

**DRAFT**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**  
I. D. #6092  
**ENERGY DIVISION** **RESOLUTION E-3999**  
**NOVEMBER 30, 2006**

**R E S O L U T I O N**

Resolution E-3999. Pacific Gas and Electric Company and Southern California Edison Company request approval of proposed tariffs applicable to transferred municipal departing load.

By Advice Letter 2433-E-C filed on September 2, 2005 and Advice Letter 1980-E filed on March 8, 2006.

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**SUMMARY**

**The proposed tariffs of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) which allow for the billing and collection of charges applicable to transferred municipal departing load (MDL)<sup>1</sup> are approved with modifications.**

- PG&E and SCE shall update the Cost Responsibility Surcharge (CRS) components to reflect the most current Commission adopted amounts.
- PG&E shall revise the ongoing Competition Transition Charge (CTC) components to reflect Commission approved amounts, and indicate that these amounts are subject to change pending any different outcome resulting from judicial review.

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<sup>1</sup> MDL refers to departing load served by a publicly owned utility (POU) as that term is defined in Public Utilities (PU) Code § 9604(d). MDL is either “transferred” or “new”. Transferred MDL is load that was served by an investor owned utility (IOU) on or after December 20, 1995, and subsequently departed to be served by a POU. New MDL is load that has never been served by an IOU but is located in an area that had previously been in that IOU’s service territory (as that territory existed on February 1, 2001) and was annexed or otherwise expanded into by a POU. Charges applicable to New MDL are the subject of PG&E Advice Letter (AL) 2483-E-A and SCE AL 1979-E-A.

- PG&E shall include a reference in its tariff to reflect prior Commission decision language regarding the priority for allocation of the load eligible for leftover exceptions.
- PG&E and SCE shall provide a notice to transferred MDL customers to inform them of their obligations under the tariffs.
- PG&E and SCE, not the transferred MDL customer, shall identify applicable exemptions.
- PG&E's and SCE's proposed customer notice provisions to document "change of party" shall be revised to add greater specificity and to remove IOU discretion.
- PG&E and SCE shall use metered usage data for a New Party if available. If not provided, SCE and PG&E may utilize either the prior customer's historic usage profile or other estimate as appropriate.
- PG&E shall provide additional clarification in its New Party notice provision.
- PG&E shall remove references to its electric and gas service rules from its proposed tariff.
- PG&E and SCE shall articulate dispute resolution procedures applicable to transferred MDL customers in the tariffs.
- PG&E and SCE shall add greater specificity to the Opportunity to Cure provisions.
- PG&E shall specify Demand for Deposit/Return of Deposit procedures consistent with its Preliminary Statement Part BB procedures.
- SCE and PG&E shall revise their respective Lump Sum Payment calculation methodology to be consistent with previous Commission directives.
- PG&E shall remove the provision allowing the termination of a transferred MDL customer's natural gas service as an enforcement mechanism to collect electric MDL charges.
- PG&E shall specify that bilateral agreements are an alternative arrangement to the transferred MDL tariff.
- PG&E shall rename its proposed tariff to minimize confusion and to maintain consistency with terminology utilized in Commission decisions.

## **BACKGROUND**

**PG&E proposed a tariff to implement Commission decisions concerning CRS for transferred MDL.**

In a series of decisions<sup>2</sup>, the Commission adopted policies and mechanisms to implement the CRS applicable to MDL within the service territories of PG&E, SCE, and San Diego Gas and Electric Company (SDG&E). The CRS includes the Department of Water Resources (DWR) Bond Charge, the DWR Power Charge, the ongoing CTC, the Historical Procurement Charge (HPC) (for SCE only), and the Regulatory Asset (RA) Charge<sup>3</sup> (for PG&E only).

On October 29, 2003, PG&E filed AL 2433-E proposing a new schedule to bill and collect CRS from transferred MDL<sup>4</sup> to implement D.03-07-028, as modified by D.03-08-076. PG&E filed supplemental AL 2433-E-A on November 4, 2003, proposing some changes to the charges previously submitted. On February 18, 2004, PG&E filed supplemental AL 2433-E-B to clarify that customers subject to the schedule would also be responsible for payment of the RA Charge.

**Additional information was needed to address implementation issues concerning the billing and collection of CRS for MDL.**

Although D.03-07-028 authorized the IOUs to file tariffs to implement the CRS for MDL pursuant to the terms and conditions of the order, it also directed the Administrative Law Judge (ALJ) to issue a ruling initiating further procedural measures necessary to implement the tariff filing, billing, collection, and accounting for the MDL CRS. In accordance with that directive, the ALJ issued a ruling on March 19, 2004 authorizing parties to file comments regarding appropriate procedures and approaches.

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<sup>2</sup> See Decision (D.) 03-07-028, D.03-08-076, D.04-11-014, D.04-12-059, D.05-07-038, and D.05-08-035.

<sup>3</sup> The RA Charge recovers PG&E's bankruptcy-related costs pursuant to D.03-12-035. The RA charge was included as an element to be collected from CRS in D.04-02-062. Pursuant to D.04-11-015, the Energy Cost Recovery Amount (ECRA) superseded and replaced the RA Charge on March 1, 2005.

<sup>4</sup> PG&E does not use the term "transferred" MDL but rather refers to it as MDL that does not include "new load" as that term is defined in D.03-07-028.

Comments were filed on April 23, 2004. Some parties made substantive proposals while others asked the Commission to defer MDL CRS billing and collection issues until MDL rehearing issues were resolved. Subsequently, the Commission adopted D.04-11-014, addressing applications for rehearing of D.03-07-028, and D.04-12-059, addressing applications for rehearing of D.04-11-014. On December 23, 2004, the assigned ALJ issued a ruling scheduling a workshop to address MDL CRS billing and collection implementation issues pursuant to D.03-07-028, as subsequently modified by D.03-08-076, D.04-11-014, and D.04-12-059. Parties were also authorized to file comments in advance of this workshop setting forth their proposals as to procedures, processes, and protocols for billing, collecting, and accounting for both new and transferred MDL required to pay CRS.

**Based on comments and the workshop process, further measures were instituted towards advancing implementation of the billing and collection of CRS for MDL.**

The workshop was held on January 31, 2005, and a workshop report was issued on March 11, 2005. Based on the report, the ALJ issued a ruling on March 28, 2005, directing the IOUs and POUs to proceed with negotiations to develop a mutually agreeable bilateral agreement for MDL CRS billing and collection. The ruling also directed the Energy Division to provide a status report to the ALJ by April 18, 2005. In the status report, the Energy Division stated that the parties decided not to hold additional negotiation meetings until the Commission issued a decision(s) addressing the pending Petitions for Modification of D.04-12-059 and D.04-02-062 concerning MDL CRS billing and collection issues. In the status report, the Energy Division also stated that it would like to see PG&E file a supplement to update AL 2433-E, E-A, or E-B, as necessary, in order to advance a process to bill and collect the CRS from applicable transferred MDL customers that do not initiate settlement talks with the relevant IOU.

On July 21, 2005, the Commission issued D.05-07-038 resolving the Petition to Modify D.04-12-059 and related decisions. PG&E believes this decision resolved outstanding issues regarding MDL and, thus, on September 2, 2005, PG&E filed supplemental AL 2433-E-C.

**PG&E's supplemental advice letter was suspended pending further Commission guidance.**

On September 19, 2005 the California Municipal Utilities Association (CMUA) sent a letter to the assigned Commissioner and the assigned ALJ seeking guidance on how the Commission intended to address new or updated MDL advice letter filings. In this letter, CMUA requested an extension of time for filing of protests to PG&E's supplemental AL 2433-E-C. CMUA argued that PG&E had been directed by prior ALJ rulings to await for subsequent action by the Commission on relevant issues relating to the billing, collection, and accounting of CRS revenue for MDL customers and therefore, CMUA requested that PG&E be required to withdraw AL 2433-E-C and resubmit it following a prescribed process for addressing MDL advice letter filings on a coordinated basis for all the IOUs.

The ALJ issued a ruling on September 20, 2005, temporarily suspending the filing of protests to PG&E's AL 2433-E-C to provide other parties the opportunity to respond to CMUA's proposal.

**With the resolution of many issues, the suspension of PG&E's proposal was lifted and the IOUs were authorized to proceed with their proposals.**

The ALJ reactivated the schedule for PG&E's AL 2433-E-C in a ruling issued February 23, 2006. In that ruling, the ALJ concluded that with the Commission's planned issuance of a decision establishing CRS exemption<sup>5</sup> eligibility for MDL along with the recent release of a final report of the Working Group reaching consensus on many issues relating to the quantification of the CRS, it was now appropriate to move forward with the processing of the MDL advice letters. In order to provide a parallel track for consideration of the advice letters of the three IOUs, SCE and SDG&E were authorized to proceed with the advice letter filing of their proposed MDL tariffs.

In response to the ruling, SDG&E served a notification on March 6, 2006, that it would not file any advice letters concerning MDL because such a filing is premature given that SDG&E has no existing or planned municipalization at this

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<sup>5</sup> Although Commission decisions issued in R.02-01-011 sometimes use the verb "except" and "exempt" (and their conjugated forms) synonymously, this resolution generally uses "except" when associated with a Commission decision and uses "exempt" when associated with statute.

time. On March 8, 2006, SCE filed AL 1980-E and PG&E re-submitted its previously-filed AL 2433-E-C. These filings propose tariffs to implement the billing and collection of the CRS and other non-bypassable charges (NBCs) applicable to transferred MDL.<sup>6</sup>

## **NOTICE**

**The filings were noticed in the Daily Calendar and served on parties in accordance with directives.**

Notice of AL 2433-E-C and AL 1980-E was made by publication in the Commission's Daily Calendar. PG&E and SCE state that a copy of their respective advice letter was mailed and distributed in accordance with Section III-G of General Order (GO) 96-A. In addition, PG&E and SCE state that pursuant to the February 23, 2006 ALJ Ruling, copies of these filings were served on all parties on the service list to Rulemaking 02-01-011 and on all POUs within their respective service territory whose customers may be subject to the CRS but who were not on the service list for Rulemaking 02-01-011.

## **PROTESTS**

**PG&E's AL 2433-E-C and SCE's AL 1980-E were protested.**

PG&E's AL 2433-E-C and SCE's AL 1980-E were timely protested by Merced Irrigation District and Modesto Irrigation District (the Districts) and CMUA. Hercules Municipal Utility (Hercules), Northern California Power Agency jointly with Turlock Irrigation District (NCPA/Turlock), and South San Joaquin Irrigation District (SSJID) timely protested PG&E's AL 2433-E-C. PG&E and SCE responded to the protests pertaining to their particular advice letter filing on April 4, 2006 and April 5, 2006, respectively.

Issues raised in the protests are summarized in this section but are addressed in detail in the Discussion section.

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<sup>6</sup> As discussed above, SCE and PG&E also filed separate advice letters proposing to implement the CRS for new MDL. These advice letters will be addressed in a separate resolution.

**The protestants object to the approval of the advice letters on procedural and substantive grounds.**

CMUA requests an evidentiary hearing to address PG&E's and SCE's proposed lump sum payment methodology because it: alleges the methodology is unreasonable, unduly discriminatory, and contravenes Commission precedent; alleges that the charges shown in PG&E's and SCE's proposed tariffs are vague and contain material errors; and believes that PG&E's proposal to disconnect natural gas service violates Commission orders and statute. Also, CMUA states that PG&E's description of certain "condemnation" and "annexation" areas is confusing and may improperly limit the scope of DWR power charge exemptions.

The Districts state the Energy Division should reject PG&E's tariff proposal for the following reasons: the proposal is incomplete; the relief sought requires consideration in a formal hearing or is otherwise inappropriate for the advice letter process; the relief requested is unjust, unreasonable, and discriminatory; there are policy issues that must be considered by the Commission; there is no lawful basis to apply MDL charges to a "New Party"; the proposal reneges on PG&E's agreement not to shut off gas service for failure to pay MDL CRS and the termination of gas service may be illegal; the proposal contains an incomplete summary of ongoing CTC amounts and ignores the fact that appellate review has been sought concerning the issue of proper ongoing CTC calculation; portions of the proposal are unworkable and nonsensical; and, other matters have been omitted that should be addressed. The Districts allege that SCE's tariff proposal has many of the same deficiencies as PG&E's including the notification process for transferred MDL customers, notice and procedure for change of existing transferred MDL customer, notice and procedure for new transferred MDL customer, and the ability to demand a lump sum payment for alleged default in the presence of unworkable notice provisions. As with PG&E's proposal, the Districts claim resolution of these issues require discretionary action by the Commission.

Hercules believes that PG&E's proposal must be filed as an application, must be considered in a formal hearing, and cannot be implemented through the advice letter process. If it is allowed to be processed as an advice letter, Hercules argues that PG&E must provide adequate notice to all affected customers and all affected individuals. Substantively, Hercules alleges that AL 2433-E-C violates

statutes and Commission orders, contains material errors and omissions, and is unjust, unreasonable, and discriminatory. Hercules also states that provisions must be added to ensure that costs of billing and collection are reasonably related to the amounts to be collected.

NCPA/Turlock state that PG&E's AL 2433-E-C letter must be rejected because: the relief requested would violate statute or Commission orders, or is not authorized by statute or Commission order; the analysis, calculations, and data contain material errors and omissions; the relief requested requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process; and the relief requested is unjust, unreasonable, or discriminatory.

SSJID requests that the Commission not act on PG&E's AL 2433-E-C until it issues a decision on the Working Group Report, and resolves the outstanding issues surrounding the calculation of the CRS for transferred MDL. Upon acting on AL 2433-E-C, the Commission should direct PG&E to: state that all of SSJID's service territory is entitled to an exception from DWR Power Charge (i.e. there should be no limit to the area of SSJID's service territory in which its allocated exceptions can be used); address the inequities in its billing scheme for New Parties; and eliminate the provision which allows PG&E to terminate a customer's gas service for failure to timely pay CRS and other NBCs.

## **DISCUSSION**

**It is not appropriate for the Energy Division to ministerially dispose of the advice letters; the Commission must act to address them.**

The Districts point out that the Commission adopted rules for advice letter processing in D.05-01-032 clarifying that some advice letters can be handled entirely by industry divisions while others require a Commission resolution to become effective. Under Rule 4.7, Energy Division disposition is appropriate if such disposition "would be a 'ministerial' act, as that term is used regarding advice letter review and disposition. (See Decision 02-02-049.)" (Rule 4.7, Appendix to D.05-01-032, p. A-12.) PG&E states that, given the level of protest, the Commission, and not the Energy Division acting ministerially, will likely address the advice letters through a resolution.

In D.02-02-049, the Commission discussed the scope of allowable ministerial actions:

[W]hile agencies cannot delegate the power to make fundamental policy decisions or “final” discretionary decisions, they may act in a practical manner and delegate authority to investigate, determine facts, make recommendations, and draft proposed decisions to be adopted or ratified by the agency’s highest decision makers, even though such activities in fact require staff to exercise judgment and discretion. (D.02-02-049, *mimeo*, p. 6.)

The Commission further stated:

If an advice letter is protested or modified, but, either in its original form or as modified, complies with the Commission order authorizing or requiring the filing of the advice letter, raises no policy concerns or other substantive issues, does not require a formal proceeding, and does not request that the Commission issue an order approving the advice letter, staff will provide written notice stating the date upon which the advice letter will become effective. (D.02-02-049, *mimeo*, p. 17.)

As the Districts correctly assert, the Commission needs to consider and act on advice letter filings which raise issues that need to be resolved through discretionary decisions. As we discuss further below, the Commission did not address, in past decisions authorizing these advice letter filings, many issues in these filings, such as change of party, customer notice of departure, demand for lump sum payment, and PG&E’s gas service termination enforcement provisions, and, therefore, the Commission must now consider and resolve these issues here<sup>7</sup>. Thus, we conclude the advice letters cannot be approved absent a Commission order.

Here, the Energy Division did not exercise ministerial approval but instead issued this resolution for the Commission’s consideration. Accordingly, because

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<sup>7</sup> For example, while D.03-07-028 authorized the IOUs to file tariffs to implement the CRS rate components for MDL, this decision did not specify detailed billing and collection provisions. In fact, as NCPA/Turlock point out, there the Commission stated that it would “defer to a separate order the specific means by which the billing and collection process will be implemented” (D.03-07-028, p. 20)

this resolution constitutes an order of the Commission, the District's and NCPA/Turlock's protest on this issue is moot.

**The relief requested is appropriate for resolution through the advice letter process and need not be set forth in an application.**

The Districts, NCPA/Turlock, and Hercules argue, for slightly different reasons, that the relief requested by the IOU proposals is inappropriate for resolution through the advice letter process. The Districts assert they are inappropriate because they raise policy matters and institute overreaching measures that have not been authorized by the Commission. NCPA/Turlock believes that such a request should be set forth in an application to the Commission due to the nature of the rate impacts.

Hercules argues that the Commission cannot approve PG&E's proposed transferred MDL schedule via the advice letter process because it contains new rates and charges that must be filed as an application pursuant to GO 96A, which states: "A formal application to increase rates shall be made in accordance with the Commission's Rules of Procedures, except where the increases are minor in nature. (GO 96-A, Section VI). Hercules alleges the Commission's express statement in D.03-07-028 that it would "defer to a *separate order* the specific means by which the billing and collection process will be implemented" (D.03-07-028, p. 21, emphasis added), is consistent with the requirements of GO 96A and demonstrates that the Commission did not intend to decide these issues by resolution.

From the perspective of affected customers, Hercules believes there are important differences between the advice letter and application processes. Hercules states that when an application is filed, interested parties and affected consumers receive full notice of the filing, may conduct discovery and may offer evidence on disputed factual matters. Hercules alleges that these rights are either severely truncated or nonexistent in an advice letter filing.

In its reply to the protests, PG&E states that the Commission has issued numerous decisions and rulings on billing and collection issues, which reflect in great part the input provided by the POU's. Therefore, PG&E believes that the Commission has complied with D.03-07-028, and that there is no reason why the proposed schedule cannot be handled through the advice letter process. Also, PG&E states that it is not proposing new rates but rather is seeking to collect

rates that have already been approved by the Commission in separate proceedings and, thus an application is not required.

Although we agree that the Commission must consider PG&E's and SCE's proposals, we do not agree that these proposals need to be addressed through the application process. D.03-07-028 specifically authorized the IOUs to file tariffs to implement the MDL CRS, and tariffs are always filed by advice letter. While we agree that D.03-07-028 deferred issues relating to the billing and collection of the MDL CRS for further consideration, subsequently, additional comments have been received from the parties, a workshop and negotiation sessions were held, additional decisions and numerous rulings have been issued toward advancing the implementation of the billing and collection of the MDL CRS. These additional procedural measures have given parties ample opportunities to identify positions, respond to opposing proposals, propose remedies or approaches to satisfy the billing and collection requirements set forth in D.03-07-028, as modified by D.03-08-076, D.04-11-014, and D.04-12-059. Therefore, the Districts' and Hercules' protest on this matter is denied.

Furthermore, an application is not needed due to any alleged rate impacts or rate increase. PG&E's and SCE's advice letters were filed to implement, with respect to MDL customers, the billing and collection of the CRS that was already imposed by D.03-07-028, as modified by D.03-08-076, D.04-11-014, and D.04-12-059. These advice letters are not establishing any new amounts for the Commission to approve or for the IOUs to justify but rather are seeking to establish the framework for the billing and collection of charges whose amounts have already been determined in other Commission proceedings. Accordingly, the protests of NCPA/Turlock and Hercules on this ground are denied. Hercules' assertion that the Commission intended to defer billing and collection implementation issues to a separate order, not a resolution, is without merit because as stated above, a resolution is an order of the Commission.

**Formal hearings are not required because there are no disputed issues of material fact.**

Hercules asserts that whether there is a practical billing and collection scheme that is just and reasonable is a matter of factual dispute that should be addressed in evidentiary hearings. It alleges that material, disputed facts include, but are not limited to, the following: 1) whether PG&E has provided adequate notice of Schedule E-MDL to the persons or businesses that will be subject to CRS under

Schedule E-MDL; 2) whether the customer notice requirements in Special Condition 3.a will provide reasonable notice to the persons or businesses subject to Schedule E-MDL; 3) whether the cost to PG&E ratepayers of identifying, noticing, billing and collecting charges from persons or businesses subject to Schedule E-MDL will exceed the monies collected; 4) whether Schedule E-MDL discriminates against persons or businesses who have never been PG&E customers; 5) whether it is reasonable to expect an average person to understand and identify his eligibility for exemptions as required in Special Condition 3.a; 6) how PG&E will calculate lump sum payments; 7) whether the lump sum collection provisions may result in overcollections, and if so, by how much and whether there is an adequate mechanism for refunds of overcollections; 8) who is a "New Party" and whether the New Party will be informed of its alleged obligations; 9) whether the Commission's dispute resolution and complaint processes are adequate for the purpose of dealing with disputes and complaints arising under Schedule E-MDL; and 10) whether PG&E's termination of gas service will be unjust, unreasonable or otherwise harmful to the health and safety of its gas customers.

The Districts also assert that certain matters may require hearings. They believe that the record on protests to the advice letters will have to be fully developed before all factual issues requiring such hearings may be determined. They allege that, among the areas where factual issues exist, are the manner in which PG&E would seek to enforce its tariff (including PG&E's "New Party," notice, lump sum payment, and gas service termination proposals) and whether the rules PG&E seeks to impose in the tariff are just, reasonable, and not discriminatory. They also assert that there are disputed issues of material fact that the advice letter filings do not address, such as whether collection of CRS should be customer specific so that no MDL customer pays CRS properly owed by another customer. The Districts indicate that they would participate in such evidentiary hearings by cross-examining other witnesses and filing briefs, and potentially sponsoring their own witness or witnesses.

The issues cited by Hercules and the Districts are not disputed issues of material fact requiring evidentiary hearings. These issues do not involve events or facts that must be determined by evidence, but rather they raise matters of policy or law that can be resolved through interpretation or judgment on the merits of the arguments presented, or are issues that are not material to the matters that must be resolved by this resolution. Parties have had the opportunity to make their arguments in protests, and PG&E and SCE have had the opportunity to respond.

Although Hercules and the Districts identify what they believe to be material, disputed issues of fact, and claim that evidentiary hearings are needed, they do not explain why evidentiary hearings are needed, do not describe the nature of the evidence that they would propose to introduce at such hearings, and do not indicate what needs to be tested under cross examination. In conclusion, we find that there are no material, factual questions to resolve and thus there is no requirement to hold evidentiary hearings. Accordingly, the protests of Hercules and the Districts on these grounds are denied.

**Since the advice letters are not seeking to increase rates, notice provisions of GO 96A do not apply.**

Hercules alleges that AL 2433-E-C clearly seeks to increase rates not authorized by a previous Commission order and cites a portion of GO 96A requiring that “[i]n the event of [rate] increases not previously authorized by Commission Order” PG&E must give notice to “affected customers where practicable, or in lieu thereof, a statement in the advice letter or other means of notification of said customers.” (GO 96A, Section III.G.5). Hercules argues that PG&E has failed to properly serve or give notice of AL 2433-E-C and must give notice of the increases to each customer subject to the present and proposed rates, including the increase in dollar and percentage terms and a brief statement of the reasons the increase is sought or required. Due to this alleged deficiency, Hercules believes the Energy Division should summarily reject the advice letter.

PG&E responds that it has complied with the necessary notice requirements<sup>8</sup> and that it is not required to issue the kind of notices that GO 96A requires for rate increases because PG&E is seeking to collect charges already approved by the Commission in separate proceedings.

As explained above, PG&E (and SCE) are not proposing new charges and/or rate increases in their advice letters but rather are implementing the CRS on MDL that was already imposed in D.03-07-028, as modified by D.03-08-076, D.04-11-

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<sup>8</sup> Pursuant to the February 23, 2006 ALJ Ruling, PG&E served copies of AL 2433-E-C on all parties on the service list to Rulemaking (R.) 02-01-011, and on all POU's within its respective service territory whose customers may be subject to the CRS but who were not on the service list for R.02-01-011.

