Decision **DRAFT DECISION OF ALJ ECONOME** **(Mailed February 11, 2004)**

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

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| Order Instituting Investigation into the ratemaking implications for Pacific Gas and Electric Company (PG&E) pursuant to the Commission's Alternative Plan of Reorganization under Chapter 11 of the Bankruptcy Code for PG&E, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Company, Case No. 01-30923 DM. (U 39 M) | Investigation 02-04-026 (Filed April 22, 2002) |

# OPINION APPROVING A RATE DESIGN SETTLEMENT LOWERING PACIFIC GAS AND ELECTRIC COMPANY'S RATES BY $799 MILLION

## I. Summary

This decision adopts a Rate Design Settlement which will implement an overall rate reduction of about $799 million.[1] This settlement is supported by

[1] The settlement agreement states a bundled service rate reduction of about $815 million for illustrative purposes. PG&E has updated this amount more accurately in its January 26, 2004 Advice Letter filing. The advice letter proposal results in an overall electric revenue reduction of $860 million ($878 million reduction for bundled service customers plus $18 million increase for direct access customers.) However, as explained in the decision, while we approve the rate decreases, we reject the increases. We also reject the $79 million revenue decrease related to the California Department of

*Footnote continued on next page*

parties representing a wide spectrum of utility, residential, governmental, commercial, agricultural, industrial, and small customer interests, including bundled, direct access (DA), and customer generation departing load. The settlement implements the rate reductions contemplated in Decision (D.) 03-12-035, which approved a modified settlement in Pacific Gas and Electric Company's (PG&E) bankruptcy proceeding (PG&E Bankruptcy Decision).[2]

This decision also addresses PG&E's advice letter which it filed to implement the Rate Design Settlement.

## II. The Rate Design Settlement

### A. Overview

The entire Rate Design Settlement is attached to this decision as Attachment A.[3] The parties explain that the purpose of the Rate Design Settlement is to provide as soon as possible to customers on an equitable basis the electric rate reduction resulting from the resolution of certain PG&E bankruptcy issues under the Modified Settlement Agreement approved by the United States Bankruptcy Court, Northern Division of California, and which the Commission entered into pursuant to the PG&E Bankruptcy Decision.

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Water Resources (DWR) revenue requirement proposed in PG&E's advice letter at this time. Therefore, the overall rate decrease is $799 million.

[2] We note that there are pending applications for rehearing of D.03-12-035, and today's decision neither addresses nor prejudges any of the issues raised in those rehearing applications.

[3] The Rate Design Settlement is entitled "Settlement Agreement With Respect to Allocation and Rate Design Issues Associated With the Decrease in 2004 Revenue Requirement Arising From Approval of the Modified Settlement Agreement in Commission Decision 03-12-035."

According to the parties, expeditious Commission approval of the Rate Design Settlement would avoid the cost and delay of time-consuming litigation over allocation and rate design issues relating to implementation of approximately $799 million in rate reductions resulting from the PG&E Bankruptcy Decision and simultaneous revenue requirement changes from other proceedings.

The Rate Design Settlement provides that the tariffs implementing the rate reduction be effective January 1, 2004.[4] PG&E explains that it will track in its balancing accounts and amortize in future rates any overcollection of revenue requirements collected from January 1, 2004 through the effective date of the new rates.

The Rate Design Settlement finally resolves certain issues, as set forth below, that would otherwise be litigated in Phase 2 of PG&E's general rate case or other Commission proceedings, and reaches an interim resolution of other rate design and allocation issues. The parties believe that the Rate Design Settlement provides a fair balance between their mutual desire to implement PG&E's rate reductions as soon as possible, while at the same time reserving for Phase 2 certain issues that they could not finally resolve at this time.

### B. The Settlement's Key Provisions

The following are the settlement's guiding principles:

- The allocation of the PG&E revenue requirement reduction will be based, to the extent possible given the level of that revenue requirement reduction, on the principles and methods used to allocate the revenue reductions of Southern

[4] The parties agreed to the date of the rate reduction in the settlement which was the subject of the PG&E Bankruptcy Decision.

California Edison Company's (Edison) post-PROACT [Procurement Related Obligations Account], which the Commission approved in D.03-07-029 (Rate Design Settlement, Paragraph 1.);

- The primary criterion for allocation of the revenue requirement decrease is to reverse the allocation of the revenue increases ordered by the Commission in D.01-01-018 and D.01-05-064 such that customer classes and rate schedules receiving the largest percentage increases in 2001 are afforded the largest percentage decreases now. Except as otherwise discussed below, the revenue allocations are interim, until the full generation cost of service study and final allocation rules are determined in Phase 2 of PG&E's general rate case. (Paragraph 2.)

In addition, the Rate Design Settlement contains the following provisions. Some of these provisions resolve issues permanently. Some provisions resolve issues on an interim basis, until the Commission can more fully address them in Phase 2 of PG&E's 2003 general rate case. The Rate Design Settlement:

- Allocates part of the revenue requirement reduction resulting from the PG&E Bankruptcy Decision to residential customers based on the principle that the residential class will receive a revenue allocation decrease equal to one-half the system average percentage change resulting from implementing the rate reduction provided by the PG&E Bankruptcy Decision. The agreement is interim until the Commission issues a decision on rate design and allocation issues in future proceedings, including Phase 2 of PG&E's general rate case. (Paragraph 6.);

- Provides that the revenue requirement associated with the Regulatory Asset (or a successor component, such as a Dedicated Rate Component) established by the PG&E Bankruptcy Decision will be allocated to all customers of PG&E on an equal cents per kilowatt hour (kWh),

nonbypassable basis, with limited exceptions.[5] Other than required by the Rate Design Settlement, the settlement provides that no customer shall be required to pay an additional amount for past undercollections to facilitate PG&E's emergence from bankruptcy. This provision does not apply to undercollections resulting from the operation of normal regulatory balancing accounts other than those associated with the rate freeze and stranded cost recovery.[6] If approved by the Commission, the parties agree that the principles in this paragraph shall constitute a final resolution among the parties governing allocation of the Regulatory Asset, among customer classes, and shall not be subject to relitigation by the parties in a future Commission proceeding.[7] (Paragraph 7.);

- Provides that with respect to the DA cost responsibility surcharge (CRS), an estimated revenue shortfall from DA customers of about $400 million for the period fourth quarter

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[5] The exception, contained in paragraph 9 of the Rate Design Settlement, is that Customer Generation Departing Load that is not required by D.03-04-030, as modified by D.03-04-041 to pay DWR Power Charge shall bear no responsibility for costs of the Regulatory Asset or any successor Dedicated Rate Component. Paragraph 9 defines Customer Generation Departing Load, and explains that such load shall pay all charges for service actually taken under any otherwise applicable schedule following its departure in the same proportion to other customers.

[6] Examples in the settlement of balancing accounts associated with the rate freeze and stranded cost recovery include the Transition Cost Balancing Account, Transition Revenue Account and Generation Asset Balancing Account.

[7] In order to implement the requirement that customers shall not be required to pay any additional amount for past undercollections to facilitate PG&E's emergence from bankruptcy, Paragraph 7 of the settlement provides that past contributions by DA customers during 2001 and 2002 through payment of the one-cent surcharge and residual competition transition charges (CTC) shall be deemed the full and final obligation of these customers to PG&E's headroom, and these amounts shall not be altered, reclassified, reallocated or reconsidered in a future Commission proceeding.

