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Decision 07-05-005 May 3, 2007

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 REGARDING PETITION FOR MODIFICATION OF DECISION 06-07-030 FILED BY PACIFIC GAS AND ELECTRIC COMPANY

I. Introduction

By this decision, we grant in part, and deny in part, the Petition for Modification of Decision (D.) 06-07-030 (Decision), filed by Pacific Gas and Electric Company (PG&E).

The Decision resolved various outstanding issues related to the cost responsibility surcharge (CRS) methodology application to non-bundled customers, including Direct Access (DA) and Municipal Departing Load (MDL) customers within the territories of the investor-owned utilities (IOUs). PG&E requests that the Commission modify the Decision, however, to resolve certain disputes relating to the interpretation of its requirements, as noted below.

II. Modification of Appendix Tables

A. Parties' Position

PG&E requests modification to clarify the purpose and significance of Appendix Table 3C attached to D.06-07-030 entitled "MDL CRS Accrual Rates Recommended by Working Group." Among other things, the table sets forth

"MDL Indifference Rates[s]" for PG&E for 2003, 2004, and 2005. From the Indifference Rate, the table derives "MDL Power Charge Rates[s]" for PG&E for 2003, 2004, and 2005, as well.

PG&E requests this modification to D.06-07-030 to address the protest by the Power and Water Resources Pooling Authority (PWRPA) filed on October 24, 2006, to PG&E's supplemental Advice Letter 2835-E-A (proposing Schedule E-NWDL). In its protest, PWRPA had objected to the Department of Water Resources (DWR) Power Charge proposed for "Additional Customer Load."[1] The Commission stated in D.06-05-018 (Ordering Paragraph 3, p. 20) that "Additional Customer Load" is responsible for corresponding CRS-related costs as had already been imposed on other departing load customers. Accordingly, PWRPA looked to the MDL CRS accrual amounts in Appendix Table 3C of D.06-07-030 as guidance concerning the charges applicable to Additional Customer Load.

PWRPA had protested the supplemental advice letter on the grounds that the DWR Power Charge that PG&E proposed for the period from January 1, 2005 through June 30, 2006 ("2005 Vintage Period") had not been authorized by D.06-07-030 and materially differed from the estimated costs associated with such charge, as reflected in D.06-07-030, Appendix Table 3C.

PG&E thus requests that D.06-07-030 be modified to affirm that the numbers presented in Appendix Table 3C for PG&E are not intended to retroactively modify the DWR Power Charge applicable to MDL or any other non-bundled customers for the period prior to June 30, 2006. PG&E states that

[1] "Additional Customer Load" is the load to be served under Tariff Schedule E-NWDL.

Table 3C was developed for illustrative purposes, to ensure that the ratemaking adopted by the Commission in D.06-07-030 was consistent with the Commission's previously stated goals with regard to elimination of the "CRS undercollection." That table, as well as Table 3B, presents CRS accrual amounts from which estimates could be derived of when the CRS undercollection might reach zero based on application of the 2.7 cents per kilowatt hour (kWh) cap.

Table 3C is not mentioned in the body of the decision. PG&E thus proposes a modification merely adding a footnote on Table 3C stating:

> No market benchmarks for PG&E were adopted for 2003 – 2005. For 2006, PG&E does not have any purpose for an "MDL Accrual Rate." Therefore, for PG&E, the calculations for 2003 - 2006 are illustrative only. The market price benchmarks for 2003 - 2005 were imputed from the adopted cost responsibility surcharge undercollection for PG&E as of December 31, 2005, in Decision 06-07-030. However, as described in Decision 06-07-030, no reported undercollections are applicable to MDL CRS obligations as of December 31, 2005, for PG&E.

A response in opposition to PG&E's Petition was filed by the California Municipal Utilities Association (CMUA).[2] CMUA argues that PG&E's Petition seeks approval to charge MDL customers based on a methodology that would substantially overcollect CRS funds. CMUA argues that instead of basing a DWR Power Charge upon actual costs, PG&E would determine the DWR Power Charge on a residual basis, as the difference between the $0.027 per kWh CRS and (a) the DWR Bond Charge, (b) the Energy Cost Recovery Amount, (c) the

[2] CMUA makes similar arguments to those asserted by PWRPA in its protest to PG&E's supplemental Advice Letter 2835-E-A. PWRPA, however, did not file any response to PG&E's Petition.

ongoing Competition Transition Charge (CTC). As a result of the use of this methodology, under PG&E's proposed Schedule E-NWDL, the DWR Power Charge for Additional Customer Load during the 2005 Vintage Period was $0.01347 per kWh (or 1.345 cents per kWh).[3] By contrast, Table 3B of Appendix 6 in D.06-07-030 shows an illustrative DWR Power Charge accrual rate applicable for PG&E during 2005 of only $0.000264 per kWh.

CMUA thus argues based on this comparison, that application of the 2.7 cents per kWh CRS methodology to MDL, as proposed by PG&E, will result in significant sums being collected from MDL above what is needed to repay actual MDL CRS obligations. CMUA further argues that PG&E's proposal bears no relationship to past or present estimates of the DWR Power Charge obligations of MDL and thus results in significant cost shifting. CMUA claims that for the pre-July 2006 period, a reasonable estimate of the DWR Power Charge obligation of MDL is zero, or thereabouts.

