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

July 5, 2005 Agenda ID #4766
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 04-06-024

This is the proposed decision of Administrative Law Judge (ALJ) Mattson, previously designated as the principal hearing officer in this proceeding. All parties have stipulated to a reduction of the Section 311(d) 30-day waiting period, allowing the item to appear on the Commission's agenda on July 21, 2005. Accordingly, comments must be filed and served by July 15, 2005, and reply comments filed and served by July 18, 2005. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Pursuant to Resolution ALJ-180 a Ratesetting Deliberative Meeting to consider this matter may be held upon the request of any Commissioner. If that occurs, the Commission will prepare and mail an agenda for the Ratesetting Deliberative Meeting 10 days before hand. When an RDM is held, there is a related ex parte communications prohibition period.

The Commission may act at the regular meeting, or it may postpone action until later. If action is postponed, the Commission will announce whether and when there will be a further prohibition on communications.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

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

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Decision **PROPOSED DECISION OF ALJ MATTSON (Mailed 7/5/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company To Revise Its Electric Marginal Costs, Revenue Allocation, and Rate Design. (U 39 M)	Application 04-06-024 (Filed June 17, 2004)

(See Appendix A for a list of appearances.)

INTERIM OPINION ON BART AND SIERRAPINE EXEMPTIONS FROM ENERGY RECOVERY BOND CHARGES

1. Summary

Pacific Gas and Electric Company (PG&E or applicant) seeks to charge the San Francisco Bay Area Rapid Transit District (BART) and SierraPine Ltd. (SierraPine) certain costs associated with applicant's energy recovery bonds (ERBs). These bonds are used to reduce ratepayer costs related to applicant's bankruptcy reorganization. BART contends it is exempt from ERB-related charges, except to the extent that it may purchase supplemental power from PG&E. SierraPine asserts that it is fully exempt.

We agree with BART and SierraPine, and find that neither entity is subject to these charges to the extent specified herein. The issue of responsibility for ERB-related charges is the same, but the underlying legislation and backgrounds for the BART and SierraPine claims differ. Therefore, we describe each separately. The proceeding remains open to address marginal cost, revenue allocation and other rate design issues.

2. BART

2.1. Background

BART states it is a local government agency that provides public transit services to approximately 310,000 San Francisco Bay Area residents each business day. The BART system is located entirely within applicant's service territory.

Legislation applicable only to BART specifies the terms and conditions under which BART purchases and receives the majority of its electricity. (See Public Utilities Code Section 701.8.[1]) This legislation permits BART to access lower cost sources of power, such as federal preference power and power from local publicly owned utilities (collectively called "preference power"). It also requires PG&E to deliver this power over PG&E's transmission and distribution lines without discrimination or delay.

BART reports that since 1996 it has obtained federal preference power through firm long term power contracts with the Western Area Power Administration and Bonneville Power Administration. BART asserts that it has not purchased power from PG&E, except for very limited amounts of supplemental power necessary to balance deliveries of lower cost power with actual loads.

California's energy crisis of 2000-2001 resulted in PG&E filing for bankruptcy reorganization on April 6, 2001. On December 18, 2003, we adopted

[1] Senate Bill (SB) 184 (Statutes 1995, Chapter 681), as amended by SB 1838 (Statutes 1998, Chapter 206, and SB 1201 (Statutes 2004, Chapter 613). SB 184 provides for BART's access to federal preference power. SB 1838 exempts BART's power purchases from Commission orders pertaining to direct access. SB 1201 requires that PG&E deliver electricity to BART from local publicly owned utilities on the same terms and conditions as BART has historically purchased federal preference power. All statutory references are to the Public Utilities Code unless stated otherwise.

a modified settlement agreement (MSA) that formed the basis of a plan of reorganization later adopted by the Bankruptcy Court. (Decision (D.) 03-12-035.) The MSA included a regulatory asset of $2.21 billion to be charged to applicant's ratepayers over a period of nine years.

On February 26, 2004, we adopted a rate design settlement agreement (RDSA) to implement rates pursuant to the Bankruptcy Court's adopted plan of reorganization. (D.04-02-062.) These rates included charges necessary to recover the costs of the regulatory asset. PG&E's transmission rates and other charges related to BART's federal power deliveries, however, did not include these regulatory asset charges. As a result, PG&E did not bill, and BART did not pay, any costs of the regulatory asset for deliveries of federal preference power.

