Decision 10-11-011 November 19, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E), Modesto Irrigation District, and Merced Irrigation District For Approval Of Nonbypassable Charge Agreement.	Application 09-06-023 (Filed June 24, 2009)

DECISION ADDRESSING APPLICATION FOR APPROVAL OF NONBYPASSABLE CHARGE AGREEMENT

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DECISION ADDRESSING APPLICATION FOR APPROVAL OF NONBYPASSABLE CHARGE AGREEMENT

Summary

This decision approves, with modifications, the nonbypassable charge agreement (NBC Agreement) between the Modesto Irrigation District and the Merced Irrigation District (jointly, the Districts) and Pacific Gas and Electric Company (PG&E) whereby the Districts will pay mutually agreed upon amounts that PG&E will apply to nonbypassable charges (NBCs) under PG&E's Electric Rate Schedule for New Municipal Departing Load customers (NMDL Customers) served by the Districts. Approval of the NBC Agreement resolves all issues surrounding PG&E's billing and collection of NBCs from NMDL Customers served by the Districts.

Approval of the NBC Agreement is in the interest of PG&E and its ratepayers because the NBC Agreement reduces the costs that PG&E ratepayers would otherwise bear.

1. Background

On June 24, 2009, the Modesto Irrigation District and the Merced Irrigation District (jointly, the Districts) and Pacific Gas and Electric Company (PG&E) (collectively, the Applicants) filed Application (A.) 09-06-023 (Application) requesting Commission approval of the nonbypassable charge agreement (NBC Agreement) between Applicants whereby the Districts will pay mutually agreed upon amounts which PG&E may apply to nonbypassable charges (NBCs) under PG&E's Electric Rate Schedule for New Municipal Departing Load customers (NMDL Customers) served by the Districts.[1]

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[1] *See* PG&E Rate Schedule E-NMDL which defines NMDL as electric load that has never been served by PG&E but locates within PG&E's service area as it existed on

Notice of the Application appeared in the Commission's July 1, 2009 Daily Calendar. No protests or responses to the Application were filed, and no evidentiary hearings are necessary.

On June 30, 2009, PG&E filed a motion for authority to suspend billing NBCs to NMDL Customers served by the Districts pending the Commission's consideration of the Application (Motion). The August 21, 2009 ruling granted the unopposed Motion.[2]

The February 26, 2010 ruling (February 26 Ruling) directed Applicants to file and serve comments on issues raised by the Application, and invited parties to A.09-06-023, Rulemaking (R.) 02-01-011 and R.06-07-010 to submit comments on the same.

On March 15, 2010, Kurt Danziger submitted a letter to the Administrative Law Judge (ALJ) in response to the February 26 Ruling on behalf of the Publicly Owned Utility Customer Association recommending approval of the Application (Danziger Letter), and the California Department of Water Resources (DWR) served a memorandum response (DWR Memorandum Response).[3]

February 1, 2001, and is served by a publicly-owned utility (POU).

[2] To minimize customer confusion, the August 21, 2009 ruling required PG&E to send a letter to NMDL Customers served by the Districts informing them that (1) PG&E and the Districts have reached an agreement regarding PG&E's Schedule E-NMDL and associated NBC obligations, (2) PG&E has filed an application for approval of this agreement with the Commission, (3) PG&E's billing and collection efforts are suspended pending the Commission's consideration and resolution of that application, and (4) billing may resume, including billing of NBCs that were not billed during suspension, if the agreement is not approved.

[3] The DWR Memorandum Response and the Danziger Letter were not filed with the Commission's Docket Office (Docket Office). These documents were placed in the record of this proceeding as Exhibit Nos. 1 and 2, respectively, pursuant to the August 17, 2010 and August 31, 2010 ALJ rulings.

On March 18, 2010, the Applicants filed and served comments, and on March 26, 2010, Applicants filed and served reply comments. On March 29, 2010, Southern California Edison Company (SCE) filed and served reply comments.

The August 12, 2010 ALJ ruling (August 12 Ruling) directed Applicants and invited DWR to submit additional information in connection with Applicants' and DWR's responses to the February 26 Ruling concerning a specific exemption from the remittance procedure in the Servicing Order adopted in Decision (D.) 07-03-025. The August 12 Ruling also directed PG&E to provide an estimate of the current and expected future legal and other costs it will incur to collect the amounts that have accrued and will accrue to the Districts' NMDL Customers, and directed Applicants to provide a description of the Westley-Tracy transmission line.

On August 30, 2010, the Applicants jointly filed and served their response to the August 12 Ruling and DWR served its response.[4] On September 7, 2010, Applicants jointly filed and served a reply to the DWR response.

2. Schedule E-NMDL and the NBCs Applicable to NMDL Customers

In R.02-01-011, pursuant to Pub. Util. Code § 366.2(d),[5] the Commission adopted a Cost Responsibility Surcharge (CRS) applicable to MDL to ensure there is no cost shifting among customers.[6] The Commission subsequently adopted Resolution Res. E-4064, approving, with modifications, PG&E's tariff

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[4] The August 30, 2010 DWR Memorandum Response was not filed with the Docket Office. This document was placed in the record of this proceeding as Exhibit No. 3, pursuant to the September 23, 2010 and October 5, 2010 rulings.

[5] All statutory references are to the California Public Utilities Code unless otherwise indicated.

[6] *See* Decision (D.) 03-07-028, D.03-08-076, D.04-11-014, D.04-12-059, D.05-07-038, D.05-08-035, D.06-03-004, and D.06-07-030.

Schedule E-NMDL, implementing prior Commission directives and authorizing procedures for the billing and collection of the CRS and other NBCs from the NMDL Customers located within PG&E's service area.

Schedule E-NMDL identifies the NBCs that NMDL Customers are billed, the exemptions from and exceptions to NBCs, and the definitions and procedures establishing PG&E's obligations for billing and collecting NBCs from NMDL Customers. Pursuant to Res. E-4064, Schedule E-NMDL also permits bilateral agreements between PG&E and POUs or POU customers as an alternative to PG&E Schedule E-NMDL.[7]

The NBCs applicable to NMDL customers within the service territory of PG&E served by the Districts include the DWR Bond Charge, the ongoing Competition Transition Charge (Tail CTC)[8] (which are components of the CRS), the Trust Transfer Amount (TTA) Charge, and the Nuclear Decommissioning (ND) Charge. There are other charges in the NMDL tariff that are not applicable to the NMDL customers served by the Districts (e.g. the DWR Power Charge).[9]

3. Background on the Application

The Application requests approval of the NBC Agreement, which provides that the Districts will pay PG&E agreed upon amounts that PG&E may apply to NBCs and relieves PG&E of responsibility for billing and collecting NBCs from NMDL Customers served by the Districts.

The Application states that PG&E began issuing bills to NMDL Customers in or around June 2008, including those NMDL Customers who receive electric

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[7] Special Condition 5.

[8] The Tail CTC includes the components specified in Section 367, applicable to MDL customers in the investor-owned utility (IOU) service territory as of December 20, 1995.

[9] *See* PG&E Schedule E-NMDL.

distribution service from the Districts. Subsequently, many NMDL Customers served by the Districts refused to pay PG&E bills for NBCs, and some voiced their dissatisfaction with the bills for NBCs to the Commission and Legislature. According to Applicants, at the recommendation of several members of the Legislature, Applicants and certain NMDL Customers entered into negotiations in September 2008 to resolve issues surrounding billing and collection of NBCs from NMDL Customers served by the Districts. Applicants state that the NBC Agreement is a result of those negotiations.