2001 through the end of the year 2003, will be financed by bundled service customers, divided between large and small customers as required by the DA CRS decision, D.03-07-030. The level of the DA CRS shortfall in this paragraph shall be subject to true-up after the Commission approves the final DWR revenue requirements. (Paragraph 3.);

- Provides that the charge imposed on DA customers for recovery of the Regulatory Asset shall be recovered from such DA customers on a non-bypassable basis under the current 2.7 cent per kWh DA CRS cap pursuant to Commission decisions regarding the cap. This provision states that the fact of the establishment of this charge alone will not be used by any of the parties as a basis to increase or lift the cap. However, the parties may address the level of the cap in future proceedings in accordance with the criteria established in the DA CRS decision (D.03-07-030). This paragraph also establishes an order of recovery of costs under the DA CRS cap, and provides that these principles constitute a final resolution, as set forth above, on this issue. (Paragraph 8.);

- Provides that Customer Generation Departing Load that is not required by D.03-04-030, as modified by D.03-04-041 to pay the DWR Power Charge shall bear no responsibility for costs of the Regulatory Asset. This provision defines Customer Generation Departing Load, explains that such load shall pay all charges for service actually taken under any otherwise applicable schedule following its departure in the same proportion to other customers, and provides that these principles constitute a final resolution, as set forth above, on this issue. (Paragraph 9.);

- Establishes principles for implementing additional rate changes, if necessary before revenue allocation and rate design principles are resolved in Phase 2 of PG&E's 2003 general rate case, such as would occur if Federal Regulatory

> Energy Commission (FERC) refunds or El Paso settlement refunds are received. For nongeneration revenue requirement changes, changes in any given component will be recovered as an equal percent change to the component that is changing, and total rates would change commensurately. For generation revenue requirement increases, the generation rates for all bundled service customers would increase on a system average percentage basis and total rates would increase commensurately.[8] (Paragraph 10.)

The Rate Design settlement also resolves the $95 million "going forward" revenue shortfall for residential customers resulting from the Commission's approval of expanded baseline quantities for residential customers in D.02-04-026. (Paragraph 5.) Under this settlement provision, the parties have also agreed to adjust commercial rates by $5 million to eliminate the shortfall resulting from the shift of Common Area Accounts to commercial rate schedules as directed in D.03-01-037. (*Id.*) However, the settlement fails to resolve the appropriate treatment of the historic Baseline Balancing Account (BBA) and Common Area Balancing Account (CABA), which issue will be addressed in a future Commission proceeding, such as Phase 2 of PG&E's general rate case. (*Id.*)

The Rate Design Settlement, until Phase 2 rates are adopted, also rolls into rates the 10% bill reduction provided to residential and small commercial customers in Assembly Bill (AB) 1890 and agrees that this item will no longer appear as a separate line item on customer bills. (Paragraph 4.) Finally, the Rate

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[8] This provision also states that the DA CRS cap shall not be modified solely as a result of such interim revenue requirement changes, but accruals of CRS cap undercollections may be affected, consistent with existing Commission policies and this agreement.

Design Settlement applies solely to cost allocation and rate design issues. It does not affect or waive any party's rights regarding the PG&E Bankruptcy Decision, including any rights to file a writ of review concerning this decision.

## III. Procedural Background

On January 20, 2004, PG&E filed a Motion for Approval of the Rate Design Settlement. A number of parties, representing a wide spectrum of interests, have entered into this settlement, and these settling parties join in and support the motion for the settlement's approval. They include PG&E, the California Manufacturers and Technology Association, the California Large Energy Consumers Association, the California Farm Bureau Federation, the Silicon Valley Manufacturing Group, the Energy Users and Producers Coalition, the Agricultural Energy Consumers Association, the California City-County Street Light Association, the Building Owners and Managers Association of California, the California Retailers Association, Federal Executive Agencies, The Utility Reform Network (TURN), Aglet Consumer Alliance, and the Office of Ratepayer Advocates.

In response to PG&E's motion for an order shortening time to respond to the motion for approval of the settlement, the Administrative Law Judge (ALJ) shortened the time for parties to file comments contesting all or part of the Rate Design Settlement (see Rule 51.4) until January 29, 2004 because the settlement was among a diverse spectrum of parties and concerned a rate decrease for PG&E customers, which the Commission desired to consider expeditiously. If any parties filed comments, the time to file replies to those comments was shortened to February 3, 2004. This ruling also required the motion for approval of the settlement, comments and replies in response thereto, as well as PG&E's advice letter implementing the settlement to be served on the service lists for this

investigation, as well as on PG&E's 2003 general rate case (Application (A.) 02-11-017 et al.) and the direct access rulemaking (R.02-01-011.) This ruling also provided that after this comment period, all further activity concerning this settlement will take place in the instant docket, with any further pleadings, rulings, decisions, etc. filed and served in the instant docket only.

On January 29, 2004, the Alliance for Retail Energy Markets (AReM) filed comments on the Rate Design Settlement protesting two elements of it, and the Modesto Irrigation District (Modesto) filed comments supporting the settlement agreement. On February 3, 2004, PG&E, on behalf of the settling parties, filed a reply to the comments. Neither AReM nor Modesto request hearings or designate a disputed issue of material fact. The issues raised by AReM and Modesto are well briefed by the parties and we address them today.

On January 26, 2004, PG&E filed an advice letter (Advice 2465-E) with revised electric rates in order to implement the Rate Design Settlement. The protest period was also reduced, and on February 4, 2004, AReM, TURN, and Utility Cost Management (UCM) submitted a protest, and DWR submitted a memorandum commenting on the advice letter. PG&E filed a reply on February 6, 2004.

The most recent Scoping Memo, issued on July 14, 2003, excluded rate allocation and rate design issues from the proceeding's scope. However, an August 19, 2003 ALJ ruling encouraged settlement of rate allocation and rate design issues, and welcomed a Rule 51 settlement sponsored by the major parties filed after the hearings regarding the bankruptcy settlement agreement. Those hearings have been held and the Commission issued a decision on this issue. (See the PG&E Bankruptcy Decision.) We now modify the scope of this proceeding to consider this Rate Design Settlement. The Order Instituting

Investigation (OII) originally stated that the Commission may hold hearings. Hearings were held in earlier phases of this investigation, but have not been held on the settlement. We therefore change the determination that hearings are required for this phase of the investigation.

## IV. Discussion

### A. Standard of Review for Settlements

We review this contested settlement pursuant to Rule 51.1(e) which provides that, prior to approval, the Commission must find a settlement "reasonable in light of the whole record, consistent with the law, and in the public interest." We undertake this review by addressing each of these three elements.

### B. Reasonable In Light of the Whole Record

In 2003, PG&E submitted prepared testimony in this investigation, including an amended Chapter 11. This chapter addressed the rate allocation and design necessary for implementing any rate reduction which was part of the bankruptcy settlement agreement. An August 19, 2003 ALJ ruling granted ORA's motion to strike PG&E's Chapter 11 because it was premature to consider rate design proposals at the same time the Commission was trying to reach a decision on the underlying PG&E and Commission staff bankruptcy-related settlement by the end of 2003. However, the August 19 ruling encouraged settlement of revenue allocation and rate design issues, and welcomed a Rule 51 settlement sponsored by the majority of the parties filed after hearings on the PG&E and Commission staff bankruptcy-related settlement were completed. The parties followed the ALJ's directive and tendered this Rate Design Settlement for our consideration.

Because PG&E's rate design testimony, Chapter 11, has been stricken from the record, the record also fails to include detailed responsive or alternative testimony from other parties on rate design issues. However, it is undisputed that the settling parties, who represent a wide spectrum of utility, residential, governmental, commercial, agricultural, industrial, and small customer interests, including bundled, DA, and customer generation departing load, should have diverse litigation positions on rate design issues, and they have chosen to compromise these diverse positions in a mutually acceptable manner. Therefore, this settlement is within the range of their various litigation positions. Furthermore, the resolution of some of the rate design issues in the settlement is interim, until the Commission addresses the broader rate design issues in Phase 2 of the PG&E general rate case. These factors weigh in favor of a finding of reasonableness, provided the settlement meets the other two settlement standards (consistent with the law and in the public interest).

Before discussing the two remaining standards, we also examine the reasonableness of the settlement in light of what the settlement articulates as its overriding principles: (1) that the primary criterion for allocating the revenue requirement decrease is to reverse the revenue surcharges ordered by the Commission in response to the energy crisis; and (2) that the allocation of the reduction will be based, to the extent possible given the level of the reduction, on the principles used to allocate Edison's post-PROACT revenue requirement reductions.

We compared the rate reductions from the settlement with the reductions which would have occurred if rates were reduced based on how the surcharge

was placed.[9] In the later case, assuming an $878 million reduction of revenue requirement as set forth in PG&E's advice letter filing, residential customers would receive a 6.2% rate reduction, whereas under the settlement these same customers are receiving a 4.4% decrease. Put another way, residential customers would receive 70% of a system average reduction if rates were reduced in the same percentage as the surcharge was placed, whereas under the settlement residential customers are receiving 50% of the system average decrease. The agriculture and streetlighting customers are receiving a rate reduction of almost twice what they would receive if their rates were reduced in proportion to their surcharge burden. The commercial class is receiving a rate reduction which is about 8% greater than it would have received if its rate was reduced in proportion to its surcharge burden. The industrial customer class has a generally consistent rate decrease in both of these scenarios. Furthermore, under the Edison PROACT decision, residential customers received about 60%, as opposed to 50%, of the system average decrease.

We find the settlement is within the range of a reasonable outcome in light of the facts that three of the settling parties are groups who represent, at least in part, residential customers, that the implemented rates are for an interim period, and that a settlement necessarily involves trade-offs of a number of factors. However, we note the above discrepancies with the settlement's overriding principles so that they can be explored more fully together with other issues in Phase 2 of PG&E's general rate case.

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[9] On February 3, 2004, PG&E served this information on all parties in response to the ALJ's electronic data request. The percentages cited in the paragraph linked to this footnote are based upon PG&E's advice letter which contained updated figures.

Finally, we note that the numbers PG&E uses in its advice letter filing to compute the decreases resulting from the settlement are its best estimates of its revenue requirements. PG&E explains that the revenue requirements subject to pending proceedings are estimates that will be trued up as they become certain. With a final decision in Phase 1 of PG&E's 2003 general rate case, we allow PG&E to revise its component revenue requirements for nuclear decommissioning (ND), public purpose programs (PPP), distribution, and non-fuel retained generation.

The advice letter PG&E filed implementing the settlement proposes an $18 million increase to DA customers. While it is reasonable to approve a decrease based on this information on an expedited basis, in order that utility customers can receive actual decreases as soon as possible, we are not as comfortable approving an increase in this case on such a basis. We therefore reject without prejudice PG&E's proposal in its advice letter to implement an increase to DA customers by virtue of this decision. Rather, we direct PG&E to (a) track the $18 million dollars associated with its projected increase to these customers, as well as any other undercollection necessitated by the deferred increases or forecast decreases resulting from this decision, in an appropriate regulatory account, or accounts, and (b) to prepare billing changes resulting from this decision, the Modified Settlement Agreement, and D.03-12-035 for implementation after a decision in Phase 1 of PG&E's 2003 general rate case. With this modification to PG&E's implementation of the Rate Design Settlement, we find that the settlement is reasonable.

### C. Consistent With the Law

The settlement complies with statutes and prior Commission decisions. However, it is useful to examine several of the settlement's provisions in light of

prior Commission decisions to illustrate why we believe the settlement is consistent with them.

### 1. DA CRS Cap

D.03-07-030 established the level of the DA CRS cap for the period subsequent to July 1, 2003. This decision determined that the current level of the cap should be 2.7 cents/kWh, and established provisions for continued monitoring and periodic readjustment of the cap, as needed, to assure bundled customers are made whole by 2011. This decision also stated that the order of collection of the DA CRS elements for PG&E is as follows: DWR bond charge, competition transition charge (CTC), and the DWR power charge. (See D.03-07-030, Ordering Paragraph (OP) 15.

In response to the PG&E Bankruptcy Decision, Paragraph 8 of the Rate Design Settlement adds another item, the Regulatory Asset, to the items to be collected from the DA CRS. Under Paragraph 8, the parties agree that the charge imposed on DA customers for recovery of the Regulatory Asset (or a successor dedicated rate component) shall be recovered from such DA customers on a non-bypassable basis under the current 2.7 cent cap. The parties furthermore state that "the fact of the establishment of this charge alone will not be used by any of the parties as a basis to increase or lift the cap."

D.03-07-030 included Edison's Historical Procurement Charge (HPC) as an element to be collected from the DA CRS cap. It is reasonable for the cost allocation of the Regulatory Asset and the HPC to be roughly similar. Therefore, including the Regulatory Asset as an element to be collected from the DA CRS is consistent with the intent of prior Commission decisions. Furthermore, Paragraph 8 recognizes and is consistent with the Commission's criteria for modifying the level of the cap, stating that the parties "may address the level of

the cap in future proceedings in accordance with the criteria established in the DA CRS Decision 03-07-030."

We also note that Paragraph 8 states that parties cannot use the establishment of the charge imposed on the DA customers for the recovery of the Regulatory Asset, alone, as a basis to increase or lift the cap. We interpret this language to mean that while parties cannot use this factor, *alone*, as a basis to increase or lift the cap, the parties can use this factor in conjunction with the other factors set forth in D.03-07-030 as a basis to increase or lift the cap.

Paragraph 8 adds the Regulatory Asset as second on the list of elements the Commission authorized to be collected from PG&E's DA CRS.[10] This is consistent with the cost allocation treatment used for Edison's HPC. (See OP 15 of D.03-07-030.)

### 2. Baseline Issues

The Commission's approval of expanded baseline quantities for residential customers in D.02-04-026 caused a reduction in the revenue received from residential customers because of the relative increase in the percentage of residential sales covered by Tier 1 and 2 rates. Paragraph 5 of The Rate Design Settlement adjusts residential rates to eliminate the $95 million "going forward" revenue shortfall for residential customers resulting from D.02-04-026. The settlement also agrees to adjust commercial rates by $5 million to eliminate the shortfall resulting from the shift of Common Area Accounts to commercial rate schedules as directed in D.03-01-037. (See Rate Design Settlement, Paragraph 5.)

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[10] We approved the following order for recovery for PG&E in OP 14 of D.03-07-030: DWR bond charge, ongoing CTC, and the DWR power charge.

Based on the settlement, we understand that, because residential rates have been adjusted to eliminate the shortfall, with the implementation of the above proposals, there will be no further accruals to the BBA resulting from the baseline quantity changes adopted in D.02-04-026, nor will there be further accruals to the CABA due to D.03-01-037, except for ongoing interest accruals. However, we note that today's decision does not address accruals to these accounts that may result due to the pending Final Opinion on Phase 2 Issues in R.01-05-047. The treatment of the historic BBA and CABA balances also remains an open issue to resolve in a subsequent proceeding (such at Phase 2 of PG&E's general rate case).

### 3. Bill Format

Paragraph 4 of the Rate Design Settlement provides that the credit for the 10% bill reduction will now be rolled into rates and no longer shown as a line item on customer bills, and we approve this provision. Although we discuss the protests more fully below, we address here one issue raised by AReM to which PG&E agrees. In its comments on the settlement, AReM states that the Commission should condition approval of the settlement on PG&E's showing all components of DA rates on the customer's bill. In its response, PG&E agrees with AReM, and states it is planning to show the CTC, Regulatory Asset, the DWR bond charge, and the DWR power charge separately on DA bills. However, as stated in the settlement, PG&E will not show the 10% discount on DA or bundled bills.

We are pleased that PG&E is planning to show the above listed charges separately on DA bills and direct that it do so. We further direct PG&E to show the separate charges, excluding the DWR power charge, on bundled customers' bills as well. Because PG&E's bundled customers' bills currently show the DWR

remittance rate, it is not necessary to show the DWR power charge on bundled customers' bills. We want as much transparency in billing format as possible, and this desire is reflected in past Commission decisions specifying components to be separately identified on a customer's bill. (See e.g., D.97-08-056, 74 CPUC2d 1, Ordering Paragraph 31.)

#### 4. General Comments

The settling parties represent that the Rate Design Settlement is consistent with the law, and our approval of the settlement relies on this representation. To the extent necessary, we have discussed certain parts of the settlement to demonstrate why we believe they are consistent with the law. We view that other aspects of the Rate Design Settlement not discussed above are also consistent with existing law. To the extent the advice letter implementing the settlement does not comply with existing law, PG&E is directed in its supplemental advice letter filing discussed below to revise the settlement's implementation in a manner consistent with existing statutes and Commission decisions.

In summary, we conclude that the Rate Design Settlement is consistent with the law.

### D. In the Public Interest

The Rate Design Settlement is a reasonable compromise of the settling parties' respective positions. The Rate Design Settlement is in the public interest and the interest of PG&E's customers. The settlement avoids the cost and delay of further litigation and brings rate relief to customers. It does so while not unduly burdening the resources of any party, nor the Commission, whose resources are presently engaged in other proceedings, including PG&E's 2003 general rate case.

There is an overall rate reduction of about $799 million for bundled customers. In addition, bundled customers are owed additional money by DA customers which is not available to these customers at present because of the DA CRS cap as provided in Commission decisions such as D.03-07-030. This money will be paid back when the cap can accommodate it.

Table 1 shows the current revenue by customer rate group and the settlement revenue by customer rate group, with totals.[11]

TABLE 1

Pacific Gas and Electric Company
Plan of Reorganization Settlement Rates
Appendix I
Illustrative $815 Million Reduction in
Bundled Service Rates

| | Present Average Rate (¢/kWh) | Present Revenue ($/Millions) | Proposed Average Rate (¢/kWh) | Proposed Revenue ($/Millions) | Percent Change |
|---|---|---|---|---|---|
| **Residential** | | | | | |
| NonCARE | 13.94 | $3,360 | 13.30 | $3,207 | -4.5% |
| CARE | 8.58 | $370 | 8.58 | $370 | 0.0% |
| **Total Residential** | 13.13 | $3,730 | 12.59 | $3,577 | -4.1% |
| **Small L&P** | 16.82 | $1,348 | 14.92 | $1,195 | -11.3% |
| **A-10** | 15.53 | $1,859 | 14.17 | $1,695 | -8.8% |
| **E-19** | 13.97 | $1,161 | 12.61 | $1,047 | -9.8% |
| **Agriculture** | 13.26 | $524 | 11.37 | $450 | -14.3% |
| **Streetlighting** | 17.40 | $66 | 14.80 | $56 | -14.9% |
| **Standby** | 15.05 | $32 | 13.49 | $28 | -10.4% |
| **Large L&P** | | | | | |
| E-20 T Firm | 10.39 | $304 | 8.84 | $259 | -15.0% |
| E-20 T NF | 9.13 | $35 | 7.58 | $29 | -17.1% |
| E-20 T | 10.25 | $339 | 8.69 | $287 | -15.2% |
| E-20 P Firm | 12.18 | $498 | 10.82 | $443 | -11.2% |

[11] The following table is also Appendix 1 to the settlement. The table was computed based on an $815 million rate reduction for bundled service assumed by the settling parties prior to PG&E filing the advice letter showing a higher overall rate reduction.

| | | | | | |
|---|---|---|---|---|---|
| E-20 P NF | 11.34 | $33 | 9.97 | $29 | -12.0% |
| E-20 P | 12.12 | $531 | 10.76 | $472 | -11.2% |
| E-20 S Firm | 13.65 | $345 | 12.36 | $312 | -9.5% |
| E-20 S NF | 12.33 | $8 | 11.04 | $7 | -10.4% |
| E-20 S | 13.62 | $353 | 12.32 | $320 | -9.5% |
| **Total Large L&P** | 11.90 | $1,223 | 10.49 | $1,078 | -11.8% |
| **System** | 13.90 | $9,943 | 12.76 | $9,129 | -8.2% |

The Rate Design Settlement provides for the continuation of the 10% bill reduction provided to residential and small commercial customers in AB 1890, but eliminates this item as a special line item on customer bills and rolls it into rates. The Rate Design Settlement, like the Edison post-PROACT rate reduction, maintains the AB 1X rate protections for consumption up to 130% of Baseline by reducing Tier 1 and 2 rates by 10%. This interim change would leave bills unchanged for residential users consuming up to 130% of Baseline. The Rate Design Settlement does not address the issue of whether or not to continue the 10% bill reduction credit for PG&E customers, and proposed rates do not assume either the ultimate continuation or expiration of the credit after the interim rates approved by this decision are no longer in place.

In summary, we conclude that the Rate Design Settlement is in the public interest.

### E. Miscellaneous

The settlement agreement states that it applies solely to cost allocation and rate design issues and does not affect or waive any party's rights regarding the PG&E Bankruptcy Decision, including any rights to appeal that decision. We note that generally, parties to our proceedings file applications for rehearing and writs of review, not appeals, of Commission decisions, and read the use of the term "appeal" as generically referring to the usual discretionary review process

for Commission decisions provided by law. (*Pacific Bell v. Public Utilities Com.* (2000) 79 Cal. App. 4th 269, 277-279.)

## V. Comments to the Rate Design Settlement

### A. AReM

AReM filed comments focusing on three aspects of the Rate Design Settlement.[12] First, AReM argues that DA customers should receive a rate decrease, rather than an increase, at this time. However, as discussed above, this decision does not approve the increase for DA customers. Rather, we direct PG&E to modify the implementation of its advice letter as discussed above.

Second, AReM argues that the Commission should modify the Rate Design Settlement to credit the DA CRS undercollection with revenues from the 1-cent surcharge and residual CTC collected from DA customers by PG&E through December 2002.[13] AReM argues that this provision would afford DA customers with regulatory relief on a deferred basis, and will address what it believes to be the discriminatory nature of the settlement toward DA customers.

In its reply, PG&E states that if the Commission adopts AReM's proposed modification, it will destroy the Rate Design Settlement because, among other things, it raises the volatile issue of whether DA, as well as other customer

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[12] AReM's protest to the advice letter is addressed in the advice letter section below.

[13] AReM proposes the Commission modify the settlement to include the following provision: "The Direct Access Cost Responsibility Surcharge undercollection shall be reduced by an amount equal to the revenues collected from DA customers through the 1-cent surcharge and residual CTC through December 2002." (AReM January 29, 2004 comments at p. 4.)

classes, overpaid or underpaid the CTC relative to each other in the past.[14] PG&E explains that with respect to surcharges, the settling parties included language in Paragraph 7 to ensure future peace among the customer groups, as well as with PG&E.

Paragraph 7 of the Rate Design Settlement states that "past contributions by DA customers during 2001 and 2002 through payment of the 1-cent surcharge and residual CTC shall be deemed the full and final obligations of these customers to PG&E's headroom… ." It resolves the thorny and contentious issue of whether certain customer classes have overpaid or underpaid these amounts vis-a-vis other customer groups. Under the Rate Design Settlement, no customer class will have past payments credited back to it. Rather, the Rate Design Settlement's rate reduction is based on reduced revenue requirements going forward and leaves historic contributions to headroom by bundled and DA customers alone.

When balancing Paragraph 7's provisions against other aspects of the settlement, we find the settlement reasonable and in the public interest. We observe that other DA interests are represented among the settling parties, including the California Manufacturers and Technology Association and the California Large Energy Consumers Association, and this representation assures us that DA customer concerns were represented and that the settlement represents an equitable balance for all customer classes. Moreover, if DA customers are unhappy with their options, they have the further option of

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[14] In its reply comments, PG&E states that it is informed and believes that TURN and Aglet Consumer Alliance would withdraw from the Rate Design Settlement if AReM's proposed change were accepted.

becoming PG&E's bundled customers. We therefore decline to modify the settlement as proposed by AReM on this issue.

Finally, AReM raises bill format issues, with which PG&E is in agreement. We addressed these issues in the bill format section above.