Subsequent legislation in 2004 permitted issuance of ERBs, secured by a dedicated rate component (DRC), to refinance the unamortized portion of the regulatory asset.[2] On July 22, 2004, PG&E applied for authority to refinance the regulatory asset. (Application (A.) 04-07-032.) A draft decision was filed on October 19, 2004. In late-filed comments on the draft decision, BART raised the issue of whether BART is exempt from ERB-related charges.

On November 19, 2004, we authorized PG&E to issue up to $3.0 billion in ERBs, with the principal, interest and related costs to be recovered via two surcharges: DRC and the Energy Recovery Bond Balancing Account charge (referred to collectively as "ERB Charges"). (D.04-11-015, also called the Financing Order.) We declined, however, to address the issue raised late by

[2] SB 772 (Statutes 2004, Chapter 46).

BART. We ordered that BART may raise the issue in this proceeding. (D.04-11-015, Ordering Paragraph 60.)

On November 29, 2004, PG&E filed an advice letter to implement a DRC consistent with our Financing Order. (Advice Letter (AL) 2596-E .[3]) The AL became effective January 8, 2005. Regarding BART, the AL stated that: (a) BART is subject to DRC charges pending the Commission's determination whether BART is exempt, (b) PG&E will retain these DRC charges in a separate BART memorandum account and will not remit these DRC charges to the Special Purpose Entity (SPE[4]), and (c) the DRC charge revenue requirement will be set based on the assumption that PG&E will not remit DRC charges collected from BART to the SPE.

On December 20, 2004, BART moved to intervene in this proceeding and add the issue of whether it is exempt from paying ERB Charges. By Ruling dated December 28, 2005, BART's unopposed motion was granted. Consistent with the adopted schedule, on March 7, 2005, BART served proposed testimony, and on April 26, 2005, PG&E served proposed rebuttal testimony.

On May 4, 2005, BART moved for issuance of an expedited interim decision affirming its position. No party identified any disputed material fact

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[3] On December 27, 2004, applicant made a supplemental filing. (AL 2596-E-A.) The revisions do not affect the items discussed in this order.

[4] The SPE is an entity that is legally separate from PG&E, and was established to facilitate the refinancing of the regulatory asset. The SPE issues the ERBs, and transfers the proceeds to PG&E in exchange for the right to receive revenues to repay the ERBs. Those revenues are from the DRC, and the right to this future cash creates an asset. It is this asset that is sold by PG&E to the SPE in exchange for the ERB proceeds. This ensures that the asset is not part of PG&E's estate for bankruptcy purposes should PG&E experience another bankruptcy.

requiring evidentiary hearing. On May 12, 2005, BART's motion was granted. Opening briefs were filed and served on May 23, 2005. Reply briefs were filed and served on May 31, 2005. On June 3, 2005, cross-examination was waived on BART's proposed testimony and it was received as evidence. On June 9, 2005, cross-examination was waived on PG&E's proposed testimony, it was received as evidence, and the BART matter was submitted for Commission decision.

2.2. Discussion

There is no dispute that BART must pay ERB Charges on supplemental power. The following discussion addresses the issue only with respect to BART's purchases of preference power.

2.2.1. Financing Order

Applicant argues the Financing Order makes BART subject to ERB Charges, and the Financing Order is irrevocable. We do not agree. The BART issue was specifically identified and preserved for decision here. (D.04-11-015, Ordering Paragraph 60.) Further, the extent to which the Financing Order is irrevocable is specified in § 848.1(g). As explained more fully below, nothing we do here conflicts with § 848.1(g).

2.2.2. Statutes

Applicant claims that SB 772 (adding § 848, et seq. effective June 7, 2004) specifically lists the entities not subject to ERB charges, and BART is not on that list. As a result, applicant concludes that BART must pay ERB Charges. BART argues that SB 1201 (amending § 701.8 effective September 21, 2004) recognizes an exemption for BART, and the statutes must be understood together.

Applicant is correct that BART is not one of the entities expressly listed as exempt from ERB Charges. (§ 848.1(b)(1)-(5).) Nonetheless, we agree with BART and conclude that BART is not subject to these charges based on the statutes,

legislative history and legislative intent. In particular, when statutes are unclear or ambiguous, we apply rules of statutory construction to give effect to the legislative intent of each statute. As explained below, exempting BART from ERB Charges properly recognizes the history and intent of both §§ 701.8 and 848.1.

BART is unlike other PG&E customers in that the terms and conditions under which BART purchases nearly all of its electricity are governed by special legislation applicable only to BART. (§ 701.8.) The purpose of the original legislation, along with subsequent amendments, is to facilitate BART's access to lower cost electricity.

Specifically, § 701.8 was added in 1995 so that BART could reduce its electricity costs by independently procuring lower cost federal preference power. (SB 184.) The legislature at that time made several significant findings that bear on public interest considerations just as pertinent today as in 1995. In particular:

> "The Legislature hereby finds that the use of the San Francisco Bay Area Rapid Transit District (BART District) systems should be encouraged as a means of reducing automobile use, energy use, air pollution, and road and highway congestion. The Legislature further finds and declares that the cost of electricity is a major portion of the cost of operating the BART District's systems, and that decreases in electricity costs can enable lower transit fares which can encourage use of the transit system, while increases in electricity costs can cause higher transit fares which can discourage use." (SB 184, Statutes 1995, Chapter 681, Section 1, cited in Exhibit 351, page 3.)

In 1998, the legislature amended § 701.8 to exempt BART's power purchases from Commission orders pertaining to direct access. (SB 1838, Chapter 206.) This further facilitated BART's purchases of federal preference power.

In 2004, further legislation amended § 701.8 (SB 1201, Chapter 613). This amendment allows BART to obtain lower cost power from local publicly owned utilities. Importantly, SB 1201 states:

> "It is the intent of the Legislature in enacting this act, to authorize the BART District to receive electric service from another publicly owned supplier of electricity on the same terms authorized by Chapter 206 of the Statutes of 1998." (SB 1201, Section 1(d), cited in Exhibit 351 at page 5.)

The terms under which BART purchased federal preference power in 1998 (two years before the California energy crisis) did not include any costs arising from the energy crisis or PG&E's emergence from bankruptcy. SB 1201 was enacted during the same legislative session as, but slightly after, SB 772. As a result, it follows that SB 1201 recognizes an exemption for BART from ERB Charges created pursuant to SB 772. It does so by making explicit reference to the terms under which BART purchased power prior to the energy crisis and PG&E's bankruptcy, and extending the terms under which BART received federal preference power to power deliveries from local agencies. SB 1201 is specific to BART, and is the later legislation.

The intent is clear, and is confirmed by legislative history. In particular, the author's published letter of intent expressly states:

> "I introduce Senate Bill 1201 in order to enable the San Francisco Bay Area Rapid Transit District (BART) to take delivery of power from local publicly owned electric utilities on the same terms and conditions as BART currently takes delivery of power from federal power marketing agencies…**As author, it is my intent that, since BART used federal preference power delivered under Section 701.8 of the Public Utilities Code to satisfy its electricity requirements throughout the energy crisis of 2000-2001, none of BART's power delivered pursuant to Section 701.8, as amended by SB 1201, would be subject to any charges or costs that arise from**

> **the energy crisis. These include, without limitation, charges…related to the emergence of Pacific Gas and Electric Company (PG&E) from bankruptcy."** (California Legislature 2003-04 Regular Session, Senate Journal, September 10, 2004 at 5554; emphasis added.)

We also consider the circumstances surrounding SB 772. Except for some supplemental power, BART has not been part of PG&E's native load since 1996, and BART did not rely on PG&E for its primary power supplies during the California energy crisis. Accordingly, BART has neither been billed for, nor paid, any charges related to the regulatory asset for deliveries of preference power. The intent of SB 772 is to authorize "a means by which the Commission can reduce ratepayer costs…" (SB 772, Section 1.) That is, the ERB refinancing is intended to reduce, not increase, costs related to the regulatory asset. Requiring BART in its unique situation to pay ERB Charges on deliveries of preference power would increase BART's costs, in contrast with the intent of SB 772.

Further, assessing ERB Charges on BART shifts to BART costs "related to the emergence of PG&E from bankruptcy" (i.e., refinancing the regulatory asset). This is clearly inconsistent with the intent of SB 1201. On the other hand, exempting BART from ERB Charges for deliveries of preference power would not shift costs to other PG&E customers since BART was never responsible with respect to those deliveries for costs related to the regulatory asset. Accordingly, an exemption from ERB Charges for BART on deliveries of preference power is equitable and consistent with the intent of SB 1201 and SB 772.

Thus, BART is not subject to ERB Charges based on the statutes, legislative intent and legislative history.

2.2.3. Leakage

Applicant states that ERBs are a very specialized structured financing for which the highest "AAA" credit rating is sought. The highest credit rating maximizes ratepayer savings that result from refinancing the regulatory asset. PG&E says "credit rating agencies are strictly scrutinizing the ERB ratemaking structure to ensure there is no material 'leakage' from the revenue stream required to support the ERBs." (Exhibit 9, page 1-25.) PG&E recommends the Commission find the BART exemption unique in order to provide assurance against leakage.

We agree with PG&E that the particular circumstances here are unique, and the BART exemption causes no leakage. BART's electricity purchases are subject to specific legislation, and the BART exemption issue was specifically preserved for decision in this proceeding. Pursuant to AL 2596-E, PG&E has retained DRC charges paid by BART in a separate BART memorandum account, and has not remitted these charges to the SPE. The DRC charge revenue requirement has been set based on the assumption that PG&E will not remit DRC charges collected from BART to the SPE. Moreover, we are required to adjust recovery amounts as necessary to ensure timely recovery of all recovery costs, and do so through the Energy Recovery Bond Balancing Account. (§ 848.1(g) and D.04-11-015.) Thus, exempting BART from ERB Charges is a unique situation and has no effect on the level of ERB Charges, other customers, or the SPE.

2.2.4. Value of Recovery Property

As specified in § 848.1(g), we are not permitted to amend the Financing Order to revise recovery costs or "in any way reduce or impair the value of recovery property." As described and explained above, we do nothing here that

revises recovery costs, nor do we reduce or impair the value of recovery property.

2.2.5. Refund of BART Memorandum Account

Having determined BART is not subject to ERB Charges, we direct that PG&E return the balance in the BART memorandum account, with interest. We apply the same interest rate that we require on payment for late intervenor compensation awards since PG&E would have been able to earn the same interest rate on funds in the BART memorandum account as it could earn on intervenor compensation awards paid late.

2.2.6. Conclusion

BART is exempt from ERB Charges on deliveries of preference power. BART is not exempt from these charges for purchases of supplemental power.

3. SierraPine

3.1. Background

SierraPine states that it is a family-owned producer of a variety of composite panel products. SierraPine reports that it operates nine plants, three of which are located in California. One facility is in PG&E's service territory in Rocklin, California.

Urgency legislation adopted in 2003 provided that a qualifying direct transaction customer may apply to the Commission for a waiver of the Direct Access Cost Responsibility Surcharge (DA CRS[5]). (§ 367.3.[6]) SierraPine was the

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[5] The DA CRS refers to the cost elements and surcharge mechanism adopted in Rulemaking (R.) 02-01-011 (implementation of direct access suspension pursuant to Assembly Bill (AB) 1X). (See, for example, D.02-11-022, D.03-07-030.)

[6] AB 1284 (Statutes 2003, Chapter 239.)

only qualifying customer to apply for, and receive, this waiver. Waiver of the entire DA CRS was granted for the Rocklin facility. (D.03-09-019.)

As noted above, we authorized a regulatory asset as part of PG&E's bankruptcy reorganization, and included charges to recover the regulatory asset in rates adopted pursuant to the RDSA. (D.03-12-035 and D.04-02-062.) The portion payable by direct access customers was included as a component of the DA CRS. (D.04-06-062, mimeo., pages 14 and 30; RDSA Paragraph 8.) According to SierraPine, its Rocklin facility paid no costs related to the regulatory asset due to waiver of the DA CRS, and PG&E did not seek to collect regulatory asset charges from SierraPine by rates adopted pursuant to the RDSA.

We replaced regulatory asset charges with ERB Charges as part of the regulatory asset refinancing in order to save costs. (D.04-11-015.) For direct access customers, ERB Charges were included as a component of the CRS, just as were the regulatory asset charges.

In March 2005, SierraPine reports that PG&E informed SierraPine that it intended to pursue collection of ERB-related costs. SierraPine protested PG&E's AL, asking that the Commission find SierraPine exempt from such charges. In response to the protest, PG&E noted similarities between SierraPine's exemption claim and that of BART, and suggested that SierraPine raise the issue in this proceeding, as did BART.

On April 19, 2005, SierraPine filed motions to intervene here, and contingently add the issue of is exemption claim. SierraPine stated that it believed the appropriate resolution of this matter was in its protest to the AL, but if not addressed there, it should be resolved in this proceeding.

By Ruling dated April 28, 2005, SierraPine's unopposed motion to intervene was granted. No issue of disputed fact was identified. In response to

BART's May 4, 2005 motion for an expedited interim decision, SierraPine asked that its exemption claim be decided on the same expedited schedule. The request was granted at the prehearing conference on May 17, 2005. Opening briefs were filed on May 23, 2005. Reply briefs were filed on May 31, 2005. The SierraPine issue was submitted along with the BART issue for Commission decision on June 9, 2005.

3.2. Discussion

Just as BART has unique legislation and circumstances, SierraPine also has unique legislation and circumstances. For example, SierraPine was the only qualifying direct transaction customer to apply for exemption from the DA CRS. (§ 367.3.) It was directly and expressly exempted in 2003 from the entire DA CRS. (D.03-09-019.)

Our decision implementing rates for PG&E's bankruptcy reorganization provided that:

> "the charge imposed on DA customers for recovery of the Regulatory Asset, or a successor DRC, 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." (D.04-02-062, Ordering Paragraph 1 and RDSA, Attachment A, Paragraph 8.)

These charges are not recoverable from customers exempted from these charges unless otherwise provided under the RDSA or other relevant Commission decisions. (D.04-02-062, mimeo., page 30.) Our decision implementing ERB Charges continues to assess these charges on direct access customers subject to the applicable DA CRS cap. (D.04-11-015, Ordering Paragraph 15.)

SierraPine was exempt from the entirety of the DA CRS, including regulatory asset charges, as a result of § 367.3 and D.03-09-019. That makes the level of SierraPine's DA CRS cap zero. Regulatory asset charges, and the replacement ERB Charges, are part of, and subject to, the DA CRS cap. No other recovery mechanism from SierraPine for the regulatory asset was proposed or adopted. As a result, we conclude that SierraPine was not responsible for regulatory asset charges, and is not responsible now for ERB Charges, assessed under, or as part of, the DA CRS.

The purpose of refinancing the regulatory asset was to "lower the costs borne by PG&E's ratepayers." (D.04-11-015, mimeo., page 3.) It would be particularly unreasonable, and inconsistent with the intent of both D.03-09-019 and D.04-11-015, for SierraPine in its unique circumstances to incur a rate increase as a result of the refinancing by becoming subject to costs from which it was previously exempt.

Continuing to recognize SierraPine's exemption from the DA CRS, including ERB Charges and all other components, has no effect on the amount collected for these cost elements. In its application for waiver, SierraPine declared that absent waiver of the DA CRS it faced certain and imminent closure. We found it necessary to waive not only part, but all, of the DA CRS. We specifically found that granting the waiver would not result in any shifting of costs:

> "We conclude that the waiver of the DA CRS [for SierraPine] will not result in any shifting of costs to bundled service customers or delay full and timely recovery of costs from direct access customers as a group. Any reduction in the amount of DA CRS collected will be no different than the reduction that would occur were the Rocklin facility to close, an inevitable result should the Commission decline to grant the waiver. The waiver will not shift any cost responsibility

> to bundled customers, since direct access customers as a group will remain responsible for the same costs whether or not a waiver is granted. Finally, deferral of the DA CRS collection would not afford SierraPine the necessary relief, since the historically thin margins in the MDF [medium-density fiberboard] business would not allow SierraPine to pay DA CRA amounts in the future." (D.03-09-019, mimeo., pages 8-9.)

No party presents evidence to the contrary. We have no reason to think this does not continue to be the case, including the infeasibility of deferral. Moreover, the period to apply for such exemption pursuant to § 367.3 has long since expired. SierraPine's Rocklin facility was the only entity to apply and qualify for the exemption. No other entity can be exempted from ERB Charges under § 367.3. Continuation of this exemption for SierraPine has no effect on the cost recovery of ERB Charges.

Thus, as described and explained above, we do nothing here that revises recovery costs, nor do we reduce or impair the value of recovery property. Continuing SierraPine's exemption from paying regulatory asset costs, and subsequent ERB Charges, has no effect on the level of ERB Charges, other customers, or the SPE.

4. Comments on Proposed Decision

On July 5, 2005, the proposed decision of Administrative Law Judge (ALJ) Burton W. Mattson was filed and served on parties in accordance with Public Utilities Code Section 311(d) and Rule 77.1 of the Commission's Rules of Practice and Procedure. All parties stipulated to a reduction of the § 311(d) 30-day waiting period. As a result, comments were filed and served on July 15, 2005, by _____. Reply comments were filed and served on July 18, 2005, by _____.

5. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner. Burton W. Mattson is the assigned ALJ in this proceeding.

6. Rehearing and Judicial Review

This order construes, applies, implements, and interprets the provisions of SB 772. Therefore, applications for rehearing and judicial review of this order are subject to §§ 1731 and 1769. These laws provide that any application for rehearing 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. Since 1996, BART has purchased federal preference power through firm long term contracts and, except for very limited amounts of supplemental power necessary to balance deliveries of federal preference power with actual loads, has not purchased power from PG&E.

2. Rates adopted pursuant to the RDSA included charges necessary to recover costs of the regulatory asset, but PG&E's transmission rates and other charges related to BART's federal preference power deliveries did not include regulatory asset charges.

3. BART has neither been billed for, nor paid, any charges related to the regulatory asset for deliveries of preference power.

4. SB 1201 is specific to BART, and was enacted during the same legislative session as, but slightly after, SB 772.

5. Assessing ERB Charges on BART for deliveries of preference power shifts costs "related to the emergence of PG&E from bankruptcy" to BART, while

exempting BART from ERB Charges for deliveries of preference power does not shift costs to other PG&E customers.

6. Exempting BART from ERB Charges is a unique situation and causes no leakage.

7. SierraPine was the only qualifying customer to apply, and receive authorization, for waiver of the DA CRS, and waiver of the entire DA CRS was granted for the Rocklin facility, making the level of SierraPine's DA CRS cap zero.

8. PG&E did not seek to collect regulatory asset charges from SierraPine, and SierraPine paid no costs related to the regulatory asset as a result of the waiver of the DA CRS.

9. Nothing in this order with respect to either BART or SierraPine revises recovery costs, reduces or impairs the value of recovery property or has any effect on ERB Charges, other customers, or the SPE.

Conclusions of Law

1. The law authorizes BART to access lower cost sources of power, such as federal preference power and local publicly owned utility power, and requires PG&E to deliver this power over its transmission and distribution lines without discrimination or delay, for the purpose of facilitating BART's ability to reduce its electricity costs. (§ 701.8.)

2. We ordered that BART may raise the issue of its exemption from ERB Charges in this proceeding, preserving the issue for decision here. (D.04-11-015, Ordering Paragraph 60.)

3. The extent to which the Financing Order is irrevocable is specified in § 848.1(g), and nothing in this order conflicts with § 848.1(g).

4. SB 1201 recognizes an exemption for BART from ERB Charges created pursuant to SB 772, as confirmed by the published letter of intent of the author of SB 1201.

5. The ERB refinancing authorized by SB 772 is intended to reduce, not increase, costs related to the regulatory asset, and lower costs borne by PG&E's ratepayers.

6. BART should be exempt from ERB Charges on deliveries of preference power.

7. Applicant should return the balance in the BART memorandum account regarding ERB Charges to BART with interest within 30 days of the date of this order.

8. Urgency legislation adopted in 2003 provided that a qualifying direct transaction customer may apply to the Commission for a waiver of the DA CRS. (§ 367.3.)

9. Regulatory asset charges, and the replacement ERB Charges, are to be collected under, and subject to, the DA CRS cap.

10. SierraPine should be exempt from ERB Charges assessed under, or as part of, the DA CRS.

11. The period to apply for exemption from the DA CRS pursuant to § 367.3 has passed and no other customer can now seek and be granted such exemption.

12. This order should be effective immediately so that applicant, BART and SierraPine may obtain certainty about responsibility for ERB Charges.

13. This order construes, applies, implements, and interprets the provisions of SB 772. Therefore, applications for rehearing and judicial review of this order are subject to §§ 1731 and 1769. These laws provide that any application for rehearing 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.

INTERIM ORDER

IT IS ORDERED that:

1. The San Francisco Bay Area Transit District (BART) is exempt from Energy Recovery Bond (ERB) Charges assessed by Pacific Gas and Electric Company (PG&E) pursuant to the Financing Order (Decision 04-11-015) on all federal preference power and local publicly owned utility power purchased by and delivered to BART under Public Utilities Code Section 701.8. PG&E shall refund the entire balance in the BART Memorandum Account (used to accumulate BART payments of ERB Charges pursuant to the Financing Order) with interest within 30 days of the date this order is mailed. Interest shall be at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and shall be calculated from the date each payment was received by PG&E from BART to the date the refund is made.
2. SierraPine Ltd. is exempt from ERB Charges collected under or as part of the Direct Access Cost Responsibility Surcharge.
3. This proceeding remains open.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

List of Appearances

Applicant: Gail L. Slocum, Attorney at Law, for Pacific Gas & Electric Company.

Interested Parties: Alcantar & Kahl, LLP, by Michael Alcantar, for Cogeneration Association of California; Evelyn Kahl, Attorney at Law, for Energy Producers and Users Coalition; Nora Sheriff, Attorney at Law, for Valero Refining Company – California and Karen Terranova, for Occidental Elk Hills, Inc.; Devra Bachrach, for Natural Resources Defense Council; Barkovich and Yap, Inc., by Barbara R. Barkovich, for CLECA/Consultants; Tom Beach of Crossborder Energy, for CA Manufacturers & Technology Association; Law Office of William Booth, by William H. Booth, for California Large Energy Consumers Association; McCracken, Byers & Haesloop, by David J. Byers, Attorney at Law, for California City – County Street Light Association; Joseph Peter Como, for the City and County of San Francisco; Sheila Day, for Western Manufactured Housing Communities; Grueneich Resource Advocates, by Dian M. Grueneich and Jack P. McGowan, for University of California and California State University; Ellison, Schneider & Harris, LLP, by Lynn Haug, Attorney at Law, for East Bay Municipal Utility District and Douglas K. Kerner, Attorney at Law, for Duke Energy North America; Sutherland, Asbill & Brennan, by Keith McCrea, Attorney at Law, for CA Manufacturers & Technology Association; Karen Norene Mills, Attorney at Law, for California Farm Bureau Federation; Anderson & Poole, by Edward G. Poole, for Western Manufactured Housing Community Association; Bruce A. Reed, Attorney at Law, for Southern California Edison Company; James Ross, of RCS, Inc., for Coalinga Cogeneration Company; Goodin, MacBride, Squeri, Ritchie & Day, LLP, by James D. Squeri, for California Retailers Association; Downey, Brand, LLP, by Ann L. Trowbridge, for Distributed Generation/Distributed Energy Resources and Merced Irrigation District; Ed Yates, for California League of Food Processors; Department of the Navy, by Norman J. Furuta, Attorney at Law, for Federal Executive Agencies; Davis, Wright, Tremaine, LLP, by Jeffrey P. Gray, Attorney at Law, for BART; and Irene K. Moosen, Attorney at Law, for WMA.

Intervenors: Mike Florio and Matthew Freedman, for The Utility Reform Network; Morrison & Foerster, LLP, by Peter W. Hanschen, and Steven Moss, of M.Cubed, for Agricultural Energy Consumers Association; John R. Redding, of Arcturus Energy Consulting; for Silicon Valley Manufacturing Group; and Scott T. Steffen, for Modesto Irrigation District.

State Service: Patrick L. Gileau, Attorney at Law, Christopher Danforth, and Dexter E. Khoury; for the Office of Ratepayer Advocates; Donald J. LaFrenz, and Maria Vanko, for the Energy Division.

(END OF APPENDIX A)