DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ID#2610

ENERGY DIVISION **RESOLUTION E-3843**

SEPTEMBER 18, 2003

R E S O L U T I O N

Resolution E-3843. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E) filed tariff changes to implement the rules governing the rights and obligations of Direct Access (DA) customers to switch between bundled and DA service, as adopted in D.03-05-034, the "Switching Order." Approved with modifications.

By PG&E Advice Letter (AL) 2393-E, SCE AL 1717-E, and SDG&E AL 1508-E filed on June 23, 2003.

SUMMARY

This Resolution resolves implementation issues regarding the rules we adopted for eligible direct access (DA) customers to choose an ESP and continue on DA service if they had returned or been returned to bundled service after September 20, 2001.

BACKGROUND

By Decision (D.)02-03-055, we confirmed the DA suspension date of September 20, 2001 and adopted rules to implement that suspension. Among other things, we allowed DA customers who signed a direct access contract prior to September 20, 2001 to choose a new ESP and continue on direct access, subject to certain restrictions, even if they had returned to bundled service after September 20, 2001. This rule was termed the "switching exemption." The Utility Reform Network (TURN) filed an Application for Rehearing that argued the basis and lawfulness of the switching exemption. By Ordering Paragraph (OP) 4 of D.02-04-067, we granted a limited rehearing on the switching exemption to consider its legality in light of Assembly Bill 1X (2001) and D.01-09-060, and to develop an adequate record on this exemption.

Decision 02-11-022 in Rulemaking (R.) 02-01-011 adopted the DA cost responsibility surcharge (DA CRS) but deferred consideration of the switching exemption. On May 8, 2003, we issued D.03-05-034 (also referred to as the Switching Order) to adopt rules to implement the switching exemption, as well as to address its legality as granted in D.02-04-067. Finally, by D.03-06-035, we addressed applications for rehearing of D.03-05-034, filed by TURN, Edison and PG&E, and granted a limited rehearing on the issue of using the California Independent System Operator (ISO) hourly price as a proxy for the short-term commodity price of electricity. The applications for rehearing were otherwise denied in all other respects.

In the Switching Order we directed the utilities to jointly develop advice letters within 45 days to file tariff changes and develop implementation timing and details necessary to comply with that order. Within 15 days of the filing of the advice letter, the utilities were required to notify "grandfathered" DA customers by letter that they have 45 days from the date of the letter during which to respond if they elect to return to DA. The original schedule set forth in the Switching Order required these rules to be fully implemented by August 21, 2003 (OP 8).

On June 6, 2003, the Commission's Energy Division hosted a Rule 22 Working Group meeting as directed in the Switching Order, to discuss and resolve implementation issues arising from the rules adopted in that order. At the workshop, the utilities proposed an extended schedule resulting in a final implementation date of November 3, 2003, (instead of August 21, 2003). This proposal contemplates mailing the 45-day notification letter on September 19, 2003 (i.e., 45 days before November 3, 2003). No party expressed opposition to this proposal, and on July 3, 2003, the Commission's Executive Director granted the extension request of the utilities.

As directed in the Switching Order, on June 23, 2003 PG&E filed AL 2393-E; SCE filed AL 1717-E, and SDG&E filed AL 1508-E. Parties at the Rule 22 Working Group meeting were unable to resolve all of the implementation issues and require Commission determination for final implementation.

NOTICE

Notice of PG&E AL 2393-E, SCE AL 1717-E, and SDG&E AL 1508-E was made by publication in the Commission's Daily Calendar. PG&E, SCE, and SDG&E state

in their respective Als that in accordance with General Order 96-A, Section III, Paragraph G, this advice letter was sent to parties shown on the attached list and the service list for R. 02-01-011.

PROTESTS

Three parties timely protested PG&E's AL 2393-E, the Allicance for Retail Energy Markets and the Western Power Trading Forum (AReM/WPTF), Energy Management Services (EMS), and Calloway Golf. The same three parties timely protested SDG&E's AL 1508-E and SCE's AL 1717-E. In addition, Hitachi Global Systems Technologies (Hitachi) and SBC Services, Inc. (SBC) timely protested SCE's AL.

The utilities responded jointly to the protest of EMS on July 18, 2003 and to the protest of Callaway Golf on July 21, 2003. PG&E and SDG&E responded jointly to the protest of AReM/WPTF on July 21, 2003. SCE responded to the protests of SBC and Hitachi on July 17, 2003 and to the protest of AReM/WPTF on July 21, 2003.

The following is a more detailed summary of the major issues raised in the protests.

DISCUSSION

Parties at the June 6 Rule 22 Working Group Meeting raised a number of implementation issues, some of which they were able to resolve. Other issues required additional Commission guidance. In this section, we will address those issues. Parties at the workshop were able to resolve the following issues, some of which are not yet and need to be reflected in utility tariffs:

- After a DA customer gives the utility its 6-month notice to return to bundled service, the utilities will allow the customer a 3-day rescission period. SCE's proposal does not comply, since once the request is received, it cannot be cancelled.

- Before two and a half years elapses on a three-year term of bundled service, the utility will provide the bundled service customer with a notice before the customer faces the decision as whether to stay with bundled

service or to sign up with an ESP for DA service. This provision needs to be reflected in SDG&E's tariffs.

- For purposes of implementing the safe harbor rule, the utility will allow the ESP a 20-day window after the initial DASR is rejected for the DASR to be corrected. This provision needs to be reflected in SDG&E's tariffs.

Sixty-Day Meter Change Deadline

AReM/WPTF protested PG&E's and SCE's proposed Rule 22.1, and SDG&E's proposed Rule 25.1 (§§ A.2.c and C.6.c in all cases), which provides that for accepted Direct Access Service Requests ("DASRs") that require a meter change, the utility will cancel the DASR if the meter change is not completed within 60 days after the receipt of the DASR (or corrected DASR).

Among other things, SCE in its response, as well as PG&E and SDG&E in their joint response, point out that by definition, all the affected customers have been on DA and thus already have a DA compatable meter, so the 60-day time requirement is reasonable. Furthermore, all three utilities agree that if the ESP wishes to install a different meter, and cannot accomplish this within 60 days, the switch can be done after the customer returns to DA service. SDG&E and PG&E in their joint response also argue that adopting AReM/WPTF's proposal to apply the 180-day rule, would extend the safe harbor from the Switching Order's 60 days to as long as 260 days (i.e., 60 days to submit DASR; 20 days to correct DASR; 180 days to install meter) or more than four times the length of the intended transition period.

PG&E's rule requires that if the new ESP insists upon installing a new meter before the customer can switch back to direct access, the change must occur within 60 days after acceptance of the DASR. However, PG&E and SCE maintain that in most cases, if there are delays in switching the meter, the customer can be put back on direct access with its existing meter, and the ESP can change the meter after the customer is back on DA service. We find this approach reasonable. The utilities' tariffs should reflect that alternative (for the customer to return to DA service with its existing meter wherever possible) so that the 60-day limit on the safe harbor period is preserved. The utilities shall not use the 60-day rule to cancel DASRs and prevent eligible customers from returning to DA service. If the ESP is unable to change the meter within 60 days, it may serve the customer using the existing meter until such time as the meter change can be accomplished. Therefore, PG&E, SCE, and SDG&E shall modify the provisions

of proposed Rule 22.1 and 25.1 respectively, to provide for returns to DA service with existing meters wherever possible and to complete all necessary steps to allow the ESP to complete any necessary meter changes timely.

New ESP Restriction

AReM/WPTF in its protest to SCE's AL, argues that the restrictive provision of proposed Rule 22.1 (§ A.7) that prohibits DA customers that utilize the 60-day safe harbor from resuming DA service with their former ESP should be deleted. PG&E and SDG&E deleted this restrictive language at the request of parties at the June 6, 2003 Rule 22 Working Group meeting. SCE in its response argues that its restrictive tariff is necessary due to the potential for arbitrage and also because the transitional bundled service (TBS) rate might not be as high as the actual cost incurred by SCE to serve TBS customers as demonstrated by a few instances in the past. SCE recommends against allowing DA customers to switch to the same ESP, because this would allow ESPs to arbitrage their prices for power against the TBS price and return customers to SCE under the "safe harbor" provision when the TBS price is lower than their price. SCE argues that this situation is exactly what occurred during the energy crisis when Enron returned many of its DA customers to bundled service, without the customer's knowledge, to take advantage of lower bundled rates.

We concur with AReM/WPTF that it is not SCE's role to limit the competitive options available to DA-eligible customers. SCE's proposal places an undue restriction on customers trying to return to DA service after their stay in the safe harbor. SCE's requirement that DA customers must switch to a different ESP is more restrictive than our directive about the short-term nature of the TBS set forth in OP 5 of the Switching Order, which allows flexibility for new offerings as market conditions change. The safe harbor period is not indefinite, as was the situation during the 2000-01 crisis cited by SCE. Nor can customers under the Switching Order rules return to bundled service without notice and a lengthy time commitment. We expect the time period limitations of the safe harbor will work to hinder arbitrage and thus reject SCE's prohibition against the customer's returning to the same ESP.

The TBS pricing structure will also help insure that bundled service customers will be indifferent to those DA customers temporarily returning to bundled service under TBS. However we shall revisit safe harbor rules in the event of numerous and repeated returns to bundled service for purposes of arbitrage.

Continuous DA Status for Safe Harbor and Other Customers

Parties disagreed as to whether the safe harbor requirements adopted in the Switching Order regarding continuous DA status apply retroactively for those taking bundled service after September 20, 2001. A continuous DA customer, as provided in D.02-11-022, that remained on DA both before and after February 1, 2001, shall be excluded from the DWR power and bond charges. The controversy is whether customers that returned to bundled service after DA suspension can retain their CRS exemption. SBC in its protest and at the June 6 Rule 22 Working Group meeting argued that its comments on the proposed decisions on the switching exemption been adopted in the Switching Order.

The dispute involves interpretation of language in the Switching Order (at mimeo p. 19) "We also clarify that if a customer was exempt from DWR charges as a "continuous" DA customer (i.e., taking DA prior to February 1, 2001), that customer does not lose the exemption upon returning to DA service after utilizing the "safe harbor" provisions. We also clarify that for switches to utility bundled service for transitional purposes prior to the effective date of this order, the safe harbor period shall be 60 days from the time the DA status of the account was deactivated until a new DASR is submitted. We conclude that such accommodation is appropriate for switches that occurred prior to this order since parties were not on notice as to the 60-day limit adopted in this order."

AReM/WPTF, SBC, and Hitachi protested the unique position SCE took in its AL that the safe harbor does not apply retroactively more than 60 days prior to the effective date of D.03-05-034 (ie, March 8, 2003). These parties insist that the safe harbor period has retroactive application to September 21, 2001, and SCE has no basis to contend otherwise. Moreover, the Switching Order contains no mention of SCE's proposed March 8th trigger date for the safe harbor period. SBC notes that the proposed tariffs concurrently filed by PG&E and SDG&E offer appropriate models for SCE to follow. SCE in its responses insists that its interpretation meets the requirements in the Switching Order and objects to the idea that Hitachi finds it clear throughout that Order that the 60-day period runs once the DA status of the account is deactivated, regardless of when the account was deactivated. Citing retroactive ratemaking, SCE argues the impossibility of these parties' position on the basis of not being able to compute TBS pricing retroactively. SCE states that no transitional returns to bundled service (TBS) pricing, or any associated incremental cost pricing for TBS, could occur prior to D.03-05-034. In fact, SCE asserts that there will be no TBS until November 3, 2003, at the earliest. (See letter from William Ahern, Executive Director of the

Commission, dated July 3, 2003, granting the July 1, 2003 request by PG&E, SDG&E, and SCE for an extension of time to implement the switching exemption rules). SCE also discounts SBC's position that the Commission modified the proposed decision in accordance with SBC's comments, pointing out that the final decision did not include SBC's January 1, 2002 date, let alone the September 20, 2001 date.

SCE in its responses also argues that as more DA customers are reclassified as "continuous" DA customers, there will be less "non-continuous" DA customers to pay back the DA CRS undercollections. With fewer DA customers over which to spread the CRS costs, the cost per DA customer rises, as does the likelihood of default by those customers and an increased risk that bundled service customers will never be repaid the amounts postponed under the 2.7 cents cap. Furthermore, SCE argues that additional DA customers being reclassified as "continuous" DA customers, could require additional calculations that might delay DWR's revenue requirement proceeding.

We determined in the Switching Order that the 60-day safe harbor should be available to those continuous DA customers that were returned to bundled service before we adopted the switching exemption rules. However, after DA suspension, DA customers returned to bundled service for any reason were in many, if not all cases, unable to resume DA service. AReM/WPTF's information, consistent with the Energy Division's understanding, is that SCE's standard practice has been to reject DASRs to resume DA service submitted on behalf of DA customers that were returned to bundled service after September 20, 2001 pending resolution of the switching exemption rehearing. Thus we would place an unfair condition on these customers returned to bundled service after September 20, 2001 to make their continuous DA status contingent on their having DASRs submitted on their behalf within 60 days of the deactivation of their DA service.

Therefore, we clarify our accommodation for DA eligible customers that were on DA service prior to February 1, 2001 and returned to bundled service after September 20, 2001 but prior to implementation of the Switching Order. Since this subgroup of DA customers had no means after DA suspension of exercising their right to return to DA service, we clarify that their continuous status shall be honored if they elect to return to DA service during their 45-day window. Therefore the protests of AReM/WPTF, Hitachi, and SBC on this matter are granted as specified herein. PG&E, SDG&E, and SCE shall modify their tariffs

appropriately to implement the rules for continuous DA status as specified in the ordering paragraphs of this resolution.

A similar issue is whether a continuous DA customer that elects a 3-year term on bundled service retains its continuous DA status when it returns to DA at the end of those three years. In protests to the utilities' ALs, AReM/WPTF argues that no justification exists for requiring continuous DA customers that commit to receive bundled service for a 3-year period to pay DWR charges if they resume DA service at the end of their 3-year commitment period. These parties argue that nothing in D.03-05-034 suggests that such customers should lose their exemptions from paying DWR charges if they resume DA service. They add that to the extent the customer utilizes power procured under DWR contracts while on bundled service, the customer will pay the full costs of that power through bundled service rates.

Callaway Golf also argues that a customer should never lose its status as a "continuous" DA customer, regardless of the length of the customer's stay on bundled service. Callaway Golf reasons that in D.03-05-034 (p. 40), we held DA customers that return to bundled service remain liable for their respective share of the DA CRS undercollections resulting from the period they took DA service. Since that decision held customers responsible for DWR charges regardless of any switching that may occur between DA and bundled service, the reverse should also be true – that continuous DA customers not responsible for DWR charges should not acquire a new obligation to bear DWR charges upon a return to DA.

Callaway Golf also notes that in D.03-05-034 (p.30), we expressed concern regarding "cost-shifting" when customers switch between bundled and DA service. According to Callaway Golf, there is no shifting of DWR costs, however, when a continuous direct access customer returns to DA service, because the customer never previously bore DWR costs.

SCE in its response and PG&E and SDG&E in their joint response reiterate the determination made in D.02-11-022 that any DA customer returning to bundled service after February 1, 2001 shall be responsible for DA CRS charges and lose its continuous DA status (D.02-11-022, OP 13). The only exception granted in the Switching Order was for safe harbor customers (p. 16). PG&E and SDG&E argue that the continuous DA customer should not be able to take advantage of the

DWR portfolio (by returning to a 3-year term on bundled service) without losing its continuous direct access status.

We have attempted to apply cost responsibility even handedly according to cost incurrence and legislative mandate. Therefore, we direct PG&E, SCE, and SDG&E to include language in their Rules 22.1 and 25.1 providing that continuous DA customers that commit to receive bundled procurement service for a 3-year period shall retain their continuous DA status if they resume DA service at the end of their 3-year commitment.

Applicability of SCE's Historical Procurement Charge

AReM/WPTF protests that SCE should modify its proposed Rule 22.1 to provide that customers who are eligible to receive DA service but who have heretofore remained on bundled service shall not be responsible for paying the Historical Procurement Charge (HPC) if they elect to exercise their DA rights under the Switching Exemption Rules, provided that SCE has fully recovered its PROACT balance by the time the customers start receiving DA service. This exception is necessary to prevent the double-recovery of amounts recorded in the PROACT from such customers, once through bundled rates which the customers have paid and continue to pay and a second time through the HPC should they elect direct access after PROACT is recovered.

SCE in its response states that during the Rule 22 Working Group meeting held on June 6, 2003, its representatives stated that customers who are eligible to receive DA service, but who have remained on bundled service and have paid their share of Procurement Related Obligations Account (PROACT) balance will not be charged the HPC if they switch to DA service during the 45-day transition period. SCE, however, did not state that it would include this statement in its Rule 22.1. However in its response, SCE again confirms that it will not charge the HPC to the DA customers described above.

Since the PROACT is fully paid off, any bundled customer returning to DA after the 45-day notice that the utilities will provide on September 19, 2003 to eligible DA customers, will be exempt from the HPC, and SCE shall modify its tariffs to reflect this exemption. Such SCE customers will pay a CRS effectively capped at 1.7 cents per kWh.

Responsibility of Former DA Customer for CRS Undercollections When Returning to Bundled Procurement Service

As a result of the capping of the DA CRS implemented in D.02-11-022 and subsequent orders, DA customers have generated and will continue to generate significant undercollections of DWR-related costs. Therefore, we required that DA customers returning to bundled service remain liable for their respective share of DA CRS undercollections resulting from the period they took DA service. The returning DA customer shall thus remain responsible for the difference between the total DA CRS obligation at the date of the customer's switch to bundled service and the total amount paid pursuant to any DA CRS caps. The Rule 22 Working Group meeting, later replaced by the Utility Advice Letter process, was to address the issue of developing a tariff-based solution to provide for returning DA customers' repayment of an appropriate share of the accrued undercollection. This resolution will thus address the issue of the process for returning DA customers' repayment of prior obligations as directed in the Switching Order (p. 44-45, Finding 17).

PG&E proposes a tariff-based solution for applicable customers to repay an appropriate share of the accrued DA CRS undercollection. Customers who received DA service after September 20, 2001, and who were not otherwise exempt from paying the DA CRS, will be required to pay for the DA CRS undercollections for the period during which they took DA service.

DA customers who contributed to the DA CRS undercollection should be required to begin paying the DA CRS undercollection when the then-current DA CRS revenue requirement is less than the DA CRS revenue, which could occur months or years after implementation of the switching rules. At that time, PG&E anticipates that the CRS will include a "shortfall rate" for DA CRS undercollection. Customers who received only DA service after September 20, 2001, are obligated to pay this shortfall rate in full. Customers who did not receive DA service for the entire period after September 20, 2001, shall pay a percentage of the shortfall rate. The percentage that applies to each customer will be determined by the periods they took DA service since September 20, 2001, and the periods of bundled service during which the DA CRS was paid. The percentage will be multiplied by the applicable shortfall rate and by the customer's current sales to determine the amount of repayment each month. SCE proposes a new charge, named the DA-CRS-UC for recovery of under-collections related to the DA-CRS cap. SCE's Schedule DA-CRS (renamed and modified Schedule DA) establishes the provisions for application of this charge

to both DA customers as well as bundled service customers formerly served on DA. SDG&E is revising Schedule DA-CRS to establish the provisions for applying the undercollection to both DA customers as well as bundled service customers who were formerly served on DA after September 20, 2001. Neither SCE nor SDG&E describe any weighting of this new charge as does PG&E.

PG&E's proposal is equitable in assigning costs to appropriate customers. We will approve PG&E's method for use in all three service territories. SCE and SDG&E shall modify their tariffs accordingly.

TBS Pricing

EMS protested the commodity charge calculation for TBS. The utilities responded jointly, citing discussion in the Switching Order about the undue complexity and impracticality of requiring each utility to calculate actual short-term commodity costs on an hour-by-hour basis incurred to serve" TBS customers (at mimeo p. 20). The utilities argue that the simplifications they proposed determine the charge in a timely and less complicated manner and thus oppose the methodology changes EMS recommends, which would yield outcomes that vary by utility and billing period. We concur with the utilities that these added complexities are appropriate and necessary for permanent bundled rates but not for a rate that applies to TBS service which is temporary. As such, our primary goal for the TBS price is that it be fully compensatory to the bundled portfolio. Thus we deny EMS's protest and approve the utilities' TBS rate calculations for the time being. We note that TURN, SCE, and PG&E filed applications for rehearing of D.03-05-034, and we granted a limited rehearing in D.03-06-035 on the issue of using the ISO hourly price as a proxy for the short-term commodity price of electricity. Depending on that outcome, the utilities may eventually need to submit revised tariffs to alter their TBS pricing.

COMMENTS

Public Utilities Code section 311(g)(1) provides that draft resolutions must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. The draft resolution was mailed to parties for comment. Comments were submitted by _____ on _____.

FINDINGS

1. In D.03-05-034, the "Switching Order," we directed PG&E, SCE, and SDG&E to file Advice Letters to implement the rules we adopted to govern the rights and obligations that apply for DA customers to return to bundled service and subsequently switch back to DA service.
2. Parties at the June 6, 2003 Rule 22 Working Group meeting resolved certain issues as explained in the discussion section herein.
3. On June 23, 2003, PG&E filed AL 2393-E, SCE filed AL 1717-E, and SDG&E filed 1508-E proposing to implement the DA switching exemption rules.
4. AReM/WPTF, EMS, and Callaway Golf timely protested PG&E's AL 2393-E, SCE's AL 1717-E, and SDG&E's 1508-E.
5. SBC and Hitachi timely protested SCE's AL 1717-E.
6. For most cases in which a customer's meter change is delayed, the customer can be put back on direct access with its existing meter, and the ESP can change the meter after the customer is back on DA service. Thus meter changes should not extend the customer's stay on safe harbor.
7. At the request of parties at the June 6, 2003 Rule 22 Working Group meeting, PG&E and SDG&E deleted a prohibition on safe harbor customers returning to DA service with their former ESP.
8. The competitive options available to safe harbor customers should not be unduly limited.
9. Numerous and repeated returns of DA customers to bundled service for purposes of arbitrage will serve as cause to revisit the safe harbor rules.
10. The Switching Order contains no mention of SCE's proposed March 8th trigger date for the retroactive safe harbor period.
11. The utilities may have been rejecting DASRs to resume DA service submitted on behalf of DA customers that were returned to bundled service after September 20, 2001 pending resolution of the switching exemption rehearing. Thus we would place an unfair condition on these customers returned to bundled service after September 20, 2001 to make their continuous DA status contingent on their having DASRs submitted on their behalf within 60 days of the deactivation of their DA service.
12. In D.03-05-034, we held DA customers that return to bundled service responsible for their respective share of DA CRS undercollections resulting from the period they took DA service. Thus the reverse should also be true – that continuous DA customers not responsible for DWR charges should not acquire a new obligation to bear DWR charges upon a return to DA.
13. Since SCE has fully recovered its PROACT balance, an HPC exception is required for DA eligible customers that have been on bundled service that

elect to return to DA service during the 45-day notice period. Such SCE customers will pay a CRS effectively capped at 1.7 cents per kWh.

14. PG&E's proposed tariff-based solution for DA customers returning to bundled service to repay an appropriate share of the accrued DA CRS undercollection is equitable in assigning costs to appropriate customers.
15. Our primary goal for the TBS price is that it be fully compensatory to the bundled portfolio.

THEREFORE IT IS ORDERED THAT:

1. The DA Switching Rules proposed by PG&E in Advice Letter AL 2393-E, SCE in AL 1717-E, and SDG&E in AL 1508-E are approved as modified herein.
2. After a DA customer gives the utility its 6-month notice to return to bundled service, the utilities will allow the customer a 3-day rescission period.
3. Before two and a half years elapses on a three-year term of bundled service, the utility will provide the bundled service customer with a notice before the customer faces the decision as whether to stay with bundled service or to sign up with an ESP for DA service.
4. For purposes of implementing the safe harbor rule, the utility shall allow the ESP a 20-day window after the initial DASR is rejected for the DASR to be corrected.
5. PG&E, SCE, and SDG&E shall modify the provisions of proposed Rule 22.1 and 25.1 respectively, to provide for returns to DA service with existing meters wherever possible and to complete all necessary steps to allow the ESP to complete any necessary meter changes timely.
6. SCE shall delete the prohibition against a safe harbor customer's returning to the same ESP.
7. PG&E, SCE, and SDG&E shall modify their Proposed Rules 22.1 and 25.1, respectively § A.6 to provide continuous DA status for DA eligible customers that were on DA service prior to February 1, 2001 and returned to bundled service after September 20, 2001 but prior to implementation of the switching order.
8. PG&E, SCE, and SDG&E shall include language in their Rules 22.1 and 25.1 providing that continuous DA customers that commit to receive bundled procurement service for a 3-year period shall retain their continuous DA status if they resume DA service at the end of their 3-year commitment.

9. Since the PROACT is fully paid off, any bundled customer returning to DA after the 45-day notice that the utilities will provide on September 19, 2003 to eligible DA customers, will be exempt from the HPC, and SCE shall modify its tariffs to reflect this exemption.
10. PG&E, SCE, and SDG&E shall make the tariff changes necessary to implement the tariff-based solution as proposed by PG&E for applicable former DA customers to repay an appropriate share of the accrued DA CRS undercollection. Customers who received DA service after September 20, 2001, and who were not otherwise exempt from paying the DA CRS, will be required to pay for the DA CRS undercollections for the period during which they took DA service.
11. Based on our primary goal for the TBS price - that it be fully compensatory to the bundled portfolio - we deny EMS's protest and approve the utilities' TBS rate calculations, pending the outcome of the limited rehearing granted for D.03-05-034.
12. The protests of AReM/WPTF, Callaway Golf, Hitachi, and SBC are granted to the extent specified herein and in all other respects denied.
13. Within 7 days of the effective date of this resolution, PG&E shall supplement AL 2393-E, SCE shall supplement AL 1717-E, and SDG&E shall supplement AL 1508-E to reflect the modifications to their proposed tariffs as specified in this resolution. These supplemental advice letters shall be effective on November 3, 2003 subject to Energy Division determining that they are in compliance with this Order.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 18, 2003; the following Commissioners voting favorably thereon:

_____

WILLIAM AHERN
Executive Director

August 19, 2003 Commission Meeting Date:
September 18, 2003

TO: PARTIES IN R.02-01-011 and PARTIES TO PG&E ADVICE LETTER 2393-E, SCE AL 1717-E, and SDG&E AL 1508-E

Enclosed is draft Resolution E-3843 of the Energy Division. It addresses the utilities' proposals to implement the switching exemption rules as filed in PG&E's Advice Letter 2393-E, SCE's AL 1717-E, and SDG&E's AL 1508-E. The draft Resolution will be on the agenda at the September 18, 2003 Commission meeting. The Commission may then vote on this draft Resolution or it may postpone a vote until later.

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

Parties may submit comments on the draft Resolution.

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

Jerry Royer
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
fax: 415-703-2200

An **electronic copy** of the comments should be submitted to:

Kathryn Auriemma
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
email: "kdw@cpuc.ca.gov"

Any comments on the draft Resolution must be received by the Energy Division by September 3, 2003. Those submitting comments must serve a copy of their comments on 1) the entire service list attached to the draft Resolution, 2) all Commissioners, and 3) the director of the Energy Division, on the same date that the comments are submitted to the Energy Division.

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

Replies to comments on the draft resolution may be submitted (i.e., received by the Energy Division) on September 8, 2003 five days after comments are filed, and shall be limited to identifying misrepresentations of law or fact contained in the comments of other parties. Replies shall not exceed five pages in length, and shall be served as set forth above for comments.

Late submitted comments or replies will not be considered.

Don Lafrenz
Energy Division

Enclosures:

Certificate of Service

Service List – Parties in R.02-01-011, and Parties to PG&E AL 2393-E, SCE AL 1717-E, and SDG&E AL 1508-E

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Draft Resolution E-3813 on all parties in these filings or their attorneys as shown on the attached list.

Dated August 19, 2003 at San Francisco, California.

_____
Jerry Royer

NOTICE

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