CMUA thus opposes PG&E's Petition, and proposes that PG&E be required to resubmit CRS accrual amounts "along the lines previously directed in D.06-07-030, as has been done by [Southern California Edison Company] SCE and [San Diego Gas & Electric Company] SDG&E through the Working Group Petition."[4]

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[3] The calculation used to arrive at this figure is as follows: $0.027 - $.00485 [DWR Bond Charge], $.00437 [Energy Cost Recovery Amount], $.00431 [Ongoing Competition Transition Charge].

[4] See D.07-01-030 which adopted Joint Parties' Petition for Modification of D.06-07-030, which incorporated specific DWR Power Charge accruals for SCE and SDG&E.

PG&E characterizes CMUA's and PWRPA's position as arguing that D.06-07-030 was intended to retrospectively modify the 2.7 cents per kWh cap applicable during 2005 to non-bundled customers responsible for the DWR Power Charge. PG&E therefore seeks the modification to D.06-07-030 to refute the objection of PWRPA in its protest regarding the applicable DWR Power Charge.

PG&E filed a third-round reply to CMUA, maintaining its previous position. PG&E also argues that CMUA's response relates only to the applicable DWR power charges for the period prior to June 30, 2006, and that there should be no question as to what the adopted PCIA is for all non-bundled customers beginning on June 30, 2006. PG&E further argues that there should be no further litigation as to what adopted Power Charge Indifference Adjustment (PCIA) will apply for all non-bundled customers beginning on January 1, 2007.

B. Discussion

In order to place PG&E's Petition in its proper context, it is useful to clarify what departing load categories would be affected by disposition of the Petition. PWRPA's protest of supplemental Advice Letter 2835-E-A specifically focuses on Additional Customer Load to be served under Tariff Schedule E-NWDL. While PG&E's Petition was in response to PWRPA's protest, PG&E seeks modification of an appendix table of D.06-07-030 labeled as applying to "MDL customers," to clarify that the numbers presented for PG&E were not intended to retrospectively modify the DWR Power Charge applicable to any non-bundled customers, including MDL. In its response to PG&E's Petition, CMUA frames its remarks within the general context of "MDL" customers without specific reference to Schedule E-NWDL.

Yet, in view of the exceptions applicable to MDL customers, D.06-07-030 "affirmed that no DWR Power Charge undercollections applied to MDL customers as of December 31, 2005." (D.06-07-030 at 30.) Therefore, although the parties' pleadings appear to implicate MDL, PG&E does not seek to modify MDL customers' exception from DWR Power charges for periods up to June 30, 2006. We clarify that the only departing load customers affected by PG&E's Petition are those that are not exempt from a DWR Power Charge. While CRS obligations applicable to Additional Customer Load were based upon provisions applicable to other departing load customers, they were not generally granted exceptions from DWR Power Charges. This is also true for Split-Wheeling Departing Load Customers who were responsible for CRS-related changes pursuant to D.03-09-052.[5] Accordingly, we shall address PG&E's Petition recognizing that the issues raised therein relate, at most, to those categories of departing load customers that are not already exempt from the DWR Power Charge.

There is no apparent disagreement concerning PG&E's limited assertion that the Appendix table figures in D.06-07-030 are illustrative and do not depict actual DWR Power Charges. CMUA objects to PG&E's Petition, however, based on PG&E's interpretation of D.06-07-030 in defense of its derivation of DWR Power Charges. CMUA does not, however, dispute the actual language in PG&E's proposed footnote modification. CMUA concedes that the Appendix table figures are illustrative, but argues that they still provide the "best estimate of the actual obligation" of MDL for the DWR Power Charge.

[5] Split-Wheeling Departing Load Customers are served under tariff Schedule E-SDL which was effective March 2, 2006.

To the extent that PG&E's proposed modification merely affirms that the Appendix table figures are illustrative, the footnote modification to Table 3C of D.06-07-030 as proposed, is reasonable. Within that limited context, we grant the Petition for Modification and incorporate the footnote language as requested. Nonetheless, our adoption of the modification is not an endorsement of PG&E's proposal for deriving a DWR Power Charge for 2005 for non-exempt departing load customers, including those to be served on Schedule E-NWDL without taking into account the effects of overcollections.

PG&E seeks the proposed modification to support its argument that Table 3C of D.06-07-030 "does not retrospectively adjust the [amounts] applicable to non-bundled customers prior to June 30, 2006," and that "it does not modify the historical levels of the DWR Power Charge that pre-dated the PCIA charge." (PG&E, p. 4.) PG&E thus believes that "historical levels" for the 2005 Power Charge apply residually, equal to the difference between the 2.7 cents/kWh cap and the other applicable nonbypassable charges.

We affirm that previous Commission decisions issued through D.06-07-030 authorized PG&E to apply the 2.7 cents/kWh CRS cap on a residual basis to non-bundled customers responsible for paying the DWR Power Charge for the period through June 30, 2006. We also affirm that D.06-07-030 did not establish a specific revised DWR Power Charge for non-bundled customers applicable to the period ending June 30, 2006. Accordingly, PG&E's authorization to accrue a DWR Power Charge applicable to non-bundled customers subject to that charge based on residual application of the 2.7 cents/kWh CRS continued through June 30, 2006.

