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Decision **04-11-014** November 19, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.	Rulemaking 02-01-011 (Filed January 9, 2002)

(See Attachment A for List of Appearances.)

OPINION REGARDING MUNICIPAL DEPARTING LOAD REHEARING AND RELATED ISSUES

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OPINION REGARDING MUNICIPAL DEPARTING LOAD REHEARING AND RELATED ISSUES

I. Introduction

This order addresses the limited rehearing ordered by Decision (D.) 03-08-076 (The Rehearing Decision), and related matters, as described below. The rehearing addresses a limited issue decided in D.03-07-028 (the Municipal Departing Load Decision or MDL Decision) which set forth the requirements for a Municipal Departing Load (MDL)[1] "cost responsibility surcharge" (CRS) within the service territories of California's three major electric utilities: Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E). The CRS was assessed on MDL customers to provide recovery of a fair share of costs incurred by the California Department of Water Resources (DWR) pursuant to legislative directive, as set forth in Assembly Bill No. 1 from the First Extraordinary Session (AB 1X) and Assembly Bill No. 117 of the 2002 Regular Session (AB117).[2]

In the MDL Decision, although we imposed a CRS provision on MDL customers, we also granted a limited CRS exception to new municipal load attributable to publicly-owned utilities "formed and delivering electricity to

[1] As used in D.03-07-028 and in the instant order, the term "Municipal Departing Load" refers to departing load served by a "publicly-owned utility" as that term is defined in Pub. Util. Code § 9604(d).

[2] See Stats. 2001, Ch. 4; States, 2002, Ch. 838.

retail end-use customers before February 1, 2001," which was defined as existing publicly-owned utilities. (D.03-07-028, p. 76 [Conclusion of Law 11] (*slip op*.).)[3]

For purposes of applying the CRS exception, "new load" was defined as load that had never been served by a California investor owned utility (IOU), but that was located in territory that had previously been IOU territory and had been annexed or otherwise expanded into by a publicly-owned utility.

The Rehearing Decision, issued in August 2003 stated, however, that, "the record for extending this [CRS exception] to existing publicly-owned utilities and not to newly formed ones appears to be inadequate on this allocation issue." Thus, a rehearing was granted "concerning whether, or to what extent, there is sufficient factual basis for a CRS allocation based on whether the publicly-owned utility was formed before or after February 1, 2001."

In this order, we also address a related issue that was left unresolved in the MDL Decision, having to do with the identification of the specific publicly-owned utilities that would be subject to any exceptions from the CRS. In this regard, the Municipal Departing Load Decision further states:

> "It is not clear from the record exactly which existing publicly-owned utilities would be entitled to exceptions from the CRS from this decision. It is our intent that only those publicly-owned utilities with substantial operations in place as of February 1, 2001 gain such benefit. Conversely, if there are any publicly-owned utilities serving minimal numbers of customers

[3] On February 18, 2004, the California Supreme Court summarily denied the petitions for writs of review challenging the lawfulness of D.03-07-028 and D.03-08-076. (Modesto Irrigation District v. Public Utilities Commission, et al., Case Nos. S119310, S119365, S119368, S119376. The petitions included challenges to the Commission's authority to impose CRS on new MDL and sufficiency of the evidence to impose the CRS on such load.

> (*e.g.*, under 100) which would technically qualify for CRS exceptions, we would choose to close such loopholes because there is too much chance for disproportionate expansion by such entities, expansion which could not reasonably have been considered by DWR." [4]

The MDL Decision anticipated further inquiry in this proceeding to clarify the definition of "existing publicly-owned utility" for these purposes." On July 23, 2004, the assigned ALJ solicited comments from the parties to develop applicable criteria for identifying publicly-owned utilities whose MDL departing load customers would qualify for exclusion from the CRS. The ruling anticipated the Commission would subsequently identify publicly-owned utilities whose customers qualify for the "new load" exception from the CRS.

We also address herein the California Municipal Utilities Association's (CMUA) related Petition for Modification of D.03-07-028 (The Municipal Departing Load Decision) filed on February 17, 2004, regarding the effects of certain new disclosures concerning the point in time that DWR received delivery of PG&E's load forecast.

Upon review of the record developed on rehearing issues, as addressed in parties' comments, we reach two major findings. First, in the case of PG&E, an explicit adjustment was made in its load forecast provided to DWR to recognize future bypass due to anticipated transfers of existing IOU load to irrigation districts and municipalities. We conclude that a corresponding CRS exclusion is warranted to recognize the effects of this MDL "transferred load" component, as discussed below. We further conclude that any new load served by publicly-

[4] *Id.* at pp. 61-62 (slip op.).

owned utilities within the annexed areas covered by the PG&E transferred load should likewise be excluded from paying the CRS. We conclude that the DWR forecasts did not include a provision for such new load in these annexed areas that were assumed to be served by publicly-owned utilities.

Second, we affirm the exception granted for "new load" of existing publicly-owned utilities, but make the following determinations about this exception. First, publicly-owned utilities must have been formed and serving at least 100 customers as of July 10, 2003, the date of issuance of D.03-07-028, to qualify for an exception for new load. Second, we will apply a cap on the "new load" exceptions on an interim basis of a total of 150 MW in the PG&E and SCE territories combined before the end of 2012, for entities that are only serving "new" load and have no transferred load.

II. Procedural Background

In compliance with the directive in the Rehearing Decision, an ALJ ruling was issued on October 20, 2003. The Ruling solicited comments from parties concerning the resolution of the rehearing issues, as described above. Attached to the ruling was a memorandum from DWR, describing the sequence of events relating to DWR's receipt of various IOU load forecasts that were utilized in its power procurement pursuant to AB1X. Opening comments in response to the ALJ ruling were filed on December 2, 2003, and reply comments were filed on December 16, 2003. Comments were filed by PG&E, SCE, and SDGE, as well as various parties representing MDL interests: California Municipal Utilities Association (CMUA), City of Industry (Industry), Merced Irrigation District (Merced ID), Modesto Irrigation District (Modesto ID), Northern California Power Agency (NCPA), and South San Joaquin Irrigation District (SSJID).

Parties' filed comments in response to the October 20, 2003 form a sufficient basis to resolve the issues identified for rehearing, with the exception of certain factual issues identified by CMUA as described below. In its reply comments in response to the ALJ ruling, CMUA argued that evidentiary hearings may be necessary to address certain "new factual representations" specifically by PG&E and DWR regarding the load forecast that was utilized in procuring DWR power.

By ruling dated August 10, 2004, the ALJ scheduled further evidentiary hearings on the factual issues raised by CMUA. Pursuant to the schedule set by the ALJ, an evidentiary hearing was held on September 8 and 13, 2004. PG&E presented two witnesses, Dennis Keane and Roy Kuga, and DWR presented one witness, Craig McDonald. Active parties conducting cross examination were CMUA, Merced and Modesto Irrigation Districts, and NCPA.

Opening briefs were filed on September 27, 2004, and reply briefs were filed on October 4, 2004. This phase of the proceeding was submitted on October 4, 2004.

III. Positions of Parties Concerning New Load CRS Allocation Exception

All of the IOUs, as well as CMUA, Industry, and SSJID take issue with the method for apportioning a CRS exception between "existing" and "new" publicly-owned utilities, as adopted in D.03-07-028.[5] Each of these groups of parties disagree, however, as to how any apportionment adopted in D.03-07-028 should be revised. Each of the IOUs argue that neither they nor DWR reduced

[5] *See* PG&E Comments, pp. 4–5; SDG&E Comments, pp. 5–6; SCE Comments, pp. 4–5; CMUA Comments, pp. 7–8; Industry Comments, p. 1; SSJID Comments, p. 3.

their load forecasts in anticipation that "new load" would be served by publicly-owned utilities (either existing or new). Consequently, the IOUs argue that no "new load" CRS exception should apply at all. SSJID and Industry argue that there *should* be a "new load" exception, but disagree that a February 1, 2001, cut-off date should be used for allocating the exception. CMUA argues that *all* new load should simply be excluded from paying the CRS, rather than being subject to any allocation.

Irvine believes a CRS exception may only be assessed against a municipal utility's customers on the basis of whether such customers ever purchased DWR power from an IOU. Irvine argues that the Commission should not apportion any CRS exception based on whether a publicly-owned utility was formed before or after February 1, 2001 because (a) DWR did not consider load growth of publicly-owned utilities; (b) the February 1 date is arbitrary; and (c) picking one single cut-off date by which a publicly-owned utility must be formed and providing retail service ignores the realities of forming a publicly-owned utility.

If the Commission maintains the February 1, 2001 date as a basis to define existing publicly-owned utilities that qualify for the CRS exception, SSJID proposes that a certain level of megawatts be set aside for which publicly-owned utilities that commence providing retail service after that date could apply (on a first come, first served basis) in order to receive an exception for new load. SSJID argues that such allocation would be consistent with the fact that the earlier in time in which a publicly-owned utility starts providing retail service after February 1, 2001, the more likely the utility considered or should have considered that this publicly-owned utility would serve new load.

City of Industry recommends that the Commission eliminate the distinction between existing and newly formed publicly-owned utilities but that

the Commission provide an exception for Industry's new loads from CRS because Edison knew that Industry would be serving new loads soon after February 1, 2001. Industry supports a CRS exception for all new load of any publicly-owned utility that was either providing electric service or that can document that it had made substantial investments in preparing to provide electric service as of the date of issuance of the Municipal Departing Load Decision, July 10, 2003. Alternatively, Industry asks either that the Commission grant an exception to publicly-owned utilities serving customers as of July 10, 2003 or to any publicly-owned utility serving customers as of either May 1, 2001 or July 10, 2003 (under the rationale that the choice of date depends on whether the focus is on DWR's updated forecast or, for parties who had no notice of the MDL decision on July 10, 2003.

Both Modesto ID and Merced ID support use of the February 1, 2001, cut-off date for deciding whether a publicly-owned utility should qualifying as an "existing" publicly-owned utility, [6] and believe that they would qualify for the "existing" new load exception.[7] Modesto states that municipal departing load which the utilities explicitly or implicitly accounted for in their forecasts should not be subject to the CRS. According to Modesto, new municipal departing load should not be subject to the CRS if such load is (a) served by an existing publicly-owned utility as defined in the MDL Decision or (b) located within the service

[6] *See* Merced ID Comments, pp. 5–6; Modesto ID Comments, pp. 2–3.

[7] *But see* Comments of Pacific Gas and Electric Company Regarding Criteria For New Load Exception (filed Aug. 15, 2003) arguing that, while Merced ID may meet certain of the criteria for qualifying as an "existing publicly-owned utility," PG&E believes that, consistent with the principles adopted in D.03-07-028, Merced ID should not qualify for any "new load" exception.

area of a publicly-owned utility as that service area existed as of February 1, 2001.

NCPA argues that it is premature for the Commission to address allocation issues, because the parties need more information from PG&E about the load forecasts PG&E provided to DWR, and the methodologies behind such forecasts before parties can provide an intelligible scheme for allocation of exceptions. NCPA believes that the fact that an IOU provided a forecast to DWR and DWR relied upon such forecast should not be the end of the inquiry. NCPA argues that the IOUs' forecasts should be reviewed for accuracy, and if the IOUs provided inaccurate information, then the IOUs' shareholders should bear the burden for this amount.

Rancho Cucamonga believes that the February 1, 2001 cut-off date is arbitrary and urges the Commission to adopt the July 10, 2003 date of issuance of the Municipal Departing Load Decision as a cut-off date. Rancho Cucamonga believes that the July 10 date is preferable because it does not require review of what the IOUs or DWR knew or should have known, and deals with any residual concern regarding loopholes.

IV. Resolution of Limited Rehearing Issues Granted in D.03-08-076

A. Framework for Determination of Cost Responsibility for MDL "New Load"

As a basis for resolving the disputes at issue in the rehearing phase of this proceeding, we first clarify the conceptual framework within which any evidence should be evaluated as a basis for assigning cost responsibility. In D.03-07-028, we concluded that the MDL CRS should be imposed, and that the CRS should extend to "new municipal load" attributable to publicly-owned utilities that formed after February 1, 2001. We granted a limited exception to the CRS,

however, applicable to new municipal load attributable to publicly-owned utilities providing "substantial operations" as of February 1, 2001.

The date of February 1, 2001 represents the point in time that DWR officially took over responsibility for procuring the net short position of the IOUs pursuant to AB1X. By adopting that date in D.03-07-028 as a cut-off for establishing eligibility for a CRS exception, we were implicitly assuming that the load forecasts relied on by DWR incorporated recognition of bypass due to new load at least for publicly-owned utilities that were already in existence at that time.

In approaching the issue this way, we inherently set up the question, in both the initial proceeding leading to D.03-07-028 as well as this rehearing phase, to be an issue of fact. Did DWR, in fact, rely upon a forecast that included or excluded municipal departing load, such that DWR made a decision to buy or not to buy power based on that forecast?

However, after examining this issue more carefully in this rehearing phase of the proceeding and reviewing the evidence in the record, we are convinced that there are ambiguities in the evidence that we must resolve. Where facts exist to show that municipal departing load was explicitly excluded from the forecast to which DWR was referring when making its purchasing decisions, then it is clear that no cost-shifting would be occurring if we allow an exception to the cost responsibility surcharge. This is because DWR would not have bought power to serve the excluded load in the first place. We address this situation more specifically in Section V. below relating to CMUA's Petition for Modification on "transferred load."

But when examining the issue of "new" MDL we simply are not convinced by the parties and the record that the "new" MDL was explicitly included in the

forecasts of the IOUs or of DWR. Nor has any party shown with any persuasive certainty that "new" MDL was explicitly excluded. The basic reality is that the IOU forecasts transmitted to DWR and subsequently augmented by DWR were not performed to the level of specificity for "new" MDL that they were for other types of load. We know that "new" MDL was not explicitly accounted for, but we cannot know for sure that it was not implicitly accounted for.

In fact, comments by both Edison and PG&E support the conclusion that "new" MDL was implicitly included in the forecasts. In Edison's opening comments, they state that "SCE's econometric load forecast model factors historical SCE trends of retail sales, and would to that extent necessarily include the *de minimus* annexation of its service territory noted above, but not as a separate 'line item' input." In addition, PG&E's comments responded that "explicit" adjustments are only necessary if there are "additional blocks of load that…are above the trend captured implicitly." D.03-07-028 already concluded that "a certain level of new MDL was assumed due to historical trends."

Thus, both utilities' comments and D.03-07-028 acknowledge that "new" MDL would have been implicitly accounted for in the forecasts, even though those adjustments were not large enough or noteworthy to warrant a specific line item adjustment to the forecasts. In addition, logically some "new" load of publicly-owned utilities is being created all the time, and thus, it does not make sense by inference that a portion of this load would not have been considered. It is a fact that publicly-owned utilities can and do serve new MDL, and this is also an historical fact. Obviously and undeniably, utilities have been aware that new load of publicly-owned utilities can have has affected their load forecasts, and as D.03-07-028 concludes, "it is reasonable to assume that historical trends will continue with current publicly-owned utilities."

For this reason, we grant the motion of CMUA to "Update Exhibit 80" and amend its petition for modification. CMUA's motion includes information the SCE had updated its Exhibit 80 to include evidence of accounting for historical trends of annexations of its territory by publicly-owned utilities in the past. While this information is not directly relevant to the time period of costs at issue in this proceeding and should not be used to determine an exact amount of "new" MDL implicit in SCE's forecast, it does show by reasonable factual inference that there is a historical trend of some MDL that SCE was necessarily aware of and would have implicitly accounted for in its forecast delivered to DWR. Thus, we grant CMUA's motion of September 27, 2004.

Finally, in deciding whether or not new load of publicly-owned utilities should be granted exceptions to the cost responsibility surcharge, we use the forecast as a prediction of what trends may occur, but not, by definition, what will actually happen with certainty. PG&E argues that there was no "careful correlation" between the multi-year forecasts DWR received and the long-term commitments that DWR ultimately made. PG&E claims therefore that it is not reasonable to use those forecasts to excuse a portion of MDL customers from paying the CRS. We do not agree. Rather, we believe that the forecasts do not provide convincing and persuasive evidence to rebut the logical presumption of the historical trends for new municipal departing load and the inference that the utilities were aware of this trend and implicitly included this information in their load forecasts.

In addition to there being substantial evidence to suggest that new MDL was implicitly accounted for in the utility forecasts, we also note that this implicit inclusion is consistent with our legal obligations not to create cost-shifting to

remaining IOU customers, as well as our policy preference not to create an undue burden on those customers on whose behalf DWR did not incur costs.

Based on the above discussion and our consideration of the record evidence, we grant an exception to cost responsibility surcharges for new MDL of publicly-owned utilities that never took service from an IOU.

B. Amount of "New Load" to be Granted CRS Exceptions

We have evidence to show that some amount of new load was excluded from the IOU forecasts delivered to DWR that would have represented an approximation of both historic trends and future growth projections. Because the forecasts were not specified in enough level of detail to determine how much new load was implicitly accounted for in the forecasts, we are left with the question of how much new load should be granted an exception to the CRS.

CMUA has proposed that the Commission grant exceptions to the CRS for new MDL up to a limit of 150 MW in the PG&E and Edison territories combined by the year 2012, for those entities that have only new load and no transferred load . As we stated in D.03-07-028, while we wish to be fair to those publicly-owned utilities whose customers were never IOU customers and never took DWR power, we do not wish to create a loophole in CRS collection that gives publicly-owned utilities an incentive to form and site facilities with the express purpose of escaping CRS charges. Therefore, we believe there should be a cap on the amount of new MDL granted exceptions to CRS for those entities that are not specifically named in the Bypass Report. We therefore accept, on an interim basis, CMUA's proposal to set a cap of 150 MW before the end of 2012 that will be granted an exception to the CRS by this decision. This is a cap for the PG&E and SCE territories, since no evidence was submitted that there has been any

history of municipalization in the SDG&E territory. We also consider 150 MW spread across the PG&E and SCE territories before 2012 to be a *de minimus* amount that would not have been separately or explicitly accounted for in any load forecast of the IOUs. 150 MW represents less than one-third of one percent of the load of PG&E, SCE, and SDG&E combined.

We set this cap on an interim basis, and will allow parties to revisit the size of the cap (but not whether there should be a cap), through workshops or other means as determined by the assigned ALJ, in the billing and collections phase of this proceeding. We also believe, as suggested by some parties in comments on this decision, that the cap should be converted into a megawatt-hour figure through use of an appropriate load factor, for ease of administration.

The specific means for administering this "new" MDL cap should also be addressed in the billing and collections phase of this proceeding.

C. Date of Eligibility for Exceptions

In the Rehearing Decision, we concluded that the record appeared inadequate to determine eligibility for the new load exception adopted in D.03-07-028 based on whether a publicly-owned utility was formed before or after February 1, 2001. Accordingly, the Rehearing Decision directed that further proceedings be conducted concerning "whether, or to what extent, there is sufficient factual basis for a CRS allocation based on whether the publicly-owned utility was formed before or after February 1, 2001."

Now that we have determined that some limited exceptions to the CRS should be granted to new municipal departing load of publicly-owned utilities, the question still remains which publicly-owned utilities are covered by this exception. In D.03-07-028 we set a cut-off of February 1, 2001 as the date before which a publicly-owned utility had to have been providing service to at least 100

customers in order to qualify for the CRS exceptions. Upon further examination in this rehearing phase, however, we agree with Irvine that setting that date did not take into account the complexities of forming a publicly-owned utility. Though it was based on the approximate date that DWR began providing power to IOU customers, it was not a date that could have been known in advance by those involved in forming publicly-owned utilities. In addition, we set that cut-off date in July of 2003, more than two years after a publicly-owned utility would have had to have taken some actions in order to qualify.

In addition, City of Industry argues that the February 1, 2001 cut-off is arbitrary and ignores the fact that IOUs were aware that some publicly-owned utilities were in the process of forming as of that date, but were not yet operational. Therefore, it is plausible that some publicly-owned utilities were in the process of forming, and their annexed and / or new load could have been included in the forecasts sent to DWR by the IOUs, and yet the new publicly-owned utility would not be granted an exception to the CRS. In order to avoid these types of potential inequities, we amend our earlier decision to create a February 1, 2001 cut-off date for publicly-owned utilities to qualify for CRS exceptions.

Several parties, including Rancho Cucamonga, recommended a cut-off date of July 10, 2003 when D.03-07-028 was issued. We think that is a reasonable date, since parties had notice that the Commission was considering imposing CRS on MDL as of that decision. Thus, we will allow any publicly-owned utility in existence on or prior to July 10, 2003, and also serving at least 100 customers (as previously specified in D.03-07-028), to qualify for the new MDL exception to the CRS in the manner outlined above and subject to the limitations set forth therein.

V. Resolution of CMUA Petition for Modification

A. Overview of Issues

Although the scope of the rehearing focuses on the CRS allocation applicable to "new load," we also address as a related issue in this order the implications of new disclosures provided by PG&E and DWR relating to PG&E's "transferred load" forecast associated with MDL bypass. This issue was brought to the Commission's attention by CMUA.

In its reply comments on rehearing issues, however, CMUA took note of new disclosures contained in the comments of PG&E and DWR concerning the point in time that PG&E delivered its load forecasts to DWR. CMUA cited DWR statements in its memorandum attached to the October 20, 2003 ALJ ruling on rehearing issues, indicating that on February 14, 2001, DWR started to use a multi-year forecast that had been provided by PG&E.

These comments indicated that PG&E's forecast was delivered to DWR earlier than PG&E had previously claimed, and conflicted with certain assumptions underlying D.03-07-028 concerning the timing of the load forecasts relative to DWR's procurement of power, including procurement associated with MDL. Specifically, in D.03-07-028, we relied on assertions made by PG&E that it did not provide a sales forecast to DWR until June 2001. Based on the fact that DWR had completed the contracting of the bulk of its power purchases by that date, we concluded in D.03-07-028 that even though PG&E's load forecast incorporated specific adjustments to exclude MDL bypass, the load data was delivered too late to be utilized by DWR in determining its power procurement requirements. In view of the lack of record of any specific exclusions of MDL

bypass in load forecasts relied upon by DWR, therefore, we did not adopt a CRS exclusion for MDL customers in D.03-07-028, except for the limited "new load" exception attributable to existing publicly-owned utilities discussed above.

If DWR received PG&E's forecast as early as February 2001, CMUA argued, the Commission's findings in D.03-07-028 were based on wrong information that required correction. CMUA asked that this issue be considered in the rehearing phase of this proceeding, or in the alternative, sought leave to file a Petition for Modification of D.03-07-028 to address the issue. In its Petition for Modification, CMUA argued that hearings may be necessary to address the veracity and implications of these "new factual representations" regarding PG&E load forecasts provided to DWR.

In view of the implications arising from apparent discrepancies as to when PG&E delivered its forecast to DWR, we scheduled evidentiary hearings related to the limited scope of factual disputes as to the nature and timing of load data provided by PG&E to DWR. By ALJ ruling dated August 10, 2004, the following issues were identified and set for further evidentiary hearings:

> How many years' worth of forecast data were provided in the initial load forecast that PG&E delivered to DWR? When was the forecast first delivered to DWR?
>
> What was the amount of "transferred load" that PG&E incorporated from its Bypass Report into the initial load forecast provided to DWR?
>
> How does the "transferred load" impact the power requirements that DWR procured for (1) existing IOU customers as of February 1, 2001 that subsequently became MDL and (2) new load, if any, added by municipalities or irrigation districts after February 1, 2001 that were in areas covered by the "transferred load" forecasts.

To the extent that DWR independently extrapolated additional years of forecast data beyond those provided by PG&E, what, if any, data relating to municipal load bypass incorporated in DWR's calculations?

Do the currently adopted requirements for MDL CRS obligations appropriately take into account the effects of PG&E "transferred load" incorporated into forecasts utilized by DWR? If not, what adjustments to the MDL CRS obligation need to be adopted in order to recognize the effects of PG&E's "transferred load"?

PG&E and DWR produced witnesses to testify concerning their assertions set forth in their previously filed pleadings as to the load forecast submissions provided to DWR between January 1, 2001, and June 30, 2001, and the extent to which such submissions contained assumptions concerning MDL. PG&E sponsored two witnesses, Roy M. Kuga, PG&E Vice President in charge of oversight of daily gas and electric procurement functions, and Dennis M. Keane, PG&E Manager responsible for analysts supporting various PG&E regulatory filings and customer retention efforts. DWR sponsored one witness, Craig McDonald, managing director of Navigant Consulting, Inc.

B. Implications of Assumptions Concerning Delivery Date of PG&E Load Forecast Data to DWR

At the start of the rehearing proceeding, parties were initially in dispute concerning when PG&E delivered its three-year load forecast data to DWR. In its data response (attached to PG&E's rehearing comments), DWR stated that the forecast received from PG&E on February 14, 2001 consisted of three years of data (for 2001-03). DWR independently extended the forecast to cover a 10-year period by taking PG&E's three-year forecast (2001-03) using PG&E FERC filing data.

In its opposition to CMUA's Petition to Modify, filed March 18, 2004, PG&E denied that its August 2000 Bypass Report was provided to DWR in February 2001. PG&E claimed that it has no record of sending DWR *any* forecast in February of 2001. In its March 18, 2004, response, PG&E did attach an email printout indicating that it provided at least a one-year 2001 forecast to DWR at the end of March 2001. PG&E acknowledged receipt of a DWR email dated March 30, 2001 from DWR to PG&E, indicating that DWR "had requested a breakdown of PG&E's monthly 2001 sales (January through December). PG&E also attached an email dated March 30, 2001 from PG&E confirming transmittal of PG&E's "standard test year 2001 sales forecast" to Navigant, DWR's consultant.

There remained a dispute over whether two additional years' worth of forecast data (for 2002-03) were concurrently provided to DWR, and thus whether the associated municipal bypassed or transferred load incorporated in such data was known by DWR at the time it made its power purchases. At the start of evidentiary hearings, PG&E announced that it had just become aware of an email record sent by PG&E employee Claudia Greif confirming that PG&E's three-year forecast had, in fact, been sent to DWR as of February 12, 2001.[8] Accordingly, it is now undisputed that a three-year forecast (2001-03), incorporating MDL bypass data from the August 2000 Bypass Report, was provided by PG&E to DWR on February 12, 2001.

As discussed below, we conclude that in light of this now undisputed confirmation of an earlier delivery date of information regarding PG&E's load,

[8] See Ex. 5.

modification is required to D.03-07-028. In that decision, we relied on PG&E's erroneous assertion that its sales forecast was not provided to DWR until June 2001—after DWR had contracted for the bulk of its power purchases as a basis to conclude that DWR could not have taken into account the data concerning MDL bypass in its procurement of power. The fact that we now know that DWR received load data from PG&E containing MDL assumptions on February 12, 2001 is relevant to our previous findings in D.03-07-028 concerning the effects of MDL bypass assumptions on DWR procurement. In view of our revised factual findings, we no longer draw the conclusion that PG&E's forecast was received too late to be relevant in DWR's procurement of power. DWR executed a material number of contracts during the period between April 2001 and September 13, 2001. [9]

PG&E argues that even assuming the "new facts" concerning the Bypass Report are proven to be true and had not been known by the Commission at the time D.03-07-028 was issued, such facts are not inconsistent with the decision. As such, PG&E claims there would be no effect on the "new load" exception, and all new load within its service territory would be served by PG&E and thus still subject to a CRS.

CMUA challenges PG&E's claim that none of the "transferred load" involved loss of "new load," arguing that the affected geographic areas that are annexed will no longer be served at all by PG&E, and that all "new load" in such areas will be served by the municipal utility.

[9] McDonald Testimony, Tr. 1474.

CMUA argues that top the extent that PG&E excluded transferred load from its forecast as identified in the Bypass Report, PG&E necessarily excluded from its forecast the new load in those same geographic areas subject to annexation or condemnation pursuant to the transfer of load.

PG&E made no explicit adjustment to exclude new load in the annexed service territory where the transferred load occurs. Therefore, the load forecasts explicitly identified in the Bypass Report relate exclusively to transferred load. Nonetheless, PG&E witness Keane testified that PG&E would not be expected to serve new load within the same geographical area in which a publicly-owned utility was to assume responsibility for serving transferred load. As CMUA notes, PG&E will have no further right, obligation, or expectation to serve within the geographic areas covered by the transferred load.[10] Thus, any new load within the annexed area to be served by the publicly owned utility would not have been recognized in the DWR forecast. Accordingly, it is reasonable to conclude that PG&E's load forecasts did not incorporate a provision for new load in those geographic areas where existing load was forecasted to be transferred to a publicly-owned utility. Since there was no new load assumed in the forecast for these annexed areas, we can conclude that DWR did not procure power to serve new load in the annexed areas. On that basis, we shall grant a limited exception for new load limited to that occurring within the annexed or condemned geographic areas covered by the transferred load identified in PG&E's Bypass Report. No cost shifting will occur to the extent that any limited

[10] See Tr. 2488-2489, (PG&E / Keane).

new load exeption is confined to the geographic areas that were subject to the transferred load in the Bypass report.

"Transferred load" has relevance, moreover, with respect to the CRS obligation for *existing* utility load as of February 1, 2001 that departs to municipalities or irrigation districts. Load assumptions with an exclusion of "transferred load" has a bearing on the total MW load as of February 1, 2001 for which DWR was required to procure power. If data from the Bypass Report was supplied to DWR as early as February 12, 2001, identifying "transferred load" that *was* expected to depart, then DWR procurement requirements did not incorporate this load. Thus, the issue arises as to whether D.03-07-028 should be modified to adjust the MDL obligation for CRS to reflect transferred municipal load for which DWR did not procure power.

To the extent that the "transferred load" does not strictly relate to the rehearing phase (which addresses "new load" issues), but only to transfer of existing utility load as of February 1, 2001, its disposition remains relevant within the context of CMUA's Petition for Modification.

C. Quantification of PG&E "transferred load" Reflected in DWR Forecast

In order to determine the extent of any CRS exclusion for PG&E's transferred load bypass adjustments, we must quantify the amount of the transferred load incorporated in the bypass report, and, in turn, ascertain how it was reflected in the load forecasts utilized by DWR. While the specific figures in the Bypass Report relating to irrigation district and municipalization are not in dispute, parties expressed differing views concerning how the bypass figures should be translated into a CRS exclusion.

CMUA expressed the applicable exclusion in terms of MW capacity which it calculated as about 260 MW assumed to depart over the full 10-year forecast period. As a basis for the 260 MW calculation, CMUA applies a 40% load factor to the MWh sales forecast in the Bypass Report. PG&E argues that any exclusion should not be translated into megawatts using CMUA's assumed load factor calculation. PG&E claims that CMUA's use of a 40% load factor to derive the MW equivalent grossly inflates the load bypass estimate.

PG&E Witness Kuga provided a summary description of the derivation of the numerical values incorporated in the Bypass Report for "transferred load."[11] The Bypass Report depicted figures for cumulative bypass per year fro 2000-2004 in annual megawatt-hours (MWH). The two categories in the Bypass Report that relate to MDL were those that identify bypass due to irrigation districts and to municipalization. The reported bypass due to irrigation districts consist of forecasts of bypass to Modesto and Merced IDs, as well as bypass to SSJID and Laguna ID. The forecast of bypass to Modesto and Merced ID was based on a time-trend linear regression using historical data on PG&E's existing customers that had departed to date. The forecast bypass to SSJID and Laguna ID is associated with efforts by the two IDs to condemn PG&E's facilities and to serve existing customers. Accordingly, all of the bypass attributable to IDs is composed of transferred load rather than forecasts of new load.

The forecast bypass due to municipalization is composed of two elements: The first element is based upon PG&E's account services representative's expectations of lost sales of existing PG&E customers associated with future

[11] Ex. 3 (Kuga) at DMK-2-3

annexations by three existing municipal utilities (i.e., Redding, Roseville, and Lodi). The second element is an "expected value" calculation whereby a probability of 10% is applied to a forecast of lost sales of existing PG&E customers associated with possible condemnation efforts by two potential municipalities (Davis and Brentwood).

The total MDL is broken into two components: (1) transferred load associated with irrigation districts for 2001,2002, and 2003, respectively, and (2) transferred load associated with municipalizations for 2001,2002, and 2003, respectively.[12] This level of bypass for the 2001 through 2003 period was incorporated into the sale forecast provided DWR, as relied upon by DWR in it power purchase activities.

PG&E argues that any exception should be limited by the amount of MDL for 2003 contained in the Bypass Report. As set forth in the table on Exhibit 9 (attached as Appendix 1), the 2003 bypass amounts attributable to irrigation districts were 588 GWh / yr and the amounts attributable to municipalization were 152 GWh / yr. PG&E argues any CRS exception should be further limited by the difference between these amounts and the actual bypass load that had already departed prior to February 1, 2001 (and would thus not be responsible for DWR power charges in any event). In its opening brief, PG&E claims that based on year 2000 actual data, 352 GWh / yr of bypass attributable to irrigation districts had occurred, and 101 GWh / yr of municipalization bypass had occurred.

[12] Tr. 2551 (PG&E / Keane).

Based on PG&E's calculations, summarized below, the resulting subtraction leaves only 237 GWh / yr exception applicable to irrigation districts and 51 GWh / yr applicable to municipalization.

PG&E-Proposed Method of Computing Amount of Any CRS Exception:

Source of Bypass	Forecast Sales From Bypass Report (in GWh)		
	2003 Forecast	2000 Actuals	Exception
To Irrigation Districts	588	352	237
Municipalization	152	101	51

PG&E presented its above-described proposal concerning the netting of the 2003 forecast amount against year 2000 actual amounts for the first time in its reply brief. Since PG&E did not present this proposal in its witnesses' testimony or even in its opening brief, there was no opportunity for opposing parties to be heard concerning the merits of PG&E's proposed netting methodology. Particularly in the absence of opportunity to be heard by other parties, we are not persuaded that it is appropriate to reduce the value of the CRS exception by netting the 2003 forecast bypass figures by year 2000 actual figures.

The record evidence indicates that DWR relied upon PG&E's forecast data for each of the years presented in the forecast independently of how the forecasts may have deviated from actual load fluctuations prior to 2001. There is no record evidence indicating that DWR manipulated the amounts forecast by PG&E for any category of load for any given year to adjust for the effects of backward-looking actual data concerning what occurred in the year 2000. In the interests of consistency, therefore, we find no reason to conclude that DWR treated forecasts of MDL bypass any differently than forecasts attributable to any other load category. Thus, even assuming PG&E's claims concerning the actual

year 2000 load are numerically accurate, we do not conclude that the actual figures should be applied as a reduction to the otherwise available CRS exception. The exception should be determined based upon the forecast amounts relied upon by DWR, rather than upon actual load fluctuations that were not considered by DWR.

PG&E further states that the transferred load that was subtracted from its load forecast provided to DWR was based only on the 2003 forecast amounts. For the forecast period 2004 through 2010, DWR merely carried forward the absolute MWh amount from 2003 without increasing it by the trended amount from PG&E's regression analysis that was applied to other categories of load.

DWR extended PG&E's forecast to cover the 2004-2010 period by applying annual growth rates based on data in PG&E's FERC Form 714 filing which was independent of PG&E's Bypass Report. Thus, DWR did not incorporate the "trend line" growth rate to MDL included in the Bypass Report. Thus, DWR's extension of PG&E's forecast for the 2004-2010 period merely retained the absolute MWh amount from 2003 without increasing it by the trended amount from PG&E's regression analysis. Thus, we conclude that the CRS exception should likewise carry forward the absolute MWh amount from the 2003 forecast through 2010 without applying any escalation factor.

Merced and Modesto ID, by contrast, calculated the applicable MW exception by applying an annual growth factor through 2010. For the forecast years 2001 through 2005, Merced simply used the bypass figures contained in the Bypass Report. For each year from 2006 through 2010, Merced applied an annual growth increment of 72,871 MWh which equals the growth increment that PG&E assumed in its forecasts covering the 2001-2005 period.

D. Allocation of Transferred Load Exception Among MDL Customers

Parties expressed various proposals concerning how any exception granted for the transferred load should be applied and allocated among the various entities subject to the MDL CRS. Certain parties proposed that any CRS exception should be applied to the specific irrigation districts and municipalities that were identified in the Bypass Report. CMUA generally agrees with such an approach, but only to the extent that it does not foreclose MDL served by publicly-owned utilities not specifically mentioned in the Bypass Report from obtaining MDL exceptions that otherwise would not be used by those entities specifically identified in the Bypass Report.

Merced and Modesto point out that the Bypass Report identifies a single aggregate of bypass applicable to both irrigation districts, but does not delineate how much applies to each entity. Merced and Modesto, in their opening briefs, offered a proposed allocation between the two that is mutually agreeable between them. We find this proposed division of load reasonable and shall adopt it.

If the Commission decides to provide a limited CRS exception based on the MDL bypass forecast of transferred load, PG&E indicates it would not object to allowing new as well as transferred load to come under the limited CRS exception. Even so, PG&E denies in principle that its transferred load bypass forecast had any effect on DWR forecasts relating to new load. PG&E also believes that further proceedings would be needed to determine appropriate tools to grant, track, and otherwise administer the application of any limited CRS exception among the publicly-owned utilities and irrigation districts that would be eligible for the exception.

We direct that the CRS exception for PG&E's transferred load be allocated in the following manner. As a first priority, the CRS exclusion shall be made available for use by those municipalities and irrigation districts that were specifically identified in the Bypass Report. In the case of Merced and Modesto IDs, we shall divide the aggregate amount allocated to them in the Bypass Report in accordance with proportionate shares to which they have mutually agreed, as indicated in their briefs. To the extent that one of those specifically identified entities does not utilize their allotted exception, the exception shall be made available to other MDL entities on a first-come, first-served basis. The priority for use of the DWR power charge exception for the entities named in the Bypass Report shall be determined on an annual basis utilizing the applicable amounts shown in the Bypass Report. Other entities authorized to utilize any portion of the CRS exception amount shall do so on an annual basis to the extent an unutilized portion is available. For determining the assignment of any unused portion of the allotted exception to such other MDL entities under the Bypass Report, priority shall first be given to load transferring specifically from PG&E bundled service. The MDL entities eligible to apply for the exception also must have been in existence and serving customers as of July 10, 2003, the date of D.03-07-028. To the extent further details require resolution to implement the exclusion, those details shall be addressed in the billing and collection implementation phase of this proceeding.

In its comments on this decision, PG&E states that MDL is subject to Energy Recovery Bond charges imposed pursuant to Senate Bill (SB) 772, except for any new load that is excluded from paying CRS pursuant to this rehearing proceeding. The applicability and effects of SB772 is beyond the scope of this proceeding, and we make no findings in this order concerning it. We are issuing

a separate order today dealing with the applicability of Energy Recovery Bond charges. To the extent that there are any remaining implementation issues relating to MDL cost responsibility for Energy Recovery Bond charges, parties may raise them in the billing and collection phase or other appropriate forum.

E. Extent to Which DWR Procurement was Influenced by Forecast Data

Parties dispute whether, or to what extent, DWR was influenced in its procurement actions by PG&E load forecast data, including the MDL bypass assumptions incorporated therein. PG&E argues that even assuming DWR received its forecast as early as February 2004, DWR's purchasing behavior was not materially impacted by the MDL bypass data. PG&E challenges the premise that commitments DWR made in the spring and summer of 2001 were closely tied to the forecasts that DWR received from the utilities. DWR witness McDonald testified that the "net short" forecasts DWR was working with were accurate to within no more than 10 percent.[13] PG&E thus argues that this uncertainty "already swamps" any estimate of MDL bypass that was implicitly contained in the forecast PG&E provided to DWR. Further, DWR was continually adjusting its forecasts during this time frame.[14] PG&E further argues that DWR's primary focus was on obtaining commitments for power for the summer of 2001, and that longer-term commitments arose out of that focus, as suppliers were unwilling to provide power at an acceptable price to DWR unless DWR was willing to make longer-term commitments. [15] PG&E claims that the

[13] . See Tr. 2676-79 (DWR / McDonald).

[14] See Tr. 2593 (DWR / McDonald).

[15] See Tr. 2610-12 / DWR McDonald.

longer-term commitments were apparently an unavoidable consequence of signing up power for the summer of 2001 irrespective of the MDL bypass assumptions.

PG&E thus argues that there was no "careful correlation" between the multi-year forecasts DWR received in early 2001 and the long-term commitments DWR ultimately made. As such, PG&E claims it is not reasonable to use those forecasts to excuse a portion of MDL customers from paying the CRS. Regardless of the fact that there was an estimate of transferred MDL implicit in its forecast given to DWR, PG&E argues that these customers should be obligated to pay the CRS.

We acknowledge the lack of a precise matching of the load forecasts utilized by DWR with the specific quantities of power procured for various categories of customers. Such lack of precision, however, does not justify completely disregarding the MDL bypass assumptions in considering the applicability of CRS. Our factual inquiry has to do with what categories of load were included or excluded from the forecast. Once we determine that a category was excluded, that means that DWR was not procuring power on behalf of the excluded category. Thus, irrespective of how imprecise the forecasts were or how well the supplies matched the demand forecasts, that matching exercise only had relevance with respect to those categories of load for which DWR was procuring power, as defined by the forecast provided to DWR. No matter how imprecise the load forecasts were, we are not persuaded that the imprecision proves that the transferred load was never included in the first place as a load category for which DWR was procuring power.

We applied a similar principle earlier in this proceeding in determining the applicability of a CRS for the other major category of departing load, namely

customer generation. In that instance, there was a similar lack of precision in matching forecasts and procurement in the context of our considering whether to grant a CRS exclusion of any portion of Customer Generation Departing Load.[16] Yet, that lack of precision did not prevent us from determining a reasonable approximation of affected load and adopting a CRS exclusion for Customer Generation Departing Load. On that basis, in D.03-04-030, we determined that the first 3000 MW of customer generation departing load to leave the IOUs' systems would not be required to pay the DWR ongoing power charge portion of the CRS. As we stated therein:

> "It is clear that DWR, when negotiating long-term power contracts, assumed that a certain amount of customer generation departing load would occur every year and therefore did not procure long-term power for that portion of the load. In fact, such an assumption is based on common sense, since utilities have always faced departing load in various forms, including that caused by an economic downturn, improvements in energy efficiency and building codes, as well as installation of self-generation systems."[17]

Thus, while we concluded in D.03-04-030 that the Navigant model assumptions were not precise enough to set a year-by-year cap for purposes of excluding a portion of Customer Generation from the CRS, the overall rationale behind setting some form of cap still made sense as a way to avoid cost shifting. Thus, given the lack of precision to support a year-by-year cap, we adopted one overall cap for Customer Generation of 3,000 MW, representing an approximate cumulative forecast assumption over a 10-year period. (D.03-04-030 at 53.)

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[16] DWR / McDonald RT 2688: 22-28.

[17] D.03-04-030, *mimeo.* at p. 54.

In similar fashion to Customer Generation, the lack of precision in the matching of forecasts and procurement is not a valid reason simply to ignore altogether the fact that the MDL bypass was never included in the load forecasts relied upon by DWR. Thus, whatever imprecision is present in power quantities that were procured, DWR was not acting to procure power for MDL load that was explicitly subtracted from the PG&E forecasts provided for use by DWR.

F. Timing of DWR Procurement Relative to Date of Receipt of Forecast

PG&E argues that even if the forecast was received as early as February 2001, DWR had already begun to enter into contractual commitments by then. PG&E argues that DWR had made a significant number of contractual commitments by the middle of March 2001, through negotiations that could not happen instantaneously.[18] Therefore, PG&E minimizes the weight that its forecasts could have had on DWR's commitments, arguing that no strong cause-and-effect has been shown between the receipt of the forecast in February 2001 and consequent actions limiting procurement in response to MDL bypass. PG&E proposes that any CRS exception that might be granted be adjusted to account for contractual commitments made by DWR prior to receiving and relying upon the sales forecast from PG&E.

We find that although DWR had made certain limited contract commitments prior to February 12, 2001, the vast majority of commitments were finalized after that date. In Exhibit 18, in reference to the PG&E forecast, DWR stated that it "did rely on the information contained within this sales forecast in

[18] . *See*, Tr. 2608 (DWR / McDonald).

making decisions regarding power purchases."[19] DWR Witness McDonald testified that "DWR started using this forecast in the mid-February timeframe."[20] The forecast was used by DWR in "the development of forecasts of net short…"[21] The net short was used "to help the contracting team inform themselves about how much contract they should be entering into."[22]

The fact that DWR had already executed a minimal number of power purchase agreements prior to receipt of the sales forecast data from PG&E (and possibly letter agreements with respect to others) does not negate the fact the DWR executed the vast bulk of its contractual commitments after February 12, 2001. Thus, we find nothing to convince us that the delivery of the load forecast on February 12, 2001 was too late to form the basis for the bulk of DWR procurement. Thus, we find nothing to preclude an exception from the ongoing power charge component of the CRS for transferred MDL reflected in those sales forecasts based on a claim that February 12, 2001 was too late in the procurement process.

An indicated by Exhibit 73 from the October 2002 hearings, only four contracts were executed before February 12, 2001, with a total capacity of 2150 MW. Three of the four contracts have already expired. Thus, the evidence

[19] Exh. 18, pg. 3, Response 1(g). As clarified by PG&E witness Keane, the forecast in question was a sales forecast (i.e., stated in MWh), not a load forecast (stated in MW capacity). 21 Tr/ 2497:7-9 (PG&E/Keane).

[20] 22 Tr. 2588:24-25 (DWR/McDonald)

[21] 22 Tr. 2631:9-12 (DWR/McDonald)

[22] 22 Tr. 26321:13-23 (DWR/McDonald)

indicates that very little, if any, long term DWR power purchases occurred prior to receipt of the PG&E load forecast on February 12, 2001.

Moreover, we made similar observations concerning the timing of contract purchases in the context of Customer (or Distributed) Generation in an earlier departing load phase of this proceeding. For example, preparation of the document entitled "Forecast for Distributed Generation in California,"[23] which DWR utilized to adjust the sales forecasts upon which its power purchase activities were based, was started in March 2001 and finalized in April 2001.[24] Although the forecast of how much load would depart the IOUs' systems for self generation was not finalized until April 2001, the Commission nevertheless provided an exception for this forecasted amount because DWR had not yet entered into the bulk of its power purchase contracts as of April 2001.[25] The Commission determined that "granting exceptions to certain portions of the CRS for customer generation up to 3,000 MW will not result in any cost shifting among customers, since costs for those MW were not incurred by DWR."[26] Thus, a similar finding applies in the context of MDL. Accordingly, we conclude that receipt of the forecast in February 2001 was early enough to have a material influence on DWR in terms of its procurement. Thus, granting CRS exceptions in recognition of the PG&E transferred load will not result in cost shifting among customers, since costs for that load were not incurred by DWR

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[23] Exh. 72 ("Forecast for Distributed Generation in California").

[24] Tr. Vol. 12 (DWR / McDonald), p. 1473, line 10 to p. 1474, line 10 (testifying to the time frame over which the forecast for customer generation was prepared).

[25] Tr. Vol. 12 (DWR / McDonald), p. 1484 (testifying to the fact that DWR negotiated and executed a material number of contracts between April 2001 and September 13, 2001).

[26] *See* D.03-04-030, p. 64 (*slip op.*).

G. Significance of Whether DWR, Itself, Makes the Adjustment

PG&E also argues that the granting of a CRS exceptions for MDL would be inconsistent with the Commission's treatment of customer generation departing load (CGDL). PG&E argues that the Commission granted exceptions to CGDL based on the forecasts of such load made by DWR, and not the utilities. Since DWR made no corresponding MDL forecast, PG&E argues that consistent treatment would disqualify MDL from an exception.

PG&E argues that the basis for the exclusion granted to CG DL in the form of a 3,000 MW cap is not analogous to the proposed basis for the CRS exclusion involving MDL transferred load. PG&E argues that in granting CG DL certain exceptions from the DWR power charge in D.03-04-030, the Commission was relying on "the DWR / Navigant model assumptions to set one overall cap of 3,000 MW (the approximate cumulative total (rounded) of DWR's annual assumptions over ten years)." (D.03-04-030, p. 54.) PG&E emphasizes that this 3,000 MW exception was based on DWR's separate, explicit specific reduction to its load forecasts to reflect anticipated load loss due to increased CGDL, above and beyond what might have been embedded in the utilities own forecasts.

PG&E quotes the MDL Decision where we stated: "While DWR actually forecasted a specific amount of departing load associated with new customer generation, it made no corresponding MDL forecast. The amount of customer generation departing load proposed to be exempt from the [power charge], by contrast, is directly tied to this DWR forecast." [27]

[27] D.03-07-028, pp. 36–37 (*slip op.*).

Thus, to the extent that any analogy is to be drawn with the Commission's decision on CGDL, PG&E claims the relevant inquiry in this case is whether DWR itself explicitly reduced the load forecasts it was using to as it made its power purchases for anticipated load loss to publicly- owned utilities.

We disagree with PG&E's claim that the only relevant inquiry is whether DWR, itself, (as opposed to PG&E) performed the forecast of a specific amount of MDL bypass. In the context of whether cost shifting is involved, the relevant inquiry is what the forecast, itself, includes or excludes. The particular entity (e.g., DWR or PG&E) that instigated the exception is merely incidental. The particular identity of the entity that makes the MDL bypass adjustment makes no difference in determining whether an adjustment exists, its magnitude, or how the resulting load forecast was utilized by DWR in procuring power.

In our earlier statement from D.03-07-028, quoted above by PG&E, we had already drawn the conclusion that there was no separate forecast of MDL bypass that had been specifically forecast by PG&E and provided to DWR. It was in that context that we focused on the separate forecasting actions performed by DWR as the only remaining relevant inquiry as to whether MDL had been taken into account in the load forecasts. Yet, since the subsequent additional evidence produced in this phase of the proceeding has proven that PG&E did, in fact, independently incorporate MDL bypass assumptions as part of the load forecast upon which DWR relied in making procurement decisions. In view of this additional evidence, therefore, our focus is not merely on the actions of DWR directly, but also on the actions of the IOU in preparing the forecast.

In terms of determining whether there is any cost shifting, the relevant issue is whether a particular component of load was included or excluded from the total load forecast relied upon by DWR in procuring power. The question of

who made the adjustment to exclude such load--whether it was made by the IOU initially, or by DWR subsequent to receiving the IOU forecast-- is an incidental detail that has no bearing on the essential question of whether DWR procured power on behalf of such load.

Thus, we conclude that the load forecast provided to DWR by PG&E did, in fact, incorporate explicit assumptions concerning the bypass of MDL. Although we acknowledge that DWR did not make any separate subsequent adjustments to the forecast to reflect MDL bypass, it likewise did not add back any of the MDL bypass that had already been taken out of the load forecast by PG&E. Thus, the load forecasts utilized by DWR did not include the MDL bypass that had been incorporated from the PG&E 2000 Bypass Report.

While DWR did not make a specific adjustment to PG&E's sales forecast to account for municipal departing load as it had done with respect to customer generation, the adjustment that had already been made by PG&E carried through to the figures relied upon by DWR. Thus, in terms of the cause-and-effect relationship between load forecast assumptions and procurement decisions, DWR's procurement behavior with respect to MDL bypass assumptions was similar in effect as for Customer Generation bypass assumptions.

H. Analogies to the U.S. Navy Load CRS Requirement

PG&E also cites the Commission's action imposing a CRS requirement on U.S. Navy load as adopted in D.03-05-036, as providing an analogous situation to the MDL CRS issue before us here. In D.03-05-036, the Commission addressed whether the United States Navy should be granted an exception from the DA CRS for 80 MW of load that it obtained through a special contract with the Western Area Power administration (WAPA). In that decision, the Commission

rejected the Navy's contention that it should receive a CRS exception, even though SDG&E's witness "testified that DWR did not buy contract power to serve the 80 MW of Navy Load…and was expressly excluded from the SDG&E load requirements provided to DWR."[28] The Commission justified its holding as follows:

> "SDG&E points out that [Navy] was on bundled service as of February 1, 2001. Under the provisions of D.02-11-022, the Navy thus is obligated to pay the DA CRS on the same basis as other customers that meet that criterion…. Although the Navy procured power under the 80 MW independently of DWR, the power did not begin to flow under the special contract until after February 1, 2001….For at least some period on and after February 1, 2001 up until it began to be served under the special contract, the Navy would have been subject to bundled procurement for meeting its load demand. To the extent that DWR procured the net short for SDG&E bundled load during the period prior to April 1, 2001, some bundled power would have flowed to the Navy."[29]

PG&E focuses on the fact that we applied the February 1, 2001 cut-off date for DWR cost responsibility, as mandated in AB 117, even though that the IOU forecast obtained by DWR reflected the loss of Navy load. PG&E claims that the manner in which SDG&E's and DWR's forecasts treated the Navy load are identical to the how PG&E's and DWR's forecasts treated the transferred MDL reflected in PG&E's August 2000 Bypass Report: PG&E argues that in both situations, the utility netted out some "transferred" load prior to providing its forecast to DWR, and in both situations DWR made no further explicit

[28] D.03-05-036, p. 4 (*slip op*.).

[29] D.03-05-036, p. 7 (slip op).

adjustments to the utility's forecast. PG&E thus argues that it would be consistent for the Commission to conclude that transferred MDL customers departing after February 1, 2001, owe the CRS, irrespective of the MDL "transferred" load that was subtracted from the load forecast provided to DWR.

We disagree that the U.S. Navy load treatment is analogous to the situation involved with the MDL transferred load. There are a number of differences between the two situations. For example, as explained in D.03-05-036, DWR / Navigant *included* the 80 MW in its modeling of SDG&E net short requirements, despite the fact that SDG&E had informed DWR / Navigant that this load should not be included because the Navy was procuring the load through its own separate contract. By contrast, DWR / Navigant expressly did *not* include any of the MDL transferred load in its forecasts or modeling thereof. Likewise, neither did it procure power on behalf of such PG&E load. Thus, DWR treated the load differently between the two situations with respect to whether it was included or excluded in forecasts and modeling calculations.

Moreover, the considerations involved here are based upon the principles we established in D.03-07-028 for the applicability of a CRS to MDL, where we expressly distinguished departing load from direct access, stating: "The dispute over the treatment of "new load" in the context of municipal customers raises issues different from those facing us in the DA phase of this proceeding."[30] We expressly considered the issue of whether the DWR load forecast incorporated a provision for MDL in concluding that a CRS exception should apply to new load. Thus, in D.03-07-028, we established a conceptual cause-and-effect link between

[30] D.03-07-028, p. 57 (*slip op.*).

the load forecast and the applicability of the MDL CRS to particular subcategories of MDL. While the rehearing order directed that a further factual record be developed, it did not disturb that underlying principle of cause-and-effect established in D.03-07-028, especially in the context of cost-shifting. We expressly stated that whether or not DWR procured on behalf of a segment of departing load was a relevant consideration in whether a CRS exception provision should apply.

In comments on the Proposed Decision, PG&E claims that granting a CRS exclusion for the transferred load would violate the cost-shifting prohibitions set forth in AB 117. PG&E argues that because the exclusion of transferred load from the MDL CRS would cause other groups of customers to pay more, an exclusion of transferred load constitutes impermissible cost shifting under AB 117. In making such a claim, however, PG&E misconstrues the requirements of AB 117. Cost shifting that is prohibited under AB117 specifically has to do with costs being imposed on one category of load where the costs were incurred on behalf of a different category of load. In the case of the MDL transferred load that was identified in the Bypass Report, however, no costs were incurred by DWR because the transferred load was never included within the load forecasts upon which DWR relied for purposes of procuring power. Since no DWR costs were ever incurred on behalf of the transferred load, there are now DWR costs to be shifted as a result of excluding the transferred load from the DWR power charge. Accordingly, there is no violation of AB 117 as a result of the transferred load exclusion. Rather, it would be a violation of AB 117 if transferred load was not excluded from the CRS.

VI. Determination of List of MDL Entities Eligible for Applying for Any CRS Exception

A. Background

As stated above, the MDL Decision adopted a CRS for MDL customers, with specified exceptions for new load of existing publicly-owned utilities. That decision defined "new load," for purposes of applying the CRS exception, as load that had never been interconnected with a California IOU, but that was located in territory that had previously been IOU territory and had been annexed or otherwise expanded into by a publicly-owned utility. That decision also defined qualifying publicly-owned utilities eligible for the CRS exception as "publicly-owned utilities formed and delivering electricity to retail end-use customers before February 1, 2001.[31]

The MDL Decision further states:

> "It is not clear from the record exactly which existing publicly-owned utilities would be entitled to exceptions from the CRS from this decision. It is our intent that only those publicly-owned utilities with substantial operations in place as of February 1, 2001 gain such benefit. Conversely, if there are any publicly-owned utilities serving minimal numbers of customers (*e.g.*, under 100) which would technically qualify for CRS exceptions, we would choose to close such loopholes because there is too much chance for disproportionate expansion by such entities, expansion which could not reasonably have been considered by DWR." [32]

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[31] ." D.03-07-028, p. 76 [Conclusion of Law 11] (*slip op.*).

[32] *Id.* at pp. 61-62 (*slip op.*).

The MDL Decision anticipated the issuance of an ALJ ruling in this proceeding to clarify the definition of "existing publicly-owned utility" for these purposes." On July 23, 2004, the assigned ALJ solicited comments from the parties to develop comprehensive and final criteria for identifying publicly-owned utilities whose MDL departing load customers would qualify for exception from the CRS. The ruling identified the issues discussed below. The ruling anticipated the Commission would subsequently identify publicly-owned utilities whose customers qualify for the "new load" exception from the CRS.

Therefore, we use the identified list of qualifying publicly-owned utilities as eligible for the new load exception and use this same list to identify any MDL entities that are eligible to apply for the PG&E transferred load exception on a first-come, first-served basis, as discussed above.

To the extent that any "transferred load" CRS exception that remains available that is not otherwise utilized by the entities identified in PG&E's Bypass Report, these and other MDL entities may seek to apply for such exception if they are among those entities that meet the criteria identified below.

B. Defining Existing Publicly-Owned Utility for Purposes of Exceptions to CRS

In response to the ALJ's ruling regarding the identification of publicly-owned utilities eligible for a CRS exclusion as referenced above, the Commission received comments from PG&E, SCE, SDG&E, CMUA, Industry, Modesto, Merced ID, Rancho Cucamonga, SSJID.

The ALJ ruling asked parties to comment as to whether there should be a specific size cut-off criterion (e.g., number of customers, load, etc.) in order for an existing publicly-owned utility to qualify for CRS exceptions, or whether other

criteria besides size should determine which existing publicly-owned utilities qualify for "new load" CRS exceptions.

C. Parties' Positions

PG&E believes that only publicly-owned utilities that fit the following criteria should be eligible for the MDL CRS exception: (1) the publicly-owned utility was providing retail service prior to February 1, 2001 (2) the publicly-owned utility was serving more than a minimal number of customers and (3) service to new customers within an IOU's service territory would not cause disproportionate expansion by the publicly-owned utility which could not reasonably have been considered by DWR. According to PG&E, compliance with the first and second criteria is straightforward. PG&E believes that the publicly-owned utilities should have the burden to establish whether they satisfy the third criteria before they are eligible to receive the exception.

SCE agrees with the Commission's intent to limit CRS exceptions to those utilities that were in existence prior to February 1, 2001. SCE would define publicly-owned utilities according to operational criteria, however, suggesting "size does not matter in this regard." SCE suggests that the Commission instead apply the definitions in Pub. Util. Code §§ 9604(d), 217 and 10001. SCE is specifically concerned that the definition of utility for purposes of the CRS exception exclude an entity that merely provides retail service by way of portable generators, because such generators are temporary in operation and also pollute.

SDG&E suggests that any size criteria (i.e., the 100 customers criteria) be a benchmark rather than a hard and fast rule and suggests the Commission also consider the following factors concerning the publicly-owned utility: (a) the number of customers served relative to the total number of electric consumers in the utility's geographic area; (b) the extent of ownership of the electric

infrastructure; (c) whether substantial billing and customer service capabilities exist; and (d) the degree of integration of electric service with other services provided.

CMUA states that there should not be a specific size criterion in order for an existing publicly-owned utility to qualify for CRS exceptions, if the definition of existing publicly-owned utility remains as stated in the MDL Decision. If the Commission changes the definition of existing publicly-owned utility, the CMUA believes the following two factors should be considered: (a) the reasonable expectation of DWR and the IOUs in forecasting new municipal load of new publicly-owned utilities; and (b) the costs incurred by the new publicly-owned utilities with the reasonable expectation of serving new municipal load. CMUA believes that DWR's underlying forecasts should have accounted for the historical trend in the creation and operation of spot municipal utilities. CMUA also states that new publicly-owned utilities have invested millions of dollars in developing spot municipal utilities.

SSJID objects strongly to the proposal presented in the ALJ's ruling as it applies to SSJID. SSJID has provided agricultural water supplies since 1909. Adopting the proposed criteria, according to SSJID, would be unreasonable in its case because SSJID has pursued status as a retail electricity provider openly and publicly since 1997. It lists the actions it has taken in that regard, among them, the publication of a business plan in 1998 that addressed providing retail power from the Tri-Dam project and entering into an interconnection agreement with PG&E in 2000. SSJID argues that, in light of those public actions, DWR would have been unreasonable to have purchased power supplies assuming SSJID's continued reliance on PG&E power after an existing power contract with PG&E expires at the end of 2004. SSJID states PG&E has known for years of SSJID's

plan to provide power to its constituents after that contract expires and even began negotiations for the purchase of PG&E distribution facilities. It argues that PG&E's load forecasts should have recognized that fact.

SSJID also proposes that the Commission use other milestones for determining eligibility for the publicly-owned utility exception from the CRS. For example, it would have the Commission consider evidence of "substantial progress" toward implementation of retail service using "developmental milestones" rather than size.

SSJID believes its proposal is consistent with Senate Concurrent Resolution (SCR) 39, which refers to municipal utilities and states that:

> "...the Legislature intends that any municipal utility serving customers in newly developed areas shall be exempt from any exit fees, as long as the municipal utility was formed before June 1, 2003, and demonstrates that it has expended in good faith significant amounts of money and resources toward the creation of a municipal utility that will serve customers in newly developed areas."

Although SSJID states it is an irrigation district, it believes the principles set forth in SCR 39 should also apply to irrigation districts.

SSJID and Merced comment that the ALJ's proposed definition of "new load" departs significantly and inappropriately from that proposed in the MDL Decision. Specifically, Merced ID argues that the ALJ's definition contravenes the express language of the MDL Decision which applies the CRS exception to publicly-owned utilities with both exclusive and non-exclusive service areas. [33]

[33] D.03-07-028, p. 61 (*slip op.*), stating: "A reasonable way to make a distinction is to assume that historical trends will continue with current publicly-owned utilities and to

Footnote continued on next page

D. Discussion

In D.03-07-028, we set limits on the publicly-owned utilities that could seek to apply for a CRS exception. As stated in that decision, our intent was to avoid creating a loophole that would encourage new publicly-owned utilities to develop solely to take advantage of a disparity in rates associated with DWR and historical utility cost responsibility costs – to the detriment of remaining IOU ratepayers. We established the cut-off date of February 1, 2001 to determine whether the publicly-owned utility qualified for the limited CRS exception. We further stated that it was our intent that only those publicly-owned utilities with substantial operations in place as of February 1, 2001, be eligible for the exception, and proposed that such utilities serving a minimal number of customers (e.g., under 100) not qualify for the exception, because there is too much chance for disproportionate expansion by such entities, which expansion could not have been considered by DWR. We asked the assigned ALJ to develop a record to clarify the definition of "existing publicly-owned utility". [34]

In this order, we determine eligibility criteria for "existing publicly-owned utilities" who qualify for the limited CRS exception for transferred load, as adopted in this order. Specifically, "existing publicly-owned utilities" are those publicly-owned utilities who were (1) providing electricity to retail end-use customers on or before July 10, 2003; and (2) serving 100 or more customers. We modify the date from our original determination of a February 1, 2001 cut-off date because we are allowing other publicly-owned utilities beyond those

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not impose a CRS on new MDL associated with existing publicly-owned utilities (including publicly-owned utilities with non-exclusive service areas."

[34] D.03-07-028, pp. 61-62 (*slip op.*).

originally named in the Bypass Report to be eligible for exceptions, on a first-come, first-served basis. Because we have modified the eligibility date for new load as described above, to allow exceptions on a non-discriminatory basis, we do so for transferred load as well. Thus, we adopt the effective date of July 10, 2003.

We define "substantial operations" in terms of number of customers, and decline to add other criteria to this definition. For example, PG&E suggests that the publicly-owned utility should establish that service to new customers within the IOU's service territory would not cause disproportionate expansion by the publicly-owned utility which could not reasonably have been considered by DWR, and SDG&E suggests adding other multiple criteria to the definition. However, an inquiry as to the number of customers strikes the balance as the best and most efficient way to insure against disproportionate expansion, because it is an objective test that does not require a mini-hearing for each publicly-owned utility claiming the exception.

We similarly decline to create a definition that relies on the type of technology (such as portable generators) a publicly-owned utility uses to serve its customers, because the number of customers a utility served as of this date is a more reasonable manner to address the issue of the possibility of disproportionate expansion. Finally, we do not create a definition that considers evidence of "substantial progress" toward implementation of retail service as of February 1, 2001 or the effective date of this decision, using "developmental milestones" rather than size, as suggested by SSJID, because as of February 1, 2001 or the effective date of this decision, there was no certainty as to when, if at all, such publicly-owned utilities would have begun to provide electricity to retail end-use customers.

PG&E lists the entities that, based on the Department of Energy table, appear to meet PG&E's first two suggested criteria (i.e., were formed and delivering electricity to retail end-use customers before February 1, 2001 and were serving more than 100 customers before February 1, 2001). PG&E believes that the burden should rest on the publicly-owned utilities to demonstrate that they satisfy the third criteria PG&E advocates be adopted before they qualify for the exception.

SCE states all municipal utilities in its territory that would qualify for the CRS exception are included in the ALJ's ruling. SDG&E states there are no qualifying publicly-owned utilities in its territory.

Modesto and Merced ID describe how they each meet all of the criteria proposed by D.03-07-028 and the ALJ's ruling. Modesto and Merced ID are included on the list of exempt publicly-owned utilities attached to the ALJ ruling.

Based on the lists provided by the IOUs in response to the ALJ ruling,[35] and the criteria adopted above, we conclude that the following publicly-owned utilities qualify as being eligible to apply for any unused portion of the CRS exception for transferred load that is not utilized by MDL of the irrigation districts and municipalities that are given first priority to utilize the CRS exception. In addition to those listed below, other publicly-owned utilities may make a motion to the assigned ALJ to be added to the eligibility list based on a demonstration that they meet the criteria we establish in this decision. The Assigned ALJ may rule on the eligibility of any entity who makes such a motion, after verifying eligibility and considering comments from other interested

[35] The ALJ ruling attached a list of California public owned utility entities as of 2001 extracted from publicly available data on the Department of Energy website.

parties. Any such motions should be served on all parties on the service list for R.02-01-011.

The currently eligible Municipal Utilities are: Alameda, Anaheim, Azusa, Banning, Biggs, Burbank, Calaveras, Colton, Glendale, Gridley, Healdsburg, Lodi, Lompoc, Los Angeles, Needles, Palo Alto, Pasadena, Pittsburg, Redding, Riverside, Roseville, Santa Clara, Shasta Lake, Tuolumne, Ukiah, Vernon.

The currently eligible Municipal Utility Districts are: Lassen and Sacramento.

The currently eligible Public Utility Districts are: Trinity, and Truckee-Donner.

The currently eligible Irrigation Districts are: Imperial, Merced, Modesto, and Turlock.

PG&E argues that Merced ID should not qualify for a CRS exception because its service to new customers within an IOU's service territory would cause disproportionate expansion by the publicly-owned utility which could not reasonably have been considered by DWR. All of the electric service that Merced ID provides is within the area in which PG&E has an obligation to serve existing and new load. PG&E estimates that as of February 1, 2001, Merced ID was serving about 333 customers, about 328 of which were former PG&E customers and 5 of which were new customers. PG&E states that Merced ID tripled the number of customers it served between February 1 and the end of 2001, and almost all of the customer increase was represented by new load. PG&E also argues that, according to Merced ID's summer newsletter, the utility expects to serve about 4,300 residences by the end of 2004, and DWR could not have reasonably considered this expansion. Merced ID states that it qualifies for the CRS exception under the criteria set forth in the MDL Decision.

Merced ID states that it should qualify for the CRS exception, and that even applying PG&E's criteria, Merced ID's service to new load in recent years does not constitute a "disproportionate expansion" which could not have reasonably been considered by DWR. Merced ID states that its witness testified that between the time it began providing retail electric distribution service in 1996, and the beginning of 2001 when the DWR forecasts were prepared, its customer count had grown to over 200 and it was serving connected peak load in the range of 40 to 60 megawatts. Merced ID then refers to PG&E's witness Keane, who testified that PG&E included a detailed combined forecast of departing load for Merced ID and Modesto including 351,173 megawatt hours (MWh) for 2000; 385,321 MWh for 2001; 458,192 MWh for 2002; 531,064 MWh for 2003; 603,936 MWh for 2004; and 676,808 MWh for 2005.

Merced ID agrees with PG&E that Merced ID was serving approximately 881 customers in 2001, and that it expects to serve 4,300 residences by the end of 2004. Merced ID also agrees that most of this is new load. However, Merced ID explains that the 4,300 residences comprise only about 2.5 to 3 MW, and that this new load, combined with existing load that departs PG&E service in 2003 and 2004, is well within the forecast of departing load prepared by PG&E.

We conclude that the MDL of Merced ID qualifies under the criteria adopted above, because it had over 100 customers as of February 1, 2001 and therefore also as of July 10, 2003.

SCE believes that new publicly-owned utilities serving load with portable generators should not qualify for a CRS exception. In its reply comments, CMUA states that, contrary to PG&E's earlier comments, Needles is an existing publicly-owned utility since 1983, and is listed in the Department of Energy table attached to the ALJ ruling as having retail sales in 2001. CMUA also states that

Edison failed to include the city of Banning within its list of existing publicly-owned utilities providing retail electric service as of February 1, 2001, and clarifies that Banning first began providing electric service in 1913, as is also listed on the Department of Energy table cited above.[36]

For the reasons set forth above, we adopt the list of excepted entities set forth above, and decline to eliminate any of the listed entities whose new MDL would qualify for the exception.

VII. Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of AB 1X (Chapter 4 of the Statutes of 2001-02 First Extraordinary Session). Therefore, Pub. Util. Code § 1731(c) (applications for rehearing are due within 10 days after the date issuance of the order or decision) and Pub. Util. Code § 1768 (procedures applicable to judicial review) are applicable.

We note that Senate Bill (SB) 772 links the disposition of the limited rehearing of D.03-08-076 with the refinancing of the bankruptcy Regulatory Asset by the issuance of Energy Recovery Bonds (Bonds) in terms of the allocation of costs from new municipal load of the "fixed recovery amounts and any associated fixed recovery tax amounts."[37] Pursuant to SB 772, new MDL cost responsibility applicable to the Bonds must be consistent with the disposition of

[36] The CMUA also states that SCE is wrong that only one new publicly-owned utility has been formed in its service area before February 1, 2001, because Victorville and Industry had both formed publicly-owned utilities on January 9 and January 25, 2001 respectively. CMUA also states that SCE is in error by including Downey on its list, because to CMUA's knowledge, Downey has not formed a publicly-owned utility.

[37] See Pub. Util. Code § 848.1(c).

the rehearing of D.03-08-076 as determined in this proceeding.[38] This is another reason for expedited review of any application for rehearing of today's decision. However, because this is not a financing order, we note that the provisions of Pub. Util. Code § 1769 set forth in SB 772 do not apply. The provisions of Pub. Util. Code § 1769 would require the filing of any court challenge within ten days of the issuance of the instant decision. Rather, judicial review procedures set forth in Pub. Util. Code § 1768 apply.

VIII. Comments on Proposed Alternate Decision

The Alternate Decision of President Peevey was filed and served on parties on November 5, 2004 in accordance with Rule 77.6 of the Rules of Practice and Procedure. Comments on the Alternate Decision were filed on November 12, 2004 by Rancho Cucamonga, City of Industry and City of Corona (jointly), CMUA, Turlock Irrigation District, NCPA, SDG&E, Modesto Irrigation District, South San Joaquin Irrigation District, Merced Irrigation District, PG&E, SCE, and Hercules. Reply comments were filed on November 16 by Rancho Cucamonga, City of Industry and City of Corona (jointly), Modesto Irrigation District, Turlock Irrigation District, NCPA, CMUA, SDG&E, South San Joaquin, and PG&E. Numerous changes have been made in the text of this decision in response to these comments from parties.

[38] See Pub. Util. Code, § 848.1(c).

IX. Assignment of Proceeding

Geoffrey F. Brown and Carl W. Wood are the Assigned Commissioners and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Neither DWR nor the IOUs incorporated explicit quantifiable adjustments into the load forecasts relied upon by DWR to recognize bypass attributable to new load for publicly-owned utilities.

2. The IOUs' forecast models implicitly incorporated historic trends, and to that extent, necessarily included a level of municipal annexation as well as associated new municipal departing load of publicly-owned utilities.

3. PG&E explicitly forecast a provision for transferred load attributable to municipalization and irrigation district bypass in its forecast provided to DWR, based upon data from its August 2000 Bypass Report.

4. Since provision for new MDL of publicly-owned utilities was implicitly included in the IOUs' forecasts, there is a basis to grant a limited exception to CRS charges for new MDL of publicly-owned utilities.

5. To assure that there is no cost-shifting prohibited by law, it is reasonable to set a limit on the amount of new MDL of publicly-owned utilities to be granted CRS exceptions.

6. Although PG&E did not explicitly forecast new load, its forecast of transferred load raises issues concerning whether a CRS exception is warranted to recognize the effects of the amount of transferred load that was excluded from the forecasts given to DWR.

7. In the MDL Decision, however, the Commission relied on PG&E's erroneous representation that it did not deliver forecast data to DWR

incorporating its 2000 Bypass Report until June 2001, as a basis for concluding that no MDL bypass was explicitly incorporated into the load data utilized by DWR in procuring power.

8. Based on disclosures developed in the evidentiary record in this phase of the proceeding, PG&E has confirmed that--instead of June 2001--it actually delivered forecast data to DWR on February 12, 2001, that incorporated MDL estimates for the period 2001-2003 from the 2000 Bypass Report.

9. PG&E's February 12, 2001 transmittal to DWR incorporated specific energy sales forecasts of municipal departing load bypass for 2001-2003.

10. The MDL bypass quantified in the 2000 Bypass Report reflect "transferred load," as well as associated "new load" in the same geographic areas as the transferred load.

11. Although PG&E quantified no explicit adjustment to exclude new load in the annexed service territory where the transferred load occurs, PG&E would not logically be expected to serve new load within the same geographical area in which a publicly owned utility was to assume responsibility for transferred load.

12. It is reasonable to conclude that PG&E load forecasts would not incorporate a provision for new load in those geographic areas where existing load was forecast to be transferred to a publicly owned utility.

13. The amount of load from the 2000 Bypass Report that was subtracted out of the PG&E forecast utilized by DWR was based upon the cumulative bypass totals forecasted for the year 2003.

14. In extending the PG&E 2003 load forecast from 2004 to 2010, DWR applied a year-to-year growth trend line to escalate the load forecast applicable to bundled load, but did not apply any growth trend to the 2003 forecast municipal departing load shown in the Bypass Report.

15. The forecast developed by DWR for the PG&E service territory for 2004 to 2010 period retained the fixed amount of 2003 cumulative municipal departing load from the Bypass Report, without any growth trend applied.

16. The fixed amount of municipal departing load estimated for 2003 as set forth in PG&E's 2000 Bypass Report attributable to irrigation district bypass was 588,252 MWh and for municipalization bypass was 151,506 MWh.

17. Merced ID and Modesto ID have mutually agreed to an allocation between themselves of the 2003 bypass estimate of 531,065 MWh attributed to them in the following manner: 340,844 MWh for Merced ID and 190,220 MWh for Modesto ID, and this allocation is reasonable.

18. Since DWR did not procure power on behalf of the MDL Bypass "transferred" load that was subtracted out of the 2000 Bypass Report, no cost shifting would result from the adoption of a MDL CRS exception applicable to that "transferred" load in the PG&E service territory.

19. As of February 12, 2001—the date on which the MDL estimate incorporated in the 2000 Bypass Report was provided to DWR by PG&E--, DWR had only executed two of its fifty-three power contracts.

20. The currently adopted requirements for MDL as adopted in D.03-07-028 do not take into account any effects of the 2000 Bypass Report as they relate to DWR power purchases.

21. For purposes of identifying publicly-owned utilities that would be eligible to apply for any unused portion of the CRS exception adopted for transferred load (not otherwise utilized by the entities identified in the PG&E Bypass Report), it is appropriate to limit eligibility to those entities formed as of July 10, 2003, the date of issuance of D.03-07-028, and serving 100 customers or more,

and to give priority to entities serving load specifically transferring from PG&E bundled service.

22. On the basis of equity, it is reasonable to modify the date of eligibility from February 1, 2001 to July 10, 2003, the issuance date of D.03-07-028.

Conclusions of Law

1. The record developed pursuant to the rehearing ordered in this proceeding provides a reasonable basis for a CRS exception for new load attributable to particular publicly-owned utilities based on their date of formation or operation.

2. The relevance and adequacy of the evidentiary record in resolving outstanding issues concerning the MDL CRS is governed by Assembly Bill 117 ("AB 117") which clarified the Legislature's intent concerning the implementation of AB 1X, and the recovery of DWR-related costs from retail end-use customers.

3. Since the evidence indicates that the IOUs implicitly include new MDL in their forecasts delivered to DWR, it is reasonable to grant a limited exception to the CRS.

4. We should set an interim cap of 150 MW in the PG&E and SCE territories combined, for "new" MDL load exceptions prior to the end of 2012, to be administered on an annual basis.

5. Since the record indicates that PG&E did exclude a provision for transferred load attributable to irrigation district and municipalization bypass from its load forecast provided to DWR, it is appropriate to amend the MDL CRS obligation to provide an exclusion for transferred load corresponding to the amounts excluded in PG&E forecast and relied upon by DWR.

6. Although it was PG&E—rather than DWR—that made the adjustment for MDL transferred load, the relevant issue in the context of cost responsibility is that the forecast, itself, incorporated the adjustment for MDL bypass.

7. Granting an MDL CRS exception for the effects of the MDL transferred load is not inconsistent with the Commission's treatment of the U.S. Navy Load in D.03-05-036 due to the differences in the respective circumstances involved, as specified in today's decision.

8. The MDL CRS decision should be amended to adopt the exception amounts set forth in the ordering paragraphs below for purposes of a MDL CRS exception for transferred load.

9. The MDL CRS exception should be applied first to those irrigation districts and / or municipalities that were identified in the Bypass Report. Any portion of the exception that is not claimed should be available to other MDL entities on a first-come, first-served basis, but limited to the MDL of those publicly-owned utilities that were formed as the effective date of this decision and serving at least 100 customers.

O R D E R

IT IS ORDERED that:

1. The Municipal Departing Load Decision (MDL) cost responsibility surcharge (CRS) exception for new load applicable to publicly-owned utilities formed on or before February 1, 2001, as established in Decision (D.) 03-07-028 is hereby modified pursuant to the rehearing ordered in this proceeding.

2. "New" municipal departing load of publicly-owned utilities without transferred load serving at least 100 customers by July 10, 2003, the date of issuance of D.03-07-028, shall be granted a limited exception to the CRS up to an

interim amount of 150 MW in the PG&E and SCE territories, collectively, by the end of 2012.

3. The "new load" exception shall be administered annually on a first-come, first-served basis, shall be converted into a megawatt-hour figure, and shall be further defined in the billing and collections phase of this proceeding.

4. D.03-07-028 is hereby modified to create a CRS exception applicable to transferred load within the PG&E service territory corresponding to the estimates set forth in PG&E's August 2000 Bypass Report that were relied upon by Department of Water Resources in its power procurement process.

5. In accordance with the PG&E Bypass Report, the CRS exception for MDL attributable to irrigation districts shall apply to at least the following: Modesto and Merced IDs, SSJID and Laguna ID.

6. In accordance with the Bypass Report, the exclusion attributable to municipalization as identified in the Bypass Report shall apply to MDL of at least the following three existing municipalities: Redding, Roseville, and Lodi and two potential municipalities: Davis and Brentwood.

7. The development of procedures to determine how exceptions to the CRS will be administered will be handled in the billing and collections phase of this proceeding, and in accordance with today's decision.

8. The amounts of CRS exception for transferred load shall be allocated to each qualifying entity in accordance with the amounts shown on a megawatt-hour basis for each entity as set forth in Appendix 2.

9. To the extent that any of those specifically identified entities' MDL does not utilize their allotted CRS exception, the exception shall be made available to MDL of these and other eligible publicly-owned utilities on an annual, first-come, first-served basis.

10. The MDL eligible for applying for any unused CRS exception on an annual first-come, first-served basis shall not be limited to the MDL served by those entities set forth in the decision herein, but may include additional entities as provided for in this decision.

11. The publicly-owned utilities eligible to apply for the CRS exception on behalf of their MDL also must have been in existence on or prior to July 10, 2003, the issuance date of D.03-07-028, and serving at least 100 customers. The list of publicly-owned utilities who have already shown that they meet the criteria for eligibility to apply for any available CRS exception on behalf of their qualifying MDL are identified as follows:

a. The eligible Municipal Utilities are: Alameda, Anaheim, Azusa, Banning, Biggs, Burbank, Calaveras, Colton, Glendale, Gridley, Healdsburg, Lodi, Lompoc, Los Angeles, Needles, Palo Alto, Pasadena, Pittsburg, Redding, Riverside, Roseville, Santa Clara, Shasta Lake, Tuolumne, Ukiah, and Vernon.

b. The eligible Municipal Utility Districts are: Lassen and Sacramento.

c. The eligible Public Utility Districts are: Trinity, and Truckee-Donner.

d. The eligible Irrigation Districts: Imperial, Merced, Modesto, and Turlock.

12. Any entity that can show eligibility for exceptions granted in this decision and not listed in Ordering Paragraph 11 above must submit evidence pursuant to procedures that will be developed for the determination of eligibility consistent with today's decision.

13. The eligibility criteria for "existing publicly-owned utilities" who qualify for the limited CRS exception for transferred load, require that the publicly-owned utility (1) be providing electricity to retail end-use customers on or before

July 10, 2003, the issuance date of D.03-07-028; and (2) serving 100 or more customers.

14. Any necessary administrative measures required to implement the MDL CRS exceptions adopted in this order shall be addressed as part of the MDL billing and collection phase of this proceeding.

15. The motion of California Municipal Utilities Association to update Exhibit 80 and to amend its Petition to Modify is granted.

This order is effective today.

Dated November 19, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President

GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I reserve the right to file a dissent.

/s/ CARL W. WOOD
Commissioner

I reserve the right to file a dissent.

/s/ LORETTA M. LYNCH
Commissioner

ATTACHMENT A
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(END OF ATTACHMENT A)

Appendix 1

Summary of Bypass Forecasts for Irrigation Districts and Municipalization Included in PG&E's Bypass Report

Type of Bypass	PG&E Bypass Forecast Through 2000 (MWh)	PG&E Bypass Forecast Through 2001 (MWh)y	PG&E Bypass Forecast Through 2002 (MWh)	PG&E Bypass Forecast Through 2003 (MWh)	PG&E Bypass Forecast Through 2004 (MWh)
Traditional Self-Gen	6,285,655	6,289,855	6,296,855	6,303,855	6,310,855
Over-the-Fence	115,226	555,414	555,414	555,414	555,414
Irrigation Districts	351,713	406,500	514,468	588,252	662,052
Municipalization	100,800	104,900	147,025	151,506	155,991
Ag Engines	188,000	190,400	192,800	195,200	197,600
Total	7,041,394	7,547,069	7,706,562	7,794,227	7,881,912

(END OF APPENDIX 1)

Appendix 2

PG&E's Estimated Lost Customers and Sales Due to Customer Bypass to Irrigation Districts

1996-2000

	Lost Sales (MWh/yr)		
Year	To Modesto ID	To Merced ID	Total
1996	1,657	33,059	34,717
1997	37,000	65,581	102,581
1998	70,867	76,342	147,209
1999	97,130	100,176	197,306
2000	114,526	205,213	319,739
5-yr Total	321,181	480,371	801,552
Addl EOY 2000	10%	10%	
2000 (Adj.)	125,979	225,734	351,713
5-yr Total (Adj.)	332,634	500,893	833,526

	Lost Sales (MWh)	Trend Line (MWh)
1996	34,717	20,962
1997	102,581	93,833
1998	147,209	166,705
1999	197,306	239,577
2000	351,713	312,449
2001		385,321
2002		458,192
2003		531,064
2004		603,936
2005		676,808
Intercept	-145,431,072	
Slope	72,872	

Note: Lost customers in 2000 are as of 4/15/00. Lost sales in 2000 are limited to already departed customers projected over the remainder of the year, and will be higher if more customers are lost. "2000 Adj" includes estimated lost sales in 2000 from customers departing after 4/15/00.

Cumulative Bypass Ests. By Year (MWh)	Modesto & Merced Ids (MWh)	Laguna ID Condemnation (MWh)	SSJID Condemnation (MWh)	Other ID Bypass (MWh)	Total ID Bypass (MWh)
2000	351,713	0	0	0	351,713
2001	385,321	0	21,179	0	406,500
2002	458,192	34,885	21,391	0	514,468
2003	531,064	35,583	21,605	0	588,252
2004	603,936	36,295	21,821	0	662,052
2005	676,808	37,021	22,039	0	735,868
			1.0%		

(END OF APPENDIX 2)

Appendix 3

PG&E's Estimated Lost Customers and Sales Due to Customer Bypass to Municipalization

ıss during 1991-2000 period--annexations	100,800
y existing munis (MWh)	
. additional bypass during 2001-2005 period--annexations	20,500
y existing munis (MWh)	
. additional bypass per year during 2001-2005 period--annexations	4,100
y existing munis (MWh)	
ntial bypass from new muni/ID formation, 2001-2005 (MWh)	
rentwood	250,000
avis	380,000,000
aguna ID	

ulative Bypass Estimates by Year	Existing Muni Annexations (MWh)	Potential Condemnations Brentwood (MWh)	Davis (MWh)	San Francisco (MWh)	Total (MWh)	Estimated Probability of Success	Condemnation Expected Value (MWh)	Total Muni Bypass Estimate Success
	100,800				0		0	100,800
	104,900				0		0	104,900
	109,000	250	380,000	0	380,250	10%	38,025	147,025
	113,100	260	383,800	0	384,060	10%	38,406	151,506
	117,200	270	387,638	0	387,908	10%	38,791	155,991
	121,300	281	391,514	0	391,796	10%	39,180	160,480
	Growth rate =>	4.0%	1.0%	2.0%				

(END OF APPENDIX 3)