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Decision 07-11-051 November 16, 2007 **Mail Date 11/21/2007**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans.	Rulemaking 06-02-013 (Filed February 16, 2006)

ORDER MODIFYING DECISION (D.) 06-07-029 AND DENYING REHEARING OF DECISION AS MODIFIED

I. BACKGROUND

This rulemaking was instituted by the Commission to "examine the need for additional policies that support new generation and long-term contracts for California, including consideration of … mechanisms (e.g., cost allocation …) which can ensure construction of and investment in new generation in a timely fashion." (D.06-07-029, at p. 6, quoting *Rulemaking to Integrate Procurement Policies* [R.06-02-013] (2006) __Cal.P.U.C.3d __ (slip op.).) After opening the rulemaking, the Commission received proposals, held a transcribed "workshop," and received comments and reply comments. (D.06-07-029, at p. 13.) The proposed decision ("PD") of the assigned Administrative Law Judge ("ALJ") was mailed to the parties for comment on June 20, 2006. Parties filed both comments and reply comments. (D.06-07-029, at p. 51.) After receipt of these comments and replies, the ALJ revised the PD. The revised PD was then adopted by the Commission, as Decision (D.) 06-07-029 ("Decision"). (D.06-07-029, at pp. 52-53, 63.)

The Decision found that the Commission needed to add 3,700 megawatts of new generation by 2009. (D.06-07-029, at pp. 3, 54.) The Decision also found that the

Commission could not rely on the policies and rules it had already applied to "load serving entities"[1] to produce an increase in the building of new generation.[2] (D.06-07-029, at pp. 4, 23.) As a result, the Decision adopted a modified version of a proposal originally put forth by a group known as the "Joint Parties" and called the "joint proposal" ("JP"). (D.06-07-029, at pp. 26-33.)

The portion of the modified JP relevant here[3] requires IOUs to enter into long-term contracts that will result in the development of new generation capacity. The Decision pointed out that this new generation is needed "to ensure grid reliability for the state as a whole [,]" and "not just [by] the three IOUs...." (D.06-07-029, at pp. 16, 25.) Nevertheless, the Commission gave the IOUs responsibility for obtaining the long-term contracts for new generation because "an IOU is an entity with the resources to make such a commitment." (*Ibid*.)

The Decision accounted for the fact that IOUs were being required to enter into long-term contracts on behalf of a group of customers broader than their own

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[1] A load serving entity ("LSE") is defined by statute to include electrical corporations (referred to in the Decision as investor-owned utilities ("IOUs")), independent "electric service providers" (referred to in the Decision as direct access ("DA") service providers) and community choice aggregators ("CCAs"). (Pub. Util. Code, § 380, subd. (j), see also, Pub. Util. Code, §§ 218 (electrical corporations), 218.3, 394 (electrical service providers), & 331.1 (community choice aggregators).) The Commission has authority to set resource adequacy ("RA") standards for load serving entities. (E.g., Pub. Util. Code, § 380, subd. (a).) LSEs are distinguished from certain other types of electricity providers, such as publicly owned utilities ("POUs"). (Pub. Util. Code, § 380, subd. (j)(1).)

[2] Previously, in *Generation Procurement* [D.04-01-050] (2004) __ Cal.P.U.C.3d. __, the Commission required each LSE to procure sufficient reserves of power to provide reliable service based on its customers' load. In its next major decisions, *Interim Opinion Regarding Resource Adequacy* [D.04-10-035] (2004) __ Cal.P.U.C.3d __ and *Resource Adequacy Requirements* (2005) [D.05-10-042] __ Cal.P.U.C.3d __, the Commission adopted policies and rules that required each LSE to make an annual showing that it could meet the next year's RA requirements. In addition, the Commission has given IOUs procurement authority on a rolling 10-year basis, and established a mechanism through which IOUs can enter into short-, medium-, and long-term contracts. (*Long Term Procurement* [D.04-12-048] (2004) __ Cal.P.U.C.3d __.) IOUs can recover costs associated with this procurement for either the life of the contract or for 10 years, whichever is less. These costs can be recovered from "all customers, including departing customers." (*Id.* at p. 60 (slip op.).)

[3] The other main feature of the JP is that it separates the management of energy and capacity components of newly acquired generation. The IOUs will not become the default managers of the new capacity acquired as a result of the JP. (D.06-07-029, at pp. 4-5.)

"bundled" customer base by allocating the net costs of the IOUs' long-term contracts broadly. (D.06-07-029, at pp. 16, 17, 41-42.) This allocation was designed to prevent these costs from being assumed by the IOUs' own customers alone. The broad group of customers subject to the Decision's cost-allocation mechanism consists of "bundled service customers, DA customers, and CCA customers." The Decision followed the previously establish policy of allocating the net costs of the long-term contracts to customers known as "departing customers."[4] That is, "customers who are located within a utility distribution service territory but take service from a local POU" after a long-term contract has been obtained by an IOU and "the new generation goes into service" will be allocated a portion the net costs of that contract. (D.06-07-029, at p. 26, fn. 21.) The Decision used the defined term "benefiting customers" to refer collectively to all of the customers subject to the allocation mechanism, including departing customers.[5]

An application for rehearing of the Decision was filed jointly by two POUs: Merced Irrigation District and Modesto Irrigation District ("MID"). The application contains three allegations of error. First, the rehearing application makes a procedural claim. MID assert that the Decision falls within the definition of an "alternate" in Public Utilities Code section[6] 311, and former Rule 77.6 of the Commission's Rules of Practice and Procedure.[7] MID make this claim because the ALJ revised the PD after comments

[4] Departing customers to take POU service are sometimes referred to as municipal departing load ("MDL") customers because POUs were previously referred to as municipal utilities. *Long Term Procurement, supra,* adopted the policy concerning departing customers, as discussed in footnote 2.

[5] The rehearing application refers to departing customers subject to the allocation mechanism as "future POU customers" and sometimes discusses the effect of the allocation mechanism on "POU customers" generally, or on "current … POU customers [.]" (E.g., Rehg. App., at pp. 7, 8.) This language is not as precise as it could be because the Decision does not attempt to reach current POU customers, and it effects MDL customers only because of their status as departing customers, not because of their status as POU customers.

[6] In this document section references indicate the Public Utilities Code, unless otherwise specified.

[7] The Commission's Rules of Practice and Procedure are referred to in this document as "Rules." The Rules are contained in Title 20, Cal. Code Regs., where each Rule's section number is the same as its Rule number. The Commission revised its Rules after the Decision issued, and this document refers to each of the now superseded Rules as a "former Rule."

were received. According to MID, when the PD was revised it became an "alternate" and was required to be circulated for comment a second time, and the Decision is in error because the PD was not re-circulated.