Our adoption of the 2.7 cents/kWh cap, however, was never intended to constitute a final cost determination of DWR Power Charges applicable to

MDL through June 30, 2006. PG&E argues that the 2.7 cents/kWh cap made applicable to MDL in D.03-07-028 was not implemented "subject to refund," but only "on an interim basis" until the Commission decided whether to apply it "for a longer period." (PG&E, p. 3.) While we did not explicitly use the expression "subject to refund" in authorizing the 2.7 cents cap, we never intended for the 2.7 cents cap to produce permanent overcollections. Rather, the 2.7 cents cap merely served as a placeholder ceiling on the maximum level of charges to MDL customers within a given year until undercollections were paid down to zero. The cap was not to measure final "historical levels" of cost responsibility for DWR Power Charge for MDL customers (any more than for other non-bundled customers).

We thus conclude that PG&E is incorrect in implying that actual "historical levels" of the DWR Power Charge had been finalized for MDL based upon the 2.7 cents/kWh cap without a true-up. PG&E identifies no Commission decision, either in D.06-07-030 or elsewhere, in which we affirmed that the 2.7 cents/kWh cap provided the basis to derive final "historical levels" of DWR Power Charges applicable to MDL customers (and by extension, to other departing load customers) for periods prior to June 30, 2006.

Instead, the 2.7 cents/kWh cap was applied to MDL with the explicit provision for subsequent consideration and adjustment. As stated in D.03-07-028, Conclusion of Law (COL) 14: "the issue of whether or to what extent to cap the MDL CRS should be deferred pending further developments with respect to the DA CRS cap and the quantification of MDL CRS obligation." By ruling on March 28, 2005, the assigned Administrative Law Judge (ALJ) directed the Working Group to "produce the calculations required for the Commission to adopt the MDL CRS obligations to date." If the actual historical

figures for DWR Power Charges had already been finalized by applying the 2.7 cents cap, there would have been no point in directing the Working Group to calculate further figures.

By contrast to the 2.7 cents/kWh cap which functioned as a placeholder, the actual DWR Power Charge obligation was to be finalized through the Total Portfolio Indifference calculation designed to avoid cost shifting between bundled and non-bundled customers. The difference between the residual collections under the 2.7 cents CRS cap and the actual DWR Power Charge represents the accrued under-or-overcollection in the CRS obligation. Thus, in order to avoid cost shifting, the ultimate goal is to reach the point where the CRS under-or-overcollection equals zero.

In D.02-11-022, we explained that the 2.7 cents cap was not intended to represent a specific quantification of DWR Power Charges but rather serve as a placeholder limiting annual charges until undercollections were paid down:

> "Although the total DA CRS requirements are expected to exceed 2.7 cents/kWh in the early years, these DA CRS requirements are forecast to decline over time. … In addition, based on the long-term forecasts presented in this proceeding, the DWR Power Charge applicable to DA CRS is expected to decline over subsequent years such that the overall DA CRS elements will drop well below the 2.7 cents cap. Thereafter, DA CRS collections are expected to yield a surplus to pay down prior undercollections." (D.02-11-022, mimeo., pp. 118-119.)

Once the prior DA CRS undercollections were paid down to zero, we did not continue to apply the 2.7 cents cap. This principle applies for MDL customers just as it does for DA customers. Accordingly, in D.06-07-030, in implementing the transition from a tops-down residual methodology to a bottoms-up methodology for calculating CRS indifference, we expressly

provided for billing adjustments to DA customers to refund previous CRS overcollections due to the 2.7 cents/kWh cap. Although PG&E was deemed to have reached a zero undercollection as of June 30, 2006, D.06-07-030 did not take effect until September 2006. Thus, because "DA customers responsible for the DWR Power Charge will have paid the full 2.7 cents /kWh CRS amounts for … two months longer than necessary to complete repayment of the DA CRS undercollection for PG&E," we authorized a bill adjustment for these DA customers equal to "the differences between the CRS as it exists once it is lowered pursuant to the instant Commission decision and the CRS these non-exempt DA customers paid during July and August" of 2006. (*Id.* at 25-26.) Consistency thus requires that a similar principle apply to MDL customers with respect to avoiding any overcollections of CRS.

Therefore, the 2.7 cents cap was to apply during the period that CRS undercollections were being paid down to zero, pending true-up so as to avoid cost shifting. D.06-07-030 provides no basis for PG&E to overcollect DWR Power Charges from MDL, or any other departing load customers covering the period up to June 30, 2006, by applying a 2.7 cents/kWh cap on a residual basis, with no provision for true-up. Yet, PG&E's proposal for applying the 2.7 cents/kWh cap with no true-up could significantly overcollect CRS funds based on estimates of future DWR Power Charge obligations.

To the extent that a DWR Power Charge applies to departing load customers such as Additional Customer Load on Schedule E-NWDL, the ultimate basis for such charge would be the actual Total Portfolio Indifference amount attributable to that category of customers.

Therefore, contrary to PG&E's argument, the residual amounts of the 2.7 cents CRS attributable to DWR Power Charges for MDL customers was

subject to further review and adjustment in D.06-07-030 to the extent necessary to bring any remaining undercollection to a zero balance. For DA customers, the Working Group reached agreement that CRS undercollections reached zero as of June 30, 2006. The Working Group, however, did not reach agreement that CRS collections under the 2.7 cents cap would result in a zero undercollection attributable to MDL customers as of June 30, 2006. Likewise, the Working Group did not reach agreement on any single specific benchmark figure to produce a final DWR Power Charge obligation for MDL. In response to the ALJ's directive to finalize the CRS calculations, the Working Group Report stated instead that the MDL CRS cap "does not appear to remain an issue" (see Footnote 2 on p. 4 of the Report). Additionally, the Working Group Report stated:

