in this decision should conform with the load growth principles adopted in D.04-07-025, and should promote compliance with Commission decisions relating to the September 21, 2001 suspension of DA.

2. The affidavit format, as set forth in Appendix 1 of this decision, should be adopted to provide confirmation that load growth on existing non-continuous DA accounts does not result in customer's total load exceeding the contracted level of DA load defined by the terms of customer's DA service contract.

3. While the IOUs are not expected to review actual contracts, the IOUs should review the submitted affidavits and notify the Commission of any discrepancies between actual customer usage and the contract maximums stated in the affidavits.

4. DA customers should be required to verify actual contract volumes in the affidavit (or to affirm that contract volumes are determined on a "full requirements" basis) and to attest that all DA accounts do not exceed the contracted level of load defined by the Agreement that was in effect as of September 20, 2001.

5. The language in the affidavit, in Sections 4 and 5, should specifically reference the September 20, 2001 date since that date provides a straightforward standard for purposes of verification and is the key date upon which the Commission has relied in interpreting the suspension provisions of Water Code Section 80110.

6. The affidavit should contain language requiring the customer to retain and make available to the Commission, upon request, the Customer's agreement with the ESP, in effect on September 20, 2001, as well as any subsequent contract amendments, to the extent not previously inadvertently destroyed and currently not retrievable.

7. The requirement for the customer to provide the Commission a copy of the ESP contract for purposes of a spot audit should not be limited only to those instances where a dispute exists between the IOU and the customer regarding contract volumes.

8. In accordance with the requirements of D.04-07-025, a minimum load per customer should be established as a threshold for requiring DA customers to sign the affidavit, but there should not be a further limitation based upon whether a load growth trigger is met.

9. As prescribed in Public Utilities Code Section 2111, the Commission has the authority in cases of noncompliance with Commission rules to impose a penalty of not less than $500 dollars nor more than $20,000 for each offense.

10. DA customers that refuse or fail to comply with the Commission's affidavit requirements should be subject to sanctions and penalties as provided for in Public Utilities Code Section 2111.

11. The Commission has other remedies available, including contempt under Section 2113, and may do all things necessary to enforce the law and its decisions (Public Utilities Code Section 701).

O R D E R

IT IS ORDERED that:

1. The affidavit form proposed in Attachment 4 of the Workshop Report, attached in Appendix 1 of this decision is hereby adopted for use in complying with the affidavit requirements of Decision 04-07-025.

2. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall coordinate the date on which affidavits are sent to customers and shall communicate the affidavit requirement to applicable customers within 60 days of the effective date of this decision.

3. Applicable customers receiving the affidavit shall have 60 days after receipt to complete and return the affidavit to the respective utility.

4. At the conclusion of the 60-day period, each utility shall file a report with the Commission within 30 days thereafter, identifying the number of customers contacted, the number of completed affidavit forms returned, and a listing of the customers that did not return or refused to sign the affidavit.

5. To the extent a Direct Access (DA) customer and/or Electric Service Provider believe that verification of contractual load volumes in the affidavit entails confidential information, they are authorized to execute a nondisclosure agreement with the utility to protect the confidentiality of such information.

6. If the utility is made aware of a load growth situation (for a customer with at least one DA account with demand in excess of 500 kW) due to a service

upgrade (i.e., a service panel upgrade, a larger transformer, etc.) and the customer has not previously signed an affidavit, the customer shall be required to sign an affidavit.

7. The utilities shall include a statement in their affidavit transmittal letter concerning the Commission's authority and willingness to impose and enforce payment of penalties as prescribed in Section 2111 for DA customers that willingly refuse to comply with the adopted affidavit requirements, as well as other remedies as necessary.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX 1