Second, the rehearing application claims that the Decision applies a "benefit test" to determine which customers will be allocated the costs and benefits of new generation. According to MID, such a test is not permitted under section 380, subdivision (g) ("section 380(g)"). (Rehg. App., at p. 5.) MID claim that using a "benefit test" is improper because they seek to avoid having costs allocated to "future departing load customers who… begin to take service from a POU…." (Rehg. App., at p. 7.) The rehearing application further claims that the record does not support the Decision's allocation mechanism, and that the Commission committed error by not holding an evidentiary hearing on "factual issues." (Rehg. App., at p. 8.)

Third, the rehearing application asserts that the Decision improperly designates IOUs as the companies that will procure power for POU customers. (Rehg. App., at p. 9.) MID argue that IOUs may not legally procure power for POU customers. Because the service territories of both irrigation districts overlap with the service territory of Pacific Gas and Electric Company ("PG&E"), MID assert that the Decision makes PG&E the "default purchaser of new resource adequacy generation" for MID's customers. (Rehg. App., at p. 11.)

Two responses to the rehearing application were filed. The Joint Parties (Southern California Edison Company, PG&E, The Utility Reform Network, Coalition of California Utility Employees, and the California Unions for Reliable Energy) filed a response, and PG&E filed a separate response. The Joint Parties response states that the Decision does not create a "benefit test." According to the Joint Parties, the Decision's cost allocation does not affect current POU customers. The Joint Parties also claim that the Decision treats potential future municipal departing load in a manner consistent with the authority granted the Commission in section 380. The Joint Parties' response also states that the Decision is not an alternate because the revisions made to the draft of the Decision were suggested in comments and did not make a substantive change.

PG&E's separate response claims that MID's customers will in fact benefit from new generation procured by PG&E, and that this fact is well-documented. In addition, PG&E claims the record in this proceeding is adequate, and that a trial-type hearing is not legally required when the Commission exercises its discretion on purely policy questions, or in ratesetting proceedings. According to PG&E the workshops, "voluminous comments" and publicly available government reports provided a sufficient record on which to base the Decision. PG&E also claims that the rehearing application is mistaken when it asserts that the Decision will result in PG&E procuring power for POU customers.

We have review each and every allegation raised in the application for rehearing, and believe the allegations have no merit. However, since MID may have misunderstood some of our holdings, we will modify the Decision, for purposes of clarification. Rehearing of D.06-07-029, as modified, will be denied.

II. DISCUSSION

A. The Commission Complied With The Applicable Requirements When It Revised the Proposed Decision.

The rehearing application identifies a portion of the Decision that it claims did not receive sufficient public notice and comment. That portion of the Decision appears in Section IV.C.13, at page 48. There, the Decision states that its "cost allocation mechanism does not apply to POU customers unless the customer is subject to D.04-12-048, as modified by D.05-12-022." Those two decisions establish that the net costs of an IOU's long-term commitments for "capacity and energy" should be recovered "from all customers, including departing customers." (*Long Term Procurement*, *supra*, at pp. 59, 60 (slip op.).) Originally, the PD had stated that "POU parties outside the CAISO control area are not subject to the [Decision's] cost-allocation mechanism." (Proposed Decision, at p. 45.) The Decision states that it revised this language in conjunction with revisions to the definition of "benefiting customers" in response to comments made by the parties. (D.06-07-029, at p. 52.)

These revisions removed an ambiguity in the Decision that allowed it to be read as holding that the cost allocation mechanism did not apply to MDL. In their discussion of "POU Concerns," both the original PD and the Decision made it clear that current POU customers would not be subject to the Decision's cost-allocation mechanism. However, MID's comments on the PD suggested that the reference to the ISO control area could be interpreted to mean that no POU customers would be "subject to the cost allocation mechanism…" under any circumstances. That interpretation was technically plausible in light of the language in Section IV.C.13, but not in light of the PD's definition of "benefiting customers" or its discussion of section 380 and *Long Term Procurement, supra*, both of which made it clear that MDL customers were to be subject to the cost allocation mechanism. (Cf., Proposed Decision, at pp. 26, 41.) The revision adds consistency to be Decision by making it clear that departing load will be subject to the cost allocation mechanism.

However, the rehearing application claims that by making these revisions to the PD the Commission "issued … an alternate" without subjecting that alternate to public review and comment, as required by section 311 and the version of the Commission's Rules of Practice and Procedure in effect at the time. (Rehg. App., at p. 4.) This claim does not demonstrate error because the revisions were properly made, following the procedure for revising a proposed decision contained in the Public Utilities Code. The claim that these revisions converted the PD into an "alternate" does not take into account the fact that the statute contains rules applying specifically to the revision of a PD. Those rules allow a PD to be revised prior to its adoption by the Commission. Because the statutory requirements applicable to PDs clearly allow revisions, there is no need to consider rules applicable to alternates in order to determine what public review and comment procedures apply should apply to the revised PD.

The requirements governing the public review of and comment on PDs are contained in section 311, subdivision (d), which provides in relevant part:

> …the administrative law judge shall prepare and file an opinion setting forth recommendations, findings, and conclusions. The opinion of... the administrative law judge is the proposed decision and a part of the public record in the proceeding.... The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision.... The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision.

Thus, when the Commission adopts a version of a PD that has been revised after the receipt of comments, it exercises its statutory authority to "modify, or set aside the proposed decision or any part of the decision." Exercising the authority granted by section 311, subdivision (d), does not create a new "alternate decision" that must be re-circulated for further comment. Instead, pursuant to section 311.5, subdivision (a) (1), the revised PD must be made available to be public "prior to the commencement" of the meeting at which the Commission will vote on it. As the Commission pointed out in response to a previous application for rehearing from MID that raised this same issue:

> There is no requirement that any revisions to a proposed decision must be served on all parties. Rather, the Commission must "make available to the public copies of the agenda, and upon request, any agenda item documents that are proposed to be considered by the commission for action or decision at a commission meeting." (Pub. Util. Code, § 311.5, subd. (a)(1).)

(*Order Denying Rehearing* [D.07-01-020] (2007) __ Cal.P.U.C.3d __, at p. 13 (slip op.), see also, *Greyhound Lines, Inc. v. Public Utilities Com*. (1968) 68 Cal.2d 406, 410-411.)[8]

[8] Similarly, former Rules 77.1-77.5 stated further, specific, rules governing the procedures to be used by parties in commenting on a PD. Those rules, which are separate from the former Rules covering alternates, contain no requirement that revisions to a PD be recirculated prior to being taken up by the Commission.