> "based on the data provided by the utilities to the Energy Division as part of this working group process, it appears that for the period 2001-2004 all MDL was exempt from the DWR Power Charge component of the DL CRS. … No specific information has been provided for 2005, though [it] appears that no MDL will be responsible for the DWR Power Charge component of the CRS for this period, either."[6]

The Commission thus "affirmed that no DWR Power Charge undercollections applied to MDL customers as of December 31, 2005." (D.06-07-030 at 30.) Based on the Working Group consensus, we thus concluded that no further need existed to quantify a specific benchmark, or DWR Power Charge for the 2001-2005 period. Therefore, we made no findings as to when MDL CRS would reach a zero-point undercollection. Likewise, no specific DWR Power Charges for MDL were adopted in D.06-07-030 in view of representations

[6] Working Group Report, p. 47.

in the Working Group Report. The MDL CRS accrual charges shown in Tables 3A through 3C were illustrative, not because we had already adopted final figures, but rather, because there appeared no necessity to determine specific figures.

D.06-07-030 thus terminated the 2.7 cents/kWh effective after June 30, 2006 for DA/Departing Load customers in the PG&E service territory, and replaced it with a bottoms-up process for deriving indifference charges prospectively based upon the premise that the DA CRS undercollection balance for PG&E reached zero as of June 30, 2006. In other words, we concluded that as of June 30, 2006, the cumulative stream of revenues applied to the DWR Power Charge through the 2.7 cents/kWh cap would finally equal the actual DWR Power Charge costs accrued under the Total Portfolio Indifference method. It was based on this premise that we discontinued the 2.7 cents cap after June 30, 2006, with no further true-up of past CRS revenue collections under the 2.7 cents/kWh cap. Conversely, however, to the extent that the CRS undercollection for a particular non-bundled customer category had *not* been paid down to zero as of June 30, 2006, a further true-up CRS revenues *would be* necessary in order to avoid cost shifting.

In view of PG&E's Petition, it is now apparent that CRS undercollections were *not* at zero as of June 30, 2006 for all non-bundled customer categories subject to a DWR Power Charge. In particular, Additional Customer Load" subject to Schedule E-NWDL and Split-Wheeling Departing Load subject to Schedule E-SDL were not taken into account as part of the Working Group consensus that the June 30, 2006 CRS undercollection balances were deemed to be zero.

Given that charges under Schedule E-NWDL and Schedule E-SDL were not covered by D.06-07-030 findings that DA CRS undercollections were deemed to be zero as of June 30, 2006, then, CRS collections applicable to Schedule E-NWDL and Schedule E-SDL are yet to be brought to zero. In D.06-07-030, we did not consider the effects of customers for whom CRS undercollections still remained as of June 30, 2006 pending billing and collection implementation. Thus, the premise underlying D.06-07-030, namely that no further true-up was needed of revenues collected through the 2.7 cents CRS, does not apply to those non-bundled customers whose CRS undercollection was other than zero as of June 30, 2006. Without a true-up, there would be no way to reconcile the CRS amounts collected and the corresponding actual indifference costs attributable to such customers. Without such a reconciliation, there could be cost shifting in violation of statutory requirements and Commission policy. Accordingly, PG&E's proposed derivation of the DWR Power Charge for Schedule E-NWDL and Schedule E-SDL is overstated to the extent that it results in overcollections. Indeed, a comparison of the illustrative calculations in the Appendix Tables of D.06-07-030 versus the residual application of the 2.7 cents/kWh cap, indicates that the potential overcollection could be substantial. Yet, by focusing only on the DWR Power Charge accruals authorized through June 30, 2006 under the 2.7 cents/kWh cap, without a subsequent true-up, PG&E offers no vehicle to avoid overcollections from such customers. We disagree with PG&E, therefore, in its claim that no further true-up is warranted for the period subsequent to June 30, 2006, for customers from whom PG&E is seeking additional CRS revenues based on the 2.7 cents cap.

Therefore, in order to avoid cost-shifting or overcollections, an additional true-up is required to determine the applicable DWR Power Charge

for customers for whom CRS undercollections were not at zero as of June 30, 2006. The appropriate basis for a true-up of such DWR Power Charges is the Total Portfolio Indifference methodology. As PG&E correctly notes, the Appendix tables of D.06-07-030 depicted only illustrative figures. Therefore, a further process is needed to determine specific DWR Power Charge figures applicable to Additional Customer Load and Split-Wheeling Departing Load customers.

Accordingly, we direct that PG&E meet and confer with the legal representatives of the customers subject to Schedule E-NWDL and Schedule E-SDL to seek agreement concerning the necessary adjustments to the DWR Power Charge to recover applicable obligations accrued prior to 2007. The calculations shall be conducted in accordance with the findings of this order, namely, that the 2.7 cents/kWh cap is intended only as a placeholder, and that the DWR Power Charge is to be determined utilizing the Total Portfolio Indifference methodology.

We direct PG&E and representatives of the Additional Customer Load and Split-Wheeling Departing Load to file and serve a joint statement in the proceeding within 20 business days of the effective date of this decision on the results of its meet and confer session to seek agreement on the calculations required to the DWR Power Charge to result in a pay-down of any undercollections to zero for these customers. In the event that the parties have failed to reach agreement, each party shall set forth in its statement its position as to the applicable figures to be applied.

III. Modification Regarding Carry-Forward of Negative Indifference Amounts

A. Parties' Positions

PG&E also requests modification of Ordering Paragraph (OP) 9 of D.06-07-030 relating to provisions for carry-forward of negative indifference charge values. PG&E proposes that OP 9 of D.06-07-030 be modified to clarify that it is qualified by OP 8. OP 8 states that "Negative [indifference] amounts will not be carried forward to a future year." OP 9 states that "however, any accumulated negative indifference amount shall continue to be tracked, and applied to any future positive indifference amounts that may accrue in later years of the applicability of the DA CRS." PG&E proposes that OP 9 be modified to clarify that the tracking of any negative indifference amount for a utility shall occur only until such time as the CRS undercollections for that utility is reduced to zero.

PG&E argues that this proposed modifications consistent with the joint recommendation of the "DA Agreement Parties" as set forth in the February 1, 2006, Final Report of the Working Group to Calculate CRS Obligations Associated with Municipal Departing Load and Direct Access, which states on p. 7:

> The DA Agreement Parties agree that the [ongoing] CTC component of the CRS could be larger than the Indifference Rate, and that this will appropriately result in a negative PCIA component of the DA CRS. They also agree that there is some possibility of a negative Indifference Rate. For SCE non-exempt DA customers, given that SCE has a much larger DA CRS undercollection than the other utilities, the DA Agreement Parties agree that if a negative Indifference Rate should occur for SCE, it should be used as a credit against any existing DA CRS undercollections. This concept is consistent with D.05-12-045, which permits a negative

> [ongoing] CTC to offset a subsequent positive [ongoing] CTC. Because the DA Agreement parties agree that the CRS undercollection on the PG&E system will be paid off as of June 30, 2006, the DA Agreement Parties agree that the Indifference Rate for PG&E should not go below zero and that no negative balance will be carried forward for PG&E. This principle of a non-negative Indifference Rate for non-exempt DA customers will also apply to SCE after its DA CRS undercollection has been recovered. The principle of a non-negative indifference rate for non-exempt DA customers is applicable to SDG&E and is consistent with the historical undercollection for SDG&E being paid off in 2005.

Therefore, PG&E, with support by SDG&E and SCE, seeks modification of OP 9 to affirm that the tracking of any negative indifference amount for a utility shall occur only until such time as the CRS undercollection for that utility is reduced to zero, as is indicated in OP 8, and that no negative indifference amount should be tracked beyond that point in time. To accomplish this, PG&E proposes that that phrase "until such time as the CRS undercollection is reduced to zero" should be added to the end of the last sentence of OP 9.

For the same reason, PG&E proposes that Finding of Fact 27 be modified so that the second sentence begins, "However, **until the existing CRS undercollection is eliminated**, any accumulated negative indifference amount shall continue to be tracked …" (Emphasis added.)

CMUA filed a response objecting to this modification. CMUA argues that the proper source of reference for clarification of OP 9 is D.05-12-045. CMUA notes that in each of the four paragraphs of the section in D.06-07-030 in which the Commission discussed the issue of a negative Indiffernce Charge, D.05-12-045 is the exclusive reference and source of authority. CMUA argues that OP 9 should be interpreted in light of the Commission's similar treatment of negative ongoing CTC in D.05-12-045.

CMUA argues that parallel treatment of ongoing CTC and the Indifference Rate is appropriate because both CRS elements measure costs over time. As discussed further below, bundled customer "indifference" cannot be measured or achieved over time if multi-year netting is not allowed. CMUA argues that disallowing multi-year netting, as proposed by PG&E, would condone cost-shifting, allowing within the ongoing Indifference calculation the inclusion of above-market costs in one year while disallowing the inclusion of below-market costs in another year. In addition to being contrary to D.05-12-045 and D.06-07-030, such an outcome would be inconsistent with the "indifference" calculation because it would "selectively focus only on certain components of cost shifting" (namely, one year's positive Indifference Charge) "while ignoring others" (namely, another year's negative Indifference Charge).

On August 4, 2006, PG&E filed Advice Letter 2871-E, which PG&E claimed was filed "in compliance with D.06-07-030 to meet the requirements of ordering paragraphs of that decision.[7] In Advice Letter 2871-E, PG&E sets forth the following interpretation of OP 9:

> "PG&E requests that the Commission approve a new memorandum account, . . . in compliance with OP 9 of the decision. The establishment of this memorandum account to record and track the negative indifference amounts that may accrue will allow PG&E to apply these accumulated negative indifference amounts to future positive indifference amounts consistent with the Commission directives in D.06-07-030. Effective September 1, 2006, negative indifference amounts recorded and tracked in the memorandum account will be eligible to be applied prospectively to offset future positive

[7] PG&E Advice Letter 2871-E at 1.

> indifference amounts. The negative indifference amounts will only be eligible to offset future positive indifference and will not be eligible to be applied against other components of the CRS."[8]

CMUA argues that the interpretation of OP 9 that PG&E sets forth in Advice Letter 2871-E is correct, and properly addresses the key elements of the Commission's reasoning, both in D.06-07-030 and in D.05-12-045. Thus, CMUA supports the following principles namely (1) no net payment would be made to the customer; (2) after the CRS undercollection balance reaches zero (in PG&E's case, as of "September 1, 2006"), (a) a negative Indifference Charge in one year may offset a positive Indifference Charge in a successive year, and (b) a negative Indifference Charge may not offset other CRS elements.