014, and D.04-12-059. And, they are incorporating components that are approved by the Commission in separate proceedings, such as the annual Energy Resource Recovery Account (ERRA) (e.g. A.05-06-007 and A.05-08-002), Direct Access (R.02-01-011) and DWR Revenue Requirement (A.00-11-038 *et. al.*) proceedings. Since these advice letters are not establishing any new amounts for the Commission to approve or for the IOUs to justify, but rather are providing the framework for the billing and collection of charges whose amounts are determined in other Commission proceedings, the IOUs are not required to issue the customer notices that GO 96A requires for rate increases. Accordingly, Hercules' protest on this issue is denied.

Furthermore, the claim that MDL customers were not served proper notice of cost responsibility was specifically addressed and rejected in D.03-07-028. In that decision, we found that all electric customers within the IOU service territories were placed on notice of their potential liabilities for DWR's procurement costs when the Legislature enacted Senate Bill (SB) 7X on January 1, 2001, and were placed on further notice by the enactment of Assembly Bill (AB) 1X on February 1, 2001, authorizing DWR to continue its procurement program through December 31, 2002 (D.03-07-028, p. 12.)

**PG&E's lack of cites to applicable authority for the imposition of other NBCs does not warrant rejection of the advice letter by the Energy Division.**

Hercules states that PG&E has not explained or cited the applicable authority for the imposition of other NBCs (i.e., charges other than the CRS components defined in D.03-07-028) and that such charges cannot be included in Schedule E-MDL unless PG&E can clearly cite authorization for the charges. The Districts also claim that PG&E has not cited to applicable authority and, therefore, that the Energy Division should reject the advice letter as incomplete.

PG&E responds that it noted in AL 2433-E-C that previously-approved Schedule E-DEPART (and its underlying decisions) held departing load customers responsible for the CTC, Public Purpose Program (PPP) charge, and the Nuclear Decommissioning (ND) charge. PG&E explains that in Resolution E-3903, the Commission resumed the effectiveness of Schedule E-DEPART, which erroneously expired on March 31, 2002, and directed PG&E to "consolidate all information applicable to a particular type of DL in a single tariff covering such customers." (Res. E-3903, p. 10). PG&E references that the Trust Transfer Amount (TTA) (also called the Fixed Transition Amount (FTA)) was specified in

Schedule E-ERB, and that D.03-12-035 required departing load customers to be responsible for payment of the RA charge.

There should be no question regarding whether transferred MDL customers have to pay the following elements of the CRS: DWR Bond Charge, DWR Power Charge, ongoing CTC, the HPC (for SCE only), and the RA/ECRA charge (for PG&E only). The Commission thoroughly addressed MDL cost responsibility for these components in D.03-07-028, D.03-08-076, D.04-02-062, D.04-11-014, D.04-11-015, D.04-12-059, D.05-07-038, and D.05-08-035. These decisions did not address MDL cost responsibility for the “other” NBCs (i.e., ND, FTA, and PPP charges) because those charges had already been established by statute<sup>9</sup> and had been previously implemented in the IOU’s tariffs applicable to departing load customers. PG&E merely proposed to consolidate all relevant charges into a single tariff applicable to transferred MDL to comply with the Commission’s directives in Resolution E-3903. Although PG&E should have provided specific cites authorizing it to charge transferred MDL customers each of the components listed in the proposed tariff, Energy Division has verified that such authority exists and does not believe PG&E’s oversight should result in a rejection of the advice letter. Hercules’ and the Districts’ protests on PG&E’s authority to impose “other” NBCs is denied.

**The Energy Division has discretion to reject incomplete advice letters but has determined that the transferred MDL advice letters generally contain the required content.**

The Districts correctly point out that Rule 2.2 set forth in the Appendix to D.05-01-032 specifies the required form and content of advice letter filings. Rule 2.2 further provides that if the advice letter omits any applicable contents, as described in Rule 2.2, the reviewing Industry Division may reject the advice

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<sup>9</sup> See PU Code § 379 (mandating that nuclear decommissioning costs shall be recovered as a nonbypassable charge until the time as the costs are fully recovered), PU Code §§ 840 - 847 (requiring residential and small commercial customers to repay the principal, interest and related costs of the rate reduction bonds through separate, nonbypassable charges called fixed transition amounts, and PU Code §§ 381-383, 385, and 399.8 establishing a nonbypassable, usage based public purpose program surcharge on local distribution service.

letter without prejudice or extend the protest period unless and until the utility files and serves the complete advice letter. Rule 2.1 set forth in the Appendix to D.05-01-032 similarly provides that if an advice letter does not include a complete cover sheet the reviewing Industry Division may reject the advice letter without prejudice or extend the protest period unless and until the utility files and serves the information that is missing or incomplete.

The Districts assert that AL 2433-E-C, and its accompanying cover sheet, is incomplete in the following respects:

- (1) The advice letter fails to state pursuant to Rule 2.2(3) whether any deviations would be created, service would be withdrawn from any present customer, or more or less restrictive conditions would be imposed.
- (2) The advice letter fails to attach, pursuant to Rule 2.2(6), any analysis and workpapers used to justify the relief sought in the advice letter, or to state that the workpapers are voluminous and will be provided within two business days upon request.
- (3) Neither the cover sheet nor the advice letter cites the Commission order (by decision or resolution number and ordering paragraph) and PU Code or other statutory provisions (by section) related to PG&E's proposal to impose "other" NBCs (i.e. charges other than DWR Bond Charge, DWR Power Charge, ongoing CTC, and PG&E's ECRA charge) on transferred MDL customers. The decisions that are cited (without reference to ordering paragraph) by PG&E do not appear to authorize PG&E to impose such "other" NBCs on the class of customers that is proposed to be subject to Schedule E-MDL.
- (4) The cover sheet is incomplete for the following reasons: a) it does not provide the estimated system annual revenue effect from implementing this proposed schedule; and (b) it fails to include an attachment showing the average rate effects on customer classes.

The Districts claim all the information set forth above is required to be included in the advice letter or cover sheet, and is essential in order for the Energy Division and other interested parties to make an informed evaluation of the advice letter. Without any information showing the analysis, calculations or data

supporting the proposed schedule, they believe it is extremely difficult for interested parties and the Energy Division to determine whether the analysis, calculations, or data in the advice letter contain material errors or omissions. Therefore, in accordance with the Commission's Rules, the Districts assert the Energy Division should dismiss the advice letter at this time without prejudice, and PG&E should be required to cure the deficiencies set forth above in a new advice letter accompanied by a new cover sheet, commencing a new protest period.

Established exemptions and exceptions from any of the elements are set forth in the proposed tariffs, and the Energy Division has determined that no other deviations will be created, no service will be withdrawn, and no more or less restrictive conditions will be imposed on transferred MDL. Although PG&E should have stated this in its advice letter pursuant to Rule 2.2(3), the Energy Division does not believe omitting this statement warrants rejection of the advice letter. Similarly, as stated above, although PG&E and SCE should have provided the relevant cites authorizing them to charge transferred MDL customers the various components listed in the proposed tariffs, Energy Division was able to confirm such authority exists (see discussion above) and thus does not believe rejection of the advice letters solely on this basis is justified. With respect to the other alleged deficiencies, Energy Division has determined that PG&E and SCE were not remiss by not providing underlying analysis/workpapers or estimated system annual revenue and average rate effects because the advice letters are not establishing new charges needing justification here but rather provide the framework for the billing and collection of charges whose amounts are determined elsewhere in other Commission proceedings. Accordingly, the Districts' protest on these grounds is denied.

**The Commission recently issued its final determination on the CRS Working Group report; the IOUs should update the CRS component amounts accordingly.**

CMUA and SSJID allege that PG&E's and SCE's proposed tariffs contain either non-existent, outdated, or yet-to-be finalized amounts for the MDL CRS and that the Commission should not approve them in their current form but rather should require the IOUs to update the advice letters once the Commission issues a decision concerning the CRS Working Group Report.

PG&E and SCE respond that some of the components were intended to be placeholders until the Commission issued its decision on the Working Group Report, and they agree that the numbers should be updated to reflect the most current Commission-adopted charges. On July 20, 2006, the Commission issued D.06-07-030 which resolved various outstanding issues relating to the CRS methodology and obligations. As a result, SCE's and PG&E's tariffs now may be finalized. Thus, we grant CMUA's and SSJID's protest on this issue and require PG&E and SCE to file a supplement to update the components accordingly.

**PG&E should revise the ongoing CTC component to reflect approved amounts, and indicate that amounts are subject to change pending any different outcome resulting from judicial review.**

The Districts and NCPA/Turlock claim that the ongoing CTC amounts listed in PG&E's proposed tariff are inaccurate for years other than 2004 and should be revised to accurately state the correct amounts. Furthermore, the Districts believe it is appropriate to state that the ongoing CTC payments are subject to change and possible refund pending appellate review of the issue of proper ongoing CTC calculation.

PG&E does not object to including all of the ongoing CTC amounts for the applicable years in its compliance advice letter following Commission resolution of AL 2433-E-C.

The ongoing CTC amounts should be revised to reflect the applicable years. Also, it is reasonable to indicate that there is a possibility they may change due to the fact that the Districts have sought judicial review of the Commission's methodology for calculating ongoing CTC. Accordingly, we grant the Districts' and NCPA/Turlock's protests on these issues and direct PG&E to include these revisions in its tariff filed in the supplemental advice letter required by this resolution.

**PG&E's proposed "Change of Party" provision is lawful and justified.**

In Special Condition 1.b of Schedule E-MDL, PG&E defines a “Change of Party”<sup>10</sup> as follows:

Change of Party occurs when a person or agency with Municipal Departing Load leaves the premises with the Municipal Departing Load and another person or agency (New Party) assumes liability for the Municipal Departing Load at that same premises.

The Districts, NCPA/Turlock, and Hercules claim this “Change of Party” provision should be rejected because it improperly creates a property right to MDL CRS collection or imposes an MDL CRS tax. They assert that PG&E fails to articulate a legal theory or policy authority for requiring a New Party who is not a PG&E customer to pay CRS. Specifically, they state that unless there is a valid lien on the property (and they argue there is not), the obligation to pay any charges cannot follow ownership of the land and that obligation cannot be imposed on a “customer” (which could be an owner, tenant, sub-lessor, joint-tenant, etc.) that has no contractual relationship for electric services with PG&E<sup>11</sup> Furthermore, the Districts, and SSJID, believe that the Commission has not authorized PG&E to assess CRS charges upon customers who occupy premises formerly occupied by a transferred MDL customer.

PG&E responds that the primary purpose of the “Change of Party” provision is to allow transferred MDL customers who vacate a premises to let PG&E know that they should no longer be held responsible for the charges associated with

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<sup>10</sup> Although SCE does not define or use the term “Change of Party”, the provisions it proposes in Special Conditions 3.d and 3.e similarly hold any new transferred MDL customer responsible for CRS and other NBCs at a premises previously owned or occupied by a transferred MDL customer.

<sup>11</sup> In support of its arguments, Hercules and NCPA/Turlock quote from various legal sources. All of the quotations address liability for the unpaid assessment or bill of a prior occupant or owner. However, as we discuss below, under its proposed tariff, PG&E will not pursue the subsequent owner/occupant of the property for the unpaid bills of the former. Instead, PG&E will only hold the subsequent owner/occupant of the property liable for charges on a going forward basis and as we explain in this section, PG&E has legal authority to do this. Accordingly, the authorities Hercules and NCPA/Turlock discuss do not appear to be applicable here.

the premises; and to ensure that the New Party who takes over the premises is aware that s/he is responsible for the associated charges. PG&E believes there is nothing unlawful or improper in this purpose. Furthermore, PG&E states the POUs have repeatedly argued that the Commission does not have authority to impose charges on MDL customers, particularly those with whom the IOU does not have a customer relationship, and that the Commission has repeatedly rejected these arguments. Thus, PG&E believes that the legal authority issue has already been decided, and those decisions are final and unappealable.

We agree with PG&E. In D.03-07-028, as modified by D.03-08-076, D.04-11-014, D.04-12-059, and D.05-07-038, we addressed the legality and applicability of MDL CRS.<sup>12</sup> These decisions give the IOUs the legal authority to assess CRS on both transferred and new MDL (and also provide some exceptions where the CRS does not apply) and explain why it is appropriate for the IOUs to assess CRS even though a new MDL customer has no prior contractual relationship for electric services with PG&E. As these decisions discuss, pursuant to the mandate of PU Code § 366.2(d), retail end-use customers who depart bundled service remain responsible for their fair share of costs incurred on their behalf. Further, the Commission determined that new load served by POUs also bear responsibility for their fair share of any costs incurred by the IOUs or DWR on their behalf. Moreover, the POUs' claims that the CRS is like a tax, and that the Commission has no authority to impose such a tax on departing load, are incorrect. The POUs also made these claims in R.02-01-011, where we found that the MDL CRS was lawful and consistent with statutory obligations under AB 1X, AB 117, and related statutes<sup>13</sup>.

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<sup>12</sup> Merced Irrigation District, Modesto Irrigation District, California Municipal Utilities Association, and the City of Corona separately sought judicial review of D.03-07-028 and D.03-08-076 in the California Supreme Court. The California Supreme Court consolidated these cases for consideration and denied review on February 18, 2004.

<sup>13</sup> See page 9 of comments filed on November 25, 2002 in R.02-01-011 by Modesto Irrigation District where it claims the following: "As proposed here, any customer departing PG&E for Modesto (or another similar municipal supplier) will be required to pay this CRS as long as the CRS is in effect, regardless of the benefit conferred on the customer. As such the CRS is more akin to a tax than a rate or charge. And, to the extent that the CRS exceeds the reasonable cost of service, it must be deemed a special

*Footnote continued on next page*

It is reasonable, as PG&E has done, to impose the cost responsibility obligation on the entity taking electricity service at the premise because IOU forecasts given to DWR for electricity procurement purposes were based on load projections at locations served by the IOUs' electric systems, as well as load projections for locations in areas that the IOUs expected to serve. This cost responsibility obligation continues even if the customer responsible for the charges changes. Thus, any New Party taking over the location which was included in the forecasts upon which DWR relied in order to decide how much power to procure, must still contribute to the recovery of those costs. Accordingly, the protests on this issue are denied.

Furthermore, the tariffs, as proposed, specifically state that the New Party will only be billed for the time period beginning with the date the New Party began to consume electricity at the premises. Thus, the New Party will not be responsible for the prior occupant's bills. As PG&E points out, the notice requirements for Change of Party situations helps to ensure that there is no confusion about which party is responsible for charges at any point in time.

**PG&E's DWR Power Charge exception specification is consistent with geographic limitations previously adopted by the Commission.**

In its proposed Special Condition 2.b, PG&E describes "[m]unicipal departing load located in the geographic area covered by PG&E's 2000 Bypass Report" that is excepted from the DWR Power Charge, and then denotes certain geographic areas as being a "condemnation" area or an "annexation" area. SCE included a similar provision in its proposed Special Condition 2.b.2.

CMUA argues that PG&E's description (and SCE's since it uses the same language<sup>14</sup>) is confusing and may improperly limit the applicability of the DWR

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tax and is not permitted [cite omitted]. The Commission has no authority to impose a tax on departing load."

<sup>14</sup> Although SCE proposes the same language, CMUA presumes that SCE is indifferent to the treatment of this issue, since the referenced areas are only within or contiguous to PG&E service area, not SCE's service area. In its reply to CMUA's protest, SCE states that although it did not intend to take a position on the geographic areas of PG&E's

*Footnote continued on next page*

Power Charge exception to only those transferred MDL customers within an undefined “condemnation” or “annexation” area, instead of all transferred MDL within the specified districts and cities. CMUA is opposed to such a limitation. SSJID also protests the proposed language claiming that the Commission clearly attributed the DWR Power Charge exception to all of SSJID’s service territory and did not limit the area in which allocated exceptions can be used.

PG&E strongly opposes the removal of the qualifying limitations because doing this would be inconsistent with the plain language of D.04-11-014 and the Bypass Report underlying the Commission’s authorized exceptions. PG&E argues that deleting the words “condemnation area” and “annexation area” could have a substantial impact on the magnitude of customers that could be excepted from charges which in turn could substantially increase the amount of cost-shifting and harm to PG&E’s remaining ratepayers.

PG&E points out that its Bypass Report was specific regarding the POU’s and geographic areas in which PG&E expected to lose load, and therefore the exceptions from the DWR Power Charge should be similarly specific. PG&E states for example, at the time of the Bypass Report, PG&E anticipated that two circuits (Ripon Circuits 1702 and 1704) would be transferred to SSJID, and the Bypass Report included an estimate of load that would be lost as a result of that transfer to SSJID. Also, PG&E asserts that its Bypass Report did not anticipate that SSJID might seek to condemn PG&E’s entire distribution system in that area. Therefore, PG&E asserts it would be unreasonable to open up the DWR Power Charge exceptions to any customer served by SSJID.

We agree with PG&E. In D.04-11-014, as modified by D.04-12-059, we created an exception applicable to transferred load and new MDL associated with this transferred load within the PG&E service territory corresponding to the estimates set forth in PG&E’s August 2000 Bypass Report (D.04-12-059, Ordering Paragraph 1.i). We granted an exception for new load “limited to that occurring within the annexed or condemned geographic areas covered by the transferred

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service territory to which the exception would apply, SCE believes it must follow PG&E’s designation of what its Bypass Report included because eligible POU’s serving former bundled service customers of SCE are third in line for the transferred MDL exception resulting from PG&E’s Bypass Report.

load identified in PG&E's Bypass Report" and found that no cost shifting would occur "to the extent that any limited new load exception is confined to the geographic areas subject to the transferred load in the Bypass report." (D.04-11-014, pp. 21-22, emphasis added).

The record demonstrates that the forecast in PG&E's Bypass Report "relied upon a time-trend linear regression using historical data on existing PG&E customers who had departed to date to Modesto and Merced Irrigation Districts, knowledge of then-pending plans by South San Joaquin and Laguna Irrigation Districts to condemn PG&E's facilities and service existing PG&E customers, information from PG&E's account services representatives about anticipated further condemnations by existing municipal utilities (Redding, Roseville, and Lodi), and an expected value calculation of lost sales of existing PG&E customers associated with possible condemnation efforts by two potential municipalities (Davis and Brentwood)." (D.04-12-059, p. 21 emphasis added). Also, PG&E's Bypass Report was reflected in Appendices 2 and 3 to D.04-11-014, which expressly reference "Laguna ID Condemnation," "SSJID Condemnation," and other potential condemnations and annexations.

In summary, the transferred MDL exceptions correspond to the estimates set forth in PG&E's Bypass Report which was specific regarding the POUs and geographic areas in which PG&E expected to lose load. Therefore, the exceptions from the DWR Power Charge similarly should be specific. Accordingly, we deny CMUA's and SSJID's protest on this issue.

**PG&E should reference the priority for allocation of load eligible for leftover exceptions.**

Special Condition 2.c of PG&E's proposed Schedule E-MDL lists the POUs eligible for "leftover" DWR Power Charge exceptions and notes that the Commission has not yet established a procedure for administering the allocation of these remaining exceptions. PG&E's proposed language does not include a reference that the POUs located in PG&E's service territory are entitled to priority in the allocation of any remaining exceptions. NCPA/Turlock state that D.04-11-014 specifically provides that "[f]or determining the assignment of any unused portion of the allotted exception to such other MDL entities under the Bypass Report, priority shall first be given to load transferring specifically from PG&E bundled service." (D.04-11-014 at p. 28). NCPA/Turlock believe that PG&E's failure to reflect the above direction in its advice letter constitutes a

material omission. While PG&E disagrees that this is a material omission, it does not object to including a clarifying statement in a compliance advice letter.

We agree with NCPA/Turlock that PG&E should modify its tariff to include a reference to reflect the language in D.04-11-014 regarding the priority for allocation of the load eligible for leftover exceptions. However, we also agree with PG&E that the omission of this language from PG&E's tariff does not rise to the level of a "material" omission. Accordingly, NCPA/Turlock's protest on this issue is granted in part.

**PG&E and SCE should provide a notice to transferred MDL customers to inform them of their obligations under the tariffs.**

Special Condition 3.a of PG&E's proposed tariff requires customers to notify PG&E of their intention to become transferred MDL at least 30 days in advance of discontinuation or reduction of service from PG&E, and requires them to specify certain information in their notice. Failure to do so would constitute violation of the tariff. SCE, on the other hand, in its Special Condition 3.a, proposes to first inform the customer of its obligations to pay MDL charges by sending the customer a notice. This notice will request the customer to provide certain information. Failure to return the notice with the requested information would constitute a violation of the tariff.

Hercules believes that SCE's approach is more appropriate because it requires the IOU to fully and fairly inform departing customers of their obligations under the tariff. Hercules believes PG&E's approach is unjust because it would place customers in a position in which they are in violation of a tariff that has not been disclosed to them. Specifically, if the tariff is made effective back to July 10, 2003, as PG&E proposes, Hercules asserts customers would automatically be in violation subject to penalties the day the tariff goes into effect.

NCPA/Turlock believe that PG&E is required, pursuant to GO 96A, to notify affected customers of their potential liability under the proposed tariff, and failure to include information regarding that notice requirement constitutes a material omission.

PG&E responds that its proposed customer notice of departure provision for transferred MDL is consistent with its departing load notice provisions in Preliminary Statement BB (Section 4.a) and Schedule E-DCG (Special Condition

3.a). PG&E states that in all cases, the responsibility falls on the customer to inform PG&E that it intends to take action that will result in departing load. Nonetheless, PG&E states that its practice is to work with its customers to ensure that they are aware of their departing load obligations.

Although SCE in its proposed Special Condition 3.a takes responsibility for sending a notice to the transferred MDL customer informing it of its obligation to pay the CRS and other NBCs, it is not required by GO 96A to provide this notification. As we discussed above, the notice requirements of GO 96A do not apply because the advice letters/proposed tariffs are not increasing rates. Rather, they are providing the framework for the billing and collection of charges that have been approved by the Commission in other proceedings where notice of such charges has already occurred. Accordingly, we deny NCPA/Turlock's protest on these grounds.

As a matter of policy, however, we agree with Hercules that it is appropriate for the IOUs to inform transferred MDL customers of their notice and payment obligations required by the tariffs to avoid unintentional defaults. Accordingly, we grant Hercules' protest on these grounds, as discussed below.

PG&E and SCE should send a notice to all customers who are subject to the transferred MDL tariffs informing them of their obligations under the tariffs. Customers include: (a) those subject to the tariffs from the date they become effective – July 10, 2003<sup>15</sup> – through the date the transferred MDL tariffs are “deemed effective” by the Energy Division; and (b) those subject to the transferred MDL tariffs going forward from the date the transferred MDL tariffs are “deemed effective” by the Energy Division. Within each of the above groups (a) and (b), there are three different types of customers subject to the transferred MDL tariffs: (1) customers taking service from an IOU who intend to discontinue or reduce service from the IOU to take service from the POU and assume responsibility for paying the CRS and other NBCs to the IOU<sup>16</sup>; (2) customers who take service from a POU, and are responsible for paying CRS and

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<sup>15</sup> This effective date is discussed below.

<sup>16</sup> These customers will have noticing and payment obligations to the IOUs under the transferred MDL tariffs.

other NBCs to the IOU, but who intend to take action such that they are no longer responsible for paying the CRS and other NBCs at the premises<sup>17</sup>; and (3) a New Party that takes over the premises subject to the transferred MDL tariff and, thus, assumes responsibility for paying the CRS and other NBCs to the IOU<sup>18</sup>.

PG&E and SCE should send a notice of the obligations imposed by the transferred MDL tariffs to all customers falling within item (a) above (i.e., customers subject to the tariffs from July 10, 2003 through the date the transferred MDL tariffs are “deemed effective”), where the IOUs have a reasonable expectation of the existences of these customers, within 15 days from the date the supplemental advice letters (required by this resolution) are deemed effective by the Energy Division. These transferred MDL customers must then submit any required notice and/or pay any amounts owed within 30 days from the date of the IOU’s notice. Also, PG&E and SCE should send a notice to the customers discussed in item (b) above (i.e., customers subject to the transferred MDL tariffs going forward from the date the transferred MDL tariffs are “deemed effective”, where the IOUs have a reasonable expectation of the existences of these customers.<sup>19</sup>

In addition, PG&E and SCE should periodically remind transferred MDL customers (e.g. through a notice on their monthly bill) of their notice and/or payment obligations under the MDL tariffs and of the substantial penalties that could result for failure to comply with these requirements. Finally, PG&E and SCE should arrange for payment plans for any transferred MDL customer who indicates that it would otherwise have difficulty paying the amount owed.

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<sup>17</sup> These customers will only have noticing obligations to the IOUs under the transferred MDL tariffs.

<sup>18</sup> These customers will have noticing and payment obligations to the IOUs under the transferred MDL tariffs.

<sup>19</sup> PG&E may use their gas service records to monitor who is taking service at the premises in question.

**The IOU, and not the transferred MDL customer, should identify applicable exemptions.**

As part of Special Condition 3.a, PG&E requires that the customer specify in its notice of departure an identification of any exemptions that the customer believes are applicable to the load. SCE also has proposed a procedure whereby it would request that the customer provide identification of any exemptions (Special Condition 3.a), and would send a follow-up statement to the customer to notify them of whether their exemption claim is approved or denied (Special Condition 3.b).

Hercules and NCPA/Turlock believe it is unreasonable to expect a customer to sort through and identify which of PG&E's enumerated exemptions might apply; instead, PG&E should identify and apply the applicable exemptions. Hercules alleges that even the most sophisticated and informed consumer is incapable of deciphering some of the special conditions in the tariffs.

As with its customer notice provision discussed above, PG&E maintains that the requirement that the customer identify any possible exemptions is consistent with similar provisions in Preliminary Statement BB which applies to all departing load customers and Schedule E-DCG which applies to customer generation departing load. That said, PG&E's states that it is its practice to work with its customers to ensure that they are aware of and receive any exemptions that may apply.

Although PG&E does have similar provisions requiring customer identification of possible exemptions in other departing load tariffs, due to the complexity of the technical aspects of the exemption criteria applicable to transferred MDL, we agree with Hercules and NCPA/Turlock that a transferred MDL customer may not be able to easily or accurately identify exemptions for which it may be eligible. Rather than expect the customer to identify applicable exemptions, it should be incumbent upon the IOU seeking to bill the customer for charges to identify the applicable exemptions. Accordingly, the protests of Hercules and NCPA/Turlock on this issue are granted. Although these protestants only addressed PG&E's tariff, as we noted above, SCE has a similar provision. We direct both PG&E and SCE to revise their tariffs to state that they will identify for the customer any applicable exemptions. As a result of this modification, SCE's proposed Special Condition 2.b is no longer necessary and should be removed.

**A customer notice provision to document “change of party” and termination of the existing customer’s liability of charges under specified circumstances is reasonable; the IOUs should modify their proposed tariffs to provide greater specificity and to remove IOU discretion.**

In Special Condition 3.c.1 of PG&E’s Schedule E-MDL and Special Condition 3.d of SCE’s Schedule TMDL, PG&E and SCE respectively propose a 30-day notice requirement for transferred MDL customers that intend to take action such that they will no longer be responsible for MDL charges at the premises. PG&E<sup>20</sup> requires that:

- 1) The customer must state the date on which the termination of liability is intended to become effective, and the reason for the termination of liability, subject to approval by PG&E. Reasons for termination of liability may include vacating the property, change of ownership or Change of Party.
- 2) If the notice of termination is approved by PG&E, PG&E will stop billing the customer for CRS and other NBCs on the effective date of the termination of liability.
- 3) If the notice of termination is not approved by PG&E, PG&E will advise the customer in writing and state the reason(s) for such disapproval.
- 4) If the customer does not agree with PG&E’s response to the notice of termination, the customer may invoke the dispute resolution provisions of Special Condition 3.e.
- 5) If released by the existing customer, PG&E will utilize the existing customer’s Reference Period Load Profile for the New Party at the same premises. If not, PG&E will utilize PG&E’s estimate of the New Party’s usage.<sup>21</sup>

Hercules alleges that these provisions contain material errors and omissions because they do not definitively enumerate and specify conditions under which

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<sup>20</sup> SCE’s proposed language is similar but not exactly the same as PG&E’s.

<sup>21</sup> SCE also states if the New Party chooses to provide SCE with metered data, it will use that data instead of any estimate or existing customer’s historic metered usage data.

customers would be relieved of their obligation to pay the charges and do not explain the criteria under which the IOU will exercise its approval.

NCPA/Turlock believe that the provisions contain material omissions because they fail to provide any rationale or reason for the notice requirement. Furthermore, they believe the proposed IOU approval requirements contain material omissions because they fail to describe criteria that will be used to approve or disapprove a customer's relocation decisions and fail to provide the customer with any meaningful remedy or recourse should the IOU fail to approve the customer's request.

PG&E indicates that the primary purpose of this provision is to allow transferred MDL customers who vacate premises to let PG&E know that they should no longer be held responsible for the CRS and other NBCs associated with the premises, and that customer notice is required to document the effective date of the termination of that customer's liability. We agree with PG&E. The need for such documentation is a sufficient reason justifying the customer notice provision. Thus, we deny NCPA/Turlock's protest on this basis. However, as pointed out by Hercules, the provision does not definitively enumerate and specify conditions under which customers would be relieved of their obligation to pay the charges. Inclusion of these additional details upfront in the tariffs would obviate the need for the IOU to exercise any discretion, and would eliminate subjecting customers to an unnecessary IOU approval process.

PG&E states that the IOU approval requirements were added to ensure that customers do not attempt to avoid their CRS/other NBC obligations by, for example, changing the name on the account from the husband's to the wife's name. In this example, given that the new customer (i.e. the wife) would ultimately be responsible for the CRS/other NBC obligations pursuant to the proposed New Party provisions, it is not clear how allowing such a change could create loopholes that could harm remaining ratepayers as PG&E asserts.

In the absence of any compelling arguments from the IOUs regarding need for discretion, PG&E and SCE should revise their respective tariffs to: 1) remove IOU approval requirements, 2) specify that a transferred MDL customer may terminate its liability of the CRS/other NBC obligations if it vacates the premises or another transferred MDL customer becomes liable for the charges at the premises, 3) require that the transferred MDL customer give the IOU not less than 30 days notice stating the date the termination of that customer's liability is

intended to become effective, and 4) require that the transferred MDL customer specify in its notice the reason for termination of liability. These modifications should alleviate the concerns expressed by the protestants and render their protests on these issues moot.

**Unless the New Party chooses to provide the IOU with metered data, it is reasonable to utilize either the prior customer's energy usage profile (if released) or an estimation methodology to determine the New Party's usage.**

NCPA/Turlock believe that PG&E's proposal (in Special Condition 3.c.1.e) to use the existing customer's Reference Period Load Profile as the Reference Period Load Profile for the New Party at the same premises contains material errors and omissions because it does not include any information regarding the procedure by which customers may determine whether or not their Reference Period Load Profile will be used, or how the IOU will use this information after the termination of liability.

SSJID believes it is unfair to bill the New Party based on the previous customer's Reference Period Load Profile because the energy use load profile of a premise will be highly dependent on the type of business that occupies it. For example, SSJID states that if a storefront is occupied by a laundry which vacates it to be replaced by clothing store, the New Party (i.e. the clothing store) will utilize significantly less energy than the laundry but will be paying CRS based on the laundry's load profile. In the instances in which the previous tenant does not want its load profile utilized in the calculation, the IOUs have proposed to estimate the New Party's usage. SSJID has concerns with this approach also because the IOUs do not state how they will undertake such an estimation.

In essence, the protestants are concerned about IOUs using either the prior customer's energy usage profile or an undefined estimation methodology to determine the New Party's usage for purposes of billing the CRS and other NBCs. The most straightforward solution to these concerns would be for the New Party to provide the IOU with metered consumption data such as SCE has allowed for in its tariff. However, in the absence of such customer-specific data, the IOU must have some other mechanism to derive usage information for the New Party.

The use of the existing transferred MDL customer's historic metered consumption data is a viable option. If the existing customer does not want its

historic metered usage released, metered usage was not supplied by the existing customer, or the existing customer's usage data seems inappropriate for the New Party (e.g. the new tenant's energy usage is obviously different than the prior tenant's usage due to a change in the type of business or activity on the premises), the IOU should have the option to estimate the New Party's usage. Although the IOUs do not specify an exact estimation procedure, it is not necessary to do so because estimation may depend on the situation. For example, one procedure could involve the utilization of average usage data for similar customer types. Here, we will not anticipate or specify a procedure that would be applicable to every scenario. Instead, we believe it is reasonable for the IOUs to have the flexibility to utilize either the prior customer's historic usage data or develop its own estimate of the usage if it would yield a more accurate assessment.

Accordingly, we grant in part SSJID's protest on this issue, and we deny NCPA/Turlock's protest on this issue. PG&E and SCE should revise their tariffs to reflect the following: (1) if the New Party provides the IOU with metered data concerning its usage, the IOU will use this data in calculating the applicable charges; and (2) if the New Party does not provide the IOU with this metered data, the IOU will either (a) utilize the existing customer's historic metered usage data for the New Party at the same premises or (b) estimate the New Party's usage if (i) either the metered usage data was not supplied by the existing customer for the New Party at the same premises, (ii) the existing customer requests at the time of termination that its historic metered usage data not be released, or (iii) the IOU determines that the existing customer's historic metered usage data is inappropriate for the New Party (e.g. due to the nature of the business, the new tenant's energy usage is obviously different than the prior tenant's usage).<sup>22</sup>

**PG&E's proposed New Party notice provision is reasonable and consistent with approved tariffs applicable to departing load but should be slightly modified to provide additional clarification.**

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<sup>22</sup> PG&E and SCE may use their respective name instead of IOU where appropriate and PG&E can substitute its term "Reference Period Load Profile" for "historic metered usage".

In Special Condition 3.c.2 of PG&E's Schedule E-MDL and Special Condition 3.e of SCE's Schedule TMDL, PG&E and SCE respectively require notice from any New Party of its intention to occupy those premises and assume responsibility for the transferred MDL charges at least 2 days in advance of taking electric service from a POU. The New Party is to specify some details about its intended electricity consumption at the premises, and some information, if known, about the prior transferred MDL customer. PG&E and SCE will issue a bill from the time period the new customer begins to consume electricity at the premises.

NCPA/Turlock and Hercules believe that these provisions contain material errors and omissions because they fail to properly define "New Party" and do not explain how PG&E will notify the New Party of the alleged obligation. NCPA/Turlock assert further material omissions stating that PG&E does not address the instance where the new occupant of a premises may not be assuming responsibility for the charges, does not reconcile how a New Party can be billed for actual usage of another customer or a PG&E estimate instead of its actual usage, and fails to provide information regarding the practice PG&E will employ in order to determine the New Party's estimated usage. Also, NCPA/Turlock believes that PG&E cannot impose an obligation upon the New Party to provide prior customer information to which the New Party is likely not privy.

PG&E currently has provisions governing notice and payment responsibility requirements for "New Party at the Existing Premises" in its tariff applicable to Split Wheeling Departing Load and for "New Customers at Existing Premises" in its tariff applicable to Departing Customer Generation Load. Although the terminology differs slightly, PG&E's proposed transferred MDL tariff provisions are consistent with the general requirements in those approved departing load tariffs. Nonetheless, we concur with NCPA/Turlock and Hercules that the term "New Party" could be more clearly defined in the transferred MDL tariff to avoid confusion over who ultimately will be liable for the on-going charges. PG&E should add a definition to its transferred MDL tariff to state that a "New Party" is either 1) an entity which occupies, and will begin to consume electricity at, transferred MDL premises or 2) an entity who assumes liability for the charges at transferred MDL premises. Furthermore, the notice requirement discussed above addresses NCPA/Turlock's concern regarding how a New Party would be informed of their notice and payment obligations. We note that SCE currently also has proposed in its Special Condition 3.e that the POU, on behalf of its customer, could notify the IOU of the New Party's intention to occupy the premises and assume responsibility for the CRS and other NBCs. As

this improves the communication process, PG&E should similarly add this option to its tariff.

Concerns raised by NCPA/Turlock regarding billing the New Party based on estimated rather than actual usage have been addressed above in the discussion concerning PG&E's proposal to use a Reference Period Load Profile and are not repeated here. NCPA/Turlock's concern that PG&E is imposing an obligation upon the New Party to provide prior customer information which the New Party is likely not privy is without merit because PG&E has only requested that the New Party provide such information "if known".