### B. Modesto

Modesto also filed comments which it states support the settlement. Specifically, Modesto expresses its belief that the settlement, particularly Paragraph 8, excludes municipal departing load (MDL) from any responsibility for the revenue requirement associated with the Regulatory Asset.

In its reply comments, PG&E strongly disagrees with Modesto and states that Paragraph 9 addresses this issue.

We disagree with Modesto's interpretation of the settlement. Under Paragraph 9 of the Rate Design Settlement, the revenue requirement associated with the Regulatory Asset is nonbypassable, with one noted exception.

Paragraph 9's exception is specifically limited to Customer Generation Departing Load "that is not required by D.03-04-030 as modified by D.03-04-041 to pay the DWR Power Charge," as well as load excluded from the definition of Customer Generation Departing Load by footnote 1 and pages 2-3 of D.03-04-030. According to the above decisions, municipal departing load does not fall within this excluded group. Therefore, municipal departing load is not within Paragraph 9's exception, and is consequently subject to the nonbypassable charge under the Rate Design Settlement.

This outcome is consistent with prior Commission decisions, specifically D.03-07-028 and D.03-08-076, review denied by the California Supreme Court on February 18, 2004. However, in D.03-08-076, we granted a limited rehearing of D.03-07-028 on the issue of the allocation of the exception for new municipal load

for payment of the CRS. To the extent the Commission issues further determinations on the exceptions of certain new municipal load for payment of the CRS, it may be appropriate to reexamine certain new municipal load's cost responsibility for the Regulatory Asset. Therefore, to ensure that the settlement is consistent with Commission decisions, we require that the tariffs for municipal departing load's cost responsibility for the Regulatory Asset be set subject to adjustment, and permit municipal utilities to file a petition for modification of the instant decision once the Commission decides the pending rehearing on the exceptions of certain new municipal load for payment of the CRS.

## VI. PG&E's Advice Letter (AL) Filing

### A. Overview

The Rate Design Settlement provides that the actual revenue requirement changes will be made by PG&E by advice letter filing pursuant to the Modified Settlement Agreement and D.03-12-035, and will be effective January 1, 2004. Changes to customer rates would be reflected in customer bills upon Commission approval of the new rates reflected in the advice letter. On January 26, 2004 PG&E filed AL 2465-E consistent with this provision of the Rate Design Settlement. By letter dated January 28, 2004 the Commission's Executive Director shortened the period for protests and responses to protests on this advice letter because the Commission desires to address it expeditiously.

PG&E proposes in AL 2465-E a total 2004 revenue requirement of $9.49 billion, $9.065 billion of which is allocated to bundled service customers and $425 million allocated to DA customers. Generation-related revenue requirement decreases by approximately $1.101 billion and non-generation revenue requirements increase by $241 million under the proposal. This proposed revenue requirement would result in an overall revenue reduction of

$860 million, with bundled service customers receiving a $878 million decrease, and DA customers receiving a $18 million increase. PG&E proposes that rates filed in AL 2465-E be implemented in customer bills on March 1, 2004, and that it track any electric revenue requirement overcollection between January 1 and March 1, 2004 and return the overcollection in future rates.

Our intent is to flow through to customers the benefits of revenue requirement decreases associated with the Modified Settlement Agreement adopted in D.03-12-035 as soon as possible. We will not approve any increases under the expedited schedule in this case. We therefore deny without prejudice the annual revenue requirement increase of $18 million for direct access customers proposed by PG&E in AL 2465-E. PG&E can track the revenue requirement for direct access customers for implementation after a decision in Phase 1 of PG&E's 2003 general rate case.

Consistent with our desire to make rate reductions resulting from D.03-12-035 effective as soon as possible, we will not wait to return to customers electric revenue requirement overcollections between January 1 and March 1, 2004 in future rates as PG&E proposes in AL 2465-E. Instead we require PG&E to return these overcollections to customers through a one-time bill credit or refund to customers no later than May 1, 2004.

### B. Protests to the AL

AReM, TURN, and UCM submitted protests on AL 2465-E on February 4, 2004, and DWR submitted a memorandum commenting on the AL. PG&E responded to these protests and comments on February 6, 2004. We address them in turn.

### 1. AReM

AReM asserts that AL 2465-E is flawed in that it: (1) implements the settlement that unlawfully discriminates against DA customers by allocating the revenue reduction solely to bundled service customers; (2) unlawfully increases rates without a hearing; and (3) provides for a regulatory asset surcharge to be aggregated with generation charges on bills rather than appearing as a separate line item. AReM also states that AL 2465-E highlights the urgency of the need for the Commission to adjust the benchmark used to calculate ongoing CTC to more accurately reflect current market conditions. AReM recommends that the Commission reject AL 2465-E and set a procedural schedule for Phase 1 of the Energy Resource Recovery Account (ERRA) proceeding that provides for resolution of the CTC benchmark issue.

In response to AReM's claim that the Rate Design Settlement unfairly discriminates against DA customers PG&E points out that those customers receive benefits, e.g., that application of the regulatory asset revenue requirement does not increase the DA CRS. PG&E states that AreM's proposal would prevent PG&E from collecting the DA CRS from certain DA customers at this time. PG&E argues that if AReM's proposal prevails, DA customers would avoid paying non-generation charges which they are obligated to pay.

PG&E states that AReM's argument that AL 2465-E unlawfully raises rates without a hearing ignores the difference between an application for an increase and an advice letter to implement an increase. In response to AReM's proposal that bundled customers' bills show CTC and the regulatory asset charges, PG&E asserts that it is not necessary to show that information. With regard to the CTC market benchmark matter PG&E notes that it is considering updating its CTC market benchmark in its 2004 ERRA proceeding, A.03-08-004. PG&E states that

if it utilizes an updated benchmark in its February 13 ERRA update, it will supplement AL 2465-E accordingly.

AReM states that AL 2465-E is discriminatory since it implements the Rate Design Settlement which allocates all reductions to bundled customers. According to AReM, DA customers made significant contributions to PG&E's headroom during 2001 and 2002 through payment of the 1-cent per kWh surcharge and residual CTC. Thus AReM concludes that DA customers should be allocated a proportionate share of the reductions. We will not require PG&E to modify its tariffs to implement reductions for DA customers. We address this issue more fully above in the section addressing AReM's comments on the Rate Design Settlement. AReM's protest on these reductions for DA customers is denied.

AReM argues that the Commission cannot approve AL 2465-E since it would implement increases for DA customers, and that would require hearings. As discussed above we will not impose increases at this time on DA customers in our implementation of the Rate Design Settlement. In light of that, AReM's protest regarding increases for DA customers is denied as moot.

AReM notes that AL 2465-E provides for CTC and the regulatory asset charge to be collected from DA customers as separately identified components of the DA cost responsibility surcharge. AReM states that both CTC and the regulatory asset charge should appear as a separate line item on the bills of PG&E's bundled customers so that DA customers will not mistakenly think they can avoid these charges by returning to bundled service. Providing this information on bundled customers bills will enhance customers' knowledge of what cost components they are responsible for paying. We grant AReM's protest on this bill presentation matter. PG&E shall show CTC and the Regulatory Asset

charge as separate line items on bundled customers' bills, as well as the other items delineated in the Bill Format section above.

AReM's request that we set a procedural schedule for Phase 1 of the ERRA proceeding to provide for resolution of the CTC benchmark issue is beyond the scope of PG&E's AL 2465-E. We deny this aspect of AReM's protest without prejudice. Furthermore, PG&E shall not supplement AL 2465-E to reflect a new CTC market benchmark unless the Commission adopts a new benchmark prior to March 1, 2004, in its ERRA proceeding, A.03-08-004.

### 2. DWR

DWR states that PG&E should withdraw its unilateral proposal to reduce DWR's 2004 revenue requirements by $79 million, the amount that PG&E anticipates DWR will receive during 2004 as a result of the El Paso Natural Gas Company settlement (El Paso settlement). DWR asserts that PG&E's proposal to incorporate this $79 million reduction would violate the rate agreement between the Commission and DWR adopted in D.02-02-051 and would conflict with D.03-10-087 which addressed the El Paso settlement. In D.03-10-087 the Commission determined that DWR will reduce its revenue requirement by the amount of the El Paso consideration, and the Commission will then implement DWR's reduction in revenue requirement as part of our periodic proceedings to implement revisions to the DWR revenue requirement.

DWR notes that although El Paso has started to contribute settlement amounts to an escrow fund, it has not received any consideration from the El Paso settlement and that DWR will not receive any such consideration until certain conditions precedent are met including the resolution of any appeals. DWR states that apart from a footnote in the advice letter, there is nothing to explain how PG&E determined that its customers' share of the El Paso settlement

is $79 million. According to DWR, once the El Paso settlement is finalized and DWR receives consideration, DWR intends to examine its impact which could lead to a reduction in DWR's revenue requirements.

DWR has two concerns about the proposed power charge balancing account (PCBA) rates that PG&E proposes in AL 2465-E. The purpose of the PCBA is to record the difference between the amount derived from PCBA rates as a component of the total rates paid by bundled customers and the amount of DWR power charges collected from bundled customers on behalf of DWR. DWR's first concern is that the proposed PCBA rates will likely be different from the DWR power charge rate. DWR states that any moneys received by PG&E on behalf of DWR must be held in trust for the benefit of DWR, citing Water Code § 80112, and the PG&E servicing order adopted by D.02-12-072 as modified by D.03-09-017 at § 2.3. DWR notes that DWR power charges are to be held by PG&E in trust and remitted to DWR. PG&E proposes to determine its charges to customers by one rate and remit DWR power charges at another rate. DWR states that Division 27 of the Water Code and the financial structure of DWR's bond issue contemplate that payment for DWR power comes from retail customers, not PG&E, and those payments must be property of DWR.

In addition, DWR is concerned that the PCBA rate component will be subsumed in another component of bundled electric rates termed "PG&E Generation Costs". DWR maintains that since DWR power charges are not PG&E costs a more appropriate title should be used for this component of rates to avoid confusion or implication of conflict with Division 27 of the Water Code and the financial structure of the bond issue. DWR has conferred with PG&E about these concerns and intends to continue to work with PG&E to address them.

PG&E replies to DWR's protest that it incorporated the El Paso settlement refunds expected to be received in 2004 into the revised calculation of the regulatory asset revenue requirements. PG&E also incorporated its expected share of the El Paso settlement refunds as a reduction to the 2004 DWR power charge revenue requirement. PG&E states that its proposed 2004 rates will need to be adjusted by approximately $79 million since DWR is refusing to incorporate PG&E's share of DWR's El Paso settlement refunds expected to be received in 2004. PG&E agrees with the representation of the language regarding the intent of the PCBA provided by DWR in its protest. PG&E also states that it does not consider the DWR power charge as part of PG&E's generation costs.

Reducing the DWR revenue requirement by an estimated $79 million to account for its customers' share of the El Paso settlement would conflict with the Rate Agreement between DWR and the Commission. Section 4.1(a) of the Rate Agreement states in part that the Commission agrees to cooperate with and assist DWR in its review, determination and revision of its retail revenue requirement at the request of DWR. According to that same section, DWR shall promptly notify the Commission following any determination or revision of the retail revenue requirements. DWR notes that Section 6.1(a) of the Rate Agreement provides in part that the Commission covenants and agrees to calculate, revise, and impose from time to time, power charges sufficient to provide moneys in the amounts and at the time necessary to satisfy the retail revenue requirements specified by DWR. DWR has not notified the Commission that its revenue requirement has changed as a result of the El Paso settlement.

Reducing the DWR power charges PG&E collects from customers by an estimated $79 million would also modify D.03-10-087. That decision requires that the Commission implement the pass through to retail customers of DWR's

reduction in revenue requirement only after DWR reduces its revenue requirement to reflect the El Paso settlement.

The Water Code and the Servicing Order adopted by D.02-12-072 as modified by D.03-09-017 require that any moneys received by PG&E on behalf of DWR must be held in trust for the benefit of DWR. Even if it were clear that PG&E's customers' share of the El Paso settlement will be $79 million this year we cannot adjust DWR's charges now.

It is not clear that DWR will receive consideration from the El Paso settlement this year. Nor is it clear that PG&E's customers' share will be $79 million. The San Diego Superior Court order approving the El Paso settlement in Natural Gas Anti-trust Cases I, II, III, & IV, J.C.C.P. Nos. 4221, 4334, 4226, & 4228 was appealed on February 3, 2004.

DWR's request advocating that PG&E withdraw its proposal to reduce DWR's 2004 revenue requirements by $79 million is granted. PG&E shall amend AL 2465-E and submit revised tariffs to reflect this change. DWR's request regarding the classification of the PCBA rate component is also granted. PG&E shall revise its tariffs to clarify the function of the PCBA and that amounts collected for DWR are not PG&E's generation costs.

### 3. TURN

TURN notes that PG&E neglected to include in its proposed tariffs an appropriate rate schedule by which to recover the costs of the Regulatory Asset (and perhaps other costs) from those departing load customers not exempted from such charges under the terms of the Rate Design Settlement agreement and other relevant Commission decisions. TURN states that absent such a tariff, no revenues will be recovered from departing load customers, and costs will instead be shifted to bundled service customers, contrary to Commission policy and state

law. TURN asserts that PG&E should be directed to file a new version of its former tariff E-Depart to recover the appropriate costs from departing load customers who are not exempt from the relevant charges.

In response to TURN's protest, PG&E states that it agrees that it is appropriate to submit revised tariffs clarifying how new rates proposed in AL 2465-E will be recovered from departing load customers not exempt from the relevant charges. PG&E filed proposed tariff language in response to TURN's protest.

In our discussion of Modesto's comments on the Rate Design Settlement, we found that contrary to Modesto's assumption, the settlement agreement does not exclude municipal departing load from any responsibility for revenue requirement associated with the regulatory asset. As such, PG&E should have included tariffs in AL 2465-E presenting new rates to collect the revised revenue requirement from municipal departing load customers. Accordingly, we grant TURN's limited protest and require PG&E to file revised tariffs to present rates for departing load customers who are not exempt from the relevant charges. On February 18, 2004, PG&E filed AL 2475-E formally revising the tariffs to clarify that departing load customers are responsible for payment of the Regulatory Asset Charge. Therefore, we do not at this time approve the proposed tariffs that PG&E submitted with its response to TURN's protest.

#### 4. UCM

UCM states that the rates proposed in AL 2465-E would actually result in a rate increase of 30 to 79% for CARE-eligible, non-profit group living facilities. UCM states that the imposition of a substantial rate increase on these low-income customers is contrary to the stated goals of both the Commission and the

Legislature. UCM requests that we reject AL 2465-E consistent with its expressed views.

In response to UCM, PG&E states that UCM's calculations are off the mark and do not model PG&E's proposal for determining bills for commercial CARE customers. In developing its proposal PG&E was aware that its method may not produce bills for every customer equal to the bills the customer pays today. PG&E calculated bill impacts for its commercial CARE customers in preparing a response to UCM's protest. In performing its calculation PG&E discovered that the discount rate it filed in AL 2465-E was incorrect. PG&E found that under its proposal using the corrected rate the vast majority of bills either decrease or do not increase more than five percent. According to PG&E, in the small number of cases where the bill increases exceed five percent, the dollar impacts are relatively small. For example, the small number of customers on Schedules A-1 and A-6 whose bills increase by more than five percent would on average see increases of $5.50 per month on monthly bills which average about $75. PG&E states that it will revise AL 2465-E to correct the CARE rate that it discovered was in error.

The protest of UCM is denied without prejudice as moot. As discussed above, we will not impose rate increases in this expedited case. The issue UCM raises here is the same as that Visalia Senior Housing (Visalia) has raised in its petition for modification of Edison's post-PROACT decision, D.03-07-029 in A.03-01-019. UCM represents Visalia in that case. A decision on that petition is pending. We will take appropriate action as required after we resolve this issue in Visalia's petition for modification of D.03-07-029. In the meantime, PG&E shall modify AL 2465-E to the extent necessary to ensure that all CARE-eligible customers do not receive any rate increases at this time. PG&E may track

undercollected revenues, if any, associated with this revision for disposition, pending the outcome of our decision in Visalia's petition for modification of D.03-07-029. PG&E shall also modify AL 2465-E to correct the CARE rate it has discovered is in error.

### C. Summary of Changes We Direct to AL 2465-E

PG&E shall amend AL 2465-E by submitting a supplemental advice letter filing on or before March 1 to make the changes we require today, including all tariff, form, and bill format changes necessary to implement the following revisions: (1) include a one-time bill credit or refund of the revenue requirement overcollection for the months of January and February 2004 which shall be implemented no later than May 1, 2004; (2) remove the $18 million revenue requirement increase for DA customers and track any resulting revenue requirement undercollections for these customers in appropriate regulatory accounts; (3) show CTC and the regulatory asset charge on bundled customers' bills as separate line items; (4) increase the DWR power charge revenue requirement by $79 million from $1.694 billion to $1.773 billion; (5) modify its tariffs consistent with our discussion concerning DWR's issues in Section VI.B.2 above; (6) reflect in tariffs that those departing load customers that are not exempted from the regulatory asset charge shall be assessed that charge; (7) ensure that all CARE customers do not receive any rate increases at this time and track any resulting undercollection of revenues in regulatory accounts; and (8) correct the CARE rate PG&E has discovered is in error.

## VII. Comments on the Draft Decision

Pursuant to Rule 77.7(f)(9) of the Commission's Rules of Practice and Procedure, in order to implement this rate reduction expeditiously, we have determined that the public necessity requires a reduction of the 30-day period for

public review and comment. Accordingly, comments on the draft decision were due no later than February 19, 2004. No replies were permitted.

The following parties filed comments: AReM, the California Municipal Utilities Association (CMUA), DWR, Merced Irrigation District (Merced), Modesto, and PG&E. CMUA also moves to intervene in this proceeding to file its comments on the draft decision and we grant CMUA's motion to intervene for this purpose. We address the parties' suggested changes to the draft decision below. Additionally, we make other nonsubstantive changes to improve the discussion and to correct typographical errors.

**Municipal Utilities**

The CMUA, Merced, and Modesto state that municipal utilities were not involved in the negotiations leading up to the settlement. They therefore object to the settlement's provision that defines the revenue requirement associated with the Regulatory Asset as nonbypassable, with one noted exception for certain Customer Generation Departing Load "that is not required by D.03-04-030 as modified by D.03-04-041 to pay the DWR Power Charge" as well as load excluded from the definition of Customer Generation Departing Load by footnote 1 and pages 2-3 of D.03-04-030.

The various municipal utilities advocate different changes to the draft decision. Modesto requests that the Commission should revise the draft decision to exclude municipal departing load from the cost responsibility associated with the Regulatory Asset. Merced requests that the Commission revise the draft decision to exclude municipal utilities from the settlement's purview, and permit them to negotiate with PG&E concerning their responsibility, if any, to pay for the Regulatory Asset. CMUA proposes that the draft decision be modified to state that municipal departing load should not have any cost responsibility for

the Regulatory Asset to the extent that the Commission finds that municipal departing load should not have any cost responsibility for DWR power charges.

We are examining the issue of the allocation of the exception for payment of the CRS for certain new municipal departing load in a limited rehearing ordered by D.03-08-076. This rehearing is limited in nature, only to certain new municipal departing load, and its outcome is pending before the Commission. Therefore, to ensure that the settlement is consistent with Commission decisions, we make changes to the draft decision to state that the tariffs for municipal departing load's cost responsibility for the Regulatory Asset should be set subject to adjustment, and to permit municipal utilities to file a petition for modification of the instant decision once the Commission decides pending issues in the limited rehearing ordered by D.03-08-076 concerning exceptions of certain new municipal load's payment of the CRS. (See Section V.B.)

**DWR**

DWR requests the draft decision be clarified to more accurately reflect the function of the PCBA, and we make these changes. (See Section VI.B.2.)

**PG&E**

PG&E requests the draft decision be modified to (1) update PG&E's proposed revenues for 2004 to reflect events that have occurred subsequent to the filing of AL 2465-E; (2) authorize PG&E to implement billing changes proposed in AL 2465-E, including the DA bill increase, as early as possible following the issuance of the Commission's decision in Phase 1 of PG&E's 2003 general rate case (e.g., component rates for distribution, ND, and PPP would be revised); (3) allow PG&E additional time to add the CTC, Regulatory Asset and DWR bond Charge as line items on bundled customers' bills; and (4) acknowledge that PG&E's ALs 2510-G and 2460-E, filed on

December 31, 2003, are an essential part of the overall implementation of the resulting rate reductions and allow PG&E to revise them to ensure overcollections and undercollections in PG&E's authorized 2004 revenue requirements are "trued up" in future rates, and to provide clarifying language, consistent with this decision.

With the exception of PG&E's first requested modification, we make these changes. (See Sections IV.B and C, and Section VI, as well as correlative conclusions of law and ordering paragraphs). We decline to modify the decision to update the 2004 electric revenue estimate amount because this amount is also comprised of other estimated revenue requirement components that are subject to pending proceedings. There are balancing accounts or similar mechanisms in place to "true up" the estimates as they become certain, and we see no need to modify the resulting revenue reduction at this time. For example, in a future update to its Regulatory Asset revenue requirement pursuant to D.03-12-035, PG&E can reflect the outcome of the Enron settlement and other actual refunds received to offset the Regulatory Asset.

**AReM**

In its comments, AReM raises issues similar to those raised in its protest and fully discussed in the draft decision. We therefore make no changes to the draft decision in response to AReM's comments.

## VIII. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Janet A. Econome is the assigned ALJ in this proceeding.

## Findings of Fact

1. On January 20, 2004, PG&E filed a Motion for Approval of the Rate Design Settlement. A number of parties, representing a wide spectrum of interests, have

entered into this settlement, and these settling parties join in and support the motion for the settlement's approval.

2. AReM and Modesto filed comments on the Rate Design Settlement, and in their comments, neither entity requests hearings or designates a disputed issue of material fact.

3. The most recent Scoping Memo, issued on July 14, 2003, excluded rate allocation and rate design issues from the proceeding's scope. However, an August 19, 2003 ALJ ruling encouraged settlement of revenue allocation and rate design issues, and welcomed a Rule 51 settlement sponsored by the major parties filed after the hearings regarding the bankruptcy settlement agreement. Those hearings have been held and the Commission issued a decision on this issue, the PG&E Bankruptcy Decision.

4. The OII originally stated that the Commission may hold hearings. Hearings were held in earlier phases of this investigation, but have not been held on the settlement.

5. The Rate Design Settlement finally resolves certain issues that would otherwise be litigated in Phase 2 of PG&E's general rate case or other Commission proceedings, and reaches an interim resolution of other rate design and allocation issues.

6. Expeditious approval of the Rate Design Settlement will avoid the cost and delay of time-consuming litigation over allocation and rate design issues relating to the implementation of approximately $799 million in rate reductions resulting from the PG&E Bankruptcy Decision and simultaneous revenue requirement changes from other proceedings.

7. Because PG&E's rate design testimony, Chapter 11, has been stricken from the record, the record also fails to include detailed responsive or alternative

testimony from other parties on rate design issues. However, it is undisputed that the settling parties, who represent a wide spectrum of utility, residential, governmental, commercial, agricultural, industrial, and small customer interests, including bundled, DA, and customer generation departing load, should have diverse litigation positions on rate design issues, and they have chosen to compromise these diverse positions in a mutually acceptable manner. Therefore, the settlement is within the range of the settling parties' various litigation positions.

8. While it is reasonable to approve a decrease in this case on an expedited basis, we are not as comfortable approving an increase in this case on such a basis.

9. Including the Regulatory Asset as an element to be collected from the DA CRS is consistent with the intent of prior Commission decisions.

10. We want as much transparency in billing format as possible, and this desire is reflected in past Commission decisions specifying components to be separately identified on a customer's bill.

11. On January 26, 2004, P&GE filed AL 2465-E. On February 4, 2004, AReM, TURN, and UCM submitted protests on the AL and DWR submitted a memorandum commenting on the AL.

## Conclusions of Law

1. The scope of this proceeding is modified to consider the Rate Design Settlement. The determination that hearings are necessary is changed for this phase of the proceeding.

2. The Commission reviews this contested settlement pursuant to Rule 51.1(e) of the Commission's Rules, which provides that the Commission must find a

settlement reasonable in light of the whole record, consistent with the law, and in the public interest.

3. The Rate Design Settlement is reasonable, consistent with the law, and in the public interest, provided it is implemented by PG&E in its supplemental AL filing as set forth in today's decision.

4. We reject without prejudice PG&E's proposal in its advice letter to implement an increase to DA customers by virtue of this decision. Rather, we direct PG&E (a) to track the $18 million associated with this proposed increase to these customers as well as any other undercollection necessitated by the deferred increases or forecast decreases resulting from this decision in an appropriate regulatory account or accounts, and (b) to prepare billing changes resulting from this decision, the Modified Settlement Agreement and D.03-12-035, for implementation in an appropriate advice filing or filings to be made subsequent to the Commission's decision in Phase 1 of PG&E's 2003 general rate case.

5. We interpret language in Paragraph 8 of the settlement to mean that while parties cannot use the establishment of the charge imposed on the DA customers for the recovery of the Regulatory Asset as the sole basis to increase or lift the cap, the parties can use this factor in conjunction with other factors set forth in D.03-07-030 as a basis to increase or lift the cap.

6. Paragraph 5 of the settlement and today's decision do not address accruals to the BBA and CABA that may result due to the pending Final Opinion on Phase 2 Issues in R.01-05-047. The treatment of historic BBA and CABA balances also remains an open issue to resolve in a subsequent proceeding (such as Phase 2 of PG&E's general rate case).

7. AReM's proposed modification to the Rate Design Settlement concerning crediting the DA CRS undercollection with revenues from the 1-cent surcharge

and residual CTC collected from DA customers by PG&E through December 2002 is denied. Modesto's proposed modifications to the Rate Design Settlement are denied.

8. Modesto's proposed modifications to the Rate Design Settlement are denied except as follows. To ensure that the settlement is consistent with Commission decisions, the tariffs for municipal departing load's cost responsibility for the Regulatory Asset should be set subject to adjustment. Municipal utilities may file a petition for modification of the instant decision concerning certain new municipal load's cost responsibility for the Regulatory Asset, once the Commission decides the pending rehearing pursuant to D.03-08-076 on the exceptions of certain new municipal load's payment of the CRS.

9. We direct PG&E to show the specific charges for the CTC, Regulatory Asset, the DWR bond charge, and the DWR power charge separately on DA customers' bills, and the CTC, Regulatory Asset, and the DWR bond charge separately on bundled customers' bills. PG&E shall implement this directive no later than August 1, 2004.

10. To the extent that PG&E's AL implementing the settlement does not comply with existing law, PG&E is directed in its supplemental AL filing to revise the settlement's implementation in a manner consistent with existing statutes and Commission decisions.

11. PG&E shall return to customers electric revenue requirement overcollections between January 1, and March 1, 2004 through a one-time bill credit or refund no later than May 1, 2004. PG&E shall amend AL 2465-E by submitting a supplemental advice letter filing on or before March 1 to effectuate this order.

12. With respect to AReM's protest to AL 2465-E, AReM's protest on (1) reductions for DA customers is denied; (2) increases for DA customers is denied as moot; (3) bill presentation is granted insofar as PG&E shall show CTC and the Regulatory Asset charge as separate line items on bundled customers' bills (as well as the other items delineated in the Bill Format section of this decision); and (4) setting a procedural schedule for Phase 1 of the ERRA proceeding to provide for a resolution of the CTC benchmark issue is denied without prejudice as being beyond the scope of this AL.

13. PG&E shall not supplement AL 2465-E to reflect a new CTC market benchmark unless the Commission adopts a new benchmark prior to March 1, 2004 in its ERRA proceeding, A.03-08-004.

14. DWR's memorandum advocating that PG&E withdraw its proposal to reduce DWR's 2004 revenue requirements by $79 million is granted. PG&E shall amend AL 2465-E and submit revised tariffs to reflect this change, namely, increasing the DWR power charge revenue requirement by $79 million, from $1.694 billion to $1.773 billion.

15. DWR's memorandum regarding the classification of the PCBA rate component is also granted. PG&E shall revise its tariffs to clarify the function of the PCBA and that amounts collected for DWR are not PG&E's generation costs.

16. TURN's limited protest to AL 2465-E is granted. PG&E filed revised tariffs in AL 2475-E to present rates for departing load customers who are not exempt from the Regulatory Asset charge to be assessed that charge. We will consider the tariffs in that AL.

17. UCM's protest to AL 2465-E is denied without prejudice as moot. The issue UCM raises is being addressed in a petition for modification of D.03-07-029,

and we will take appropriate action, as required, after we resolve the petition for modification.

18. In the interim, PG&E shall modify AL 2465-E to the extent necessary to ensure that all CARE-eligible customers do not receive any rate increases at this time. PG&E may track undercollected revenues, if any, associated with this revision in an appropriate regulatory account for disposition pending the outcome of our decision on Visalia's petition for modification of D.03-07-029. PG&E shall also modify AL 2465-E to correct the CARE rate it has discovered is in error.

19. Because we have consolidated our decision on the Rate Design Settlement with AL 2465-E, and PG&E was directed to serve its AL on the service list for this proceeding, as well as for A.02-11-017 et al. and R.02-01-011, this decision will be served on the service list of this proceeding, as well as on the service lists for A.02-11-017 et al. and R.02-01-011.

20. CMUA's motion to intervene to file comments to the draft decision should be granted.

21. This decision should be effective immediately in order that PG&E customers receive a rate decrease as soon as possible.

## O R D E R

**IT IS ORDERED** that:

1. The Settlement Agreement with Respect to Allocation and Rate Design Issues Associated with the Decrease in 2004 Revenue Requirement Arising from Approval of the Modified Settlement Agreement in Commission Decision 03-12-035 (Rate Design Settlement), filed on January 20, 2004, together with a motion for its approval and attached as Attachment A hereto, is approved,

provided Pacific Gas and Electric Company (PG&E) implements the Rate Design Settlement in its supplemental advice letter filing as set forth in today's decision.

2. No later than March 1, 2004, PG&E shall amend Advice Letter 2465-E with a supplemental advice letter to conform with the requirements of the discussion, findings and the conclusions of this decision. The advice letter, as supplemented, shall be effective on March 1, 2004 subject to the Commission's Energy Division determining that it is in compliance with this decision. In addition, subject to the Energy Division's review, PG&E may revise Advice Letter 2510-G/2460-E, filed December 31, 2003, to support the ratemaking mechanisms necessitated by this decision to ensure overcollections and undercollections in PG&E's authorized 2004 revenue requirements are "trued up" in future rates, and to provide clarifying language, consistent with this decision.

3. The California Municipal Utilities Association's motion to intervene to file comments to the draft decision is granted.

4. This decision will be served on the service list of this proceeding, as well as on the service lists for Application 02-11-017 et al. and Rulemaking 02-01-011.

This order is effective today.

Dated _____, at San Francisco, California.

# Appendix 1