Special Condition 5 of Schedule E-NMDL permits bilateral agreements with POUs or POU customers to be used as an alternative arrangement to PG&E's NMDL tariff.[10] The Application is the first request to the Commission for approval of a bilateral agreement that was entered into pursuant to Special Condition 5 of Schedule E-NMDL and Res. E-4064.

Neither Res. E-3999 nor Res. E-4064 specify whether bilateral agreements require Commission approval, or, if so, whether the advice letter, application, or another process should be followed to request any Commission approval that may be required.[11] Therefore, before addressing the substantive issues related to the Application, we first consider whether the NBC Agreement requires Commission approval via the application process or the advice letter process, or whether no further approval beyond the authorization in Res. E-3999 and Res. E-4064 is necessary.

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[10] The Districts are POUs pursuant to Pub. Util. Code § 224.3 and Water Code § 2050, *et seq*.

[11] Res. E-3999 permits bilateral agreements as an alternative arrangement to the Transferred MDL tariff while Res. E-4064 permits bilateral agreements as an alternative arrangement to the New MDL tariff.

4. Is an Application Necessary for Approval of the NBC Agreement?

The filing of this Application indicates Applicants believe that approval of the NBC Agreement via the application process is necessary.

SCE states that it has reached agreement with four of the six POUs in its service territory but has not sought Commission review of those bilateral agreements because it interprets Res. E-4064 as authorizing IOUs to complete bilateral agreements with POUs without the need for further Commission approval. SCE nevertheless recommends that the Commission approve the NBC Agreement and other similar agreements that are consistent with Res. E-3999 and Res. E-4064 because, according to SCE, such agreements streamline the process for collecting NBCs from MDL customers, and reduce administrative and legal costs that would ultimately be borne by ratepayers.

DWR states that agreements such as the NBC Agreement may shift costs to other customers, including those customers of other IOUs, if assumptions concerning incremental collection costs are overstated. DWR recommends that all bilateral agreements between IOUs and POUs be reviewed by the Commission to ensure affected customers are contributing fairly to recoverable costs and that DWR collects the full amount of the DWR charges.

Discussion

Res. E-3999 and Res. E-4064 state that, as an alternative to the tariff process and procedures, a POU or a POU consumer and PG&E "may mutually agree upon a mechanism to fund, pay, or collect the CRS and other NBCs."

The authorization granted by Res. E-3999 and Res. E-4064 to enter into bilateral agreements was intended to give IOUs and POUs the flexibility to use other alternative arrangements "to fund, pay, or collect the CRS and other NBCs" in lieu of the detailed billing and collection procedures specified in Schedule

NMDL and other IOU's comparable tariffs.[12] Given its concerns about cost shifting,[13] the Commission did not give the IOUs blanket approval to re-negotiate nonbypassable charges without further Commission review and approval.

The NBC Agreement allows the Districts to pay PG&E specified amounts to fulfill the NBC obligations of the NMDL Customers served by the Districts. The agreed-upon amounts are less than the amounts established by the Commission for NBC obligations that have accrued in the past and that will accrue for ongoing charges, and relieves PG&E of its obligation to bill and collect the applicable tariffed charges.

Requesting approval of the NBC Agreement via advice letter would be appropriate if PG&E and the Districts had simply agreed to deviate from the billing and collection procedures in Schedule NMDL and not deviate from the charges in the rates section of the tariff.[14] However, because the NBC Agreement raises policy questions addressed in R.02-01-011 concerning cost shifting, the

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[12] For example, a POU could agree to pay the CRS and other charges listed on Schedule NMDL on behalf of its customers (or agree to bill and collect the charges from its customers), the IOU would then cease billing those customers, no longer need to follow the procedures in the tariff, and the IOU would compensate the POU for the costs the IOU avoids by not having to continue to bill and collect from those customers.

[13] *See* D.03-07-028 (at 13, 19-23); D.03-08-076 (at 4-8, 11); D.04-11-014 (at 10, 12-13, 36-37; and D.04-12-059 (at 13-14).

[14] The primary use of the advice letter process is to review a utility's request to change its tariffs in a manner previously authorized by statute or Commission order, to conform the tariffs to the requirements of a statute or Commission order, or to get Commission authorization to deviate from its tariffs. A utility may also request relief by means of an advice letter where the utility has been authorized or required, by statute, by General Order (GO) 96-B, or by other Commission order, to seek the requested relief by means of an advice letter; or requests modification of a Commission resolution addressing a prior advice letter of the utility. GO 96-B, General Rules, Rule 5.1.

filing of an application is advised in order for the Commission to determine if the agreement contravenes any Commission decisions or other law, and the extent, if any, that the agreement may shift costs to PG&E's bundled customers.[15]

We now describe details of the NBC Agreement and consider issues raised by the proposed agreement.

5. Description of Proposed Agreement

The NBC Agreement provides that the Districts will each pay PG&E mutually agreed upon amounts which PG&E may apply to NBCs of the NMDL Customers served by the Districts. The NBC Agreement relieves PG&E of any obligations to bill or collect the applicable NBCs from existing NMDL Customers or new NMDL Customers who receive electric service from the Districts. Upon payment by the Districts of the amounts described in the NBC Agreement, PG&E will release NMDL Customers who receive electric distribution service from the Districts from liability for the NBCs otherwise due or that may accrue pursuant to current Commission decisions and PG&E Schedule E-NMDL.

The NBC Agreement also identifies the NMDL charges applicable to new and existing NMDL Customers served by the Districts, and, as discussed in greater detail below, (1) qualifies the NMDL Customers served by the Districts as of November 13, 2007 for the "stand-alone" exemption set forth in PG&E Schedule E-NMDL, Special Condition 2.e; (2) terminates PG&E's billing and collection obligations to new and existing NMDL Customers served by the Districts; (3) provides for credits to the Districts for PG&E's avoided costs related to the billing and collection of NBCs; (4) exempts new and existing NMDL

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[15] The advice letter process is not appropriate for requests that are controversial or that raise important policy questions. GO 96-B, General Rules, Rule 5.1.

Customers served by the Districts from additional generation-related or distribution-related NBCs; and (5) provides for PG&E to refund the NMDL Customers served by the Districts prior NMDL payments.

The Districts agree to pay PG&E the amounts shown in Appendix A to the NBC Agreement that have accrued or will accrue for retroactive and ongoing NBCs charged to existing NMDL Customers served by the Districts, subject to a 45% reduction to reflect PG&E's current collection experiences and the efficiencies associated with the Districts paying these amounts. The Districts will also pay PG&E the amounts shown in Appendix A to the NBC Agreement that have accrued or will accrue for ongoing NBCs charged to new NMDL Customers served by the Districts, subject to a 40% reduction to reflect PG&E's expected future collection experience and the efficiencies associated with the Districts paying these amounts.

In recognition of its avoided billing and collection costs, PG&E agrees to reduce the amounts to be paid by the Districts in accordance with PG&E's Schedule E-Credit.[16] In particular, PG&E will compensate the Districts based on the estimated number of NMDL Customers served by the Districts as of February 1, 2009, as shown in Appendix A to the NBC Agreement. These amounts will be credited on a timeframe that is consistent with the Districts' decisions regarding payments.[17]

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[16] Schedule E-Credit provides for credits to customers that receive consolidated or dual billing services from energy service providers.

[17] The NBC Agreement permits the Districts to elect to pay certain of their obligations on a lump-sum or three-year amortized basis, some on a lump-sum or monthly basis, and others on a per-customer basis.