**PG&E should remove references to its electric and gas service rules from its proposed provision concerning the transferred MDL customer's obligation to make MDL payments.**

In Special Condition 3.f, SCE states that it will issue bills in accordance with the provisions of its Schedule TMDL. PG&E states in Special Condition 3.d that rendering and payment of bills for MDL charges shall be handled in accordance with the provisions of its Electric Rule 9.E, 9.H. and 9.L. PG&E also states that if it opts to discontinue any service that it is providing to the customer based on the customer's non-payment of MDL charges, PG&E will follow the notice and provisions of Gas or Electric Rule 8.

NCPA/Turlock assert that PG&E's proposal contains material errors and omissions because its referenced rules pertain to bills for "electric service" and do not address charges of the kind contemplated under this tariff. They state that MDL, by PG&E's own definition, involves a customer that no longer takes "electric service" from PG&E.<sup>23</sup>

We agree with NCPA/Turlock that tariff provisions of PG&E's Electric (and Gas) rules do not adequately address the unique characteristics of a MDL customer and to that extent their protest is granted. Furthermore, none of PG&E's other schedules applicable to departing load (e.g. see Preliminary Statement Part BB, Schedule E-DCG, or Schedule E-SDL) have such references but rather include a

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<sup>23</sup> SSJID also protests this aspect of PG&E's proposal but for reasons concerning PG&E's proposed Enforceability provision (see the discussion below).

statement similar to that proposed by SCE. Accordingly, PG&E should remove the two sentences referencing its Electric (and Gas) Rules 8 and 9 from its proposed Special Condition 3.d, and replace them with a statement that PG&E will issue bills in accordance with transferred MDL tariff provisions.

**Dispute resolution procedures applicable to transferred MDL customers should be articulated in the tariffs.**

In Special Condition 3.e, PG&E states that disputed bills will be handled in accordance with provisions from its Electric Rule 10.A and 10.B. SCE similarly references in its proposed Special Condition 3.g that disputed bills will be handled in accordance with the provisions of its Rule 10.

Hercules argues that PG&E's provision contains material errors and omissions because 1) there is no "service" being provided by PG&E to the customer or the New Party thus the rule must be revised to accommodate claims arising from Schedule E-MDL and 2) before Schedule E-MDL can be implemented, the Commission must revise its practices and procedures for handling complaints specific to this tariff (i.e. complaints can not be accommodated using the existing forms and processing procedures).

PG&E responds that it believes that no changes to Rule 10 are necessary, however, it would not object if the Commission orders it to revise the rule to include claims arising from Schedule E-MDL. PG&E states there is no reason why complaints related to Schedule E-MDL cannot be handled in the same manner as other Commission complaints.

Since January 1, 1998, PG&E has had an approved dispute resolution provision applicable to CTC for Departing Load in its Preliminary Statement Part BB. PG&E has not demonstrated why a similar provision would be insufficient here to govern the CRS and other NBCs applicable to transferred MDL. While PG&E's Rule 10 may apply to general bill disputes, we believe that the tariff applicable to transferred MDL should be revised to specify procedures applicable to disputes arising from transferred MDL customers. Accordingly, we direct PG&E and SCE to revise their transferred MDL tariffs to include the dispute resolution procedures specified in PG&E's Preliminary Statement Part BB.4.f and remove its references to Rule 10.

**PG&E's and SCE's Opportunity to Cure provisions should be revised.**

PG&E has included a provision called Opportunity to Cure in its proposed Special Condition 3.f that enables PG&E to send a notice to the transferred MDL customer specifying their failure to comply (i.e. breach of the tariff) if the customer fails to provide the notice(s) required for Departure or for Change of Party, and specifying the customer's obligations in order to cure the breach. SCE has a similar provision in its Special Condition 3.h., but SCE's provision offers more specificity regarding the customer's notice and payment procedures required to cure the breach.

Hercules believes that PG&E's proposed provision contains a material omission because PG&E does not indicate whether the notice provided by PG&E will advise the transferred MDL customer of the amount that is due and payable. Without such information, Hercules asserts it is not clear how the customer can pay all amounts that are due within 20 days of the notice to cure.

PG&E responds that it included the Opportunity to Cure provision in its proposed transferred MDL tariff because such a provision is included in its Preliminary Statement Part BB tariff concerning the CTC procedure for Departing Load. However, upon closer review, PG&E agrees with Hercules that the provision may be confusing and could be deleted. Instead, PG&E offers that the following language be inserted at the end of Special Condition 3.c (Notice to PG&E for Change of Party): "Failure to provide notice including all the elements specified above will constitute a violation of this tariff and a breach of the customer's obligations to PG&E, entitling PG&E (subject to the provisions of Special Condition 3.e, "Dispute Resolution") to collect the applicable NBCs from the customer on a lump sum basis retroactive to the date the New Party began consuming electricity at the premises."

PG&E's suggested alternative language does not address Hercules' concern. Hercules is concerned that the transferred MDL customer will not be advised of the amount that is due and payable. We agree that this is important information that should be included in the IOU notice and accordingly grant Hercules' protest on this issue. SCE's proposed tariff language adds greater specificity regarding payment information but does not state that SCE will notify the transferred MDL customer of the amount that is owed. The IOUs' failure to comply notice should give the transferred MDL customer the opportunity to cure either a failure to provide required notice or a failure to pay an amount owed. Accordingly, SCE and PG&E should revise the Opportunity to Cure provisions

in their tariffs to state that they will specify the amount due and payable by the transferred MDL customer in their failure to comply notice. To the extent PG&E intends to impose a penalty for breach of the tariff, it should indicate (similar to SCE's language) how it will calculate such a penalty. Also, PG&E should remove any references to its Electric (and Gas) rules because relevant provisions from those rules should be specifically stated in the transferred MDL tariff. Finally, PG&E should revise its Opportunity to Cure provision to state that PG&E shall send a notice specifying a customer's failure to comply if the customer fails to 1) provide the notice specified in Special Condition 3.a. or 3.c. or 2) make MDL payments as specified in Special Condition 3.d. PG&E's current proposed language only requires PG&E to send the customer a notice if the customer fails to provide the required notice(s).

**PG&E should revise its transferred MDL tariff to include specific Demand for Deposit/Return of Deposit provisions consistent with its tariffs applicable to departing load for CTC responsibility.**

In its Special Condition 3.g, PG&E specifies that it will follow procedures of its Electric Rules 6 and 7 for deposits whereas SCE in its Special Condition 3.i specifies the exact demand for deposit procedures that would apply in instances when a customer's balance is in arrears, and where the customer fails to cure this breach after receiving at least one notice of Opportunity to Cure.

Hercules asserts that PG&E's proposed language contains material errors and omissions because it does not explain which provisions of its rules are applicable. NCPA/Turlock also believe PG&E's language contains material errors and omissions because the provision fails to adequately address the unique characteristics of a transferred MDL customer (e.g. neither Rule 7 nor the proposed provision address the specifics of an "account" as that term would be used for a transferred MDL customer, how the deposit process will be employed for a New Party, or how a customer that takes no service from PG&E can discontinue service and have its deposit refunded).

PG&E responds that its purpose in referencing Electric Rules 6 and 7 in Schedule E-MDL was to provide transferred MDL customers with notice of the means by which they may reestablish credit after termination of service for nonpayment of an energy bill. To the extent the Commission believes that it is confusing to include these references, PG&E is willing to delete them.

As we have stated above with respect to other aspects of the tariff, all provisions applicable to transferred MDL should be clearly specified in the transferred MDL tariff. Accordingly, we agree with Hercules and TCPA/Turlock and grant their protests on this issue. PG&E does not state which provisions of its general rules apply and also, its rules do not address the unique characteristics of transferred MDL customers. In contrast, its Special Condition 4.h and 4.i of its Preliminary Statement Part BB, PG&E specifies procedures applicable to departing load for CTC responsibility for the issuance of a Demand for Deposit and Return of Deposit. SCE appears to have modeled its proposed Demand for Deposit/Return of Deposit provisions applicable to transferred MDL after PG&E's Preliminary Statement Part BB procedures. Similarly, PG&E should revise its transferred MDL tariff language to be consistent with those procedures.

**The Demand for Lump Sum Payment provision is justified but should be modified to be consistent with previous Commission directives.**

PG&E's proposed Special Condition 3.h and SCE's proposed Special Condition 3.k require the transferred MDL customer to pay a penalty amount equal to 102 percent of the bill for violation of the tariff. This is referred to as the Demand for Lump Sum Payment provision.

CMUA states that this provision 1) contravenes Commission precedent because it violates the principle in D.97-06-060 that any lump sum payment should reflect a discounted, net present value of a reasonable estimate of transition cost obligations, 2) is discriminatory because it differs from current payment calculation provisions in tariffs applicable to departing load, and 3) requires hearings because there is a material disputed fact.

Hercules asserts PG&E's provision contains material errors and omissions because 1) the lump sum amount would exceed by 2% the actual or anticipated loss and that this is unreasonable, 2) the payment does not take into account the time value of money so it does not accurately compensate PG&E, 3) the tariff fails to explain how PG&E will calculate estimated damages, 4) the proposed calculation method does not account for the possibility that the customer's liability may end before PG&E's estimated date of the expiration of the obligations, and 5) the tariff fails to include any discussion regarding the crediting or reimbursement to customers if a New Party occupies the service address where a lump sum payment has been made.

NCPA/Turlock allege that PG&E's provision is not supported by Commission orders or the law, contains material errors and omissions, and results in discriminatory treatment. Specifically, they assert that this provision gives PG&E unfettered discretion to impose potentially huge penalties on transferred MDL customers without providing any data supporting the numerical, policy, or legal rationale for such a position. They believe that the provision is unjust and unreasonable. Also, they state that there is no reimbursement mechanism when and if a new consumer moves into the service address at issue. They assert that continuing to collect the charges from future occupants after receiving a lump sum payment would be unjust.

PG&E responds that it did not intend to deviate from its current tariff applicable to departing load (Preliminary Statement Part BB) but rather intended to propose additional language to clarify how the lump sum payment would be calculated. PG&E is amenable to revising its proposed provision to reflect the net present value (NPV) to address the protestants' concerns on that issue.

SCE acknowledges that its proposed transferred MDL tariff sets forth a different methodology for calculation of the lump sum payment than the one adopted in its Preliminary Statement Part W applicable to departing load CTC responsibility. Like PG&E, SCE agrees to use a lump-sum calculation methodology consistent with the standard text book NPV calculations incorporating a discount rate to be adopted by the Commission.

First, we address whether it is just and reasonable to adopt a lump sum payment provision for CRS and other NBCs applicable to transferred MDL. In D.97-06-060, we found that a lump sum payment provision was justified and should be applied to departing load customers as a penalty for failure to provide notice and failure to pay CTC in part because the utility has limited or no ability to exact payment, e.g., the utility cannot threaten to terminate service if the departing load customer fails to meet its obligations. The proposed lump sum payment provision was incorporated into PG&E's Preliminary Statement Part BB and SCE's Preliminary Statement Part W. Because the CRS and other NBCs are akin to the CTC for departing load, it is reasonable, for the same reasons discussed in D.97-06-060, to include a lump sum payment provision to apply to these charges. Accordingly, we deny NCPA/Turlock's protest on this basis.

As far as the appropriate calculation methodology to use, we agree with the protestants that PG&E's and SCE's current proposal requiring the transferred

MDL customer to pay the full, undiscounted expected value of the CRS and other NBCs, plus an additional penalty of 2% is unfair and is inconsistent with Commission precedent. Accordingly, we grant the protests on this issue. If all things were equal, PG&E and SCE instead should use the same lump sum payment provisions presently applicable to departing load for CTC as specified in their respective Preliminary Statement. However, as SCE points out, the calculations for the lump sum payment for CTC are based on the recovery of charges over a four-year period, which is not applicable to the current MDL CRS and other NBC obligations. Given this difference, SCE and PG&E would not be able to use the exact methodology but are willing to modify their proposals to use a lump sum calculation methodology consistent with the standard text book NPV calculations incorporating a discount rate to be adopted in this Resolution. PG&E and SCE should revise their lump sum payment calculation to reflect the NPV of the transferred MDL customer's current CRS and other NBCs obligation using the most recent Commission-adopted value of the IOUs' weighted cost of capital as the discount rate. Currently, the weighed cost of capital is 8.79% for PG&E and 8.77% for SCE<sup>24</sup>. PG&E and SCE should modify their tariffs accordingly. CMUA's protest requesting hearing on this matter is rendered moot by this modification.

Next we address whether the transferred MDL tariffs should provide for reimbursement to customers who make a lump sum payment when and if a new customer moves into the service address at issue. We agree with NCPA/Turlock that it would be unjust to allow an IOU to continue to collect charges from future occupants after receiving a lump sum payment but disagree with NCPA/Turlock and Hercules that a reimbursement mechanism is warranted. The lump sum payment provision is intended to allow the IOU to collect an amount representing the remaining net present obligation of the CRS and/or other NBCs in instances where a customer has failed to provide the required notice(s) or failed to make its payments. In other words, the customer must pay its entire obligation upfront as a penalty for failure to comply with the tariffs. This customer should not be entitled to a refund nullifying that penalty simply because a new customer moves into the premises. To clarify this point, however, PG&E and SCE should add language to their lump sum payment provisions stating that if a lump sum payment for a component is demanded and received,

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<sup>24</sup> See D.05-12-043, Ordering Paragraphs 1 and 2.

no subsequent consumer at the same premises shall be responsible for that component.

**PG&E should remove the provision allowing the termination of a transferred MDL customer's natural gas service as an enforcement mechanism to collect electric MDL charges.**

In Special Condition 3.i, PG&E proposes an enforceability provision which would allow it to disconnect natural gas service to a transferred MDL customer if it determines that the customer is in default of his or her obligation to pay the charges under the electric tariff.

All of the protestants object to this provision on the basis that it violates applicable laws and/or Commission policy articulated in D.96-04-054. In addition, NCPA/Turlock believe the proposal contains material errors and omissions and results in discriminatory treatment. The Districts further allege that PG&E's inclusion of this provision reneges on its commitment made at a workshop that it would not shut off gas service for nonpayment of the MDL charges.

PG&E responds that although it had previously stated that it was not intending to shut off a customer's gas service for failure to pay MDL charges, PG&E has, since that time, determined that it has existing legal authority to do so. PG&E states that its proposed enforceability provision is consistent with its current Electric and Gas Rule 11 tariffs. PG&E believes that under these rules it has the right to terminate "any and all services" if a bill or credit deposit has become past due, subject to the processes and protections elsewhere in its tariffs that ensure adequate notice and opportunity to cure.

The protestants disagree. As a matter of recognized public utility law<sup>25</sup>, NCPA/Turlock and Hercules state that PG&E cannot refuse to render the service which it is authorized to furnish, because of some collateral matter not related to that service. Hercules cites a court case in support of its argument which it

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<sup>25</sup> Protestants cite to 3 Am.Jur., Public Utilities and Services, §23, p. 588; 73 C.J.S. Public Utilities §7 a, p. 999.

believes demonstrates that PG&E's proposal violates due process and equal protection rights.

SSJID, NCPA/Turlock, The Districts and CMUA assert PG&E's proposal to cut off gas service if a customer does not timely pay a charge related to its past electric service is inconsistent with D.96-04-054. They assert the Commission in that decision denied such a remedy for payment defaults. Specifically, they argue that in D.96-04-054 we did not allow PG&E to enforce the collection of interim CTC by denying other services and that the same policy should be applied here with respect to cutting off gas service to enforce payment of the CRS and other NBCs. They assert PG&E's gas termination proposal for transferred MDL is comparable to that in D.96-04-054 and that the Commission, here, too, should find the proposal inappropriate as a matter of policy.

In D.96-04-054, we disapproved PG&E's proposal to enforce collection of interim CTC by denying the breaching customer utility services provided by other utilities under the Commission's jurisdiction. There, we concluded that PG&E's proposal went "too far" and that we would not require other utilities to become collection agents for PG&E. (65 CPUC 2d 605.) Here, although PG&E, and not other utilities, would be denying a utility service, PG&E has not provided sufficient justification for us to adopt such a proposal. In light of the protests, PG&E's insufficient justification, and the fact that we disallowed a similar practice in D.96-04-054, we do not allow PG&E to deny gas service to a customer for nonpayment of MDL related charges. Furthermore, as we have stated with respect to other issues we have addressed above, PG&E should not look to its "electric service" tariffs (which, by definition, do not apply to departing load customers) to address issues pertaining to transferred MDL customers. Accordingly, we grant the protests to exclude this provision from PG&E's transferred MDL tariff.

**To provide consistency with PG&E's Preliminary Statement Part BB and SCE's proposed transferred MDL tariffs, PG&E should revise its proposed measurement provision to allow for the substitution of metered data.**

In Special Condition 5, PG&E specifies how it proposes to use a Reference Period Load Profile as a measurement of the transferred MDL customer's usage for purposes of billing the customer for CRS and other NBCs. In the absence of metered consumption data, SCE proposes to base the transferred MDL customer's CRS and other NBCs obligations on the customer's historical load.

NCPA/Turlock allege that PG&E's proposal contains material omissions and errors in failing to address how use of the Referenced Period Load Profile or an estimate of actual usage will result in accurate billing.

PG&E responds that its proposal to use a Reference Period Load Profile is consistent with its Preliminary Statement BB (Section 5.c) which employs a Reference Period Load Profile based on a 12-month or 36-month "snapshot" of usage to estimate the amount of load subject to CRS and other NBCs. PG&E states that it will work with the customer to develop a reasonable Reference Period Load Profile if the customer's average monthly usage during the period the customer was served by PG&E is not available.

PG&E states that in both its Preliminary Statement BB and its original Schedule E-MDL (Advice 2433-E), it provided the option to substitute metered data for the Reference Period Load Profile which would result in accurate billing. However, in their comments at the workshops, the POUs indicated that they would oppose any efforts by PG&E to obtain customer-specific metered data or otherwise intervene in the POU-MDL customer relationship. PG&E thus determined that it would be most efficient to withdraw the metered usage option and to rely exclusively on the Reference Period Load Profile as a basis to bill CRS and other NBCs for transferred MDL customers.

As we discussed above, the solution to concerns about the accuracy of billing due to the use of estimates can be resolved if the POU would provide the IOU with actual metered data. However, in the absence of such customer-specific data, the IOUs must have some other mechanism to derive usage information. Thus, NCPA/Turlock's protest regarding the PG&E's use of a Reference Period Load Profile for the measurement of the transferred MDL customer's usage for purposes of billing the customer for CRS and other NBCs is denied.

We agree with PG&E that the tariff provisions previously approved for CTC responsibility for departing load are appropriate, however as noted by PG&E, those tariffs include an option for the customer to substitute metered data rather than using the historical billing determinants. SCE also proposes to base the customer's CRS and other NBC obligations on metered consumption. To provide consistency with PG&E's Preliminary Statement Part BB and SCE's proposed transferred MDL tariffs, PG&E should revise its proposed measurement provision to allow for the substitution of metered data at the

customer's election. Also, PG&E should state in its revised tariff that if the POU does not provide metered consumption data in a manner acceptable to PG&E, the transferred MDL customer's usage for billing the CRS and other NBCs will be based upon the customer's Reference Period Load Profile using the 12-month or 36-month "snapshot" options as appropriate.

**PG&E should specify that bilateral agreements are an alternative arrangement to the tariff.**

Hercules argues that a new provision should be added to PG&E's proposed tariff allowing a POU and PG&E to mutually agree to fund, pay or collect the charges applicable to customers of the POU (with reimbursement for the reasonable costs of such billing and collection).

PG&E responds, however, that it believes the Commission has already made it clear that POUs are welcome to negotiate bilateral billing and collection agreements with the IOUs. PG&E states that it has indicated at workshops that it would consider reimbursing reasonable costs and even drafted a proposed bilateral agreement that incorporated comments from POUs. Therefore, PG&E believes it is unnecessary and confusing to include a provision in Schedule E-MDL to allow bilateral billing and collection agreements.

We disagree with PG&E. It would be helpful to notify customers that as an alternative to the process and procedures set forth in Schedule E-MDL, a POU and PG&E may mutually agree upon a mechanism to fund, pay, or collect the CRS and other NBCs applicable to transferred MDL customers of the POU. In fact, SCE includes such language in its proposed Schedule TMDL (see Special Condition 3). PG&E should also add this language. Accordingly, Hercules protest on this issue is granted.

**Tariffs implemented by this resolution must comply with the directives of prior Commission decisions and cannot exempt transferred MDL customers from their payment obligations.**

Hercules argues that another new provision also should be added to PG&E's proposed tariff stating that if the costs of identifying, noticing, billing and collecting MDL charges from a customer exceed the amount to be collected, then the charges to the customer or class of customers shall be waived. PG&E responds that the Commission has never, to its knowledge, exempted a class of

customers from their payment obligations because the cost of billing them would be too significant.

In D.03-07-028, as modified by D.03-08-076, D.04-11-014, D.04-12-059, and D.05-07-038, the Commission adopted policies and mechanisms to implement the CRS applicable to MDL, and authorized the IOUs to file tariffs to bill and collect the CRS. Although this resolution addresses issues arising from implementation details of proposed tariffs, it must comply with the directives of those decisions. Those decisions clearly did not exempt any MDL customers from their payment obligations due to billing and collection implementation costs. Thus, Hercules' request for a waiver of MDL charge obligations in the event that costs exceed the amount collected is denied.

**PG&E should rename its proposed tariff and use the term transferred MDL instead of MDL, where appropriate, to minimize confusion and to maintain consistency with the terminology utilized in Commission decisions.**

As noted in Footnote 4, PG&E does not use the term "transferred MDL" to describe customers who replace IOU service with POU service. Instead, PG&E uses the term "MDL" but qualifies that "MDL does not include 'new load', as that term is defined in D.03-07-028". This is very confusing. Generally speaking, MDL encompasses both "transferred" and "new" MDL. This distinction between these two terms was clarified in D.04-11-014, and the specific terms "transferred" and "new" have been used subsequently in Commission decisions and ALJ rulings. It is important to differentiate between the two types of MDL customers because they are to be governed under separate tariffs<sup>26</sup>. SCE proposed Schedule TMDL which is applicable to transferred MDL. To minimize confusion and to maintain consistency among the IOUs, PG&E should similarly rename its proposed tariff to TMDL and replace references to MDL with transferred MDL where appropriate.

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<sup>26</sup> See ALJ Ruling issued on February 23, 2006 which directed that "to the extent that either SCE or SDG&E propose to bill and collect both transferred and new [MDL] components, the advice letters shall delineate each of these components by separate tariffs."

**The effective date of the transferred MDL tariffs should be July 10, 2003, with one exception for PG&E regarding CTC recovery.**

SCE requests that AL 1980-E become effective on July 10, 2003. PG&E also requests that AL 2433-E-C become effective on July 10, 2003 but with one exception. PG&E requests that the tariff provision related to CTC recovery be effective April 1, 2002, the date that PG&E's Schedule E-DEPART inadvertently expired.

The tariffs submitted in AL 1980-E and 2433-E-C should be effective on July 10, 2003 because that is the effective date of D.03-07-028 which adopted the CRS applicable to MDL. In addition, PG&E should be allowed to make CTC recovery effective April 1, 2002 as requested. Because the CTC component was part of CRS, the Commission instructed PG&E to hold off charging the CTC "until issues regarding CRS have been resolved for each type of DL customer." (Resolution E-3903, Finding 8) This resolution addresses all outstanding issues for transferred MDL customers. Making the CTC provisions of Schedule E-MDL effective as of April 1, 2002 (rather than July 10, 2003) would effectively "close the gap" between the erroneous expiration date of E-DEPART and the effective date of the remainder of Schedule E-MDL, and is consistent with our directive in Resolution E-3903 to "consolidate all information applicable to a particular type of DL customer, including all nonbypassable charges into a single tariff covering such customers." (Id., Finding 9.)

## **COMMENTS**

**Per statutory requirement, a draft resolution was mailed to parties for comment at least 30 days prior to consideration by the Commission.**

PU Code section 311(g)(1) provides that a draft resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments.

## **FINDINGS**

1. On March 8, 2006, SCE filed AL 1980-E and PG&E re-submitted AL 2433-E-C proposing tariffs to implement the billing and collection of charges applicable to transferred MDL customers.
2. These advice letters were protested by CMUA, the Districts, Hercules, NCPA/Turlock, and SSJID.
3. It is not appropriate for the Energy Division to ministerially dispose of the advice letters; the Commission must act to address them.
4. The relief requested is appropriate for resolution through the advice letter process and need not be set forth in an application.
5. Formal hearings are not required because there are no disputed issues of material fact.
6. Since the advice letters are not seeking to increase rates, notice provisions of GO 96A do not apply.
7. PG&E's lack of cites to applicable authority for the imposition of other NBCs does not warrant rejection of the advice letter by the Energy Division.
8. The Energy Division has discretion to reject incomplete advice letters but has determined that the transferred MDL advice letters generally contain the required content.
9. The Commission recently issued its final determination on the CRS Working Group report; PG&E and SCE should update the CRS component amounts accordingly.
10. PG&E should revise the ongoing CTC component to reflect Commission approved amounts, and indicate that these amounts are subject to change pending any different outcome resulting from judicial review.
11. PG&E's proposed "Change of Party" provision is lawful and justified.
12. PG&E's DWR Power Charge exception specification is consistent with geographic limitations previously adopted by the Commission.
13. PG&E should reference the priority for allocation of load eligible for leftover exceptions.
14. Within 15 days of the date the supplemental advice letters (required by this resolution) are deemed effective by the Energy Division, PG&E and SCE should provide a notice of the obligations imposed by the transferred MDL tariffs to all customers subject to the tariffs from July 10, 2003 through the date the tariffs are deemed effective by the Energy Division, where the IOUs have a reasonable expectation of the existences of these customers.. These transferred MDL customers must submit any required notice and/or pay any amounts owed within 30 days from the date of the IOU's notice.

15. PG&E and SCE should also send a notice to customers subject to the transferred MDL tariffs going forward from the date the tariffs are deemed effective by the Energy Division where the IOUs have a reasonable expectation of the existences of these customers.
16. PG&E and SCE should periodically remind transferred MDL customers of their notice and/or payment obligations under the tariffs and of the substantial penalties that could result for failure to comply with these requirements.
17. PG&E and SCE should arrange for payment plans for any transferred MDL customer who indicates that it would otherwise have difficulty paying the amount owed.
18. PG&E and SCE, not the transferred MDL customer, should identify applicable exemptions.
19. A customer notice provision to document "change of party" and termination of the existing customer's liability of charges under specified circumstances is reasonable.
20. PG&E and SCE should modify their proposed customer notice provisions to provide greater specificity and to remove IOU discretion.
21. Unless the New Party chooses to provide SCE or PG&E with metered data, it is reasonable to utilize either the prior customer's energy usage profile (if released) or an estimation methodology to determine the New Party's usage.
22. PG&E's proposed New Party notice provision is reasonable and consistent with approved tariffs applicable to departing load but should be slightly modified to provide additional clarification.
23. PG&E should remove references to its electric and gas service rules from its proposed provision concerning the transferred MDL customer's obligation to make MDL payments.
24. Dispute resolution procedures applicable to transferred MDL customers should be articulated in the tariffs.
25. PG&E's and SCE's Opportunity to Cure provisions should be revised to provide greater specificity.
26. PG&E should revise its transferred MDL tariff to include specific Demand for Deposit/Return of Deposit provisions consistent with its tariff applicable to departing load for CTC responsibility.
27. PG&E's and SCE's Demand for Lump Sum Payment provision is justified but should be modified to be consistent with previous Commission directives.
28. PG&E has not provided sufficient justification for its proposal to terminate a customer's gas service for nonpayment of electric MDL charges.

29. In light of the protests, PG&E's insufficient justification, and the fact that we disallowed a similar practice in D.96-04-054, PG&E should remove its proposed gas termination enforcement mechanism provision from the transferred MDL tariff.
30. PG&E should not look to its "electric service" tariffs (which, by definition, do not apply to departing load customers) to address issues pertaining to transferred MDL customers.
31. To provide consistency with PG&E's Preliminary Statement Part BB and SCE's proposed transferred MDL tariffs, PG&E should revise its proposed measurement provision to allow for the substitution of metered data.
32. PG&E should specify that bilateral agreements are an alternative arrangement to the transferred MDL tariff.
33. Tariffs implemented by this resolution must comply with the directives of prior Commission decisions and cannot exempt transferred MDL customers from their payment obligations.
34. PG&E should rename its proposed tariff and use the term transferred MDL to minimize confusion and to maintain consistency with the terminology utilized in Commission decisions.
35. The effective date of the transferred MDL tariffs should be July 10, 2003, with one exception for PG&E that the tariff provisions related to CTC recovery be effective April 1, 2002.

**THEREFORE IT IS ORDERED THAT:**

1. PG&E's AL 2433-E-C and SCE's AL 1980-E are approved with the following modifications:
  - a. PG&E and SCE shall update the CRS components to reflect the most current Commission adopted amounts.
  - b. PG&E shall revise the ongoing CTC component to reflect approved amounts, and indicate that these amounts are subject to change pending any different outcome resulting from judicial review.
  - c. PG&E shall include a reference in Special Condition 2.c to reflect the language in D.04-11-014 regarding the priority for allocation of the load eligible for leftover exceptions.
  - d. Within 15 days from the date the supplemental advice letters (required by this resolution) are deemed effective by the Energy Division, PG&E and SCE shall send a notice of the obligations imposed by the transferred MDL

tariffs to all customers subject to the tariffs from July 10, 2003 through the date the tariffs are deemed effective, where the IOUs have a reasonable expectation of the existences of these customers. These transferred MDL customers shall submit any required notice and/or pay any amounts owed within 30 days from the date of the IOU's notice.

- e. PG&E and SCE shall also send a notice to customers subject to the transferred MDL tariffs going forward from the date the tariffs are deemed effective by the Energy Division, where the IOUs have a reasonable expectation of the existences of these customers.
- f. PG&E and SCE shall periodically remind transferred MDL customers of their notice and/or payment obligations under the tariffs and of the substantial penalties that could result for failure to comply with these requirements.
- g. PG&E and SCE shall arrange for payment plans for any transferred MDL customer who indicates that it would otherwise have difficulty paying the amount owed.
- h. PG&E and SCE, not the transferred MDL customer, shall identify applicable exemptions.
- i. PG&E and SCE shall revise the customer change of party notice provisions to: 1) ) remove IOU approval requirements, 2) specify that a transferred MDL customer may terminate its liability of the CRS/other NBC obligations if the customer vacates the premises or another transferred MDL customer becomes liable for the charges at the premises, 3) require that the transferred MDL customer give the IOU not less than 30 days notice stating the date the termination of that customer's liability is intended to become effective, and 4) require that the transferred MDL customer specify in its notice the reason for termination of liability
- j. PG&E and SCE shall revise their respective Special Condition applicable to New Party to reflect the following: 1) if the New Party provides the IOU with metered data concerning its usage, the IOU will use this data in calculating the applicable charges; and 2) if the New Party does not provide the IOU with this metered data, the IOU will either (a) utilize the existing customer's historic metered usage data for the New Party at the same premises or (b) estimate the New Party's usage if (i) either the metered usage data was not supplied by the existing customer for the New Party at the same premises, (ii) the existing customer requests at the time of termination that its historic metered usage data not be released, or (iii) the IOU determines that the existing customer's historic metered usage data is inappropriate for the New Party (e.g. due to the nature of the

business, the new tenant's energy usage is obviously different than the prior tenant's usage).

- k. PG&E shall add a definition to its transferred MDL tariffs to state that a "New Party" is either 1) an entity which occupies, and will begin to consume electricity at, transferred MDL premises or 2) an entity who assumes liability for the charges at transferred MDL premises.
- l. PG&E shall add the option that the POU on behalf of its customer could notify PG&E of the New Party's intention to occupy the premises and assume responsibility for the CRS and other NBCs.
- m. PG&E shall remove references to its electric and gas rules from its proposed transferred MDL tariff.
- n. PG&E and SCE shall articulate in the tariffs the dispute resolution procedures that are applicable to transferred MDL customers.
- o. PG&E and SCE shall revise the Opportunity to Cure provision to state that they will specify the amount due and payable by the transferred MDL customer in their failure to comply notice. To the extent PG&E intends to impose a penalty for breach of the tariffs, it shall indicate (similar to SCE's language) how it will calculate such a penalty.
- p. PG&E shall revise its Opportunity to Cure provision to state that it shall send a notice specifying a customer's failure to comply if the customer fails to 1) provide the notice specified in Special Condition 3.a. or 3.c. or 2) make MDL payments as specified in Special Condition 3.d.
- q. PG&E shall specify Demand for Deposit/Return of Deposit procedures consistent with Preliminary Statement Part BB procedures.
- r. PG&E and SCE shall revise their lump sum payment calculation to reflect the NPV of the transferred MDL customer's current CRS and other NBCs obligations using the most recent Commission-adopted value of the IOUs' weighted cost of capital as the discount rate.
- s. PG&E and SCE shall add language to their lump sum payment provision stating that if a lump sum payment for a component is demanded and received, no subsequent consumer at the same premises shall be responsible for that component.
- t. PG&E shall remove its proposed provision allowing the termination of a transferred MDL customer's natural gas as an enforcement mechanism to collect electric MDL charges.
- u. PG&E shall revise its proposed measurement provision to allow for the substitution of metered consumption data for the use of historical billing determinants at the customer's election. Also, PG&E shall state that if the POU does not provide metered consumption data in a manner acceptable

- to PG&E, the transferred MDL's usage for billing purposes will be based upon the customer's Reference Load Profile using the 12-month or 36-month "snapshot" options as appropriate.
- v. PG&E shall specify that bilateral agreements are an alternative arrangement to the transferred MDL tariff.
  - w. PG&E shall rename its proposed tariff and use the term transferred MDL instead of MDL, where appropriate, to minimize confusion and to maintain consistency with terminology utilized in Commission decisions.
2. PG&E and SCE shall file a supplemental advice letter within 15 days of today's date to modify their proposed tariffs to reflect these modifications.
  3. Following verification of compliance by the Energy Division, the supplemental advice letters shall be effective July 10, 2003, with the exception that for PG&E that the tariff provision regarding CTC recovery shall be effective April 1, 2002.
  4. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 30, 2006; the following Commissioners voting favorably thereon:

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STEVE LARSON

I. D. #6092  
October 12, 2006

Commission Meeting Date: November 30, 2006

TO: PARTIES TO PACIFIC GAS AND ELECTRIC COMPANY'S ADVICE  
LETTER 2433-E-C AND SOUTHERN CALIFORNIA EDISON  
COMPANY'S ADVICE LETTER 1980-E

Enclosed is draft Resolution E-3999 of the Energy Division. It addresses PG&E's and SCE's request for approval of proposed tariffs applicable to transferred municipal departing load. The draft Resolution will be on the agenda at the November 30, 2006 Commission meeting. The Commission may then vote on this draft Resolution, or it may postpone a vote until later.

When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the draft Resolution.

An original and two copies of the comments, with a certificate of service, should be submitted to:

Jerry Royer  
Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Fax: 415-703-2200; JJR@CPUC.CA.GOV

A copy of the comments should be submitted by electronic mail to Laura Martin in the Energy Division at: LRA@CPUC.CA.GOV.

Any comments on the draft Resolution must be received by the Energy Division by November 1, 2006. Those submitting comments must serve a copy of their comments on 1) the entire service list attached to this letter, 2) all Commissioners, 3) the Chief Administrative Law Judge, and the General Counsel on the same

date that the comments are submitted to the Energy Division. Comments may be submitted electronically.

Comments shall be limited to fifteen pages in length, and list the recommended changes to the draft Resolution. Comments shall focus on factual, legal or technical errors in the proposed draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.

Replies to comments on the draft Resolution may be submitted (i.e. received by the Energy Division) on November 6, 2006, and shall be limited to identifying misrepresentations of law or fact contained in the comments of other parties. Replies shall not exceed fifteen pages in length and shall be served as set forth above for comments.

Late submitted comments or replies will not be considered.

Gurbux Kahlon  
Program Manager  
Energy Division

Enclosures:

Certificate of Service

Service List

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of Draft Resolution E-3999 on all parties in these filings or their attorneys as shown on the attached list.

Dated October 12, 2006 at San Francisco, California.

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*Jerry Royer*

**NOTICE**

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.

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