B. Discussion

We reject PG&E's proposed modification of OPs 8 and 9 regarding its interpretation of Commission's intent as to the provisions for carrying forward of negative indifference amounts into future years. We agree with CMUA that the appropriate reconciliation of D.06-07-030 is that negative indifference amounts will be eligible to offset future positive indifference amounts after September 1, 2006, if any, but will not be eligible to be applied against any other components of the CRS. This clarification, as reflected previously in the proposed language referenced above from PG&E's Advice Letter 2871-E, is the proper treatment consistent with the principle that bundled customers be kept indifferent with respect to DWR Power costs applicable to DA or DL customers. By allowing for

[8] *Id.* at 4.

negative indifference amounts to be netted against future positive amounts, the goal of bundled customer indifference is preserved.

By contrast, PG&E's proposed modification would not result in bundled customer indifference. By recognizing only positive indifference amounts, but not tracking offsetting effects attributable to negative indifference, PG&E's proposed method could result in a permanent net positive indifference amount charged to DA/DL customers. The indifference charge is intended to capture the applicable above-market procurement costs. Indifference is achieved when there is neither an under-or-over recovery of such indifference charges from DA/DL customers.

The requirement for bundled ratepayer indifference is linked to DA/DL responsibility for DWR costs which accrue under multi-year contractual power commitments. These multi-year DWR costs did not end when the CRS undercollection balance reached zero for PG&E on June 30, 2006. Likewise, the indifference requirement did not end once a zero CRS undercollection was reached, but continues for the life of the DWR contracts. Under Pub. Util. Code § 366(d), all retail customers must bear a "fair share" of DWR costs with the intent "to prevent any shifting of recoverable costs between customers."

Therefore, in order to maintain indifference, both positive and negative indifference effects must still be tracked, with the negative amounts offsetting positive amounts. Accordingly, our adoption of the Working Group proposal for the prospective treatment of indifference charges is qualified by this clarification, requiring the treatment of negative indifference amounts as we have explained above.

D.06-07-030, however, did not intend for negative indifference amounts to be "carried forward" in a manner that would produce a credit on customers'

bill for such negative amounts. It was in this context of avoiding a credit balance on customers' bills that OP 8 stated that "no negative balance shall be carried forward." Nonetheless, the requirement to maintain bundled customer indifference did not end on June 30, 2006 merely because PG&E's CRS undercollection at that point was deemed to be zero. The indifference requirements continues until the DWR contracts expire. D.06-07-030 recognized that in future years after June 30, 2006, the possibility existed that market conditions could change such that DWR power costs could once again result in additional net positive adjustments applicable to DA or DL customers necessary to preserve bundled customer indifference.

In that event, the requirement for bundled customer indifference would continue to apply. In order to maintain bundled customer indifference on a cumulative basis, it would be appropriate in such a situation to offset such positive amounts with any previously accumulated negative indifference amounts from prior years. Any such negative indifference amount would only be eligible to offset future positive indifference charges and would not be eligible to reduce any other components of the CRS. It was with this view towards future periods beyond September 30, 2006, and continuing until expiration of the DWR contracts, that D.06-07-030 stated:

> However any accumulated negative indifference amount shall continue to be tracked and applied to any future positive indifference amounts that may accrue in later years of the applicability of the DA CRS. This approach is consistent with D.05-12-045, which permits a negative ongoing CTC to offset a subsequent positive ongoing CTC." (D.06-07-030, p. 17.)

At the expiration of the DWR contract term, the applicability of the indifference requirement would also expire. In the event that there is any net

cumulative negative indifference balance at the time the DWR contracts expire, that balance will not be credited to DA/DL customers. It will simply expire.

To be consistent with this clarification concerning the continuing requirement to track and offset negative indifference amounts, the language on page 17 of D.06-07-030 also requires modification. The sentence at the bottom of that page reads:

> "Given the parties agreement on the end of year 2005 undercollection balance, with the balance reaching zero by June 2006, PG&E will not be required to track the undercollection balance thereafter."

This sentence is hereby modified to read as follows:

> "Given the parties agreement on the end of year 2005 undercollection balance, with the balance reaching zero by June 2006, PG&E will no longer have an undercollection balance to be drawn down."

IV. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments were filed on April 19, 2007, and reply comments were filed on April 24, 2007. We have reviewed the comments in finalizing this order.

In its comments on the Proposed Decision, PG&E repeats its argument that the 2.7 cents/kWh surcharge in effect through June 30, 2006 was not intended to be "subject to retrospective adjustment later," and that it would be "illogical and unreasonable" to do so. PG&E characterizes the Proposed Decision as requiring such "retrospective adjustment."

PG&E's arguments ignore the conceptual framework within which the 2.7 cents/kWh CRS applied, as explained in the Proposed Decision. PG&E fails to reconcile its opposition with the principle that non-bundled customers' cost responsibility obligations are predicated on bundled customer indifference. This goals is ultimately achieved when under/overcollections in CRS obligations are balanced to zero. Contrary to PG&E's claims, the Proposed Decision is consistent with past decisions in requiring an accurate accounting of CRS obligations.

PG&E argues that the Proposed Decision will result in treating non-bundled customers in an inconsistent manner with respect to the applicable DWR power charges during the period up through June 30, 2006. We disagree. PG&E's argument is based on a faulty premise as to what constitutes consistency in determining CRS obligations. Non-bundled customers are treated consistently only when they pay their fair share of costs and bundled customer indifference is achieved.

The CRS obligation for any non-bundled customer category is a function of two variables: (1) the magnitude of the per-kWh surcharge and (2) the duration of the collection of that surcharge. The Commission adopted the Working Group recommendation to terminate the 2.7 cents/kWh CRS as of June 30, 2006 based on the consensus that CRS undercollections had reached zero as of that date, *as applicable to direct access load.* The Working Group did *not* reach consensus, however, concerning the point in time when CRS obligations applicable to other categories of non-bundled customers reach a zero-point undercollection. Therefore, there is no basis to assume that the CRS undercollection necessarily reached zero as of June 30, 2006 applicable to other non-bundled customers subject to DWR power charges. To achieve consistency among non-bundled customers, a further process is required to adjust the surcharges applicable to

periods subsequent to June 30, 2006, and the duration of such surcharges to reach a zero-point under/overcollection. Contrary to PG&E's argument, the Proposed Decision promotes consistency by providing a process for under-or-overcollections of CRS obligations for non-bundled customer groups to be brought to zero.

PG&E disputes the statement in the Proposed Decision that PG&E "could significantly overcollect CRS funds" unless it complies with the directive to meet and confer to determine the appropriate adjustments to balance out any under-or-overcollections. PG&E disputes the possibility of overcollections based on the claim that "DWR maintains specific balancing accounts so that the amount collected from each utility, across time, is the required amount, neither more nor less." DWR's balancing accounts, however, do not prevent cost shifting between categories of customers. Thus, PG&E could still overcollect funds applicable to a particular category of customer even though DWR's balancing accounts may have no overcollections.

PG&E also argues there is no overcollection for any non-bundled customers relative to other non-bundled customers as long as the 2.7 cents/kWh CRS applies to all non-bundled customers up through June 30, 2006, with no subsequent adjustment. In making this claim, PG&E again fails to acknowledge that the 2.7 cents/kWh was a mere placeholder, not based upon any calculation of actual cost obligations required to achieve total portfolio indifference for non-bundled customers.

PG&E also disagrees with the Proposed Decision disposition relating to future tracking of negative indifference amounts. PG&E argues that the Proposed Decision, in finding that negative indifference amounts should be tracked, is inconsistent with the Working Group recommendation. Even

assuming that the intent of the Working Group parties was to eliminate tracking of negative indifference on a prospective basis, the intent of the Working Group is not the proper basis to resolve the issue. The Commission must comply with statutory directives and prior Commission orders to avoid cost shifting with respect to the allocation of indifference charges. By eliminating any requirement to track negative indifference amounts prospectively, the effects of potential cost shifting could not be identified or prevented. To the extent that the Working Group intended to eliminate any requirement to avoid cost shifting, such an intent would be contrary to statutory requirements and thus unenforceable. Accordingly, to the extent that the Working Group intended such a result, we explicitly reject that aspect of their proposal.

PG&E argues that tracking and offsetting negative indifference amounts prospectively "makes no sense." PG&E characterizes the accounting for such offsetting effects as "artificially induced." PG&E seems to imply that it is "artificial" to recognize multi-year cumulative effects in measuring or ascertaining indifference, and that the calculation of indifference should apply only when the amounts are positive while ignoring offsetting negative effects from previous periods. While making such characterizations, PG&E offers no logical basis to conclude that the symmetrical accounting for offsetting positive and negative amounts is "artificial."

With respect to the principles, protocols, and calculation metrics for determining indifference up until CRS undercollections reach zero, PG&E acknowledges that it was proper to net positive and negative indifference amounts, recognizing multi-year cumulative effects. PG&E provides no convincing rationale as to why such an approach was reasonable while undercollections existed, but "makes no sense" on a prospective basis. The

requirement for bundled customer indifference was not eliminated once the CRS undercollections reached zero. While D.06-07-030 changed the mechanics by which the indifference amount is calculated, that change did not eliminate the principle that the indifference is measured on a cumulative basis. As such, the only accurate measure of the indifference amount is one which tracks both positive and negative indifference amounts. If only positive amounts were recognized while negative amounts were ignored, the resulting calculation would be inconsistent and would not achieve indifference.

V. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. The Appendix tables appearing in D.06-07-030 depicted illustrative figures, but did not reflect actual CRS figures.

2. The footnote modification proposed by PG&E accurately reflects the intent of the Appendix tables.

3. The adoption of the modification to add the footnote, as proposed by PG&E, does not provide support for the derivation of a DWR Power Charge for 2005 utilizing the 2.7 cents/kWh CRS cap with no provision for a true-up.

4. The 2.7 cents/kWh cap was applied to MDL with the explicit provision for subsequent consideration and adjustment, as stated in D.03-07-028, COL 14.

5. In D.06-07-030, the Commission found, based on the data provided through the working group process, that for the period 2001-2004 all MDL appeared to be exempt from the DWR Power Charge. Although no specific information was provided for 2005, the Commission made a similar finding applicable to 2005.

6. In view of the apparent exception of MDL from the DWR Power Charge through 2005, it was concluded in D.06-07-030 that no further need existed to quantify a specific benchmark or DWR Power Charge for MDL for 2001-2005.

7. The purpose of the 2.7 cents/kWh CRS cap, as applied to MDL, was to limit the maximum exposure of MDL customers in a given year, but its purpose was not to create permanent overcollections of CRS funds.

8. As explained in D.02-11-022, total CRS requirements were expected initially to produce an undercollection when the 2.7 cents/kWh cap was first adopted, but in subsequent years to yield a surplus to pay down the prior undercollection.

9. Consistent with the principles of bundled customer indifference, the goal of the CRS over time is to balance out to zero any under- or overcollections so as to avoid cost shifting.

10. In D.06-07-030, the Commission authorized a billing adjustment for DA customers to eliminate any DA CRS overcollection as a result of the 2.7 cents/kWh CRS cap.

11. In order to promote consistency between DA and DL customers, similar treatment is appropriate with respect to avoidance of any overcollections of DWR Power Charges.

12. PG&E's Petition for Modification should be denied to the extent it seeks permission to disregard future accumulated negative indifference amounts as an offset to future positive indifference amounts that specifically relate to the costs for DWR contract power.

13. The appropriate clarification of D.06-07-030 is that negative indifference amounts will be eligible to offset future positive indifference amounts after

September 1, 2006, if any, but will not be eligible to be applied against any other components of the CRS.

14. At the expiration of the DWR contract term, the applicability of the indifference requirement would also expire.

15. In the event that there is any net cumulative negative indifference balance at the time the DWR contracts expire, that balance will not be credited to DA/DL customers. It will simply expire.

Conclusions of Law

1. The Petition to Modify D.06-07-030 should be granted in part, with respect to the footnote addition to Table 3C, as set forth in the OPs below.

2. Adoption of the footnote addition should not be construed as Commission endorsement of PG&E's methodology for deriving a DWR Power Charge applicable to Schedule E-NWDL or Schedule E-SDL with no provision for the effects of overcollections that may accrue.

3. It would be inconsistent with Commission principles prohibiting cost shifting to impose a DWR Power Charge under Schedule E-NWDL or Schedule E-SDL based on the 2.7 cents/kWh CRS cap that resulted in a permanent or protracted overcollection.

4. To the extent that a DWR Power Charge were applicable to Schedule E-NWDL or Schedule E-SDL, the proper basis to finalize such charge would be the actual indifference amount, instead of merely applying a 2.7 cents/kWh charge on a derivative basis without a true-up.

5. The Petition to Modify D.06-07-030 should be denied in part, with respect to the request relating to clarification of OPs 8 and 9.

6. The requirement to maintain bundled customer indifference did not end on June 30, 2006 merely because PG&E's CRS undercollection was deemed to be zero.

7. D.06-07-030 recognized that in future years after June 30, 2006, the possibility existed that market conditions could change such that DWR power costs could result in additional net positive amounts charged to DA or DL customers necessary to achieve bundled customer indifference.

8. D.06-07-030 should be modified to clarify that the requirement to track negative indifference applies on a prospective basis during the period subsequent to June 30, 2006, and that such negative indifference amount would only be eligible to offset future positive indifference, but would not be eligible to be applied against any other components of the CRS.

O R D E R

IT IS ORDERED that:

1. The Petition to Modify Decision (D.) 06-07-030 of Pacific Gas and Electric Company (PG&E) is hereby granted in part, and denied in part, as directed below.

2. D.06-07-030 is hereby modified to add the following footnote language on Appendix Table 3C:

> No market benchmarks for PG&E were adopted for 2003-2005. For 2006, PG&E does not have any purpose for an "MDL Accrual Rate." Therefore, for PG&E, the calculations for 2003-2006 are illustrative only. The market price benchmarks for 2003-2005 were imputed from the adopted cost responsibility surcharge undercollection for PG&E as of December 31, 2005, in Decision 06-07-030, no reported

undercollections are applicable to MDL CRS obligations as of December 31, 2005 for PG&E.

3. The granting of PG&E's proposed modification regarding Appendix Table 3C does not constitute endorsement of PG&E's methodology for deriving a DWR Power Charge under Schedule E-NWDL based on the 2.7 cents/kilowatt-hour (kWh) Cost Responsibility Surcharge (CRS) with no true-up.

4. PG&E shall promptly meet and confer with the legal representatives of the customers subject to Schedule E-NWDL and Schedule E-SDL to seek agreement concerning the necessary adjustment to the California Department of Water Resources (DWR) Power Charge to recover applicable obligations. The calculations shall be conducted in accordance with the findings of this order, namely, that the 2.7 cents/kWh cap is intended only as a placeholder, and that the DWR Power Charge is to be determined utilizing the Total Portfolio Indifference methodology.

5. We direct PG&E and representatives of Additional Customer Load and Split-Wheeling Departing Load customers to file and serve a joint statement in this proceeding within 20 business days of the effective date of this decision on the results of its meet and confer session to seek agreement on the calculations required to the DWR Power Charge to result in a pay-down of any undercollections to zero for these customers. In the event that the parties have failed to reach agreement, each party shall set forth in its filed statement its position as to the applicable DWR Power Charge figures to be applied in the statement together with supporting assumptions.

6. To the extent that there is a perceived inconsistency in D.06-07-030 with regard to Ordering Paragraphs 8 and 9, the inconsistency is hereby reconciled to confirm that negative indifference amounts shall be tracked and offset against

any positive indifference amounts that may accrue subsequent to June 30, 2006. Any such negative indifference amount would only be eligible to offset future positive indifference, and would not be eligible to be applied against any other components of the CRS.

7. The sentence on page 17 of D.06-07-030 at the bottom of that page is hereby modified. The sentence in D.06-07-030 reads:

> "Given the parties agreement on the end of year 2005 undercollection balance, with the balance reaching zero by June 2006, PG&E will not be required to track the undercollection balance thereafter."
>
> This sentence is hereby modified as follows (indicated by underlining):
>
> "Given the parties agreement on the end of year 2005 undercollection balance, with the balance reaching zero by June 2006, PG&E will no longer have an undercollection balance to be drawn down."

8. Rulemaking 02-01-011 remains open.

This order is effective today.

Dated May 3, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners