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Decision 06-05-018 May 11, 2006

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)

OPINION RESOLVING PETITION FOR MODIFICATION OF DECISION 03-09-052

I. Introduction

In this decision, we grant, in part, and deny, in part, the Petition for Modification of Decision (D.) 03-09-052, filed by Pacific Gas and Electric Company (PG&E) on July 18, 2005. In D.03-09-052, the Commission addressed the motion of the Central Valley Project Preference Power Post-2004 Implementation Group (CVP Group) regarding the applicability of the "Cost Responsibility Surcharge" (CRS) to preference power customers for Western Area Power Administration (WAPA) power purchased after 2004. The CVP Group consists of certain "preference power customers"[1] under contracts with the WAPA.[2] In D.03-09-052, we determined that preference power customers

[1] "Preference power customers" refers to those entities granted a preference by WAPA when contracting to sell surplus federal power, and includes "municipalities and other public corporations or agencies; and also cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (7 USC 901 *et seq*.)."

[2] WAPA is a power marketing agency within the U. S. Department of Energy that sells capacity and energy generated by the U. S. Bureau of Reclamation at Central Valley

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meeting their full power requirements through WAPA bear no CRS obligation, but for that portion of their power needs provided through bundled utility service (referred to as "split wheeling"), they remained responsible for the CRS.

After the issuance of D.03-09-052 in September 2003, PG&E engaged in negotiations with WAPA, the Commission, and various WAPA customers concerning termination of Contract 2948A. Under the terms of Contract 2948A, WAPA integrated its facilities with those of PG&E in support of WAPA sales of firm power to preference power customers.

On March 31, 2004, PG&E filed at the Federal Energy Regulatory Commission (FERC) seeking, among other things, to cancel terms of Contract 2948A and to replace it with successor arrangements.[3] The principal successor agreement relating to service area and customer-related issues was the "Service Agreement for Wholesale Distribution Service to Western Area Power Administration" (WDT Agreement). The WDT Agreement was filed at FERC in connection with an "Offer of Settlement" on various issues.[4]

PG&E subsequently sought to implement a new Rate Schedule E-NWDL (New WAPA Departing Load) by filing Advice Letter (AL) 2592-E on November 19, 2004. PG&E intended to apply Rate Schedule E-NWDL to customers that "discontinue or reduce their purchases of bundled or direct access electricity service from PG&E to receive electricity from WAPA (or another

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Project (CVP) hydroelectric plants that is surplus to the CVP's own project power consumption.

[3] See FERC Docket No. ER04-690-000 *et al.*

[4] FERC accepted the settlement package, including the WDT Agreement and appendices, on December 3, 2004. (See PG&E, 109 FERC ¶ 61,255 (2004).)

similarly situated entity), not pursuant to Contract 2948A, but rather under a new contractual agreement." [Petition at page 2.] PG&E designated such customers by the term WAPA "new allottees."

By letter dated May 16, 2005, the Commission's Energy Division Director rejected the AL 2592-E filing, and informed PG&E that the issues raised therein should be brought before the Commission through a formal application. By supplemental letter on June 2, 2005, the Energy Division Director clarified that PG&E could also bring the matter as a Petition for Modification of D.03-09-052. PG&E thus filed the instant Petition for Modification on July 18, 2005, seeking confirmation that customers subject to CRS and other nonbypassable charges covered in D.03-09-052 included WAPA "new allottees."

The Power and Water Resources Pooling Authority (PWRPA)[5] filed a response in opposition to PG&E's Petition for Modification on August 17, 2005, arguing for further discovery. PWRPA claimed that the Petition lacked factual support and was unduly vague in its use of the term WAPA "new allottee." PG&E filed a third-round reply on August 29, 2005. In its reply, PG&E provided further information in support of its Petition. PG&E clarified the definition of the term "new allottee" as referring to new points of interconnection taking service from WAPA for the first time after January 1, 2005. PG&E provided additional argument in support of its Petition based on the claim that the California

[5] The PWRPA was organized and established by the CVP Group on January 22, 2004, under a Joint Powers Agreement for the purpose of, among other things, aggregating and supplementing preference power deliveries under WAPA's post-2004 Marketing Plan. The PWRPA participants include the same members as the former CVP Group.

Department of Water Resources (DWR) did procure power on behalf of WAPA "new allottees."

In response to the claim that its Petition lacked factual support, PG&E attached to its reply the Declaration of Dennis M. Keene, manager of the PG&E Service Analysis Department. Keene is responsible for the group that supports PG&E's customer retention and economic development efforts.

On September 6, 2005, the PWRPA filed a motion seeking a ruling as to how the Commission would address the issues in PG&E's Petition. PWRPA argued that the definition of "new allottee" provided in PG&E's August 29th response should be treated as an amendment to its original Petition, and that parties should have an opportunity to present testimony and to challenge the legal and factual merits of PG&E's assertions.

On September 21, 2005, PG&E filed a response in opposition to the PWRPA motion, arguing that the record was adequate for the Commission to grant its Petition, and that no further procedural measures were necessary as a basis to grant its Petition.

On December 22, 2005, PWRPA filed an additional motion to supplement the record and repeated its request for a ruling to provide guidance as to how the issues raised by PG&E's Petition would be addressed. PWRPA attached to its motion the Declaration of Stuart Robertson, its economic and technical consultant.

PWRPA asked the Commission to provide for the following measures:

1. Notice to all parties that they may be affected by PG&E's amended definition of the term "new allottee";

2. An opportunity for parties to respond to the Amended PG&E Petition as it relates to PG&E's new definition of the term "new allottee";

3. An opportunity for parties to supplement the record with evidence relevant to the consideration of the Amended PG&E Petition; and

4. A prehearing conference (PHC) to address the scope and schedule for the Commission's consideration of PG&E's Amended Petition, the need for evidentiary hearings, and any other pertinent procedural matters.

PG&E filed a response to the PWRPA motion on January 6, 2006, indicating no opposition to receipt of the Robertson Declaration into the record. PG&E did, however, take issue with certain assertions in the Declaration. PG&E also reiterated its position that no further proceedings were necessary.

An Administrative Law Judge's (ALJ) ruling, issued on January 19, 2006, granted the PWRPA request to supplement the record with the Robertson Declaration. A PHC was convened on February 2, 2006, where parties had the opportunity to present arguments on further procedural measures necessary to provide an adequate record. At the PHC, parties agreed that no evidentiary hearings and no further pleadings were necessary.

The Assigned Commissioner and ALJ directed the parties to meet and confer to seek agreement on a joint proposal for settling the disputed issues raised by PG&E's Petition, and to report on their progress by February 17, 2006. PG&E notified the assigned ALJ by email on February 17, 2006, that the parties had been unsuccessful in arriving at a settlement of disputed issues. While PWRPA requested that a mediator be provided to facilitate further discussions, PG&E opposed this request and believes that the matter is now ready to be resolved by a Commission decision.

II. Positions of Parties

By its Petition, PG&E asks the Commission to confirm that CRS and other nonbypassable charges identified in D.03-09-052 apply to customers defined as WAPA "new allottees." D.03-09-052 does not have an ordering paragraph identifying WAPA "new allottees" as a customer group responsible for CRS. PG&E claims, however, that a review of D.03-09-052, as well as pleadings leading up to it, demonstrates that the Commission intended to hold new allottees responsible for CRS in the same manner as split-wheeling customers. PG&E identifies at least eight references in the text of D.03-09-052 to the application of CRS to "split wheeling customers and new preference power allottees."

PG&E also notes the pleadings of the CVP Group in which it referenced "new allottees" in requesting clarification leading up to D.03-09-052. PG&E argues that the CVP Group thus intended to include both split-wheeling customers and "new allottees" within the scope of preference power customers subject to its Motion for Expedited Clarification. Based on these references, PG&E believes that omission of explicit language referencing "new allottees" in the ordering paragraphs of D.03-09-052 was unintentional.

PG&E further argues that holding WAPA "new allottees" responsible for CRS is consistent with prior Commission precedent that requires customers to pay CRS if DWR procured power on their behalf. PG&E argues that since neither PG&E nor DWR reduced their forecasts to reflect the anticipated loss of such load from the PG&E system, the DWR forecasts included a provision for WAPA "new allottees." As a result, PG&E argues that such customers should pay a CRS.

In support of its claim that DWR forecasts included a provision for WAPA "new allottees," PG&E offered the Declaration of Dennis M. Keene. In his

Declaration, Keene affirmed that he had no personal knowledge that PG&E adjusted its sales forecast provided to DWR to reflect the loss of WAPA "new allottee" load. He also affirmed that he had no personal knowledge as to whether or how DWR performed any independent calculations to extrapolate additional years of forecast data. He observed, however, that DWR never indicated that it adjusted the utilities forecast downward for anticipated loss of WAPA "new allottee" load.

PG&E also attached the Declaration of Matt Masters, a Senior Regulatory Analyst in PG&E's Regulatory Analysis Department responsible for electric sales forecasts. Masters affirmed that the only adjustment that he made to the forecasting model used in the 2000-2001 timeframe was to reflect the projected bypass figures provided to him by Keane.

In letters to the Assigned Commissioner and ALJ dated August 29, 2005, Tuolumne Power Agency and Calaveras Power Agency claimed that the term "new allottee" refers to WAPA preference power customers that received an allocation of CVP "base resource" power for the first time out of the "Resource Pool" established under the WAPA's Final 2004 Power Marketing Plan.

PG&E argues that the key issue is not what WAPA did in its Marketing Plan, but rather whether the long-term purchases made by DWR relied on forecasts that were adjusted to reflect a loss of load. PG&E argues that its definition of WAPA "new allottees" reflects this distinction while the definition offered by opposing parties does not.

Based on documents referenced in the Robertson Declaration, PG&E argues that the parties to the WDT Agreement agreed to abide by the Commission's determination of whether WAPA "new allottees" should be held responsible for the CRS.

PG&E offered a compromise to its proposal by letter dated March 3, 2006 to Commissioner Brown, stating that it would not oppose a limited CRS exemption for new "Greenfield" load[6] up to a cap of 10 MW (measured based on interconnected capacity). PG&E would be agreeable to applying such an exemption only to the DWR power charge component of the CRS. PG&E would still seek to charge this "Greenfield" load for other CRS components. PG&E would agree to make the 10 MW exemption available on a first-come, first-served basis to all qualifying customers. PG&E argues that this revised approach would allow for CRS exemptions for "incidental" load growth by new allottees, but hold them accountable for "substantial" increases in usage.

PWRPA opposes the proposal to charge CRS to "new allottees," and denies that the DWR forecast included a provision for WAPA "new allottees." The PWRPA delineated three distinct customer classifications that would be subject to CRS under PG&E's definition of WAPA "new allottees," namely: (1) Qualifying New Delivery Points, that is, a delivery point first energized after January 1, 2005, for a Contract 2948A customer that qualifies for new service under Section 10.4 of the WDT Agreement; (2) "Dual Supply" customer load, that is, load of a customer that was not under Contract 2948A, but received WAPA-supplied power for the first time on or about January 1, 2005, as part of WAPA's 2004 Power Marketing Plan; and (3) "Additional Customer Load," that is, additional load of a Contract 2948A customer, which load was not served

[6] PG&E uses the term new "Greenfield" load to refer to load that is truly new and not simply former PG&E retail load that is newly qualified for WAPA service.

under Contract 2948A, but was served entirely by PG&E until January 1, 2005 (at which point the load was served under the WDT Agreement).[7]

PWRPA claims that PG&E's load forecast was adjusted to reflect the loss of load, beginning in January 2005, associated with WAPA "new allottees." PWRPA argues that the amount of power to be provided by WAPA to new allottees was widely and publicly known well before DWR entered into any of its power purchase contracts. Notice of the final allocation to New Allottees was officially published on July 26, 2000. Previous "final" information was provided beginning as early as June 1999.

PWRPA believes that PG&E personnel were intimately aware of the allocation provided to New Allottees in the Post-2004 Plan and that PG&E's Post-2004 load forecast was adjusted to reflect a loss of load to New Allottees corresponding to the allocation amounts shown in the Post-2004 Plan. As described in D.03-09-052, DWR "recognized" the existence of these post-2004 commitments.

PG&E admittedly adjusted its load forecast to reflect the loss of load associated with WAPA power delivered under the Post-2004 Marketing Plan to split-wheeling customers. Because both split-wheeling customers and "new allottees" are described in the Post-2004 Marketing Plan, PWRPA argues that PG&E's load forecast would reasonably be expected to include a loss-of-load adjustment for power delivered to "new allottees," as well.

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[7] PG&E confirmed its intent to apply CRS on Qualifying New Delivery Points and Additional Customer Load in a data response dated September 22, 2005 (attached as Exhibit B to the Robertson Declaration).

The PWRPA, by letter dated March 8, 2006 to the Assigned Commissioner, responded to PG&E's proposal of a 10 MW exemption offered as a compromise to settle parties' dispute. PWRPA rejects PG&E's proposal to the extent that it would apply only a "limited exemption" (i.e., on the same basis as has been applied to MDL) rather than a full exemption from all CRS elements, as applied in D.03-09-052. PWRPA also opposes PG&E's proposed use of a quantity-based exemption limited specifically to 10 MW. PWRPA believes that a "qualitative" based limit is more appropriate.

III. Discussion

A. Summary

We conclude that with the submission the rounds of pleadings summarized above, the record is complete as a basis to issue a decision on PG&E's Petition.

We are not persuaded that D.03-09-052 should be amended based merely on PG&E's belief that the Commission unintentionally omitted a reference to "new allottees" from ordering paragraphs of D.03-09-052. The status of "new allottees" was not sufficiently developed in D.03-09-052 as a basis to make definitive findings and orders concerning the applicability of CRS to them. Moreover, it was not clear even when PG&E filed its Petition as to what customer categories PG&E specifically intended to cover under the term "new allottee." Based upon the further development of the record through pleadings filed relating to PG&E's Petition for Modification, we now have a sufficient record to define specific customer categories covered under the term WAPA "new allottees," and to determine the extent, if any, that such customers are subject to CRS.

As discussed below, we conclude that CRS should apply only to the limited category of "Additional Customer Load," as defined below, but should not apply to other categories of WAPA "new allottee" load. We decline to adopt PG&E's compromise proposal limiting the CRS exclusion only to 10 MW.

To the extent that the Commission grants an exemption for "new allottees," PG&E asks that the exemption only apply to the DWR power charge, but not to other CRS components. In D.03-09-052, however, we ordered that split-wheeling preference power customers bear no responsibility for any component of the CRS for electric loads that fall within the customer's contract rate of delivery (CRD) in the manner contemplated under the existing provisions of Contract 2948A. Consistent with that determination, we conclude that "new allottees" exempt from the DWR power charge should bear no responsibility for any component of the CRS.

We set forth our conclusions as to the applicability of CRS for each of the categories of "new allottees" as discussed below.

B. Qualifying New Delivery Points

We conclude that "new allottee" load categorized as Qualifying New Delivery Points should not be subject to a CRS, consistent with the principles in D.03-09-052. We stated in D.03-09-052 that customers receiving increased allocations of federal preference power under Contract 2948 would not be classified as departing load under PG&E's tariff to the extent such increased power was allocated in a manner contemplated under that existing contract. Accordingly, categorical exemption from the CRS was extended to those preference power "full requirements" customers.

Contract 2948A expressly authorized WAPA to have the exclusive right and obligation to serve Qualifying New Delivery Points. The WDT Agreement

expressly carried forward the preexisting provision of Contract 2948A regarding service to Qualifying New Delivery Points. Under the WDT Agreement, Qualifying New Delivery Points will receive full power requirement through Base Resource and supplemental energy transactions. Therefore, we conclude that no CRS should apply to Qualifying New Delivery Points since this load's eligibility for full preference power service was expressly authorized under Contract 2948A, and continues to be provided pursuant to the current WDT Agreement. Exclusion of Qualifying New Delivery Points from the CRS under the current WDT Agreement is consistent with the prior exclusion under the provisions of Contract 2948A.

In his Declaration, Robertson claims that although the parties to the WDT Agreement set forth various reservations anticipating PG&E's action to apply for Commission determination of CRS applicability for Dual Supply and Additional Customer Load categories, the parties expressed no intent nor reserved any rights regarding New Points of Delivery. Robertson argues that excluding New Points of Delivery from CRS is therefore consistent with the terms of parties' settlement of litigation before FERC that resulted in the WDT Agreement.

PG&E disagrees with this claim that there was no express reservation of rights to CRS for "Qualifying New Delivery Points." PG&E references Section 11, pp. 6-7 of the WDT SA which expressly reserves PG&E's right to seek CRS from New Allottees. This section states: "By agreeing to provide Distribution Service under this Distribution Tariff…the Distribution Provider reserves the right to collect Departing Load Charges from Western customers that may be required to pay such charges. Departing Load Charges shall be collected in the event that a competent regulatory agency or legislative body

determines that it is appropriate to promulgate regulations or legislation which entitle the Distribution Provider to collect such charges from the Western customers and similarly situated customers."

Our disposition of this issue does not conflict with any express reservation of rights under the WDT Agreement with respect to the applicability of CRS to Qualifying New Delivery Points. The language cited by PG&E concerning its reservation of rights merely entitles PG&E to collect CRS *if* the governing regulatory body *were to* decide in PG&E's favor on this issue. We have concluded, however, that CRS does not apply to this component, and therefore, PG&E is not entitled to collect CRS for Qualifying New Delivery Points.

C. Dual-Supply Customer Load

We conclude that WAPA "new allottees" under the category of Dual-Supply Customer Load should also be excluded from the CRS based on evidence that the forecasts relied upon by DWR excluded this source of load. PG&E admits that it was aware of the Base Resource allocations given to Dual-Supply customer load well before submitting its forecast to DWR in February 2001. Even earlier, numerous WAPA-sponsored meetings occurred that were attended by PG&E representatives, and various public announcements were made on the 2004 Power Marketing Plan. The existence of the Base Resource allocations (including allocations related to Dual-Supply customers) was public knowledge as early as the year 2000. As noted in D.03-09-052: "Prior to December 31, 2000, all preference power customers had committed to the WAPA Post-2004 Plan by executing individual base resource contracts." (D.03-09-052 at 12.)

As support for its claim that the forecast relied upon by DWR incorporated Dual-Supply customer load, PG&E provided the Declaration of Mr. Masters, in which he states that he is "not aware of any evidence that PG&E adjusted its sales forecast provide to [DWR] to reflect the loss of New Allottee load." Yet, even though PG&E did not make an explicit adjustment in this manner, the evidence cited by PWRPA indicates that the overall WAPA end-use load adjustments attributable to serving its preference power customers under Contract 2948A were already embedded within the forecast provided to DWR. Because PG&E's load forecasting methodology employs regression analysis, the effects of such regression analysis would automatically exclude load that was served at the time by WAPA. In its forecast covering the period 2004 through 2010, DWR performed a calculation to extend PG&E's sales forecast information using FERC Form 714 data. PG&E acknowledges, however, that WAPA's sales to preference power customers were not included in PG&E's FERC 714 filing in February 2001. Accordingly, sales forecasts relied upon by DWR in its power purchases excluded WAPA's overall sales to end-use preference power customers under Contract 2948A.[8]

WAPA's sales to preference power customers under the post-2004 arrangements are significantly less than overall sales to preference power customers under Contract 2948A. In addition, WAPA's allocations of Base Resource to Dual-Supply customers came from a "Resource Pool" created by withholding a percentage of the renewal allocations made to pre-2005 WAPA

[8] See Stuart Robertson Declaration, pp. 10-12, dated December 22, 2005, particularly footnotes 30-37.

customers (i.e., all WAPA customers who received power under Contract 2948A). Based on these facts, we find it reasonable to conclude that the DWR forecast excluded an overall estimate of WAPA-served end-use preference power load that is sufficient to accommodate all post-2004 end-use preference power deliveries, including those to Dual-Supply customers.

D. Additional Customer Load

We conclude that the CRS should apply to the category of "new allottees" identified by PG&E as "Additional Customer Load." This category of load encompasses the specific list of delivery points of Pooling Authority participants listed in Appendix C of the WDT Agreement. In Appendix C (Paragraph 6), the Pooling Authority agreed to "abide by any determination" of the Commission for departing load charges, cost responsibility surcharges, and other forms of stranded costs attributable to service to Additional Customer Load. PG&E states that generally, the delivery points identified in Appendix C were served by PG&E prior January 1, 2005, because they did not qualify for service under the prior WAPA-PG&E contract (Contract 2948A). Because load at these accounts was served by PG&E prior to January 1, 2005, PG&E argues that these customers constitute departing load that should pay CRS.

PWRPA does not argue that all Additional Customer Load can necessarily qualify for exemption from CRS, but does argue that Additional Customer Load be granted eligibility to apply for any unused CRS exemptions attributable to PG&E's exclusion from its forecasts of WAPA's overall sales to end-use preference power customers. PWRPA is unclear as to whether WAPA may be defined as a "publicly owned utility" for purposes of qualifying for CRS exemptions available to Municipal Departing Load pursuant to D.04-11-014 and D.04-12-059. To the extent that WAPA is so defined, however, PWRPA argues

that Additional Customer Load should be eligible to apply for any unused exemptions available under those decisions.

We conclude that PG&E has made a reasonable argument to support charging CRS to "Additional Customer Load," defined by the specific list of delivery points of Pooling Authority participants identified in Appendix C of the WDT Agreement. We shall therefore require that such customers be held responsible for CRS and that no CRS exemptions be applied to them. Based on the fact that these load accounts were served by PG&E prior January 1, 2005, it is reasonable to conclude that this load was included within the DWR forecast that provided the basis for its contractual procurements.

PWRPA has not provided evidence to indicate that the "Additional Customer Load" category was excluded from DWR forecasts. Accordingly, we shall grant PG&E's request to apply a CRS to the "Additional Customer Load" component of WAPA "new allottees," as defined above.

IV. Comments on Draft Decision

The draft decision of ALJ Thomas R. Pulsifer in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on May 1, 2006, and reply comments were filed on May 5, 2006. We have taken the comments into account, as appropriate, in finalizing this order.

V. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. DWR began buying electricity on behalf of the retail end-use customers in the service territories of the California utilities: for PG&E and SCE on January 17, 2001, and SDG&E on February 7, 2001.

2. AB 1X, together with AB 117, provides for DWR to collect revenues by applying charges to the electricity that it purchased on behalf of all retail end customers that took bundled utility service on or after February 1, 2001, in the service territories of the three major utilities.

3. Consistent with AB 1X and AB 117, retail customers that took bundled service on or after February 1, 2001, are responsible for paying a fair share of the DWR revenue requirements.

4. Certain members of the CVP preference power customers received only a portion of their power through WAPA, with the remaining power needs met through bundled PG&E utility service during periods on or after February 1, 2001, on a split-wheeling basis pursuant to contract.

5. In D.03-09-052, the Commission found that DWR did not procure power to serve the wholesale power needs of WAPA Preference Power Customers, but did bear responsibility to meet the power supply needs of PG&E's retail end users, including bundled utility service provided to split-wheeling load.

6. In D.96-11-041, the Commission previously determined that customers receiving increased allocations of federal preference power under Contract 2948 would not be classified as departing load under PG&E's tariff to the extent such increased power was allocated in a manner contemplated under that existing contract.

7. PG&E filed the instant Petition for Modification on July 18, 2005. In its Petition for Modification, to seek confirmation that the categories of customers

subject to CRS and other nobypassable charges covered in D.03-09-052 included WAPA "new allottees."

8. PG&E's definition of "new allottees," as applied in its Petition for Modification of D.03-09-052, includes (1) "Qualifying New Delivery Points" first energized after January 1, 2005, for a Contract 2948A customer that qualifies for new service under Section 10.4 of the WDT Agreement; (2) "Dual-Supply" customer load that was not under Contract 2948A, but received WAPA-supplied power for the first time on or about January 1, 2005 as part of WAPA's 2004 Power Marketing Plan; and (3) "Additional Customer Load" of a Contract 2948A customer, which was not served under Contract 2948A, but was served entirely by PG&E until January 1, 2005 (at which point the load was served under the WDT Agreement).

9. The WDT Agreement expressly carried forward the preexisting provision of Contract 2948A regarding service to Qualifying New Delivery Points. Under the WDT Agreement, Qualifying New Delivery Points will receive full power requirements through Base Resource and supplemental energy transactions.

10. PG&E was aware of the Base Resource allocations given to Dual-Supply customer load well before it submitted its forecast to DWR in February 2001. Even earlier, numerous WAPA-sponsored meetings occurred that were attended by PG&E representatives, and various public announcements were made on the 2004 Power Marketing Plan.

11. Generally, the delivery points identified in Appendix C of the WDT Agreement were served by PG&E's prior January 1, 2005, because they did not qualify for service under the prior WAPA-PG&E contract (Contract 2938A). Because load at these accounts was served by PG&E prior to January 1, 2005, these customers constitute departing load responsible for CRS.

Conclusions of Law

1. As concluded in D.03-09-052, preference power customers are not subject to CRS if they took no bundled utility service from PG&E on or after February 1, 2001, and met their full contract needs through WAPA deliveries.

2. No CRS should apply to Qualifying New Delivery Points since this load's eligibility for full preference power service was expressly authorized under Contract 2948A, and continues to be provided pursuant to the current WDT Agreement.

3. No CRS should apply to the "Dual-Supply" category of WAPA "new allottee" load based on the conclusion that DWR load forecasts did not include a provision for this category of load.

4. There is reasonable basis to conclude that the DWR forecast excluded an overall estimate of WAPA-served end-use preference power load that is sufficient to accommodate all post-2004 end-use preference power deliveries to Dual-Supply customers.

5. The Commission concluded in D.03-09-052 that the provisions for imposing CRS-related costs on departing load customers as adopted in D.03-04-030 and D.03-07-030 forms a basis for applying corresponding CRS-related costs to the departing load component of preference power customers' split-wheeling load.

6. The applicability of CRS-related costs on departing load customers as adopted in D.03-04-030 and D.03-07-030 form a basis for applying corresponding CRS-related costs to the departing load component of preference power customers' "Additional Customer Load," as defined in Ordering Paragraph 3 below.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 03-09-052, filed by Pacific Gas and Electric Company, is hereby granted in part and denied in part, as ordered below. The Petition is granted to the extent that it seeks authorization to collect the "Cost Responsibility Surcharge" (CRS) from "Additional New Load" as defined in Ordering Paragraph 2 below. The Petition is denied to the extent that it seeks authorization to collect a CRS from the Western Area Power Administration (WAPA) "new allottee" categories defined as "Additional Points of Delivery" and "Dual-Supply Load."

2. The following Finding of Fact 13 is added: "To the extent that preference power customers categorized as 'Additional New Load' that took bundled power from PG&E on or after February 1, 2001, subsequently terminate or reduce bundled service to take electric service from WAPA or a similarly situated entity, such terminations or reductions constitutes 'departing load' under the provisions of PG&E's tariff."

3. The following modification (highlighted in italics) is adopted in Conclusion of Law 2 to read: "The provisions for imposing CRS-related costs on departing load customers as adopted in D.03-04-030 and D.03-07-030 form a basis for applying corresponding CRS-related costs to the departing load component of preference power customers' split-wheeling load *and Additional Customer Load" relating to the specific list of delivery points listed in Appendix C of the WDT Agreement.*"

4. The following modification (highlighted in italics) is adopted in Conclusion of Law 5 to read: "In order to prevent cost shifting and to impose cost responsibility in accordance with AB 1X and AB 117, split-wheeling

preference power customers *and 'Additional Customer Load' relating to the specific list of delivery points listed in Appendix C of the WDT Agreement*. must bear cost responsibility for the portion of their load that is met by bundled utility service and that subsequently is terminated after December 31, 2004.

5. The following new Ordering Paragraph (OP) 8 is added (reordering current OPs 8 and 9): "PG&E is directed to promptly file an advice letter with the appropriate amendments to its tariff to bill and collect CRS and other applicable nonbypassable charges from preference power customers consisting of 'Additional Customer Load' relating to the specific list of delivery points listed in Appendix C of the WDT Agreement, that have taken bundled service from PG&E on or after February 1, 2001, and subsequently reduced or terminated such service to take electric service from WAPA or another similarly situated entity."

This order is effective today.

Dated May 11, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
RACHELLE B. CHONG
Commissioners

Commissioner John A. Bohn, being necessarily absent, did not participate.