Moreover, MID's claim that a revised PD becomes an alternate does not accurately describe the requirements that apply to alternates. Neither the statute nor the former Rules provide that a PD becomes an alternate when it is revised. Subdivision (e) of section 311, which governs the distribution of alternates, establishes that an alternate is a second, separate "item that appear[s] on the [C]ommission's agenda as an alternate item to a proposed decision…."[9] Similarly, former Rule 77.6 stated that an alternate was a separate document that was produced when a Commissioner revised a proposed decision authored by someone else. That rule defined an alternate as (emphasis added): "a substantive revision *by a Commissioner* to a proposed decision *not prepared by that Commissioner*" that changed the resolution of a contested issue decision or altered the findings, conclusions or ordering paragraphs of the proposed decision.

As a result, MID is incorrect when it claims that an agenda document that differs from a PD in certain ways must be treated as an alternate. (Cf., Rehg. App., at p. 4.) That claim does not take into account the statutory requirement that an alternate be a second document on the agenda, authored by a Commissioner. The rehearing application's reliance on language from former Rule 77.6 to support this claim is also misplaced. Former Rule 77.6 did not state that unless revisions to a document were suggested by the comments then that document it is an alternate. Instead, the Rule states an exception to the definition of "alternate," which provided (emphasis added) that an item "is *not* an alternate" if it only makes changes suggested in comments or another alternate. (Former Rule 77.6, subd. (a), Cal. Code Regs. tit. 20, former § 77.6, subd. (a).) This language only describes features that prevent a document from having to meet the

[9] Those familiar with the Commission's agenda and the way the Commission conducts its voting meetings take for granted that a PD and an alternate represent two separate documents, containing different, usually competing, resolutions of the issues presented in a proceeding. In fact the term "alternate" used in the rehearing application is an abbreviation. The statute and the former Rules refer to an "alternate to a proposed decision," again indicating that an alternate is a second document, independent from a proposed decision, not a subsequent draft of a proposed decision.

procedural requirements applicable to alternates, not the features that make a document an alternate.

Finally, the revision addressed by MID in the rehearing application does not even meet the requirements of the rule MID proposes. The revision did not change the outcome of a contested issue because the definition of "benefiting customers" in both the PD and the Decision included MDL customers. (Compare, Proposed Decision, at pp. 26, 55, Decision, at pp. 26, 61.) Further, as the Joint Parties argue in their response, the revision with which MID take issue was suggested by the comments. (Response of Joint Parties, at p. 3, quoting Comments of Joint Parties on PD, at pp. 10-11.)

B. The Decision Properly Allocated the Costs of New Generation.

The rehearing application further claims that the Decision used an impermissible method to allocate the costs of long-term contracts for new generation. According to MID, the Decision set up a "benefit test to determine cost responsibility" for new generation instead of following section 380(g), which requires that those costs be allocated "only to those customers on whose behalf such generation is procured...." (Rehg. App., at p. 5.) MID also claim that the group of customers that will be responsible for long-term contract costs "cannot include future departing load customers once they leave IOU service." (Rehg. App., at p. 7.)

These claims do not demonstrate error for two reasons. First, the Decision did not establish a benefit test—it explicitly allocated costs to the customers "on whose behalf" those costs would be incurred. (D.06-07-029, at p. 41.) Second, despite MID's claims, both section 380 and Commission precedent provide for the allocation of costs such as these to a broad group of customers, including MDL customers. (Pub. Util. Code, § 380(g); *Long Term Procurement, supra*.) The rehearing application is simply incorrect when it claims that we are legally required to allow "future departing load customers… who begin to take service from a POU" to escape responsibility for the costs allocated in the Decision. (Cf., Rehg. App., at p. 7.)

1. The Decision Does Not Contain a "Benefit Test."

The Decision adopted the JP to address a specific problem: none of the LSEs were taking steps to obtain new generation that would be needed by 2009. (D.06-07-029, at pp. 3-4, 36-40, 53.) The Decision found that because IOUs and ESPs were "unwilling to sign long-term contracts in the current regulatory and market framework…" not enough new generation was being developed. (D.06-07-029, at p. 4.) To address this "stalemate[,]" the Commission adopted the modified JP, requiring IOUs to enter into the necessary long-term contracts, and allocating the net costs of those contracts to the defined class of "benefiting customers." (D.06-07-029, at pp. 4, 26, 61.) The JP's allocation mechanism was designed to account for the fact that while IOUs would enter into the required long-term contracts, the IOUs' customers should not, alone, be bear responsibility for those contracts' costs. (E.g., D.06-07-029, at p. 16.)

The rehearing application claims that by adopting this cost-allocation mechanism the Decision "declare[s], without analysis, that … section 380 contains a benefit test when that statute… only applies to customers on whose behalf … procurement is made." (Rehg. App., at p. 4.) MID further assert that the Decision's analysis of the Commission's authority under section 380 is flawed because it "fails to address adequately or at all the key point: Section 380(g) does not establish a 'benefit test'…." (Rehg. App., at p. 5.)

These claims do not demonstrate error because they do not accurately describe the basis on which the Decision adopted the cost allocation mechanism. The Decision did not "declare" that section 380 contains a "benefit test." (Cf., Rehg. App., at p. 4.) Nor did the Decision allocate costs on the basis of a so-called "benefit test." The phrase "benefit test" did not appear in the Decision.[10] The Decision only used the term

[10] Some sections of the Decision focus on the way the allocation mechanism will apply to the LSE customers in an IOU's service territory (bundled service customers, DA customers and CCA customers). Those customers will both pay for the costs of the IOUs long-term contracts and receive a portion of the RA benefits produced by those contracts. (D.06-07-029, at pp. 4, 26, 41.) Although it is not the subject of the application for rehearing, this is an important feature of the JP. This feature of the JP presented

(*footnote continued on next page*)

"benefiting customers," which is definitional. (E.g., D.06-07-029, at pp. 26, fn. 21, 41.) Moreover, the Decision explicitly determined to allocate costs to "benefiting customers as defined in Section IV.B.1" for a reason permitted by section 380(g): those customers would be the ones "on whose behalf the costs are incurred." (D.06-07-029, at p. 41, quoting Pub. Util. Code, § 380(g).)

Given this clear articulation of the Decision's holding, the rehearing application's unsubstantiated claims do not demonstrate error. The rehearing application does not identify language in the decision that adopts the so-called "benefit test." Nor does the rehearing application describe how such a test would work.[11] Essentially, MID have constructed a straw man argument: they claim the Decision takes a position it does not take, and then assert that this position is legally infirm. Such a claim is without merit.

Because the Decision did not apply a "benefit test," claims that rely on this theory also do not demonstrate error. The Decision did not seek to replace any of section 380(g)'s criteria or to insert an impermissible "benefit test" into the statute's requirements. (Compare, Rehg. App., at p. 5.) Similarly, when the Decision found that the defined class of "benefiting customers" would comprise those on whose behalf the IOUs long-term contract costs would be incurred it did not "read words saying one thing as saying something else." (*Ibid.*) MID, not the Commission, advances the claim that the Decision used a "benefit test" that is somehow different from applying the cost allocation mechanism to those on whose behalf costs were incurred. And the Decision's finding that "benefiting customers" are those on whose behalf costs will be incurred follows the

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policy and technical issues not relevant here and the Decision therefore discusses it in detail. However, this discussion should not be read out of context as providing the reason why the Decision determined to allocate costs to "benefiting customers." We will modify the Decision to make this point clear.

[11] It is significant that the rehearing application does not describe what aspects of a benefit test would be impermissible because, as discussed below, section 380 contains a number of mandates covering cost allocation. That statute requires the Commission to facilitate the development of new generation, to equitably allocate costs, and to avoid cost shifting, among other things. (Pub. Util. Code, § 380, subd. (b).) Without any description of the mechanics of the so-called "benefit test" it is impossible to tell if that alleged test would comply with or contravene these mandates. (Compare, Pub. Util. Code, § 1732.)

logic behind the JP. The JP addresses the fact that when the IOUs enter into long term contracts pursuant to the Decision they will not do so solely on their bundled customers' behalf.[12] Thus the Decision seeks to prevent the IOUs bundled customers, alone, from being unfairly required to "pay the premium that new generation commands as compared with existing resources...." (D.06-07-029, at p. 16.) The broad allocation of costs places cost responsibility on all those on whose behalf the IOUs acted, thereby avoiding an unreasonable cost burden being placed on bundled customers. (Pub. Util. Code, §§ 451, 380, subd. (b).) Also, as the Joint Parties point out with respect to MDL, we have a well-established policy to allocate costs incurred on behalf of all customers in this manner. Specifically, *Long Term Procurement, supra,* has already determined that the IOU's net long term contract costs should be allocated to a broad group of customers, "including departing customers." (*Id.* at p. 60 (slip op.).)

2. The Allocation Mechanism Complies With Section 380(g) and Relevant Commission Precedent.

As the previous discussion shows, the Decision adopted an allocation mechanism that followed the requirements of applicable law. Section 380, among other things, gives the Commission a mandate to facilitate the development of new generating capacity. (Pub. Util. Code, § 380, subds. (b)(1), (h)(2).) We are also required to: "Equitably allocate the cost of generating capacity and prevent shifting of costs between customer classes." (Pub. Util. Code, §380, subd. (b)(2).)

In addition, section 380(g) specifically addresses how certain resource adequacy costs incurred by IOUs will be recovered. That subdivision provides, in pertinent part:

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[12] TURN, one of the Joint Parties, pointed this out clearly in its comments. TURN notes that the JP resolves the dilemma faced by the Commission by giving IOUs a different role from the one they now play in the current market structure. IOUs will buy power that ensures system reliability, even though doing so is not in their interest as an LSE. "[W]hen IOUs are assigned to play that more traditional role, as advocated by the Joint Proposal, they will be acting *not as LSEs* for their bundled customers but as stewards of system reliability on behalf of all customers." (Separate Reply Comments of TURN, dated April 19, 2006, at pp. 2-3.)

> An electrical corporation's costs … associated with system reliability and local area reliability, that are determined to be reasonable by the commission… shall be fully recoverable from those customers on whose behalf the costs are incurred, as determined by the commission, at the time the commitment to incur the cost is made or thereafter, on a fully nonbypassable basis, as determined by the commission.

The determination to allocate the net costs of long-term contracts to those falling into the class of "benefiting customers" was plainly authorized by these statutory directives. As an initial matter, the Decision's cost-allocation mechanism was "intended to support new generating capacity [,]" and section 380 supports Commission action to achieve this goal. (D.06-07-029, at pp. 41-42; Pub. Util. Code, § 380, subds. (b)(1), (h)(2).) Additionally, the cost allocation mechanism complied with the statute's injunction against cost shifting by preventing bundled customers, alone, from being made responsible for new generation costs, and preventing MDL customers (or customers switching between different types of LSE service) from being able to avoid costs by changing service providers. The Decision acknowledged this feature, stating that the allocation mechanism "is the appropriate way to equitably allocate the cost and keep [bundled] rates just and reasonable." (D.06-07-029, at p. 43.) Thus, as the Decision pointed, out the statute clearly authorizes the Commission to "adopt a cost-allocation methodology that spreads the cost of new generation." (D.06-07-029, at p. 41.)

Moreover, the Decision follows the mandate set out in section 380(g), which gives us significant discretion in allocating costs. Under section 380(g) we may "determine" those customers from which IOU costs "associated with system reliability" will be "recoverable[.]" (Pub. Util. Code, § 380(g).) The Decision made "benefiting customers" responsible for the net costs of new generation in a manner consistent with this subdivision. First, it found that the costs allocated to "benefiting customers" are IOU costs "associated with system reliability [,]" as the statute requires. (E.g., D.06-07-029, at p. 54 [Finding of Fact 3].) Second, the Decision held that "benefiting customers" were those on whose behalf the IOUs' long term contract costs were incurred. (D.06-07-029, at p. 41.) Finally, the Decision allocated these costs "on a fully nonbypassable basis" by

including all LSE customers and departing load in the definition of "benefiting customers." (Cf., Pub. Util. Code, § 380(g).)

Despite the clear correspondence between the Decision's allocation mechanism and the statute's requirements, the rehearing application claims that the Decision's allocation mechanism did not follow section 380. First, MID claim that when it discussed section 380 the Decision did not provide a thorough enough explanation of why arguments made by MID in their comments on the PD did not apply. (Rehg. App., at p. 5.) This claim fails to demonstrate legal error because the Decision explained why section 380 and Commission precedent support the chosen allocation mechanism. By explaining why section 380 supports the chosen allocation mechanism, the Decision showed why arguments that section 380 requires a different result (as asserted by MID in its comments) are not correct. Further, because the Decision did not apply MID's purported "benefit test," there is no need for it to explain in detail why the alleged defects of that test did not prevent it from adopting the allocation mechanism; it was sufficient for the Commission to point out that it did not use such a test here. (Compare, Rehg. App., at p. 5; *Pacific Tel. & Tel. Co. v. Public Utilities Com.* (1965) 62 Cal.2d 634, 648.)

Next, MID reiterate their claim that under principles of statutory interpretation section 380 should be read to allow MDL to escape cost responsibility for long-term contracts obtained by IOUs pursuant to the Decision. This assertion is also incorrect. The Decision's discussion of the statute, summarized above, explained why the cost allocation mechanism achieves the objectives of section 380 in general, and section 380(g) in particular. The Decision's approach to the statute followed, rather than contravened, applicable rules of statutory construction, including those set out in the rehearing application. (Cf., Rehg. App., at p. 6.) Specifically, when the Decision allocated the costs of long-term contracts to those on whose behalf the costs were incurred, on a nonbypassable basis, it accomplished the "purpose" that appears "on the face of the statue." (*Public Utilities Com. v. Energy Resources Conservation and Dev. Com.* (1984) 150 Cal.App.3d 437, 444.) On the other hand, MID's reading of section 380, which involves interpolating additional requirements into section 380 by comparing

it to section 9620 and attempting to develop a requirement for "statewide resource adequacy" seeks to uncover "hidden meanings not suggested by the statute...." (*Ibid.*)

Moreover, the fact that MID can construct a "harmonized" reading of two statutes that is consistent with its position does not demonstrate that our more straightforward interpretation is in error. (Cf., Rehg. App., at p. 7.) MID's reading seeks to establish a legal requirement that MDL be made exempt from the cost allocation mechanism when the statue, on its face, both gives the Commission broad discretion to "determine" which customers will be allocated these costs and to make the allocation "on a fully nonbypassable basis as determined by the [C]ommission." (Pub. Util. Code, § 380, (g).) In addition MID's reading of the statute fails to take into account subdivision (b)'s requirement that costs be allocated equitably, without cost-shifting. In these circumstances, it is not error for us to adopt an interpretation of a statute that differs from an interpretation proposed by a party. We have authority to do so, unless our interpretation "fails to bear a reasonable relation to statutory purpose and language." (*Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d 406, 410-411.)

The rehearing application is also incorrect to claim that the Decision is in error because it contravenes a proposition advanced by MID—that "IOU customers are to pay for IOU resource adequacy costs and POU customers are to do the same for POU resource adequacy costs." (Rehg. App., at p. 7.) This statement represents MID's position, and is not found in the text of section 380. Further, this statement is neither completely accurate nor relevant to the Decision. When the net costs of the IOUs' long-term contracts are allocated, they will not be allocated to current POU customers. In addition, the fact that IOU and POU customers' cost responsibility is often distinguishable does not eliminate section 380(g)'s clear mandate allowing the Commission to impose nonbypassable charges on those on whose behalf costs were or will be incurred.

The rehearing application also claims that the cost allocation mechanism is in error because once departing customers begin to take service from a POU long-term contract "power is no longer being procured 'on their behalf.'" (Rehg. App., at p. 7.)

This statement is beside the point. Section 380(g) addresses "customers on whose behalf costs were incurred"—not customers on whose behalf power is procured. The Decision's allocation mechanism is based on the fact that IOUs will enter into long-term contracts on behalf of certain customers, and incur costs that will be charged over the life of the contract. The fact that an MDL customer subject to the Decision's cost allocation mechanism will receive power from a POU after that customer departs does not change the fact that an IOU will have incurred costs on that customer's behalf; and we have clear authority to allocate those costs to that customer under section 380(g). The rehearing application cites no authority that suggests the rule it proposes should be observed despite countervailing legislation and Commission precedent.

In essence MID are making a policy argument—MDL customers should not be allocated cost stemming from the IOUs' long-term contracts because departing customers will have to pay for POU reliability costs when they become POU customers. The law does not require the Commission to conclude that MDL customers must be given the ability to avoid costs incurred on their behalf simply because those customers will also bear other costs. To the contrary, that conclusion is inconsistent with section 380(g)'s clear language allowing the Commission to "determine" how to provide for the recovery of costs "on a fully nonbypassable basis…." Thus, arguments in favor of allowing departing customers that take service from a POU to bypass costs based on section 9620, the "statutory background," or California Energy Commission forecasts do not demonstrate the Decision is in error for relying on the plain meaning of the words in the statute. (Cf., Rehg. App., at pp. 7, 8, fn. 19.)

Finally, the rehearing application's arguments fail to demonstrate error because they essentially ask the Commission to reconsider a decision that has already been made. The Decision's cost allocation mechanism was consistent with a broad Commission policy establishing that IOU customers alone will not be given responsibility for costs that an IOU assumes in order to create system-wide benefits. (D.06-07-029, at p. 42, fn 32.) In particular, the Decision pointed out that *Long Term Procurement, supra*, had already held that IOUs "should be allowed to recover the net

costs of these commitments [including long-term contracts] from all customers, including departing customers." (D.06-07-029, at pp. 27, 42, 60.) The Decision's purpose in adopting the JP was to implement "additional policies [,]" notably the allocation of costs to all LSE customers combined with a sharing of RA credit. (D.06-07-029, at p. 6.) Thus, arguments that take issue with the determination to allocate costs to MDL do not demonstrate that the Decision is in error because this holding was made previously and is simply followed by the JP and the Decision. (Pub. Util. Code, §§ 1709, 1731, subd. (b)(1).) Nevertheless, the rehearing application's claims point out that the Decision's discussion of the legal basis for the allocation mechanism could be presented more clearly. We will modify this discussion and other relevant portions of the Decision to make clear the points we articulate in today's order.

C. The Decision is Supported by the Record, and Did Not Require a Trial-Type Evidentiary Hearing.

The rehearing application claims that certain aspects of the Decision are not supported by the record. According to MID, "no record exists to justify the Decision's adoption of a cost allocation proposal that requires any current or future POU customer to pay for" the cost of long-term contracts obtained by IOUs to ensure reliability. (Rehg. App., at p. 8.) Similarly, MID claims that "no evidence" was presented to show that "current or future [POU] customers benefit at all from IOU resource adequacy procurement [i.e., long-term contracts for new generation]" or that the benefit "supports the costs that they will be required to bear."

These claims do not demonstrate error because, for the most part, they do not address findings made in the Decision. There is no need for the record to address current POU customers because only departing customers ("future customers" in the words of the rehearing application) are subject to the cost allocation mechanism. Similarly, claims about the extent of the record on the alleged "benefits" received by

POU customers do not demonstrate error because the Decision did not adopt the cost allocation mechanism by relying on a benefit test. (Compare, Rehg. App., at p. 8.)[13]

Moreover, the Decision is based on a complete record developed in the course of these proceedings. Comments submitted by the parties provide factual, policy and legal support for the policy to allocate the IOUs' net costs under the long-term contracts to a broad group of customers that includes departing customers. For example, the comments explained that unless the Commission adopted a policy targeted at new generation, the state would not have enough generation resources. Further, the record contains material showing that the JP was the only proposal before the Commission that addressed resolved the dilemma posed by the LSEs' reluctance to enter into long-term contracts.[14] Because the Decision was concerned about the lead-times needed to plan and construct new generation, this material is significant. (See, D.06-07-029, at p. 55.)

The record also addressed relevant legal and policy considerations. The Comments point out that section 380 and previous Commission decisions establish that long-term IOU contract costs are to be allocated to departing customers.[15] Finally, the record contains comments explaining that costs associated with long-term contracts must be fully recovered, which suggests departing customers should not be able to avoid long-term contract costs by changing service providers.[16] These comments are consistent with

[13] In connection with this claim, MID restate their position that because POUs fall under separate RA requirements, departing load customers should be allowed to avoid being allocated costs incurred by IOUs once they take POU service. As explained above at pp. 15-16 however, MID point to no legal barrier that prevents the Commission from adopting its cost allocation mechanism.

[14] Under the JP, costs will not remain with the IOUs but will be "allocated to those customers on whose behalf the procurement effort would be undertaken." (Joint Proposal, filed March 7, 2006, at p. 1, see also, Separate Reply Comments of TURN, dated April 19, 2006, at p. 3.) Comments also state that without such a policy, IOUs will be reluctant to undertake "procurement steps [.]" (Comments of SCE, filed April 10, 2006, at p. 2. The Decision relies on this position when it adopts the allocation mechanism.) The Decision states, at p. 3 that the JP is the "only complete solution" to the policy problems presented.

[15] E.g., Joint Proposal, at pp. 12-13.

[16] In their Comments, dated April 19, 2006, the Joint Parties state that "suggestions that the term of cost recovery should be less than the full length of any commitment that IOUs might enter to secure new generation should be rejected." (Joint Proposal, at p. 4.) At the workshop representatives of the Joint Parties explained that costs must be recovered over the life of a contract. (Workshop Transcript, at p. 19.)

the determination not to allow MDL to avoid responsibility for these costs, as well as to prevent cost shifting to remaining LSE customers. (See Pub. Util. Code, §§380, subds. (b)(2) & (g).) As this brief summary indicates, the Commission adopted the JP based on a record which contains the justification for its various components.

Moreover, the record shows that the question of allocating of long-term contract costs to departing load is a legal question.[17] Section 380 allows for that allocation, and *Long Term Procurement, supra,* previously determined that departing load would be responsible for such costs. The Decision relied on this record when it adopted the modified JP. Its discussion of the allocation mechanism is based on section 380 and previous decisions. (D.06-07-029, at pp. 40-43, 48.) The Decision explicitly states that it has taken this approach, pointing out that it is not resolving disputed factual claims but instead relying on previous determinations and on policy determinations. The Decision states, at p. 50:

> …we are not making any findings in this decision that revolve around any newly identified disputed material facts. Our findings in this decision are based on facts previously litigated and policy determinations.

In addition, the Decision provides that "material facts related to need and other issues that were identified by parties in their comments that would benefit from cross-examination are not being decided in this phase of the Rulemaking." (D.06-07-029, at p. 50.) Consideration of such issues was deferred to subsequent phases of this proceeding, with provisions made to allow for revisions of the Decision's holdings in light of the results of those further proceedings. (D.06-07-029 at pp. 62 (Ordering Paragraph 2), 63 (Ordering Paragraph 10).)

[17] For example, The Joint Parties stated that because of the "clear legal and policy grounds for such an allocation [mechanism], there is no issue of material fact which would benefit from evidentiary hearings." (Comments of Joint Parties, dated April 10, 2006, at p. 15.)

As a result, the rehearing application is also incorrect to claim that the Decision is in error because the Commission did not hold a formal, trial type, evidentiary hearing in this phase of the proceeding.[18] The rehearing application overstates, without any citation to authority, the hearing requirements that apply in Commission proceedings. Relevant authority makes it clear that the procedures MID claim are inadequate (written comments and a "workshop" addressing the issues) are sufficient in a Commission ratesetting proceeding such as this one. The California Supreme Court has established that the making of economic determinations by this Commission is an essentially legislative act. As a result, just as there is no constitutional right to participate in the legislative process as it applies to economic determinations, the "right to be heard in a [C]omission proceeding exists only at all as a statutory and not a constitutional right." (*Wood v. Public Utilities Com.* (1971) 4 Cal.3d 288, 292.) Accordingly, an evidentiary hearing was neither warranted nor legally required, and to the extent factual issues relating to need have a bearing on MID's claims, they will be addressed subsequently.

D. PG&E Will Not Be the Default Purchaser for Current POU Customers.

The rehearing application's final claim asserts that, as a result of the Decision, IOUs will procure generation for POU customers. The rehearing application states that "the Decision purports to designate PG&E as the default purchaser of new resource adequacy generation power for everyone within its distribution service

[18] The Decision was issued following a "notice and comment" style hearing. (D.06-07-029, at pp. 13, 49.) In addition on March 29, 2006, the assigned ALJ issued a ruling asking parties to comment on whether there were "any issues of material fact that would benefit from evidentiary hearings" and to "identify the issues" if there were any. (Decision, at p. 49.) In response, the Joint Parties stated that the JP had been fully explained, and that no further proceedings were needed to understand the workings of the JP, including its cost allocation mechanism. Constellation, Aglet, AReM, and Sempra Global supported hearings, although Constellation and Sempra Global did not support evidentiary hearings on any of the issues MID raise. (Comments of Constellation, dated April 10, 2006, at p. 18, Comments of Sempra Global, dated April 10, 2006, at p. 20.) Although MID claimed that "several issues" required evidentiary hearings, the only issue MID identified was the claim that the record did not currently establish that those who were being allocated long-term contract costs would "benefit" from the IOU's contracts. (E.g., Joint

(*footnote continued on next page*)

territories, including areas that overlap those served by the districts." (Rehg. App., at p. 9.) In support of this claim of error, MID discuss in detail the geographic overlap between certain POU service territories and the service territory of PG&E. MID then restate the distinction between POUs and IOUs.

This claim does not demonstrate error because it fails to take into account that the Decision only affected the *cost responsibility* of a small group of potential POU customers: MDL. The Decision did not determine who would provide electricity to such customers. (D.06-07-029, at p. 48.) MID are incorrect to read the Decision's reference to an IOU's service territory in the definition of "benefiting customers" as an attempt exercise jurisdiction over POU resource adequacy. That reference is simply technical language designed to include all types of MDL. (See *Cost Responsibility for Municipal Departing Load* [D.03-07-028] (2003) __ Cal.P.U.C.3d __, at p. 59 (slip op.).) The rehearing application's claims do not, in fact, rely on any explicit attempt by the Decision to establish an IOU as the entity that will procure power for a POU. Rather, MID quote portions of the Decision that refer to an IOU's service territory and then—by combining that discussion with MID's own description of geographical overlap—attempt to characterize the Decision as addressing the question of who will procure power for POU customers.

This reading of the Decision is incorrect. The Decision directed the IOUs to enter into long-term contracts for specific amounts of electricity, and MID do not claim that those amounts include any POU's need for new generation. (Compare, D.06-07-029, at pp. 37-39 (slip op.), Rehg. App., at pp. 9-10.) The fact that IOU and POU service territories overlap does not in any way indicate that the power subject to the Decision's cost allocation mechanism will be procured for POU customers. In response to POU concerns, the Decision also reiterates that IOUs must plan for departing load, i.e.,

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(footnote continued from previous page)

Comments of MID, et al. dated April 7, 2006, at pp. 8-10.) As discussed above, this issue is not material to the Decision.

exclude forecasted departing load, including MDL, from their future projections of long term resource needs. (D.06-07-029, at p. 48.) However, the Decision does not address questions of need in detail because they will be taken up in a subsequent phase of the proceeding. Therefore, at the time when issues of need are examined in detail, if MID or other parties believe that the record contains specific facts that support excepting certain amounts of MDL from the cost allocation, those parties may bring those concerns to our attention, consistent with our prior practices regarding allocation of costs to MDL. (See, *Municipal Departing Load Rehearing* [D.04-11-014] (2004) __ Cal.P.U.C.3d __, at pp. 17-18 (slip op.).) We will modify the Decision to clarify this point, in conjunction with our other modifications.

III. CONCLUSION

In the Decision, we adopted an allocation mechanism that ensured an IOU's costs for certain long-term contracts would be borne by those on whose behalf those costs were incurred. The class of "benefiting customers" to whom we allocated those costs consisted of customers to whom we were permitted to allocate costs pursuant to section 380(g), which specifically allows us to impose nonbypassable charges. Moreover, MDL was included in the class of "benefiting customers" because we had previously determined that departing load should bear such costs in *Long Term Procurement*, *supra*. The Decision did not adopt a benefit test, nor did the adoption of the allocation mechanism involve factual issues the resolution of which would have benefited from a trial-type evidentiary hearing. When we do examine factual issues, relating to need, we will allow parties to address how those issues affect the allocation of costs to MDL.

The Decision also makes no attempt to establish a role for IOUs in the procurement of power for POU customers; the Decision only allocates *cost responsibility* to potential future MDL customers. Finally, the Decision was properly circulated for comment as a PD, and was properly revised before it was adopted. As a result, the allegations of error contained in the rehearing decision are without merit. We will, however, modify the Decision to make these points clear, and deny rehearing of the Decision, as modified.

THEREFORE, IT IS ORDERED that:

1. For purpose of clarification, D.06-07-029 is modified as follows:

   a. The first full paragraph on page 7, which paragraph begins, "Therefore we are adopting…" is restated to read:

      "Therefore we are adopting a cost-allocation mechanism on a limited and transitional basis, that allows the costs of new generation be allocated broadly to a defined class of "benefiting customers" consistent with applicable law and precedent, and also allows the RA benefits of this new generation to be shared by all LSE customers in an IOU's service territory. Benefiting customers as defined in Section IV.B.1 pay only for the net cost of this capacity, determined as a net of the total cost of the contract minus the energy revenues associated with dispatch of the contract."

   b. The first sentence of the first full paragraph on page 15, which sentence begins, "The Joint Parties ask…" is modified to read: "The Joint Parties ask the Commission to rule that as a transitional mechanism the utilities, or another entity if feasible, may procure new generation within an IOU's distribution service territory with the net costs of these new resources being allocated to a defined class of 'benefiting customers' consistent with applicable law and precedent, and the RA benefits being shared among the LSE customers in the IOU's service territory."

   c. The last sentence of the first full paragraph on page 16, which sentence begins, "While and IOU…" is modified to read: "While an IOU is an entity with the resources to make such a commitment, PG&E and SCE believe that it would be unfair for their bundled customers, alone, to pay the premium that new resources command as compared with existing resources when they are obtaining new resources on behalf of a broad group of customers."

d. The second sentence of numbered paragraph 5 on page 27, which sentence beings "Nothing we adopt herein…" is modified to read: Nothing we adopt herein relieves or adds to that responsibility with respect to contracts that are not subject to this decision's cost-allocation mechanism."

e. A new sentence is added at the end of footnote 22, on page 28, which reads: "The relationship of D.04-12-048 to the treatment of the net costs of long-term contracts subject to this decision's allocation mechanism is described elsewhere."

f. The last sentence in numbered paragraph 15, on page 31 is restated to read: "The contract costs paid and RA benefits received by DA, CCA, and bundled customers should be based on a share basis equal to the credit share received, with cost responsibility for departing customers being calculated by assuming that they did not depart."

g. Section IV.C.6, entitled "Legal Authority" and appearing on pages 40-43 is restated to read as follows:

"In conjunction with their JP, the Joint Parties provided legal support for their cost-allocation scheme citing AB 380, codified as Section 380 in the Public Utilities Code, for the Commission's authority to approve the plan. The main applicable section of the code is as follows:

> An electrical corporation's costs of meeting resource adequacy requirements, including, but not limited to, the costs associated with system reliability and local area reliability, that are determined to be reasonable by the commission, or are otherwise recoverable under a procurement plan approved by the commission pursuant to Section 454.5, shall be fully recoverable from those customers on whose behalf the costs are incurred, as determined by the commission, at the time the commitment to incur the cost is made or thereafter on a fully non-bypassable basis, as determined by the commission.[31]

[31] Cal. Pub. Util. Code § 380(g).

In addition, Section 380(b) requires that we allocate costs equitably and avoid cost shifting. Thus, Section 380 gives us clear authority to allow an IOU to recover the costs it incurs to sustain "system reliability and local area reliability" from all customers "on whose behalf the costs are incurred." We construe benefiting customers as defined in Section IV.B.1 to be those customers on whose behalf the costs have or will be incurred.

Joint Parties posit that the Legislature's intent is clear from the statutory language that they did not want to limit recovery for system and local area reliability to just an IOU's bundled customers, but authorized recovery from a larger group of customers. Therefore, Joint Parties argue that the JP is consistent with the Legislative intent of AB 380 since it provides for an equitable cost allocation for the new capacity needed for system reliability from all benefiting customers.

We agree with the Joint Parties that Section 380 clearly authorizes the Commission to adopt a cost-allocation methodology that spreads the cost of the new generation authorized by this decision. Because it prevents bundled customers, alone, from bearing the costs for new resources, the allocation mechanism prevents cost shifting. We note as well that Section 380(g) clearly states that these costs are to be recovered "on a fully nonbypassable basis, as determined by the [C]omission." These mandates are expressed clearly by the statute's language, and we are carrying them out in a straightforward manner. There should be no question that Section 380(g) provides us with a basis on which to adopt the JP's cost allocation mechanism.

Further, we read Section 380 to include a mandate that (as part of the Commission's obligation to establish RAR) we must support "new" generating capacity and equitably allocate the costs. That mandate also provides a basis on which to adopt the JP's allocation mechanism. The pertinent portion of Section 380 that addresses RA is as follows:

(b) In establishing resource adequacy requirements, the commission shall achieve all of the following objectives:

(1) Facilitate development of new generating capacity and retention of existing generating capacity that is economic and needed.

(2) Equitably allocate the cost of generating capacity and prevent shifting of costs between customer classes.

While we have adopted RAR for all LSEs, we have not specified that any portion of the capacity must be "new." Sempra, in its comments, points this out, and this may be an area that we address in the future. In the interim, the cost-allocation methodology we are adopting in this decision is intended to support new generating capacity.

To further bolster their claim that the cost allocation proposal in the JP is consistent with law and Commission precedent, the Joint Parties reiterate the that cost allocation or the recovery of the costs for new generation must be "just and reasonable" and cannot be unfair or discriminatory. The Joint Parties cite to a number of cases where the Commission imposed surcharges upon a broad group of customers when costs are incurred by the IOU for of all customers, not just for its bundled-service customers.[32]

More pertinently, the Joint Parties refer to D.04-12-048, where we found that it was appropriate and reasonable for the IOUs to recover the net costs of long-term commitments (i.e., long-term agreements to construct new facilities) from "all customers, including departing customers."[33] We agree with the Joint Parties that some aspects of the JP's allocation mechanism are matters of settled policy. We have already established that an allocation mechanism for IOU costs for long-term contracts that provide capacity needed not just by the IOU's bundled customers should charge the net costs

[32] Joint Parties Proposal, March 7, 2006, p. 13, citing D.02-11-022 (addressing charges for direct access customers); R.03-09-007 (addressing charges for CCA); D.03-04-030 (addressing charges for distributed generation departing load); D.03-07-028 (addressing charges for municipal departing load) and D.05-12-041 (addressing charges for CCA).

[33] *Long Term Procurement* [D.04-12-048], *supra*, at p. 60 (slip op.), see generally, *id.* at pp. 58-60 (slip op.).

incurred by the IOU to a broad group of customers, including departing customers.[34] The JP is consistent with this holding.

Finally, we note that Joint Parties point to the "physical interconnectedness of California's electricity system."[35] From their perspective, it is not the sufficiency of the largest entity's resources that ensures reliability, as much as it is the sufficiency of all entities' resources. Since a fully resourced LSE can be subjected to an outage because of an under-resourced LSE, if, pursuant to the JP, an IOU obtains new generation that contributes to system reliability, that generation will be obtained on behalf of all LSEs, and all LSE's customers.

Thus we agree with the Joint Parties that Section 380 and Commission precedent supports the adoption of the cost allocation formula set forth herein, and in addition, we read Section 380 as mandating that we take proactive steps to facilitate new generating capacity and the cost sharing mechanism we prescribe is the appropriate way to equitably allocate the cost (e.g. avoid cost-shifting) and keep rates just and reasonable."

h. Section IV.C.13, entitled "POU Concerns" on page 48 is restated to read:

"Our definition of benefiting customers subject to the cost allocation mechanism does not include current POU customers, and departing customers who take POU service will not be able to avoid cost responsibility pursuant to D.04-12-048, as modified by D.05-12-022. As noted in D.04-12-048, Ordering Paragraph 9, IOUs are required to forecast and plan for departing load as they file their biennial long-term procurement plans which establish each IOU's long-term resource needs. Further, we will consider issues of need in a subsequent phase of this proceeding and POUs may address whether specific facts suggest refining our approach to the allocation of costs to municipal departing load."

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[34] *Id.* at p. 63 (slip op.). As a corollary, we allowed the IOUs to recover costs related to enhancing reliability from all LSE customers in their respective service areas, not just from those taking bundled service.

[35] Joint Parties' Comments, April 19, 2006, p. 3.

i. The second sentence of the second paragraph on page 50, which sentence begins, "Our findings in this decision…" is restated to read:

"Our findings in this decision result from the application of settled legal principles, or are based on facts previously litigated and policy determinations."

j. Finding of Fact 9, on page 55 is restated to read: "In D.04-12-048, we allowed the IOUs to recover any stranded costs from all customers, including departing customers, for a period of either the life of the contract ,or 10 years, whichever is less."

k. Finding of Fact 19, on page 56 is restated to read:

"The cost allocation mechanism that is set forth with particulars herein will spread the costs of new generation to the defined class of benefiting customers and allow the RA benefits of new generation to be shared by all LSE customers in an IOU's service territory. We designate the IOUs to procure this new generation. The LSEs in the IOU's service territory will be allocated rights to capacity that can be applied toward each LSE's RA requirements. The LSE customers and other defined benefiting customers will pay only for the net cost of this capacity, determined as a net of the total costs of the contract minus the energy revenues associated with dispatch of the contract."

l. A new sentence is added at the end of Finding of Fact 25, stating, "This review will also allow POUs to raise issues about the application of the cost allocation mechanism to municipal departing load consistent with our past practices."

m. A new sentence is added at the end of Conclusion of Law 2 reading:

"It is also consistent with D.04-12-048, as modified by D.05-12-022 for departing customers to allocated cost responsibility, as that decision holds that an IOU's long-term contract costs should be allocated to all customers, including departing customers."

n. Conclusion of Law 5, on page 60 is modified to read:

"It is reasonable, and consistent with law, for the Commission to adopt this limited and transitional cost allocation mechanism to support the development of new generation by

having the costs allocated to the defined class of benefiting customers and RA benefits shared by all relevant customers."

l. The last sentence of Ordering Paragraph 1, on page 62 is modified to read:

> "The IOUs will allocate only the net cost of capacity obtained pursuant to this decision, determined as a net of the total costs of the contract minus the energy revenues associated wit the dispatch of the contract."

2. Rehearing of D.06-07-029, as modified, is hereby denied.

This order is effective today.

Dated November 16, 2007, at San Francisco, California.

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