The NBC Agreement qualifies the NMDL Customers served by the Districts as of November 13, 2007 for the "stand-alone" exemption in PG&E Schedule E-NMDL, Special Condition 2(e).[18]

The NBC Agreement provides that, if PG&E is authorized or directed to bill and collect, any new NBCs related to generation or distribution facilities or assets, such charges will not apply to the NMDL Customers served by the Districts.

The NBC Agreement contains additional provisions relating to jointly supporting approval of the NBC Agreement, dispute resolution procedures, termination of the NBC Agreement, and provisions addressing confidentiality and disclosure, consents, releases, waivers and notices.

Following is a summary of comments on the Application and discussion of the issues raised by the NBC Agreement.

6. Issues Raised by the NBC Agreement

The Application raises issues related to the billing of NBCs addressed in R.02-01-011, and issues related to the billing of DWR-related CRS addressed in R.06-07-010. As a result, the February 26 Ruling directed Applicants to file and serve comments on the issues discussed below, and invited parties to A.09-06-023, R.02-01-011 and R.06-07-010 to submit comments on the same.

The February 26 Ruling sought comments on, among other things: (1) whether agreements that reduce the amount of NBCs payable to reflect uncollectibles and avoided costs are permissible under Commission decisions or statutes prohibiting cost shifting; and (2) if the Commission may approve an

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[18] Special Condition 2.e provides that NMDL taking service from a POU without the use of transmission and distribution facilities owned by PG&E is exempt from ongoing CTC.

agreement that relieves PG&E of its obligations to bill and/or collect NBCs and that releases NMDL Customers that receive electric distribution service from the Districts from liability for NBCs otherwise due or that may accrue pursuant to current Commission decisions and PG&E Schedule E-NMDL.

6.1. May PG&E Reduce the NBCs Payable by NMDL Customers Served by the Districts and Release those NMDL Customers from Liability for NBCs, and Relieve PG&E of its Obligations to Bill and/or Collect NBCs?

Applicants assert that agreements that reduce the amount of NBCs that are payable are permissible under § 366.2(d), § 366.2(g)(2), and § 367, and that the Commission is not prohibited from approving the NBC Agreement or otherwise taking actions that might result in some cost shifting. Applicants acknowledge that reductions to the amounts of NBCs charged to NMDL Customers may result in some modest cost-shifting. According to Applicants, however, the Commission has discretion to approve exceptions to NBCs when justified by the facts or public policy. Applicants point to D.03-04-030 as an example of the Commission finding it reasonable and consistent with legislative and Commission policy to exempt customer generation under 1.0 megawatts in size from all CRS cost components.

Applicants state that the Commission has the legal authority, pursuant to current Commission decisions and PG&E Schedule E-NMDL, to approve an agreement that releases NMDL Customers from NBCs otherwise due. In particular, Applicants state that Special Condition 3a of PG&E Electric Schedule E-NMDL expressly provides that PG&E may be relieved of its obligations to bill and collect NBCs from NMDL customers by entering into a bilateral agreement with a POU or POU customer.

Applicants assert that approval of the NBC Agreement is justified because the NBC Agreement reduces or eliminates the uncertainty and potential that PG&E may collect little or nothing from NMDL customers, and because the administrative and legal cost savings associated with the NBC Agreement will likely exceed the reductions in NBCs provided under the NBC Agreement. Applicants contend that the NBC Agreement is in their customers' and the public interest because it reasonably resolves issues surrounding NBCs that PG&E is billing the NMDL Customers served by the Districts.

DWR states that the DWR Rate Agreement adopted in D.02-02-051 (Rate Agreement)[19] and the Servicing Order adopted in D.07-03-025 (Servicing Order) do not prohibit the Commission from reducing the amounts that have accrued or will accrue for prior and ongoing NBCs charged to the NMDL Customers served by the Districts, as long as the Commission sets rates to collect sufficient bond charges without shifting recoverable costs between customers. According to DWR, D.04-12-059 found that § 366.2(d) provides the Commission with the discretion to determine the fair share to be paid by each customer class, and that the Servicing Order anticipates and provides for billing and collection for non-utility bills such as those contemplated in the NBC Agreement.

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[19] The DWR Rate Agreement requires the Commission to establish bond charges and power charges sufficient to cover DWR's revenue requirements to pay its power costs and bond obligations, respectively.

Discussion

As stated above, the authorization granted by Res. E-3999 and Res. E-4064 to enter into bilateral agreements was to give IOUs and POUs the flexibility to use other alternative arrangements to fund, pay, or collect the CRS and other NBCs in lieu of the procedures specified in Schedule E-NMDL and other IOU's comparable tariff. Res. E-3999 and Res. E-4064 do not explicitly state whether IOUs may agree to reduce the amount of NBCs obligations.

However, in connection with notice to MDL consumer requirements, Res. E-4064 orders that:

> "SCE and PG&E shall revise their tariffs to state that if at the time the consumer notice is due, an IOU has entered into, or agreed to enter into, bilateral discussions with a POU or a POU customer, then the notice requirement for the new MDL consumer(s) taking service from that POU may be suspended until such time as the IOU and POU, or POU customer, <u>reach agreement on the CRS and other NBC obligations</u>, or the IOU determines that a bilateral agreement will not be feasible. <u>If a bilateral agreement is reached that resolves the CRS and other NBC obligations</u>, then the consumer notice requirement is extinguished. If the CRS and other NBC obligations are not resolved through bilateral negotiations, then the IOU shall send the consumer notices required in this subparagraph within 15 days of concluding such bilateral negotiations."[20]

Thus, Res. E-4064 anticipates the possibility that bilateral agreements could address and resolve NBC obligations.

D.09-08-015 approved the application of PG&E and the Power and Water Resources Pooling Authority (PWRPA)[21] for a nonbypassable charge agreement

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[20] Ordering Paragraph (OP) No. 1(n). Emphasis added. Res. E-3999 contains similar language at OP No. 1(d).

[21] PWRPA operates as a local publicly-owned electric utility, as defined by Pub. Util. Code § 9604(d), and provides electric service to its end–use customers under a master rate and service agreement.

between PG&E and PWRPA that provides for a lump-sum payment by PWRPA on behalf of its customers that owe NBCs under PG&E's Electric Rate Schedule E-NWDL.[22] Although not designated a "bilateral agreement," as defined by Res. E-4064, the PG&E/PWRPA agreement approved by D.09-08-015 is similar to the NBC Agreement in that it requires PWRPA to pay an agreed-upon amount to resolve past, present, and future NBC obligations for the New Western Area Power Administration Departing Load (NWDL) customers of PWRPA.

Because the negotiations leading to the PG&E/PWRPA agreement provides that content of discussions leading to the agreement are confidential, it is not known how much of the tariffed NBCs obligations were reduced, if at all, under the PG&E/PWRPA agreement. However, the PG&E/PWRPA agreement states that the estimate upon which the agreed-upon settlement is based is reasonable, binding, and not affected or altered if actual charges are different than those reflected in the binding estimate.

D.09-08-015 concluded that the PG&E/PWRPA agreement was reasonable, consistent with law, and in the public interest.[23] D.09-08-015 further concluded that the PG&E/PWRPA agreement fully satisfied the NWDL charge obligations of PWRPA's NWDL customers, and that PG&E has no right to seek further payment or pursue any claim against NWDL customers for charges under Schedule E-NWDL.[24] Thus, the Commission has previously approved an agreement that resolves past, present, and future NBC obligations by payment of amounts that may differ from tariffed charges, that relieves an IOU of its

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[22] Schedule E-NWDL applies to New Western Area Power Administration (WAPA) Departing Load.

[23] Conclusion of Law No. 1.

[24] Conclusion of Law No. 3.

obligations to bill or collect NBCs, and that releases the departing load customers of a POU from liability for the payment of NBCs.

We conclude that PG&E and the Districts may enter into the NBC Agreement to resolve NBC obligations, including reducing the amount of NBCs payable by NMDL Customers served by the Districts, releasing those NMDL Customers from liability for NBC obligations, and relieving PG&E of its obligations to bill and/or collect NBCs. However, as discussed above, the NBC Agreement must be reviewed and approved by the Commission in an application.

6.2. Do the Districts Qualify for the Stand-Alone Exemption?

Section II.C of the NBC Agreement qualifies, for purposes of the NBC Agreement only, the NMDL Customers served by either of the Districts as of November 13, 2007 for the "stand-alone" exemption in PG&E Schedule E-NMDL, Special Condition 2(e). Special Condition 2(e) provides that "New Municipal Departing Load taking service from a POU without the use of transmission and distribution facilities owned by PG&E is exempt from ongoing CTC." According to Applicants, November 13, 2007 is the date that the Westley-Tracy transmission line was energized.

Res. E-4064 approved Special Condition 2(e) after clarifying that, consistent with D.03-07-028, as modified by D.03-08-076, the exemption applies only to ongoing (i.e., "Tail") CTC and not other NBCs.[25] D.03-07-028, as modified by D.03-08-076, determined that, for purposes of CTC recovery, "new

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[25] *See* Res. E-4064, Finding of Fact No. 17.

load" excludes load met through a direct transaction that does not otherwise require the use of transmission and distribution facilities owned by the IOU.[26]

Applicants state that the Westley-Tracy transmission line is a double circuit 230 kilovolt (kV) transmission line extending approximately 30 miles from Westley to Tracy.[27] According to Applicants, the first circuit was energized in December 1995. The Modesto Irrigation District (ID) subsequently entered into an agreement with WAPA to connect the second circuit at WAPA's Tracy Substation, and this second circuit was energized in November 2007.

Applicants state that ownership and all costs of the Westley-Tracy transmission line are shared equally between Modesto ID and Turlock ID, that Modesto ID presently operates the Westley-Tracy transmission line, and that Merced ID is solely interconnected with Turlock ID. Thus, the NMDL Customers served by the Districts have been taking service from a POU without the use of transmission and distribution facilities owned by PG&E since November 13, 2007, and are exempt from ongoing CTC, pursuant to PG&E Schedule E-NMDL, Special Condition 2.e.

Section II.C of the NBC Agreement is consistent with the exemption set forth in PG&E Schedule E-NMDL, Special Condition 2.e. Therefore, the exemption provided under Section II.C of the NBC Agreement is reasonable and should be approved.

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[26] Conclusion of Law No. 12.

[27] August 30, 2010, Applicant's Response to ALJ's Ruling at 4.

6.3. What Impact, if any, will the Agreement Have on the Accounts, Trusts, or Funds Established for NBCs? Are any Conditions Needed to Ensure Costs are not Inappropriately Shifted to PG&E's Bundled Customers?

The February 26 Ruling sought comments on what impact, if any, the NBC Agreement will have on the accounts, trusts, or funds established for NBCs, and whether any conditions are needed to ensure costs are not inappropriately shifted to PG&E's bundled customers.

Applicants assert that the NBC Agreement does not affect the total remittances that PG&E will make to DWR because the Commission has established the mechanisms to ensure that the charges owed to DWR are promptly remitted by PG&E. Applicants state that the DWR charges are subject to balancing account treatment, and any amounts not collected in a given year are carried over to the following year. Therefore, according to Applicants, DWR is not harmed by the NBC Agreement and will remain whole in terms of remittances from PG&E.

6.3.1. Bond Charge Remittance Procedures Established by D.07-03-025

DWR recommends that the Commission adopt a specific exception to the remittance procedure established in the Servicing Order for the current Bond Charge applicable to MDL to accommodate pending bilateral agreements. DWR states that, to the extent that a specific exemption from the remittance procedure is provided in an applicable Commission order, DWR's portion of the payments provided for in the NBC Agreement could be received by DWR without further modification to the Servicing Order.

DWR states, however, that it is not aware that the Commission has granted such an exemption for MDL customers as contemplated by the NBC Agreement or other bilateral agreements related to MDL customers, so as to be consistent with the Servicing Order. DWR states that, if the Commission does not articulate an exemption, a new remittance procedure applicable to the Servicing Order will also need to be articulated by the Commission.

DWR recommends including the following exemption in a decision approving the NBC Agreement to allow PG&E to continue its current practice for recovering DWR Bond and DWR Power charges in connection with bilateral agreements related to MDL customers and avoid the need to revise relevant provisions of the 2007 Servicing Order:[28]

> "Modesto Irrigation District and Merced Irrigation District have finalized and entered into such bilateral agreements to settle MDL obligations with PG&E, including DWR Bond Charge and DWR Power Charge. As a result, PG&E will remit such amounts to DWR in accordance with any Applicable Commission Orders and the terms of the NBC Agreement."

Applicants state that, while the remittances under the NBC Agreement differ from the remittances described in the Servicing Order, nothing in the Servicing Order prohibits the Commission from modifying the remittance approach described therein. Applicants agree with DWR that a decision approving the NBC Agreement should include a specific exemption from the remittance procedure in the Servicing Order because the NBC Agreement provides less than full recovery of the DWR Bond Charge.[29]

Applicants, however, recommend that the decision in this Application include the following statement:

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[28] We note that DWR recently submitted a request to the Commission to modify the 2007 Servicing Order and the operating orders and agreements. That request is being addressed in R.09-06-018.

[29] August 30, 2010, Applicants Response to Administrative Law Judge's Ruling at 2.

> With respect to New Municipal Departing Load customers served by Modesto Irrigation District and Merced Irrigation District, PG&E shall remit such amounts to DWR consistent with the Agreement approved in this decision. To the extent that the collection and remittance procedures adopted here are inconsistent with those reflected in the Servicing Order adopted in D.07-03-025, the procedures adopted here should be followed with respect to New Municipal Departing Load customers served by Modesto Irrigation District and Merced Irrigation District.

Applicants state that DWR's proposed language is confusing because the reference to MDL (Municipal Departing Load) includes Transferred Municipal Departing Load, which is not addressed in the Application or the NBC Agreement, and because the DWR Power Charge is not applicable to NMDL customers served by the Districts. Applicants also state that the proposed reference to "any Applicable Commission Orders" is unduly vague.

Appendix D-1 of Attachment B of the 2007 Servicing Order for PG&E sets forth the specific methodologies for determining the forecast monthly billed dollar amount, the updated monthly billed dollar amount, and the actual billed dollar amount for the DWR Bond Charge on MDL customers. Appendix D-1 of Attachment B of the 2007 Servicing Order for PG&E provides that all MDL is subject to the DWR Bond Charge <u>unless specifically exempt by a Commission order</u>.[30] Because the approval of the NBC Agreement results in a different remittance procedure from that in D.07-03-025, it is appropriate to provide a specific exemption from the procedure prescribed Appendix D-1 of Attachment B of the 2007 Servicing Order for PG&E.

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[30] D.07-03-025, Appendix A, Attachment B, Appendix D-1, Section A.3 at D-1-1. Emphasis added.

Therefore, with respect to NMDL Customers served by the Districts, PG&E must remit such amounts to DWR for the NMDL Customers served by the Districts in accordance with the terms of the NBC Agreement approved in this decision. To the extent that the collection and remittance procedures adopted here are inconsistent with those reflected in the Servicing Order adopted in D.07-03-025, or any subsequent Servicing Order that may be adopted by the Commission, the procedures adopted here should be followed with respect to the NMDL Customers served by the Districts.

6.3.2. Data Requirements for Remittances under the NBC Agreement

DWR states that the remittances made pursuant to the NBC Agreement will be lump sum payments that do not conform to the data reporting templates set forth in Attachment C of the Servicing Order. DWR therefore requests that a decision approving the NBC Agreement should require PG&E to provide DWR with 1) the name of the municipal entity making the payment, 2) the date of payment to PG&E by the municipal entity, 3) the amount of DWR remittance, and 4) whether the remittance is for Bond Charges or Power Charges.

Because the remittances made to DWR pursuant to the NBC Agreement will be lump sum payments that do not conform to the data reporting templates set forth in Attachment C of the Servicing Order, PG&E must provide DWR with the name of the municipal entity making the payment, the date of payment to PG&E by the municipal entity, the amount of DWR remittance, and that the remittance is for Bond Charges.[31]

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[31] As discussed above, the DWR Power Charge is not applicable to the NMDL customers served by the Districts.

6.3.3. Bond Charge Remittance Information and Confidentiality Concerns

DWR states that the confidentiality of the negotiations in connection with bilateral agreements and the nondisclosure requirements in bilateral agreements do not permit DWR to determine the remittances and discounts provided under the agreements related to DWR Bond Charges. DWR requests that, if the nondisclosure provisions of the NBC Agreement prohibit DWR from receiving basic remittance information, the Commission should require PG&E to work with its counterparty to ensure DWR receives the remittance records associated with the NBC Agreement that are sufficient for DWR to accurately determine its Bond Charge revenue requirement.

Applicants state that they do not oppose providing basic remittance information to DWR. However, Applicants oppose providing information concerning the level of discounts provided in the NBC Agreement because Applicants assert this information is highly confidential.

The confidentiality provisions of the NBC Agreement state that the parties agree that the information and documents in connection with NBC Agreement are confidential and subject to Rule 12.6 of the Commission's Rules of Practice and Procedure.[32] However, the Servicing Order provides that PG&E and DWR:

> "may acquire information and material that is the other party's confidential, proprietary or trade secret information . . . In all cases, <u>Confidential Information includes proprietary or confidential information of any third party disclosing such information to either</u>

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[32] Rule 12.6 provides, in part, that no discussion, admission, concession or offer to settle made during any negotiation on a settlement shall be subject to discovery, or admissible in any evidentiary hearing against any participant who objects to its admission, and that participating parties must hold such discussions, admissions, concessions, and offers to settle confidential and not disclose them outside the negotiations without the consent of the parties participating in the negotiations.

> Party in the course of such third party's business or relationship with such Party...DWR agrees, and it is ordered with respect to Utility, that all Confidential Information disclosed by the disclosing Party ("Discloser") will be considered Confidential Information by the receiving Party ("Recipient") if identified as confidential and received from Discloser."[33]

Thus, pursuant to the Servicing Order, any information DWR may receive from PG&E and the Districts needed to assist DWR determine the remittances related to DWR Bond Charges is protected from disclosure, including information Applicants assert is highly confidential. With Applicants' consent, DWR may receive information that is sufficient for DWR to determine the remittances related to DWR Bond Charges in connection with the NBC Agreement.

Therefore, as a condition of approval of this Application, we require Applicants to establish arrangements, consistent with the nondisclosure provisions of the Servicing Order, NBC Agreement, and Rule 12.6, to provide DWR with sufficient information for DWR to determine the remittances related to DWR Bond Charges provided in the NBC Agreement so that DWR may accurately determine its Bond Charge revenue requirements.[34]

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[33] D.07-03-025, Appendix A, Section 6.1 at 19-20. Emphasis added.

[34] Because, pursuant to the Servicing Order, DWR is already bound to maintain confidentiality of any information obtained from PG&E and the Districts, no additional nondisclosure arrangements between Applicants and DWR are necessary.

6.3.4. Other DWR Recommendations

DWR requests that the NBC Agreement be clarified to relieve PG&E from its obligation to bill and collect the DWR Bond Charge only upon full payment of the agreed-upon amounts contained in the NBC Agreement to ensure that DWR collects the full amount of the Bond Charges.

The NBC Agreement's provision to release NMDL customers served by the Districts from liability "upon payment [by the Districts] of the [agreed-upon amounts]" is sufficiently clear, and, therefore, further clarification in this regard is not necessary.

DWR requests that the amounts receivable under the NBC Agreement be designated as "[DWR] Bond Charges." However, the NBC Agreement already designates all references to bond charges as "DWR Bond" charges.

DWR recommends that the Commission consider requiring DWR Bond Charge obligations to be paid first from settlement dollars to help reduce cost shifting and risks of recovering insufficient Bond Charge revenues. However, according to DWR, the Servicing Order already provides for the collection and remittance of the DWR Bond Charge under arrangements such as that contemplated in the NBC Agreement.[35] Therefore, it is not necessary to include additional conditions in the NBC Agreement to require DWR Bond Charge obligations to be paid first.

DWR states that PG&E has entered into other settlement agreements, and that SCE has entered into similar bilateral agreements with several entities, and recommends that a remittance procedure like that in the NBC Agreement be applied to all currently effective bilateral agreements. DWR recommends that the Commission provide further guidance and standards for future bilateral

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[35] D.07-03-025, Appendix A, Section 3.1 at 13-14.

agreements applicable to other customer classes (e.g., Direct Access, Customer Generation and Community Choice Aggregation), and to reiterate the need for utilities to comply with the Servicing Order.

DWR also requests that the Commission issue an order adopting a remittance process similar to that proposed for the NBC Agreement for all bilateral agreements, and direct PG&E and SCE to provide DWR with sufficient information for DWR to determine the amount of the discounts provided under bilateral agreements.

Applicants do not oppose DWR's request for the Commission to reiterate the need for utilities to comply with the Servicing Order. However, Applicants oppose DWR's other requests because, according to Applicants, DWR's recommendations undermine the benefits of the bilateral agreements permitted under Res. E-4064 or are beyond the scope of the Application. Applicants assert that it would be burdensome to re-open R.02-01-011 to consider the issues raised by DWR.

As discussed above, we adopt several of DWR's recommendations as they relate to the Application. However, this proceeding is not the appropriate forum to consider DWR's recommendations concerning bilateral agreements, generally, or other specific bilateral agreements, in particular, because parties to other bilateral agreements have not received notice or an opportunity to be heard concerning these recommendations. DWR should make its recommendations concerning other bilateral agreements in a proceeding addressing Servicing Orders or other appropriate proceedings.

DWR's other recommendations are beyond the scope of this proceeding and we do not address them here.[36]

6.4. May the Commission Approve an Agreement wherein neither the Districts nor the NMDL Customers Served by the Districts will Pay any New Generation or Distribution Related NBCs that may be Established?

Section II.H of the NBC Agreement addresses NBCs that do not currently exist but which may be established in the future. Section II.H exempts NMDL Customers served by the Districts from those future generation or distribution related NBCs, even if the Commission or the Legislature directs PG&E to collect such future NBCs from NMDL Customers served by the Districts.

Section II.H of the NBC Agreement states, in part:

> " . . . if PG&E proposes, or if PG&E is authorized or directed to bill and collect, any new nonbypassable charges related to (a) generation sources in any respect, including without limitation the costs of acquiring the sources or the output of the sources, the costs of refinancing the sources or contracts for the output of the sources, the costs of retiring or laying off the sources or terminating or laying off contracts for the output of the sources, or the costs of renegotiating or assigning contracts for the output of the resources, or (b) distribution facilities or assets, such charges shall not apply to the Districts' NMDL Customers."

The February 26 Ruling sought comments on whether the Commission may approve an agreement wherein neither the Districts nor the NMDL

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[36] DWR's other recommendations include the request to establish a remittance procedure for all currently effective bilateral agreements, for Commission review of all bilateral agreements between utilities and POUs, for a specific exception to the current Bond Charge applicable to MDL to accommodate other pending bilateral agreements, for Commission guidance and standards for future bilateral agreements applicable to other customer classes, and for the Commission to direct PG&E and SCE to provide DWR with sufficient information for DWR to determine the amount of the discounts provided under bilateral agreements.

Customers served by the Districts will pay any new NBCs that may be established in the future that would otherwise apply to NMDL Customers.

Applicants assert that NBCs were established to recover costs from customers only if costs were incurred in order to meet the needs of such customers (i.e., on a cost causation basis). Applicants state that PG&E does not intend to incur any costs in anticipation of serving the NMDL customers covered by the NBC Agreement, and therefore, it is unlikely that the Legislature or Commission could lawfully impose new NBCs on such customers. Applicants point to D.08-09-012 as an example of where the Commission exempted certain customers from future NBCs after determining that MDL and customer generation departing load (CGDL) customers should not pay any NBCs related to new generation resources that were not procured on their behalf.

D.08-09-012 did not exempt MDL and CGDL customers from future NBCs that may be incurred on their behalf. Instead, D.08-09-012 determined that MDL and CGDL customers should not pay any NBCs related to new generation resources that were not procured on their behalf. We determined that no resources were procured on behalf of CGDL customers, and, therefore, their fair share is "zero."

Applicants' assertion that it is unlikely that the Legislature or Commission could lawfully seek to impose new NBCs on such customers is insufficient to conclude that there will not be a situation in the future where the Legislature or Commission may find it necessary to establish new generation or distribution related NBCs. As such, to the extent that PG&E might in the future be directed to bill and collect, any new NBCs related to generation sources, Section II.H of the NBC Agreement is not consistent with the law or in the public interest because it may inappropriately bind the Commission.

However, we do not object to PG&E agreeing that it will not impose on NMDL customers served by the Districts any new generation or distribution-related NBCs that PG&E proposes and is authorized, but not required or directed, to bill and collect. Therefore, Section II.H of the NBC Agreement should be modified as follows:

> "The Parties agree that if PG&E proposes~~, or if PG&E~~ <u>and</u> is authorized ~~or directed~~ to bill and collect, any new nonbypassable charges related to (a) generation sources in any respect<u>,</u> including without limitation the costs of acquiring the sources or the output of the sources, the costs of refinancing the sources or contracts for the output of the sources, the costs of retiring or laying off the sources or terminating or laying off contracts for the output of the sources, or the costs of renegotiating or assigning contracts for the output of the resources, or (b) distribution facilities or assets, such charges shall not apply to the Districts' NMDL Customers, <u>except as may be required by the Commission or the Legislature</u>."[37]

We find Section II.H of the NBC Agreement, as modified, to be reasonable.

In comments on the proposed decision, Applicants state that Section II.H is a material term that provides certainty for the parties, and should not be modified.[38] Applicants state that the Districts retain the right to terminate the NBC Agreement if the Districts determine that the uncertainty created by the modification to Section II.H is unacceptable.

According to Applicants, if the Districts reject the NBC Agreement as modified, PG&E will be required to resume billing the NMDL Customers served by the Districts, including the billings suspended pursuant to PG&E's motion for authority to suspend billing granted by the August 21, 2009 ruling. Applicants

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[37] Deleted text is shown in strikethrough font and inserted text is underlined.

[38] Comments of Pacific Gas and Electric Company, Merced Irrigation District, and Modesto Irrigation District on Proposed Decision of ALJ Smith, November 9, 2010.

contend that the resumption of billing would result in customer dissatisfaction and confusion, and would further compromise the prospects of collecting any NBCs from the NMDL Customers served by the Districts. Applicants assert that such an outcome is not in the public interest. Applicants do not allege that the modification results in any factual, legal or technical error.

As stated above, according to Applicants, PG&E does not intend to incur any costs in anticipation of serving the NMDL customers covered by the NBC Agreement, and it is unlikely that the Legislature or Commission could lawfully impose new NBCs on such customers. Because Applicants do not anticipate any situation that could result in the establishment of any new NBCs applicable to the NMDL Customers served by the Districts, Applicants' concern about the uncertainty resulting from the modification of Section II.H is unwarranted.

Kurt Danziger (Danziger), on behalf of the Publicly Owned Utility Customer Association, too, objects to the modification to Section II.H because, according to Danziger, it leaves open the possibility of future disputes concerning new NBCs.[39] Danziger states that the NMDL customers served by the Districts need closure on the issues regarding current and future NBCs, but does not contend that the modification results in any factual, legal or technical error.

7. Other Modifications to the NBC Agreement

In addition to the modification discussed above, we require one other modification to the NBC Agreement.

[39] Kurt Danziger Letter Regarding Proposed Decision in A.09-06-023, November 8, 2010.

Section II.E of the NBC Agreement provides that PG&E may apply the amounts paid by the Districts to the NBCs addressed by the NBC Agreement.[40] Because the NBCs are mandatory charges established to satisfy obligations resulting from electric industry restructuring and the California energy emergency, PG&E should be required to apply the amounts paid by the Districts toward the costs for which the NBCs were established to recover. Therefore, Section II.E of the NBC Agreement should be modified to state:[41]

> "E. The District's Payment Obligations. The Parties agree that Modesto ID and Merced ID each shall pay PG&E mutually agreed amounts which PG&E ~~may~~ must apply to the NBCs identified in Paragraphs II.A and/or II.B above, that have accrued or will accrue to Existing NMDL Customers and/or New NMDL Customers pursuant to current CPUC decisions and implementing Rate Schedule E-NMDL, subject to the provisions set forth below.
>
> 1. Existing NMDL Customers. The Parties agree that, for the Existing NMDL Customers who receive electric service from Modesto ID and/or Merced ID, each District shall pay PG&E amounts which PG&E ~~may~~ must apply to the following categories of NBCs:
>
>   a. The 'retroactive charges,' which consist of the charges accrued to such customers for the period July 10, 2003 through February 7, 2008 (as reduced consistent with Paragraph II.E.1.c hereto), which retroactive charges may be amortized over a 36-month period, and
>
>   b. The 'ongoing charges,' which consist of the charges accrued to such customers for the period beginning February 8, 2008, until the expiration of the charges in question (as reduced consistent with Paragraph II.E.1.c hereto)

[40] Emphasis added.

[41] Deleted text is shown in strikethrough font and inserted text is underlined.

c. The total amounts that the Districts shall pay to PG&E pursuant to this section shall be the amounts that have accrued or will accrue to Existing NMDL Customers for retroactive charges and ongoing charges, as described in Paragraphs II.E.1.a and II.E.1.b above, but reduced by 45% to reflect PG&E's current collection experiences, combined with the efficiencies associated with Modesto ID and Merced ID paying these amounts, as described in Paragraph II.F. The total amount owed by each District for these charges is set forth in Appendix A hereto.

2. New MDL Customers. The Parties agree that for New NMDL Customers who receive electric distribution service from Modesto ID and/or Merced ID, each District shall pay PG&E amounts which PG&E ~~may~~ must apply to the 'ongoing charges,' which consist of the charges accrued to such customers for the period beginning February 8, 2008, or the date that such customers become New NMDL Customers, whichever is later, until the expiration of the charges in question. The total amounts that the Districts shall pay to PG&E pursuant to this section shall be the amounts that have accrued or will accrue to these New NMDL Customers for ongoing charges, as described in the preceding sentence, but reduced by 40% to reflect PG&E's expected future collection experience, combined with the efficiencies associated with Modesto ID and Merced ID paying these amounts, as described in Paragraph II.F. The total amount owed by each District for these charges is set forth in Appendix A hereto."

8. Is the NBC Agreement Reasonable?

PG&E states that at the time PG&E and the Districts started negotiations PG&E was experiencing a very high rate of uncollectibles for the payment of NBCs by the Districts' customers. In response to the August 12 Ruling, PG&E filed and served an estimate of the current and expected future legal and other costs it will incur to collect the amounts that have accrued and will accrue to the Districts' NMDL Customers (Estimate).[42]

The Estimate shows that the administrative and legal costs of pursuing collection of the unpaid NBCs owed by currently delinquent NMDL Customers served by the Districts and the customer service and billing costs that are avoided under the NBC Agreement are substantially greater than the value of the discounts provided in the NBC Agreement. The Commission has considered the Estimate and finds it to be reasonable.

Without an agreement, PG&E will continue to experience a high rate of uncollectibles and incur significant additional administrative and legal costs to collect unpaid NBCs. It is unreasonable for PG&E to incur costs to collect unpaid NBCs that exceed the value of the unpaid NBCs being collected. The NBC Agreement is in the interest of PG&E and its customers because the NBC Agreement reduces the costs that PG&E ratepayers would otherwise bear.

The NBC Agreement, as modified by and subject to the conditions set forth in this decision, does not result in any cost-shifting to PG&E ratepayers because the reductions provided under the agreement are less than the costs of pursuing collection of the unpaid NBCs. As modified by and subject to the conditions set forth in this decision, the NBC Agreement is reasonable, and is in accordance with applicable statutes and Commission decisions prohibiting cost shifting among customers.

The NBC Agreement, as modified by and subject to the conditions set forth in this decision, is in the interest of the Districts and their customers because it

[42] PG&E filed a companion motion requesting confidential treatment of the Estimate and supporting work papers, pursuant to GO 66-C. The September 15, 2010 ruling granted PG&E's unopposed request.

reasonably and finally resolves all issues surrounding the billing and collection of NBCs from NMDL Customers served by the Districts, including avoiding possible costly litigation.

There is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation,[43] and the NBC Agreement, as modified by and subject to the conditions set forth in this decision, satisfies this public policy preference. The NBC Agreement, as modified by and subject to the conditions set forth in this decision, serves the public interest by resolving competing concerns in a collaborative and cooperative manner.

By reaching agreement, PG&E avoids the costs of billing and collecting NBCs from NMDL Customers served by the Districts, including possible litigation costs for PG&E and the NMDL Customers served by the Districts. Approval of the NBC Agreement, as modified by and subject to the conditions set forth in this decision, will provide speedy and complete resolution of all issues surrounding the billing and collection of NBCs from NMDL Customers served by the Districts.

The NBC Agreement, as modified by and subject to the conditions set forth in this decision, reflects the interests of the Applicants and their customers. PG&E and the Districts have balanced a variety of issues of importance to them and have agreed to the terms of the NBC Agreement as a reasonable means by which to finally resolve all issues surrounding the billing and collection of NBCs from NMDL Customers served by the Districts.

The NBC Agreement is the result of arms-length negotiations between PG&E and the Districts, and is uncontested. Thus, for these reasons, and taken

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[43] D.88-12-083, 30 CPUC2d 189, 221.

as a whole, the NBC Agreement, as modified by and subject to the conditions set forth in this decision, is in the public interest. The NBC Agreement, as modified by and subject to the conditions set forth in this decision, does not contravene or compromise any statutory provision or prior Commission decision, is reasonable, consistent with the law, and in the public interest. Applicants' request is unopposed, and, therefore, the NBC Agreement, as modified by and subject to the conditions set forth in this decision, should be approved.

PG&E must send a follow up letter to NMDL Customers served by the Districts informing them of the termination of PG&E's billing and collections obligations to NMDL Customers served by the Districts. A draft of the letter must be submitted to Director of the Energy Division for review and approval prior to distribution.

9. Proceeding Category and Need for Hearings

In Resolution ALJ 176-3237, dated July 9, 2009, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not needed. Today's decision affirms the Commission's preliminary determination on the category of this proceeding and that evidentiary hearings are not needed in this proceeding.

10. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed jointly on November 9, 2010 by PG&E, Merced ID, and Modesto ID, and comments were submitted by Kurt Danziger on behalf of the Publicly Owned Utility Customer Association. The comments have been considered and appropriate changes have been made.

11. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Richard Smith is the assigned ALJ in this proceeding.

Findings of Fact

1. No protests or responses to the Application were filed.

2. Commission decisions in R.02-01-011, pursuant to Pub. Util. Code § 366.2(d), established a CRS to ensure there is no cost shifting among customers.

3. Resolution (Res.) E-4064, approved, with modifications, PG&E's tariff Schedule E-NMDL, implementing prior Commission directives and authorizing procedures for the billing and collection of the CRS and other NBCs from the NMDL Customers located within PG&E's service area.

4. The NBCs currently applicable to NMDL customers served by the Districts within the service territory of PG&E, contained in Schedule E-NMDL, include the DWR Bond Charge, the Tail CTC, the TTA Charge, and the ND Charge.

5. PG&E Schedule E-NMDL permits bilateral agreements between PG&E and POUs or POU customers as an alternative to the billing and collection procedures in PG&E Schedule E-NMDL.

6. The authorization in Res. E-4064 to enter into bilateral agreements was to give IOUs and POUs the flexibility to use other alternative arrangements or protocols to the detailed billing and collection procedures specified in Schedule NMDL.

7. Commission decisions in R.02-01-011 require the IOUs to bill and collect the CRS from MDL to ensure there is no cost shifting among customers.

8. D.09-08-015 approved a bilateral agreement that resolves past, present, and future NBC obligations by payment of amounts that may differ from tariffed

charges, that relieves an IOU of its obligations to bill or collect NBCs, and that releases departing load customers of a POU from liability for NBCs.

9. The NBC Agreement allows the Districts to pay PG&E amounts that are less than the amounts that have accrued for past charges and that will accrue for ongoing charges, and relieves PG&E of its obligation to bill and collect the applicable charges.

10. PG&E Schedule E-NMDL provides that NMDL taking service from a POU without the use of transmission and distribution facilities owned by PG&E is exempt from ongoing CTC.

11. Ownership and all costs of the Westley-Tracy transmission line are shared equally between Modesto ID and Turlock ID.

12. Modesto ID presently operates the Westley-Tracy transmission line and Merced ID is solely interconnected with Turlock ID via the Westley-Tracy transmission line.

13. For purposes of the NBC Agreement only, as of November 13, 2007, the NMDL Customers served by either the Merced ID or the Modesto ID qualify for the "stand-alone" exemption set forth in PG&E Schedule E-NMDL, Special Condition 2(e).

14. Without an agreement with the Districts, PG&E will continue to experience a high rate of uncollectibles and incur significant administrative and legal costs to collect unpaid NBCs owed by the NMDL Customers served by the Districts, and these costs will be borne primarily by PG&E ratepayers.

15. PG&E's administrative and legal costs of pursuing collection of the unpaid NBCs owed by currently delinquent NMDL Customers served by the Districts and the customer service and billing costs avoided under the NBC Agreement

will be substantially greater than the value of the discounts provided in the NBC Agreement.

16. Pursuant to the Servicing Order, DWR is prohibited from disclosing any information it may receive from PG&E and the Districts in connection with remittances made pursuant to the NBC Agreement.

17. The nondisclosure provisions of the NBC Agreement provide that the parties agree that the information and documents in connection with NBC Agreement are subject to Rule 12.6.

18. With the Applicants' consent, DWR may receive information from settlement negotiations that is sufficient for DWR to determine the remittances related to DWR Bond Charges in connection with the NBC Agreement.

19. D.03-07-028, as modified by D.03-08-076, determined that, for purposes of CTC recovery, "new load" excludes load met through a direct transaction that does not otherwise require the use of transmission and distribution facilities owned by the IOU.

20. The Application is uncontested.

Conclusions of Law

1. Evidentiary hearings are not necessary.

2. Given its concerns about cost shifting, the Commission did not give the IOUs blanket approval to re-negotiate nonbypassable charges without further Commission review and approval.

3. The filing of an application for approval of the NBC Agreement is appropriate because the NBC Agreement raises policy questions addressed in R.02-01-011 concerning cost shifting, and the Commission must determine if the agreement contravenes any Commission decisions or other law, and the extent, if any, that the agreement may shift costs to PG&E's bundled customers.

4. D.08-09-012 determined that MDL and CGDL customers should not pay any NBCs related to new generation resources that were not procured on their behalf, that new generation resources were not procured on behalf of MDL and CGDL customers, and, therefore, the fair share of these customers is "zero."

5. Section II.H of the proposed NBC Agreement should be modified because it may inappropriately bind the Commission, if, in the future, the Commission directs PG&E to bill and collect any new NBCs related to generation sources.

6. The NBC Agreement, as modified by and subject to the conditions set forth in this decision, is in the interest of PG&E and its customers because, without an agreement, PG&E will continue to experience a high rate of uncollectibles and possibly incur significant additional administrative and legal costs to collect unpaid NBCs, and those costs will be borne primarily by PG&E ratepayers.

7. The NBC Agreement, as modified by and subject to the conditions set forth in this decision, does not result in any cost-shifting to PG&E ratepayers.

8. Section II.C of the NBC Agreement is consistent with the exemption set forth in PG&E Schedule E-NMDL, Special Condition 2.e., and is reasonable.

9. The NBC Agreement, as modified by and subject to the conditions set forth in this decision, is in the interest of the Districts and their customers because it reasonably and finally resolves all issues surrounding the billing and collection of NBCs from NMDL Customers served by the Districts.

10. PG&E should be required to apply the amounts paid by the Districts pursuant to the NBC Agreement toward the costs for which the NBCs were established to recover.

11. The NBC Agreement, as modified by and subject to the conditions set forth in this decision, is reasonable, consistent with the law, and in the public interest.

The Application should be granted and the NBC Agreement should be approved, as modified by and, subject to the conditions set forth in this decision.

12. PG&E should send a follow up letter to NMDL Customers served by the Districts informing them of the termination of PG&E's billing and collections obligations to NMDL Customers served by the Districts. A draft of the letter should be submitted to the Director of the Energy Division for review and approval prior to distribution.

13. PG&E should remit Bond Charge amounts to DWR for the NMDL Customers served by the Districts in accordance with the terms of the NBC Agreement approved in this decision. To the extent that the collection and remittance procedures adopted here are inconsistent with those reflected in the Servicing Order adopted in D.07-03-025, or any subsequent Servicing Order that may be adopted by the Commission, the procedures adopted here should be followed with respect to the NMDL Customers served by the Districts.

14. Because the remittances made to DWR pursuant to the NBC Agreement will be lump sum payments that do not conform to the data reporting templates set forth in Attachment C of the Servicing Order, PG&E should be required to provide DWR with the name of the municipal entity making the payment, the date of payment to PG&E by the municipal entity, the amount of DWR remittance, and that the remittance is for Bond Charges.

15. Applicants should be required to establish arrangements, consistent with the nondisclosure provisions of the NBC Agreement and Rule 12.6, to allow PG&E to provide DWR with sufficient information to determine the remittances related to DWR Bond Charges provided in the NBC Agreement.

16. With the Applicants' consent, DWR may receive information from settlement negotiations that is sufficient to determine the remittances and

discounts that may be provided under the NBC Agreement related to DWR Bond Charges.

17. This proceeding is not the appropriate forum to consider DWR's recommendations concerning bilateral agreements, generally, or other specific bilateral agreements, in particular, because parties to other bilateral agreements have not received notice or an opportunity to be heard concerning DWR's recommendations.

18. A.09-06-023 should be closed.

O R D E R

IT IS ORDERED that:

1. The Nonbypassable Charge Agreement between the Modesto Irrigation District and the Merced Irrigation District and Pacific Gas and Electric Company, attached to this decision as Attachment 1, is approved as modified by Ordering Paragraph Nos. 2 and 3, subject to the conditions set forth below in OP Nos. 4 through 7.

2. Section II.E of the Nonbypassable Charge Agreement between the Modesto Irrigation District and the Merced Irrigation District and Pacific Gas and Electric Company is modified as shown in Attachment 1 (deleted text is shown in strikethrough font and inserted text is underlined).

3. Section II.H of the Nonbypassable Charge Agreement between the Modesto Irrigation District and the Merced Irrigation District and Pacific Gas and Electric Company is modified as shown in Attachment 1 (deleted text is shown in strikethrough font and inserted text is underlined).

4. Pacific Gas and Electric Company (PG&E) must promptly send a letter to New Municipal Departing Load customers served by the Modesto Irrigation

District and the Merced Irrigation District informing them of the termination of PG&E's billing and collections obligations to New Municipal Departing Load customers served by the Districts. PG&E must provide a draft of the letter to the Director of the Commission's Energy Division for review and approval prior to distribution.

5. Applicants must establish arrangements, consistent with the nondisclosure provisions of Servicing Order adopted in Decision 07-03-025, the nonbypassable charge agreement between the Modesto Irrigation District and the Merced Irrigation District and Pacific Gas and Electric Company (NBC Agreement), and Rule 12.6 of the Commission's Rules of Practice and Procedure, to allow Pacific Gas and Electric Company to provide the Department of Water Resources (DWR) with sufficient information for DWR to accurately determine the remittances related to DWR Bond Charges provided in the NBC Agreement.

6. When remitting Bond Charges to the Department of Water Resources (DWR) in connection with the nonbypassable charge agreement between the Modesto Irrigation District and the Merced Irrigation District and Pacific Gas and Electric Company (PG&E) approved by this decision, PG&E must provide DWR with the name of the municipal entity making the payment, the date of payment to PG&E by the municipal entity, the amount of DWR remittance, and state that the remittance is for Bond Charges.

7. Pacific Gas and Electric Company must remit Bond Charges to the Department of Water Resources in accordance with the terms of the nonbypassable charge agreement between the Modesto Irrigation District and the Merced Irrigation District and Pacific Gas and Electric Company approved by this decision. To the extent that the collection and remittance procedures adopted in this decision are inconsistent with those reflected in the Servicing

Order adopted in Decision 07-03-025, or any subsequent Servicing Order that may be adopted by the Commission, the procedures adopted in this decision must be followed with respect to the New Municipal Departing Load customers served by the Modesto Irrigation District and the Merced Irrigation District.

8. Application 09-06-023 is closed.

This order is effective today.

Dated November 19, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners