

Decision **DRAFT DECISION OF ALJ KENNEY** (Mailed 5/17/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

In the Matter of the Application of Pacific Gas and Electric Company for: (1) Authority to Sell or Assign Recovery Property to One or More Financing Entities; (2) Authority to Service Recovery Bonds on Behalf of Financing Entities; (3) Authority to Establish Charges Sufficient to Recover Fixed Recovery Amounts and Fixed Recovery Tax Amounts; and (4) Such Further Authority Necessary for PG&E to Carry Out the Transactions Described in this Application. (U 39 M)

Application 04-07-032
(Filed July 22, 2004)

**DECISION GRANTING IN PART AND DENYING IN PART
PETITIONS TO MODIFY DECISION 04-02-062 AND DECISION 04-11-015**

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O P I N I O N

1. Summary

This Decision grants in part and denies in part the petition to modify Decision (D.) 04-11-015 filed by the California Municipal Utilities Association (CMUA) and the petitions to modify D.04-02-062 filed by CMUA, the Merced Irrigation District (Merced), and the Modesto Irrigation District (Modesto). The petitions are granted to the extent they seek to exempt new municipal departing load (new MDL) from Pacific Gas and Electric Company's (PG&E's) Regulatory Asset Charge (RAC) and Energy Recovery Bond Charges to the same extent that new MDL is exempted from the California Department of Water Resources (DWR) Power Charge. The petitions are denied to the extent they seek to exempt transferred load from the RAC and Energy Recovery Bond Charges.

2. Procedural Background

CMUA filed petitions to modify D.04-11-015 and D.04-02-062 on February 16, 2005.¹ Notice of the petitions appeared in the Daily Calendar on February 23, 2005.² Responses were filed by Merced, Modesto, PG&E, and the Northern California Power Agency (NCPA).

¹ CMUA filed a document titled *Motion for Clarification, or, Alternatively, Petition to Modify Decision 04-12-059 and Related Decisions*. Pursuant to instructions from the Commission's Docket Office, CMUA changed the title to *Petition for Modification of D.04-02-062 in I.02-04-026, Petition for Modification of D.04-11-015 in A.04-07-032, and Petition for Modification of D.04-12-059 and D.03-08-076 in R.02-01-011*. Today's Decision addresses CMUA's petitions to modify D.04-11-015 issued in Application (A.) 04-07-032 and D.04-02-062 issued in Investigation (I.) 02-04-026. Another Commission decision will address CMUA's petition to modify D.04-12-059 and D.03-08-076 issued in Rulemaking (R.) 02-01-011.

² CMUA is not party to the proceedings in which D.04-11-015 and D.04-02-062 were issued. Rule 47(e) states: "If the petitioner is not a party to the proceeding...the petition must state specifically how the petitioner is affected by the decision and why the petitioner did not

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Merced and Modesto each filed a petition to modify D.04-02-062 on February 25, 2005.³ Notice of the petitions appeared in the Daily Calendar on March 1, 2005. A response was filed by PG&E.

Decision 04-11-015 was issued in A.04-07-032 and D.04-02-062 was issued in I.02-04-026. The petitions to modify D.04-11-015 and D.04-02-062 raise related questions of law and fact. Therefore, A.04-07-032 and I.02-04-026 are consolidated pursuant to Rule 55 for the sole purpose of resolving these petitions.

The petitions addressed by today's Decision seek to exempt two types of MDL from the RAC and Energy Recovery Bond Charges. These charges recover costs associated with PG&E's recent bankruptcy. The two types of MDL at issue are (1) new MDL, and (2) transferred load. Both types of load are located in PG&E territory that is shared with a publicly owned utility (POU) or annexed by a POU. A key feature of new MDL is that it was never served by PG&E.⁴ Transferred load is existing PG&E load that transfers to a POU.

3. Petitions to Modify D.04-02-062

A. Background

In D.04-11-014, as modified and affirmed by D.04-12-059 and D.05-01-040, the Commission excepted⁵ new MDL and transferred load from one of the five

participate...earlier. A separate petition to intervene (see Article 14) is not required. The petitioner will become a party to the proceeding for the purpose of resolving the petition.”

³ Modesto has also filed an application to rehear D.04-02-062. Today's Decision does not address or otherwise prejudice this rehearing application.

⁴ Because PG&E cannot know the precise level of future new MDL, it is possible that PG&E might have signed contracts to purchase electricity in anticipation of serving some future load that ultimately becomes new MDL.

⁵ Commission decisions issued in R.02-01-011, including D.04-11-014, D.04-12-059, and D.05-01-040, use the verb “excepted” and its conjugated forms. Today's Decision uses the verbs “except” and “exempt” synonymously.

elements that comprise the Cost Responsibility Surcharge (CRS). The five elements are as follows:

1. The Competitive Transition Charge (CTC) and Tail CTC.
2. The DWR Bond Charge.
3. The DWR Power Charge.
4. The RAC.
5. The Energy Recovery Bond Charges.⁶

New MDL and transferred load are exempt from the DWR Power Charge element of the CRS. The exemption is subject to certain restrictions, including a cap on the exemption for transferred load and a portion of new MDL.

Most elements of the CRS stem from the electricity crisis that gripped California in 2000 and 2001.⁷ At the time, huge increases in the price of wholesale electricity left the investor-owned utilities (IOUs) financially crippled and unable to buy power for their customers. In response to the crisis, the Governor declared a state of emergency and ordered DWR to purchase power on behalf of the IOUs' retail customers.⁸ The Legislature also enacted laws in an emergency session to provide DWR with the requisite authority to buy power.

In order to buy power, DWR had to borrow more than \$ 10 billion from the State's General Fund and Wall Street firms. DWR eventually refinanced the debt by selling long-term bonds to investors. The DWR Bond Charge element of the CRS recovers the principal and interest payments on DWR's bonds. In addition, DWR signed numerous long-term contracts to ensure a stable power supply. The

⁶ Pursuant to D.04-11-015, the Energy Recovery Bond Charges will replace the RAC.

⁷ Some CTC costs are not attributable to the energy crisis, but were caused by the transition to a competitive electricity market.

⁸ Governor's Emergency Proclamation dated January 17, 2001. (D.02-02-051, Appendix B.)

DWR Power Charge recovers the ongoing cost of power purchased under DWR's long-term power contracts.

The huge increase in the price of wholesale electricity caused PG&E to incur large debts to buy power. On April 6, 2001, PG&E filed for protection under Chapter 11 of the United States Bankruptcy Code. In D.03-12-035, the Commission adopted a modified settlement agreement (MSA) to establish a plan of reorganization (POR) to enable PG&E to emerge from bankruptcy. PG&E's POR under Chapter 11 became effective on April 12, 2004, and incorporated the terms of the MSA.

To restore PG&E's financial health, D.03-12-035, as modified and affirmed in D.04-03-009, authorized PG&E to record a bankruptcy Regulatory Asset in the amount of \$ 2.21 billion and to recover the Regulatory Asset from electric customers over a nine-year period.⁹ The total costs to PG&E's customers for the Regulatory Asset, including rate of return, income taxes, etc., was expected to exceed \$ 4.6 billion.¹⁰ Decision 04-02-062 adopted the Regulatory Asset Charge (RAC) to enable PG&E to recover the cost of the Regulatory Asset. In addition, D.04-02-062 required all of PG&E's customers to pay the RAC, except for certain Customer Generation Departing Load (CGDL).

Importantly, D.04-02-062 determined that new MDL should not be exempt from the RAC. However, D.04-02-062 also recognized that the Commission was considering in R.02-01-011 whether to exempt new MDL from the DWR-related

⁹ The bankruptcy Regulatory Asset was sized to provide PG&E with the necessary revenue, cash flow, and capital structure to pay creditors in full and to enable PG&E to emerge from bankruptcy as an investment grade company.

¹⁰ As described more fully in D.03-12-035, PG&E's customers had to contribute several billion dollars over and above the cost of the Regulatory Asset to enable PG&E to emerge from bankruptcy and pay its creditors in full.

costs of the CRS. Decision 04-02-062 stated that after the Commission had decided the CRS exemption issue in R.02-01-011, municipal utilities could file petitions to modify D.04-02-062 to exempt new MDL from the RAC to the same extent new MDL had been exempted from the CRS.¹¹ As noted above, D.04-11-014 and D.04-12-059, which were issued in R.02-01-011, exempted new MDL and transferred load from the DWR Power Charge element of the CRS, subject to certain restrictions and caps.

B. Summary of the Petitions

In their petitions to modify D.04-02-062, CMUA, Merced, and Modesto seek to exempt new MDL from the RAC. They believe the following provision in D.04-02-062 demonstrates that the Commission intended to exempt new MDL from the RAC if the Commission in R.02-01-011 exempted new MDL from the DWR Power Charge:

To ensure that [D.04-02-062] is consistent with Commission decisions...Municipal utilities may file a petition for modification of [D.04-02-062] concerning certain new municipal load's cost responsibility for the Regulatory Asset, once the Commission decides the pending rehearing [in R.02-01-011] on the exceptions of certain new municipal load's payment of the CRS. (D.04-02-062, *mimeo.*, p. 40 [COL 8].)

CMUA, Merced, and Modesto observe that D.04-11-015 and D.04-12-059, issued in R.02-01-011, exempted new MDL from the DWR Power Charge element of the CRS. They maintain that in order to fulfill the Commission's intent in D.04-02-062 to make new MDL's exemption from the RAC consistent with new

¹¹ D.04-02-062, *mimeo.*, pp. 4 – 7, 22 – 23, 34 -35, and 40 [Conclusion of Law (COL) 8].

MDL's exemption from CRS, it is necessary to modify D.04-02-062 to exempt new MDL from the RAC.

CMUA also requests that D.04-02-062 be modified to exempt transferred load from the RAC. CMUA states that both new MDL and transferred load were exempted from the DWR Power Charge by D.04-11-014 and D.04-12-059. CMUA believes this precedent shows that new MDL and transferred load must be treated the same. Thus, if today's Decision exempts new MDL from the RAC, the Decision must also exempt transferred load from the RAC. CMUA further claims that transferred load should be exempted from the RAC because D.04-02-062 exempted CGDL from the RAC. CMUA argues that it would be unlawfully discriminatory to exempt CGDL from the RAC but not transferred load.

C. Responses to the Petitions

i. Merced and Modesto

Merced and Modesto support CMUA's petition, including CMUA's request to exempt transferred load from the RAC (which Merced and Modesto did not request in their own petitions to modify D.04-02-062).

ii. NCPA

NCPA supports CMUA's petition.¹² CMUA states that the Commission intended in D.04-02-062 that new MDL's exemption from the RAC and CRS should be treated consistently. NCPA also agrees with CMUA that exempting transferred load from the RAC would be consistent with the Commission's determination in D.04-02-062 to exempt CGDL from the RAC.

¹² NCPA did not respond to Merced's and Modesto's petitions.

iii. PG&E

PG&E does not object to modifying D.04-02-062 to exempt new MDL from the RAC to the extent that new MDL is exempted from the DWR Power Charge. On the other hand, PG&E opposes modifying D.04-02-062 to exempt transferred load from the RAC. PG&E argues that unlike new MDL, the Commission did not intend to re-visit D.04-02-062 with respect to transferred load.

PG&E disputes CMUA's contention that D.04-02-062 should be modified to exempt transferred load from the RAC because D.04-02-062 exempted CGDL from the RAC. PG&E argues that the Commission in D.04-02-062 knowingly exempted CGDL but not transferred load. Thus, the Commission's determination in D.04-02-062 to exempt CGDL from the RAC provides no support for granting transferred load a similar exemption.

D. Discussion

The petitions to modify D.04-02-062 raise the issue of whether new MDL and transferred load should be exempted from the RAC. We first consider if new MDL should be exempted from the RAC, followed by transferred load.

i. New MDL

All the parties agree that the Commission intended in D.04-02-062 that new MDL should be exempted from the RAC to the same extent new MDL is exempted from the DWR Power Charge. The parties further agree that D.04-11-014 and D.04-12-059 exempted new MDL from the DWR Power Charge.

We concur with the parties' assessment. Therefore, as contemplated by D.04-02-062, we will modify D.04-02-062 to exempt new MDL from the RAC to the same extent that new MDL is exempted from the DWR Power Charge element of the CRS by D.04-11-014 and D.04-12-059. We note that currently new MDL's exemption from the DWR Power Charge is subject to various restrictions,

and that the exemption for a portion of new MDL is capped. The same restrictions and cap and shall apply to new MDL's exemption from the RAC.

PG&E shall file revised tariffs to reflect new MDL's exemption from the RAC adopted by today's Decision.¹³ For as long as the RAC remains in effect, PG&E shall promptly revise its RAC tariffs to conform to any future revisions to new MDL's exemption from the DWR Power Charge.

ii. Transferred Load

The parties dispute whether transferred load should be exempted from the RAC. We conclude for the following two reasons that transferred load should not be exempted. First, unlike the situation with new MDL, D.04-02-062 did not contemplate an exemption for transferred load.

Second, the RAC and its successor, the Energy Recovery Bond Charges, should be treated similarly because both charges recover the same PG&E bankruptcy costs. As discussed in more detail, *infra*, exemptions from the Energy Recovery Bond Charges are limited to those authorized by Pub. Util. Code §§ 848.1(b) – (d).¹⁴ These statutes do not exempt transferred load from the Energy Recovery Bond Charges. Therefore, because exemptions from the RAC and Energy Recovery Bond Charges should be treated similarly, and transferred load is not exempt from the Energy Recovery Bond Charges, we conclude that transferred load should not be exempted from the RAC.¹⁵

¹³ PG&E filed Advice Letter (AL) 2624-E on February 7, 2005, to eliminate the Regulatory Asset Revenue Adjustment Mechanism (RARAM) and transfer any remaining balance in the RARAM to the Energy Recovery Bond Balancing Account. The RARAM and RAC will terminate if and when AL 2624-E goes into effect.

¹⁴ All statutory references are to the Public Utilities Code unless otherwise indicated.

¹⁵ The transferred load that is exempted from the DWR Power Charge by D.04-11-014, as modified and affirmed in D.04-12-059, is load that was forecast by PG&E to be transferred to

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We disagree with CMUA that it is unlawfully discriminatory to exempt CGDL from the RAC but not transferred load. In D.04-02-062, the Commission held that MDL (with the possible exception of new MDL) should not be exempted from the RAC, even though D.04-02-062 exempted certain CGDL from RAC.¹⁶ CMUA has not provided adequate justification to reverse our previous holding on this issue.

4. Petition to Modify D.04-11-015

A. Background

To enable PG&E to emerge from bankruptcy, D.03-12-035 authorized PG&E to record a bankruptcy Regulatory Asset in the amount of \$ 2.21 billion and to recover the Regulatory Asset over a nine-year period. The total costs to ratepayers for the Regulatory Asset, including rate of return, income taxes, etc., was expected to exceed \$ 4.6 billion. In order to lower the costs borne by ratepayers, D.03-12-035 directed PG&E to seek to issue up to \$ 3.0 billion of Energy Recovery Bonds (ERBs) to refinance the Regulatory Asset and associated income taxes.¹⁷ This action was expected to result in substantial savings because the interest rate on the ERBs would be much lower than the rate of return on PG&E's Regulatory Asset. Decision 03-12-035 also anticipated that PG&E would recover the cost of the ERBs via a new charge called the Dedicated Rate Component (DRC).

POUs during 2001-2003. (D.04-11-014, *mimeo.*, p. 18.) This transferred load does not encompass the load served by PG&E during 2000, when PG&E incurred the preponderance of the costs that ultimately resulted in its filing for bankruptcy. The Commission subsequently authorized PG&E to recover these bankruptcy-related costs through the RAC and Energy Recovery Bond Charges.

¹⁶ D.04-02-062, *mimeo.*, pp. 22 -23, 34 – 35, and 40 [COL 8].

¹⁷ D.03-12-035, *mimeo.*, pp. 88-89 [Ordering Paragraph (OP) 9].

The issuance of the ERBs required enabling legislation. On June 7, 2004, the Governor signed into law Senate Bill (SB) 772, which authorized the issuance of ERBs.¹⁸ SB 772 also authorized the Commission to impose non-bypassable charges on all current and future customers in PG&E's service territory to recover the principal, interest, and other costs associated with the ERBs, with certain exceptions. The exceptions of particular importance to today's Decision are contained in §§ 848.1(b)(2), 848.1(c), and 848.1(d), which state as follows:

§ 848.1(b)(2): Customer Generation departing load that is exempt from [DWR] power charges pursuant to...Decision No. 03-04-030, as modified by Decision No. 03-04-041, and as clarified and affirmed by Decision No. 03-05-039, [is exempt from ERB Charges] except that the load shall pay the costs as a component of and in proportion to any purchase of electricity delivered by [PG&E] under standby or other service made following its departure.

§ 848.1(c): Except as provided in paragraphs (4) and (5) of subdivision (b), the commission shall determine the extent to which [ERB Charges] are recoverable from new municipal load, consistent with the... limited rehearing granted in [R.02-01-011]. The determination of the commission shall be made on the earlier of the date it adopts a financing order or December 31, 2004.

§ 848.1(d): Except as provided in paragraphs (4) and (5) of subdivision (b) and in subdivision (c), the obligation to pay [ERB Charges] cannot be avoided by the formation of a local publicly owned electric utility on or after December 19, 2003, or by annexation of any portion of the service territory of [PG&E] by an existing publicly owned utility.

On July 22, 2004, PG&E filed A.04-07-032 for authority under SB 772 and D.03-12-035 to refinance its bankruptcy Regulatory Asset by issuing up to

¹⁸ 2004 Stats., ch. 46.

\$3.0 billion of ERBs through a legally separate Special Purpose Entity. The Commission granted A.04-07-032 in D.04-11-015. In addition, D.04-11-015 authorized PG&E to recover ERB principal, interest, and other ERB-related costs via the DRC and the ERB Balancing Account (ERBBA) Charge (referred to collectively hereafter as ERB Charges).¹⁹ The ERB Charges replaced the RAC.²⁰

The Commission held in D.04-11-015 that ERB Charges should be nonbypassable and recovered from all existing and future consumers in PG&E's service territory as of December 19, 2003, except as provided for in SB 772. As required by SB 772, § 848.1(c), the Commission determined in D.04-11-015 that ERB Charges should apply to new municipal load²¹ to the same extent it was determined in R.02-01-011 that the CRS applies to new MDL.²² In D.04-11-014, as modified and affirmed in D.04-12-059, issued in R.02-01-011, the Commission exempted new MDL (and transferred load) from the DWR Power Charge element of the CRS, subject to certain restrictions and caps.

B. Summary of the Petition

In D.04-11-015, Conclusion of Law 82, the Commission held that new MDL should be exempted from ERB Charges as set forth below:

Pursuant to § 848.1(c), Bond Charges should apply to new municipal departing load **to the same extent** it is determined in R.02-01-011 that the CRS applies to new municipal load. (Emphasis added.)

¹⁹ The purpose of the DRC is to recover ERB principal, interest, and certain other costs directly related to the ERBs. The purpose of the ERBBA Charge is to pass through to ratepayers all other ERB-related costs and benefits. (D.04-11-015, *mimeo.*, pp. 33 and 38.)

²⁰ D.04-11-015, *mimeo.*, pp. 42, 90 [COL 61], and 103 [OP 15].

²¹ The phrases “new municipal load” and “new MDL” are synonymous and used interchangeably in this Decision.

²² D.04-11-015, *mimeo.*, p. 59, 93 [COL 82], and 111 [OPs 58 and 59].

CMUA understands the phrase “to the same extent” to mean that new MDL is exempt from ERB Charges to the same extent that new MDL is exempted from the DWR Power Charge element of the CRS by the Commission in R.02-01-011. In its petition to modify D.04-11-015, CMUA asks the Commission to confirm this understanding.

CMUA also asks the Commission to modify D.04-11-015 to exempt transferred load from ERB Charges. CMUA argues that because CGDL has been exempted from ERB Charges, it would be unlawfully discriminatory to treat transferred load differently than CGDL.

C. Responses to the Petition

i. Merced, Modesto, and NCPA

Merced, Modesto, and NCPA support CMUA’s petition to modify D.04-11-015. Merced represents that the parties have agreed that § 848.1(c) exempts new MDL from ERB Charges to the same extent that new MDL is exempted from the DWR Power Charge. Modesto adds that because D.04-11-014 and D.04-12-059 exempted transferred load from the DWR Power Charge, it is reasonable to exempt transferred load from the ERB Charges.

ii. PG&E

PG&E notes that D.04-11-015 exempts new MDL from ERB Charges “to the same extent” new MDL is exempted from the CRS in R.02-01-011. PG&E believes the phrase “to the same extent” is ambiguous, given the determination in R.02-01-011 that the new MDL exemption applies only to the DWR Power Charge element of the CRS, and not the entire CRS.²³ Accordingly, PG&E does not

²³ PG&E’s approved tariffs for the DRC already exempt new MDL from the DRC to the same extent that new MDL is exempted from the DWR Power Charge.

oppose supplementing D.04-11-015 to clarify that new MDL exempted from the DWR Power Charge is also exempted from ERB Charges.

PG&E opposes CMUA's request to modify D.04-11-015 to exempt transferred load from the ERB Charges. PG&E maintains that SB 772 and D.04-11-015 require all electricity consumers in PG&E's service territory to pay the ERB Charges except for those consumers that are exempted by SB 772. PG&E states that there is no exemption in SB 772 for transferred load.

PG&E disputes CMUA's claim that transferred load should be exempted from ERB Charges because the Commission has exempted CGDL from ERB Charges. PG&E states that SB 772 requires all PG&E customers to pay ERB Charges except for those exempted by the statute. PG&E argues that because SB 772 exempts CGDL, but not transferred load, transferred load is indisputably responsible for ERB Charges under the statute.

D. Discussion

We grant CMUA's unopposed request to clarify D.04-11-015 to mean that new MDL is exempt from ERB Charges to the same extent that new MDL is exempted from the DWR Power Charge element of the CRS pursuant to Commission decisions issued in R.02-01-011. New MDL's exemption from ERB Charges is subject to the same restrictions adopted in R.02-01-011 regarding new MDL's exemption from the DWR Power Charge. The adopted clarification supplements D.04-11-015, but does not modify D.04-11-015.²⁴

²⁴ Although D.04-11-015 is largely irrevocable pursuant to § 848.1(g), the Commission may supplement D.04-11-015 as long as the supplement is not inconsistent with the terms and provisions of D.04-11-015. (D.04-11-015, *mimeo.*, p. 98 [COL 111].) The clarification of D.04-11-015 adopted by today's Decision is consistent with the terms and provisions of D.04-11-015.

We decline to grant CMUA's request to modify D.04-11-015 to exempt transferred load from ERB Charges. As we explained in D.04-11-015, SB 772 requires all of PG&E's customers to pay ERB Charges except for those customers exempted by SB 772.²⁵ There is no statutory exemption for transferred load. Consequently, transferred load must pay the ERB Charges.²⁶

We are not persuaded by CMUA's argument that transferred load should be exempted from ERB Charges because CGDL has been exempted from ERB Charges. As mentioned previously, SB 772 requires all of PG&E's customers to pay ERB Charges except for those customers exempted by SB 772.²⁷ CGDL is exempt from ERB Charges to the extent set forth in § 848.1(b)(2), but there is no statutory exemption for transferred load.²⁸ Consequently, CGDL's exemption from ERB Charges has no bearing on whether transferred load should be exempted from ERB Charges.

5. Comments on the Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311(g)(1) and Rule 77.7. Comments and reply comments were filed by _____. These comments have been reflected, as appropriate, in the final Decision adopted by the Commission.

²⁵ D.04-11-015, *mimeo.*, pp. 33, 44, and 62, 90 [COL 61], and 103 [OP 15].

²⁶ Today's Decision exempts new MDL associated with transferred load from the RAC and ERB Charges to the same extent this new MDL is exempted from the DWR Power Charge pursuant to decisions issued in R.02-01-011.

²⁷ D.03-12-035, *mimeo.*, pp. 61-63, 90 [COL 61], and 103 [OP 15].

²⁸ Section 848.1(d) indicates that some or all of transferred load may not be exempt from the ERB Charges. CMUA did not attempt to show what portion of transferred load, if any, falls outside the scope of § 848.1(d).

6. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner for A.04-07-032 and I.02-04-026. Timothy Kenney is the assigned ALJ for A.04-07-032, and Janet A. Econome is the assigned ALJ for I.02-04-026.

7. Rehearing and Judicial Review

This Decision construes, applies, implements, and interprets the provisions of SB 772. Therefore, applications for rehearing and judicial review of this Decision are subject to §§ 1731 and 1769. These laws provide that any application for rehearing of this Decision must be filed within 10 days of the final order. The Commission must issue its decision on any application for rehearing within 20 days of the filing for rehearing. Any court challenge must be made directly to the California Supreme Court and must be filed within 10 days after the Commission denies rehearing.

Findings of Fact

1. The petitions to modify D.04-11-015 and D.04-02-062, which were issued in A.04-07-032 and I.02-04-26, respectively, raise related questions of law and fact.
2. In their petitions to modify D.04-02-062, CMUA, Merced, and Modesto seek to exempt new MDL from the RAC to the same extent that new MDL is exempted from the DWR Power Charge. CMUA also requests that D.04-02-062 be modified to exempt transferred load from the RAC.
3. There is no opposition to modifying D.04-02-062 to exempt new MDL from the RAC to the same extent that new MDL is exempted from the DWR Power Charge. PG&E opposes CMUA's request to modify D.04-02-062 to exempt transferred load from the RAC.
4. The RAC and ERB Charges are similar in that both types of charges recover the same PG&E bankruptcy costs.

5. CMUA's petition to modify D.04-11-015 asks the Commission to (i) confirm that new MDL is exempt from ERB Charges to the same extent that new MDL is exempted from the DWR Power Charge element of the CRS, and (ii) modify D.04-11-015 to exempt transferred load from ERB Charges. There is no opposition to CMUA's first request. PG&E opposes CMUA's second request.

Conclusions of Law

1. Application 04-07-032 and I.02-04-026 should be consolidated pursuant to Rule 55 for the sole purpose of resolving these petitions.

2. The Commission intended in D.04-02-062 to exempt new MDL from the RAC to the same extent that new MDL is exempted from the DWR Power Charge pursuant to decisions issued in R.02-01-011.

3. Since the issuance of D.04-02-062, the Commission in R.02-01-011 has exempted new MDL and transferred load from the DWR Power Charge element of the CRS. This exemption is subject to various restrictions and caps.

4. For the reasons stated in the two previous Conclusions of Law, D.04-02-062 should be modified to exempt new MDL from the RAC to the same extent new MDL is exempted from the DWR Power Charge element of the CRS by decisions issued in R.02-01-011, including D.04-11-014, D.04-12-059, and D.05-01-040. The same restrictions and cap that apply to new MDL's exemption from the DWR Power Charge should apply to new MDL's exemption from the RAC.

5. PG&E should file revised tariffs that reflect new MDL's exemption from the RAC adopted by today's Decision.

6. As long as the RAC remains in effect, PG&E should promptly revise the provisions in its tariffs reflecting new MDL's exemption from the RAC to conform to any revisions to new MDL's exemption from the DWR Power Charge.

7. The Commission in D.04-02-062 did not intend to exempt transferred load from the RAC in response to developments in R.02-01-011.

8. Exemptions from the RAC and ERB Charges should be treated similarly because both charges recover the same PG&E bankruptcy costs.

9. SB 772 does not exempt transferred load from ERB Charges.

10. Because exemptions from the RAC and ERB Charges should be treated similarly, and transferred load is not exempt from the ERB Charges, transferred load should not be exempted from the RAC.

11. Transferred load should not be exempted from the RAC for the reasons stated in the four previous Conclusions of Law.

12. Decision 04-11-015 determined pursuant to SB 772, § 848.1(c), that ERB Charges should apply to new municipal load “to the same extent...it is determined in R.02-01-011 that new municipal load is exempt from the CRS.” This provision in D.04-11-015 is ambiguous due to the determination in R.02-11-011 to exempt new MDL from only the DWR Power Charge element of the CRS, and not the entire CRS.

13. It would be consistent with D.04-11-015 and SB 772 to exempt new MDL from ERB Charges to the same extent that new MDL is exempted from the DWR Power Charge element of the CRS by the Commission in R.02-01-011.

14. Decision D.04-11-015 should be clarified to mean that new MDL’s exemption from the ERB Charges adopted by D.04-11-015 should be identical to new MDL’s exemption from the DWR Power Charge element of the CRS adopted by Commission in R.02-01-011.

15. Sections 848.1(b) – (d), which were enacted by SB 772, require all of PG&E’s customers and types of load to pay ERB Charges except for those customers and types of load specifically exempted from ERB Charges by SB 772.

There is no statutory exemption for transferred load. Consequently, transferred load must pay the ERB Charges.

16. CMUA's request to modify D.04-11-015 to exempt transferred load from the ERB Charges should be denied for the reasons set forth in the previous Conclusion of Law.

17. CGDL and transferred load are differently situated with respect to the RAC and ERB Charges because D.04-02-062 and SB 772 have exempted CGDL, but not transferred load, from PG&E's bankruptcy costs.

18. Because CGDL and transferred load are differently situated with respect to the RAC and ERB Charges, the fact that certain CGDL has been exempted from the RAC and ERB Charges does not mean that transferred load should be exempted from these charges.

19. Decision 04-11-015 is a Financing Order enacted pursuant to SB 772 that is irrevocable to the extent specified in § 848.1(g). However, the Commission may supplement D.04-11-015 as long as the supplement is not inconsistent with the terms and provisions of D.04-11-015.

20. The clarification of D.04-11-015 adopted by today's Decision is not inconsistent with the terms and provisions of D.04-11-015.

21. This Decision construes, applies, implements, and interprets the provisions of SB 772. Therefore, applications for rehearing and judicial review of this Decision are subject to Sections 1731 and 1769. These laws provide that any application for rehearing of this Decision must be filed within 10 days of the final order. The Commission must issue its decision on any application for rehearing within 20 days of the filing for rehearing. Any court challenge must be made directly to the California Supreme Court and must be filed within 10 days after the Commission denies rehearing.

22. The following order should be effective immediately because it makes needed modifications to D.04-02-062 and an important clarification regarding the Commission's intent in D.04-11-015.

O R D E R

IT IS ORDERED that:

1. Decision (D.) 04-02-062 is modified to exempt new municipal departing load (new MDL) from Pacific Gas and Electric Company's (PG&E's) bankruptcy Regulatory Asset Charge (RAC) to the same extent that new MDL is excepted from having to pay the Department of Water Resources (DWR) Power Charge pursuant to Commission decisions issued in Rulemaking (R.) 02-01-011.

2. Within 10 days from the effective date of this Order, PG&E shall file revised tariffs for the RAC that implement Ordering Paragraph 1, *supra*.

3. For as long as the RAC remains in effect, PG&E shall promptly revise its RAC tariffs for new MDL to mirror any revisions to new MDL's exception from the DWR Power Charge adopted by the Commission.

4. Decision 04-11-015 is clarified to mean that new MDL is exempt from Energy Recovery Bond Charges to the same extent new MDL is excepted from payment of the DWR Power Charge element of the Cost Responsibility Surcharge by Commission decisions issued in R.02-01-011.

5. The petition to modify D.04-11-015 filed by the California Municipal Utilities Association (CMUA) is granted to the extent set forth in the previous Ordering Paragraphs. The petition is denied in all other respects.

6. The petitions to modify D.04-02-062 filed by CMUA, the Merced Irrigation District, and the Modesto Irrigation District are granted to the extent set forth in the previous Ordering Paragraphs. The petitions are denied in all other respects.

7. Application 04-07-032 and Investigation 02-04-026 are consolidated pursuant to Rule 55 for the sole purpose of resolving the petitions identified in the two previous Ordering Paragraphs.

8. Application 04-07-032 is closed.

9. Investigation 02-04-026 remains open.

This order is effective today.

Dated _____, at San Francisco, California.