MAILED: 08/27/07

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-4064**
August 23, 2007

R E S O L U T I O N

Resolution E-4064. Pacific Gas and Electric Company and Southern California Edison Company request approval of proposed tariffs applicable to new municipal departing load.

By Advice Letter 2483-E-A filed on September 23, 2005, as supplemented by Advice Letter 2483-E-B filed on April 17, 2006, and Advice Letter 1979-E-A filed on April 17, 2006.

SUMMARY

- **Proposed legislation should not delay implementation of existing policies and laws applicable to new Municipal Departing Load (MDL)[1].**

- **The procedural issues raised by the protestants regarding the new MDL advice letters filed by Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) are the same as those which were addressed and resolved by the Commission in its consideration of their transferred MDL advice letters. Any additional issues are appropriately addressed in this Resolution.**

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[1] MDL refers to departing load served by a publicly owned utility (POU) as that term is defined in Public Utilities (PU) Code § 9604(d). MDL is either "transferred" or "new". Transferred MDL is load that was served by an investor owned utility (IOU) on or after December 20, 1995, and subsequently departed to be served by a POU. New MDL is load that has never been served by an IOU but is located in an area that had previously been in that IOU's service territory (as that territory existed on February 1, 2001) and was annexed or otherwise expanded into by a POU. Charges applicable to transferred MDL were the subject Resolution E-3999.

- **PG&E's and SCE's proposed tariffs which allow for the billing and collection of charges applicable to new MDL are approved with modifications.**

  - PG&E shall modify the date in its proposed "TERRITORY" section to be consistent with the definition of new MDL.
  - PG&E and SCE shall revise the ongoing Competition Transition Charge (CTC) component to reflect approved amounts, and indicate that amounts are subject to change pending any different outcome resulting from judicial review.
  - PG&E and SCE shall update their new MDL tariffs to reflect recent revisions to the Department of Water Resources (DWR) Power Charge.
  - PG&E shall modify its proposed definition of new MDL, rename its schedule, and the use the term NMDL instead of MDNL throughout its tariffs.
  - PG&E shall modify its definition of "Consumer" to add clarification and to eliminate confusion, and SCE shall include an analogous definition in its new MDL tariffs.
  - SCE and PG&E shall revise and update their respective lists of entities eligible for specific exemptions and exceptions, and reference recently adopted protocols.
  - SCE's proposed ongoing CTC exemption in "stand-alone" situations is reasonable with minor modifications.
  - The exemption in "stand-alone" situations shall only apply to ongoing CTC and not other nonbypassable charges.
  - PG&E shall revise its "stand-alone" test to be consistent with the statutory language that was implemented in the Customer Generation Departing Load (CGDL) tariffs.
  - PG&E and SCE shall provide notice to consumers informing them of their obligations under the new MDL tariffs, and consumers must respond to the IOU notice with the provision of specific information.
  - PG&E and SCE, not the new MDL consumer, shall identify applicable exemptions and exceptions.
  - A consumer notice provision to document "change of party" and termination of the existing new MDL consumer's liability of charges under specified circumstances is reasonable; PG&E and SCE shall modify their proposed tariffs to provide greater specificity and to remove their discretion.

- The new MDL consumer, or the POU with permission of its customer, may provide actual metered data to the Investor Owned Utilities (IOUs) for billing purposes in Change of Party situations. In the absence of this consumer-specific data, the IOUs must be allowed to estimate usage utilizing a methodology that yields the most accurate assessment.
- PG&E's and SCE's proposed New Party notice provisions are reasonable and consistent with approved tariffs applicable to departing load but shall be slightly modified to provide additional clarification.
- PG&E shall remove references to its electric and gas service rules from its proposed provision concerning the new MDL consumer's obligation to make payments.
- Dispute resolution procedures applicable to new MDL consumer shall be articulated in the tariffs.
- PG&E's and SCE's proposed Opportunity to Cure provisions shall be revised.
- PG&E and SCE shall remove references to any electric rules from their respective Demand for Deposit/Return of Deposit provisions and revise them to be consistent with PG&E's tariffs applicable to departing load for CTC responsibility.
- PG&E's and SCE's proposed lump sum payment provisions are justified but shall be modified to be consistent with previous Commission directives.
- Consistent with our conclusion in Resolution E-3999, PG&E is not allowed, at this time, to disconnect natural gas service for violation of the tariff applicable to new MDL.
- The new MDL consumer shall have the option to provide metered data because actual usage information is preferable to estimates. However, the use of estimates for billing the charges applicable to new MDL is appropriate in the absence of customer-specific usage data.
- PG&E shall specify that bilateral agreements are an alternative arrangement to the new MDL tariff.
- The effective date of the new MDL tariffs shall be July 10, 2003.

- **All other aspects of PG&E's and SCE's new MDL tariffs shall be implemented as proposed.**

  - PG&E's proposed "APPLICABILITY" section clearly establishes relevance and needs no further review or modification.
  - PG&E and SCE are authorized to include other nonbypassable charges in their tariffs applicable to new MDL.
  - PG&E's proposed DWR Power Charge exception specification is consistent with geographic limitations previously adopted by the Commission.
  - PG&E's and SCE's proposed "Change of Party" provisions have previously been determined to be justified and lawful.
  - There is no limit to the use of estimated bills for new MDL consumers when metered consumption data is not available.
  - Tariffs implemented by this resolution must comply with the directives of prior Commission decisions and cannot exempt new MDL consumers from their payment obligations.

BACKGROUND

PG&E and SCE proposed tariffs to implement Commission directives concerning the Cost Responsibility Surcharge (CRS) for new MDL.

In a series of decisions[2], the Commission adopted policies and mechanisms to implement the CRS applicable to MDL within the service territories of PG&E, SCE, and San Diego Gas and Electric Company (SDG&E). The CRS includes the DWR Bond Charge, the DWR Power Charge, the ongoing CTC[3], the Historical

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

[3] Pursuant to PU Code § 367, the IOUs may recover certain transition costs through December 31, 2001. These costs are referred to as "CTC." Ongoing CTC, on the other hand, consists of enumerated transition costs which may be recovered after December 31, 2001 and are specified in PU Code § 367(a)(1) - (a)(6). The IOUs and the protestants sometimes refer to "ongoing CTC" as "CTC". In this Resolution, we have changed their

Footnote continued on next page

Procurement Charge (HPC) (for SCE only), and the Regulatory Asset (RA) Charge[4] (for PG&E only).

On March 15, 2004, PG&E filed AL 2483-E proposing a new schedule to bill and collect CRS from new MDL[5] to implement D.03-07-028, as modified by D.03-08-076. On March 29, 2004, the Administrative Law Judge (ALJ) issued a ruling stating that no action would be taken on PG&E's AL 2483-E pending receipt of comments and resolution of relevant issues. Based on resolution of MDL issues in D.04-11-014, D.04-12-059, D.05-07-038 and D.05-08-035, PG&E filed supplemental AL 2483-E-A on September 23, 2005 which superseded the previous filing in its entirety. On September 27, 2005, the ALJ temporarily suspended AL 2483-E-A in response to a letter from California Municipal Utilities Association (CMUA). By ruling dated February 23, 2006, the ALJ reactivated PG&E's AL 2483-E and directed SCE and SDG&E to file their respective MDL advice letters[6]. On March 8, 2006, SCE filed AL 1979-E and PG&E re-submitted its previously-filed AL 2483-E-A. These filings propose tariffs to implement the billing and collection of the CRS and other non-bypassable charges (NBCs) applicable to new MDL. On March 17, 2006, Hercules Municipal Utility (Hercules) requested that the Energy Division reject PG&E's AL 2483-E-A without prejudice or extend the protest period until PG&E submits the information that Hercules claims is missing or incomplete. The City of Corona and the City of Rancho Cucamonga made the same request regarding SCE's AL 1979-E.

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characterization to "ongoing CTC", where appropriate, and have included an Order directing the IOUs to make the corresponding changes in their new MDL tariffs.

[4] The RA Charge recovers PG&E's bankruptcy-related costs pursuant to D.03-12-035. The RA charge was included as an element to be collected from CRS in D.04-02-062. Pursuant to D.04-11-015, the Energy Cost Recovery Amount (ECRA) superseded and replaced the RA Charge on March 1, 2005.

[5] PG&E proposes to identify the tariff as Schedule E-MDNL – Municipal Departing New Load.

[6] In response to the ALJ ruling, SDG&E served a notification on March 6, 2006, that it would not file any advice letters concerning MDL because such filings are premature given that SDG&E has no existing or planned municipalization at this time.

The Energy Division reviewed the contents of AL 2483-E-A and AL 1979-E, and determined that PG&E and SCE had omitted some information that may be essential for an informed evaluation of the filing. Accordingly, on April 5, 2006, the Energy Division sent a letter to PG&E and SCE instructing them to submit certain additional details in a supplemental filing. In response to the letter, PG&E and SCE filed supplemental AL 2483-E-B and supplemental AL 1979-E-A, respectively, on April 17, 2006. AL 1979-E-A replaces AL 1979-E in its entirety.

NOTICE

The filings were noticed in the Daily Calendar and served on parties in accordance with directives.

Notices of AL 2483-E-A/B and AL 1979 E-A were made by publication in the Commission's Daily Calendar. PG&E and SCE state that a copy of their respective advice letter was mailed and distributed in accordance with Section III-G of General Order (GO) 96-A. In addition, PG&E and SCE state that pursuant to the February 23, 2006 ALJ Ruling, copies of these filings were served on all parties on the service list to Rulemaking (R.) 02-01-011 and on all POUs within their respective service territory whose customers may be subject to the CRS but who were not on the service list for R.02-01-011.

PROTESTS

PG&E's and SCE's advice letters establishing schedules applicable to new MDL were timely protested.

On March 15, 2006, the Sacramento Regional County Sanitation District (SRCSD) submitted a protest to PG&E's AL 2483-E-A. On May 8, 2006, Merced Irrigation District and Modesto Irrigation District (the Districts), South San Joaquin Irrigation District (SSJID), the Northern California Power Agency and Turlock

Irrigation District (NCPA/Turlock)[7], and Hercules submitted a protest to PG&E's AL 2483-E-A as supplemented by AL 2483-E-B; the Cities of Corona, Industry, Moreno Valley, and Rancho Cucamonga (Municipal Utilities) submitted a protest to SCE's AL 1979-E as supplemented by AL 1979E-A; and CMUA submitted a protest to both PG&E's AL 2483-E-A as supplemented by AL 2483-E-B and SCE's AL 1979-E as supplemented by AL 1979-E-A. PG&E and SCE responded to protests pertaining to their particular advice letter filings on May 15, 2006.

Issues raised in the protests and IOU responses are summarized in this section but are addressed in detail in the Discussion section.

The protestants object to the approval of the advice letters on procedural and substantive grounds.

SRCSD protests on the grounds that the method for estimating usage for new load described in the tariff will significantly overstate the actual loads of the SRCSD facility and will subject SRCSD to unreasonable and unjustifiable charges. In the case of new load where there is no usage history to enable making a reasonably accurate estimate, SRCSD states that customers should be given the opportunity to provide meter data so that they can be billed accurately.

The Districts state that the relief requested in PG&E's AL 2483-E-A/E-B requires consideration in a formal hearing or is otherwise inappropriate for the advice letter process. The Districts also state that the relief requested is unjust, unreasonable, and discriminatory because: 1) it requires exercise of discretion for approval and therefore is not appropriate for Energy Division disposition without a Commission resolution; 2) PG&E continues to seek to apply new MDL charges to "changes of party" at a given location without any guidance from the Commission suggesting that charges attach to the location, not the departing customer; and 3) the tariff, without legal support, seeks the right to terminate gas service to customers who do not pay new MDL CRS charges, and in doing so, reneges upon a PG&E agreement, made openly at a Commission workshop, not

[7] The first page of NCPA/Turlock's protest states that it is being filed only on behalf of NCPA, while the last page states that the protest is being filed by both NCPA and Turlock. This Resolution assumes that the latter is correct.

to do so. The Districts additionally state that PG&E seeks unilaterally to establish conditions to apply to a new MDL consumer's right to claim a new load exemption under PU Code § 369. The Districts also assert that certain portions of the proposed tariff are nonsensical, requiring either customer clairvoyance or that POUs act as agents of PG&E to notify customers of obligations they have under PG&E's tariffs.

SSJID asserts that there are overreaching inequities in billing and collecting charges from individuals who have never been PG&E customers and cites illustrative examples. SSJID also believes that there are the following specific deficiencies in PG&E's filing: there is no basis for assessing the Trust Transfer Amount (TTA) charge on New POU Customers[8]; the list of entities entitled to an exemption from the DWR power charge is incorrect because it denotes geographic limitations; there is no basis upon which to bill in "Change of Party" situations; and the proposal to discontinue gas service for nonpayment of applicable charges is not justified.

NCPA/Turlock state that PG&E's AL 2483-E-A/E-B must be rejected because: the relief requested would violate statute or Commission orders, or is not authorized by statute or Commission order; the analysis, calculations, and data contain material errors and omissions; the relief requested requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process; and the relief requested is unjust, unreasonable, or discriminatory.

Hercules believes that PG&E's proposal must be filed as an application, must be considered in a formal hearing, and cannot be implemented through the advice letter process. If it is allowed to be processed as an advice letter, Hercules argues that PG&E must provide adequate notice to all affected customers and all affected individuals. Substantively, Hercules alleges that AL 2483-E-A/E-B violates statutes and Commission orders, contains material errors and omissions, is unjust, unreasonable, and discriminatory, and incorrectly states that no more or less restrictive conditions will be imposed. Hercules also states that provisions must be added to ensure that costs of billing and collection are

[8] SSJID refers to customers subject to PG&E's proposed tariff as New POU Customers or New POU Load. It asserts new MDL is a misnomer because such customers have not "departed" from PG&E' service.

reasonably related to the amounts to be collected, and that the Commission should investigate whether implementation of SCE's AL 1979-E will result in a net cost to SCE ratepayers.

Municipal Utilities assert that the Commission, under General Order (GO) 96-A and the advice letter rules, cannot approve AL 1979-E/E-A for the following reasons: Schedule NMDL cannot be imposed through the advice letter process; SCE did not properly serve or give notice to "NMDL consumers"; it violates Decision 03-07-028 by including CRS elements not authorized by statute or Commission order; it provides no definition of "NMDL consumer" making it impossible to determine who is subject to the provisions of Schedule NMDL; it provides no evidence that SCE is capable of accurately identifying NMDL consumers; proposed Special Condition 3.a neglects to identify a deadline for submission of NMDL consumer information; SCE's requirement that NMDL consumers provide information such as service date, load information, rate group classification and qualification for exemption is unreasonable; the proposed process requiring that NMDL consumers provide an exemption statement is flawed and, SCE's list of existing POUs whose customers are eligible for exemption is incomplete; the "billing method" proposed in Special Condition 3.c omits any option for NMDL consumers to voluntarily submit usage data to SCE; the proposed notice requirement for "Change of Existing NMDL Consumer" wrongly implies a POU notice obligation, and imposes notice requirements on NMDL consumers that are unreasonable and discriminatory; SCE's proposal that it be allowed to decide what reasons for termination of POU service are "reasonable" is a violation of POU sovereignty and an invitation to abuse of discretion; the proposed notice requirement for "Change in Occupancy for NMDL Consumers" is completely unworkable, since it demands advance notice from new customers with no connection to SCE and no knowledge of their obligation to pay CRS; the proposed billing procedures omit crucial information; the proposed dispute resolution process is fundamentally flawed because it cross references utility tariff rules and CPUC complaint procedures that do not apply to persons that are not IOU customers, and that do not accommodate such customers' complaints; the provision allowing SCE to demand a deposit four times the average monthly billing is inconsistent to SCE Tariff Rule 7.2 and discriminates against NMDL consumers; the return of deposit provision is internally inconsistent and inconsistent with SCE Tariff Rule 7.a3; the "lump sum" payment provision lacks any explanation or supporting analysis regarding SCE's proposed methodology for calculation, is vague and ambiguous as to application and procedures, and discriminates against NMDL consumers; SCE's

proposed method of estimating NMDL consumer usage by reference to SCE's class average is inconsistent with Commission policies, is likely to be significantly inaccurate, and is discriminatory; the implementation is likely to result in a net cost to SCE ratepayers; the Commission must address billing and collection issues in a formal proceeding; and, the relief requested is unjust, unreasonable, and discriminatory.

CMUA asserts that an evidentiary hearing is required to resolve factual issues and it requests that the Commission be mindful of relevant legislative activity as it develops a schedule for an evidentiary hearing on and/or suspension of PG&E's AL 2483-E-A/E-B and SCE's AL 1979-E/E-A. On substantive grounds, CMUA states that SCE's "stand-alone" exemption provision is unjust and unreasonable, and that PG&E's "stand-alone" exemption test is vague, unreasonable and unduly discriminatory. In addition, CMUA renews its transferred MDL protest regarding the IOU's lump sum payment methodology, PG&E's proposal to disconnect natural gas service for violation of the tariff, and PG&E's description of certain "condemnation" and "annexation" areas.

DISCUSSION

Proposed legislation should not delay implementation of existing policies and laws applicable to new MDL.

During the 2006 legislative session, Senate Bill (SB) 1554[9] was introduced. This bill would prohibit the Commission from imposing any charge on new MDL. CMUA requests that the Commission consider the legislative committee analysis of this bill when reviewing and analyzing PG&E's and SCE's new MDL advice letters. CMUA believes that the committee analysis confirms the unprecedented nature of the Commission's decisions which seek to recover IOU costs from POU customers who may have never taken IOU service, and questions the legal basis on which the Commission grounded its authority to impose charges on new MDL. CMUA asserts that these aspects warrant consideration by the

[9] SB 1554 failed passage in the Assembly Utilities and Commerce Committee. AB 533, containing language similar to that found in SB 1554, was introduced in February 2007 and is awaiting a hearing in the Assembly Utilities and Commerce Committee.

Commission and support CMUA's request for an evidentiary hearing and/or suspension of the new MDL advice letters for an appropriate duration of time.

PG&E and SCE respond that the Commission is obligated to enforce existing decisions and statutes which govern the collection of nonbypassable charges from new MDL, and it should not delay recovery based on proposed legislation that may never become law.

The Commission has considered the proposed legislation precluding the imposition of charges on new MDL, and has expressed its opposition on the grounds that it would eliminate policies developed by the Commission. As directed by the legislature, those policies were crafted to ensure that costs associated with electric restructuring and the energy crisis are shared equally by all Californians on whose behalf the costs were incurred. Nothing expressed in the legislative committee analysis referenced by CMUA changes the Commission's position. The Commission is obligated to implement existing policies and law and should not delay recovery of costs simply because there is a proposal to have the law changed. Accordingly, CMUA's protest on this matter is denied.

The procedural issues raised by the protestants regarding new MDL are the same as those which were addressed and resolved by the Commission in its consideration of PG&E's and SCE's transferred MDL advice letters. Any additional issues are appropriately addressed in this resolution.

The Districts argue that PG&E's and SCE's new MDL advice letters contain policy matters that at a minimum require a Commission resolution and thus cannot be processed ministerially by the Energy Division. NCPA/Turlock points out that the Commission also specifically stated in D.03-07-028 that it would "defer to a separate order the specific means by which the [MDL] billing and collection process will be implemented". Thus, NCPA/Turlock believes the Energy Division is precluded from approving the advice letters. The Districts, NCPA/Turlock, Hercules, and Municipal Utilities assert that the relief requested by the IOUs is inappropriate for resolution through the advice letter process and that a formal application is required. If allowed as an advice letter, Hercules and Municipal Utilities argue that PG&E and SCE must provide notice to all affected customers pursuant to GO 96A. CMUA, the Districts, NCPA/Turlock, Hercules, Municipal Utilities, and SSJID assert that formal evidentiary hearings are necessary.

On November 30, 2006, the Commission adopted Resolution E-3999 which approved tariffs for PG&E and SCE to allow for the billing and collection of charges applicable to transferred MDL. Procedural issues which pertain to MDL generally (i.e. both transferred and new) were thoroughly addressed in that resolution. Although the Commission did agree with the Districts, that the advice letters could not be approved absent a Commission order due to the need to resolve discretionary issues, it found that the billing and collection procedures are appropriate for resolution through the advice letter process and need not be set forth in an application. Since the advice letters are not seeking to increase rates, the Commission found that notice portions of GO 96A do not apply. The Commission also found that formal hearings are not required because there are no disputed issues of material fact. The Districts filed an application for rehearing of Resolution E-3999 on procedural grounds but the Commission denied the request on April 12, 2007 in D.07-04-047, stating that MDL CRS billing and collection issues were properly addressed through the advice letter process. Although there are additional issues raised with respect to new MDL that were not specifically addressed in Resolution E-3999, they do not warrant the filing of an application and/or formal hearings, and thus are appropriately addressed in this resolution Accordingly, the protests to the new MDL advice letters made on procedural grounds are denied.

PG&E's proposed "APPLICABILITY" section clearly establishes relevance and needs no further review or modification.

NCPA/Turlock assert that the "APPLICABILITY" provision of the new MDL tariff must be reviewed *de novo*, and all other PG&E tariff provisions impacted by the advice letter must be specifically set forth.

The protest on this issue is denied because NCPA/Turlock does not provide any support for its assertion or explain what would be achieved by requiring further review. NCPA/Turlock simply states that it should be reviewed "de novo" because the tariff deals with a new class of customers. The tariffs applicable to new MDL are being implemented pursuant to D.03-07-028, D.03-08-076, D.04-11-014, D.04-12-059, D.05-07-038, and D.05-08-035. Those decisions thoroughly addressed the rationale for applying CRS to this class of customers. PG&E's proposed "APPLICABILITY" section clearly reflects that the tariff is relevant to new MDL, as provided for in those decisions. PG&E's proposed language also specifies that the tariff supersedes portions of earlier tariffs that address

nonbypassable charge obligations that would otherwise pertain to new MDL. PG&E has specifically set forth all of the tariff provisions applicable to new MDL so that consumers need only refer to one tariff to ascertain all of their nonbypassable charge obligations.

PG&E shall modify the date in its proposed "TERRITORY" section to be consistent with the definition of new MDL.

PG&E proposes to make its new MDL tariff applicable to PG&E's service territory "as it existed on December 20, 1995." SCE proposes to make it applicable to SCE's service territory "as it existed on February 01, 2001".

NCPA/Turlock assert that PG&E's proposal is unduly broad, unsupported by any of the Commission MDL decisions, and must be rejected. They state that although the Commission did note that pursuant to PU Code § 369, "all municipal load customers subsequent to December 20, 1995, shall continue to pay tail CTC,", they claim this is the only element of the CRS for which a December 20, 1995 date is appropriate. They believe that allowing the broader definition to stand would allow the IOU to expand the application of other charges or require the inclusion of further confusing and technical language regarding possible exemptions and exceptions.

We grant NCPA/Turlock's protest on this issue in part to the extent that we agree that the territory should be "as it existed on February 1, 2001" because that is consistent with the definition of new MDL (as discussed further below). But, we absolutely do not agree that selecting that later date in any way limits the application of other (pre-2001) nonbypassable charges to new MDL, and thus deny its issue of protest on these grounds. Unless expressly exempted by statute or excepted by Commission decisions, new MDL consumers are responsible for the charges articulated in the "RATES" section of the PG&E's and SCE's new MDL tariffs.

PG&E and SCE are authorized to include other nonbypassable charges in their tariffs applicable to new MDL.

In addition to the CRS components specifically defined in D.03-07-028, PG&E and SCE have included other nonbypassable departing load charges in their proposed tariffs applicable to new MDL. Specifically, they include Trust Transfer Amount (TTA) (also called Fixed Transition Amount (FTA)), Nuclear

Decommissioning (ND), and Public Purpose Program (PPP) charges[10]. They state that these nonbypassable charges had been established by statutes, Commission decisions, and had been previously implemented in their tariffs applicable to departing load.

Municipal Utilities, NCPA/Turlock, and SSJID assert that non-CRS charges should be removed from the tariffs applicable to new MDL because they were not authorized by statutes or Commission decisions. Municipal Utilities and NCPA/Turlock state that the statutes and Commission decisions cited by SCE and PG&E all predate D.03-07-028, in which the Commission first addressed the imposition of CRS charges on MDL. Therefore, by definition, they do not provide the authority SCE and PG&E seek. SSJID takes no position on the ND charge but states that PG&E has no basis for assessing the TTA charge on New POU customers because such customers do not meet the definition of departing load addressed in D.97-09-055. Furthermore, SSJID and Turlock/NCPA state that such customers never benefited from the 10 percent rate reduction thus there is no equitable rationale to require them to assist in funding it.

PG&E and SCE maintain that statutes and Commission decisions have specifically provided that these charges are "nonbypassable" and should be collected from new MDL.

It is clear that the statutes and Commission decisions cited by SCE and PG&E[11], and previously-implemented IOU tariffs[12], specifically authorize the IOUs to

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[10] PG&E did not include PPP charges because they assert that they are not applicable to new MDL customers pursuant to D.97-08-056.

[11] See PU Code §s 381-383 and 399.8 for the PPP charge (establishing a nonbypassable rate component of the local distribution service and collected on the basis of usage), D.97-08-056 creating an exemption to the PPP charge for departing load served by an entity that must impose a PPP charge pursuant to PU Code § 385, PU Code § 379 (mandating that nuclear decommissioning costs shall be recovered as a nonbypassable charge until the time as the costs are fully recovered), PU Code §s 840-847 (requiring residential and small commercial customers to repay the principal, interest, and related costs of the rate reduction bonds through separate, nonbypassable charges called fixed transition amounts), and D.97-09-055 (for PG&E)/D.97-09-055 (for SCE) expressly subjecting departing load to the FTA charge.

collect ND, PPP, and FTA/TTA from departing load customers. Thus, the debate really hinges on whether new MDL qualifies as "departing" load. The protestants argue that until the Commission addressed the elements of CRS in D.03-07-028, which came after the dates of the cited authorities, the definition of departing load did not include customers who never received IOU bundled service.

This argument is without merit. The Legislature (through the implementation of AB 1890) established that the ND, FTA, and PPP charges are **nonbypassable**. PU Code § 369, which was also part of AB 1890, specifically provided for the recovery of CTC from

> "all existing and **future** consumers in the service territory in which the utility provided electricity services as of December 20, 1995….[T]he obligation to pay the competition transition charges cannot be avoided by the formation of a local publicly owned electrical corporation on or after December 20, 1995, or by annexation of any portion of an electrical corporation's service area by an existing local publicly owned electric utility."

In D.97-09-055 implementing the FTA charges, the Commission authorized PG&E "to apply similar nonbypassability provisions as applicable for CTC for departing load customers" [13] to ensure that the FTA charges are nonbypassable. Thus, the nonbypassable charges from AB 1890 must be collected from future consumers who locate in the historical service territory of the IOU (i.e. new MDL). PG&E and SCE merely propose to consolidate these nonbypassable charges into a single tariff applicable to new MDL consumers. This proposal is in response to Resolution E-3903 where the Commission directed PG&E to "consolidate all information applicable to a particular type of DL in a single tariff".[14] Accordingly, the protests of Municipal Utilities, NCPA/Turlock, and SSJID on this issue are denied.

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[12] PG&E's Schedules E-DEPART, E-RRB, and Preliminary Statement Part BB and SCE's DL-NBC: Departing Load Nonbypassable Charges and Preliminary Statement Part W.

[13] 75 CPUC2d, p. 536.

[14] Resolution E-3903, p. 10.

SSJID's and Turlock/NCPA's claim that new MDL consumers should not pay the TTA/FTA because they never benefited from the corresponding 10 percent rate reduction, is irrelevant because this is the circumstance for all who move into an IOU service territory. All consumers (whether they were present during the rate reduction period or not) must continue to pay the TTA/FTA until the bonds which financed the reduction are fully paid off. Accordingly, their protest on this basis is denied.

PG&E and SCE shall revise the ongoing CTC component to reflect approved amounts, and indicate that amounts are subject to change pending any different outcome resulting from judicial review.

The Districts and NCPA/Turlock claim that the ongoing CTC amounts listed in PG&E's proposed tariff applicable to new MDL are inaccurate and should be revised. Furthermore, the Districts believe it is appropriate to state that the ongoing CTC payments are subject to change and possible refund pending appellate review of the issue of proper ongoing CTC calculation. These same issues were raised in protests and addressed in Resolution E-3999 with respect to PG&E's transferred MDL advice letter. There we granted the protests and directed PG&E to revise the ongoing CTC component to reflect Commission approved amounts for the applicable year, and indicate that amounts are subject to change pending any different outcome resulting from judicial review. There is no reason to treat new MDL differently than transferred MDL on these issues. Additionally, SCE should similarly revise its tariffs. Thus, PG&E and SCE shall include corresponding revisions in a supplemental advice letter filing.

PG&E and SCE shall update their new MDL tariffs to reflect recent revisions to the DWR Power Charge.

In PG&E's new MDL advice letter, PG&E proposes that the DWR Power Charge shall be determined residually as the difference between the $0.027 per kilowatt-hour CRS and (a) the DWR Bond Charge, (b) the ECRA, and (c) the ongoing CTC. At the time PG&E filed its new MDL tariffs, some calculations concerning CRS components had not yet been finalized. In July 2006, D.06-07-030 was issued which resolved various outstanding issues relating to the CRS

methodology and obligations. In November 2006, PG&E filed a Petition to Modify that decision requesting that the Commission resolve certain disputes relating to the interpretation of its requirements, specifically regarding the applicable DWR power charges for the period prior to June 30, 2006. The Commission issued D.07-05-005 resolving that petition in May 2007.

This decision has implications to all departing load that is subject to the DWR Power Charge. Specifically, the Commission found that an additional true-up is required to determine the applicable DWR Power Charge for those whose CRS undercollections were not zero as of June 30, 2006, and ordered legal representatives of customers subject to the New WAPA and Split-Wheeling Departing Load to meet and confer to come up with a methodology for determining the applicable DWR Power Charge. Because all new MDL consumers were believed to be excepted from the DWR Power Charge and because no protestants raised issues regarding PG&E's DWR Power Charge residual calculation methodology proposed in AL 2483-E-A/E-B, the Commission did not mandate in D.07-05-005 that a legal representative for new MDL meet and confer with PG&E. However, if there are any new MDL consumers who are not excepted from the DWR Power Charge and thus are obligated to pay it, the new MDL tariffs should be updated to reflect any subsequent revisions to the charge.

On June 1, 2007, PG&E filed a statement indicating that it had reached agreement with representatives of Additional Departing Load and Split Wheeling Departing Load that the DWR Power Charge is zero from January 1, 2005 through June 30, 2006. There was no need to calculate the DWR Power charge for these customers prior to 2005 because applicable tariffs were not effective until January 1, 2005. PG&E shall update its new MDL tariffs to reflect this recent agreement. It is reasonable to allow PG&E to maintain its proposed residual methodology in the new MDL tariffs to calculate any applicable DWR Power Charge prior to 2005 because this is uncontested. PG&E and SCE shall also update their new MDL tariffs to reflect that the DWR Power Charge was superseded and replaced by the Power Charge Indifference Adjustment (PCIA) on July 1, 2006.

PG&E shall modify its proposed definition of new MDL, rename its schedule, and the use the term NMDL instead of MDNL throughout its tariffs.

SCE and PG&E use different terms, acronyms, and definitions for new MDL. SCE uses the term New Municipal Departing Load (NMDL) and defines it in

Special Condition 1.a as "load that has never been served by SCE but that is located in an area that had previously been in SCE's service territory (as that territory existed on February 01, 2001) and was annexed or otherwise expanded into by a POU". In its Special Condition 1.a, PG&E uses the term Municipal Departing New Load (MDNL) and defines it as "new electric load which, on or after December 20, 1995, locates within PG&E's service area as it existed on December 20, 1995, and is served by a Publicly Owned Utility (POU)".

NCPA/Turlock assert that nothing in the Commission's MDL decisions authorizes the categorization of the class of consumers retroactive to December 20, 1995 and thus PG&E's definition is improper because it is too broad.

PG&E responds that in crafting the basic definition of MDNL, it sought to be as inclusive as possible, so that the full range of consumers affected by the tariff would be on notice of that fact. PG&E then describes the exemptions from specific charge components in Special Condition 2. PG&E asserts that incorporating all of the various exemptions into the definition would be confusing.

While we appreciate PG&E's efforts to minimize confusion, we agree with NCPA/Turlock that inclusion of the December 20, 1995 date in the definition is improper. Also, because PG&E has "shared territories", its definition must differ slightly from SCE's. PG&E should define new MDL as "electric load that has never been served by PG&E but locates within PG&E's service area as it existed on February 1, 2001, and is served by a Publicly Owed Utility (POU)". This definition has nothing to do with which charge components new MDL must pay, however. While it is true that new MDL that departed an IOU's service territory on or after December 20, 1995, must pay certain charges unless exempted (e.g. ND and CTC), those details should not be subsumed into the definition of new MDL. PG&E shall revise its new MDL definition accordingly and specify the applicability of charge components within its RATES section of the tariff. The revision removes NCPA/Turlock's concern regarding the propriety of including the December 20, 1995 date in the definition.

Also, although not in response to issues raised by any party, we direct PG&E to rename its Schedule and use the term New Municipal Departing Load or NMDL throughout its tariffs, instead of Municipal Departing New Load or MNDL. PG&E shall make this modification to eliminate any potential confusion and to ensure consistent nomenclature with SCE's tariff.

PG&E shall modify its definition of "Consumer" to add clarification and to eliminate confusion, and SCE shall include an analogous definition in its new MDL tariffs.

In Special Condition 1.b, PG&E defines the term, *Municipal Departing New Load Consumer (Consumer),* as "[t]he party or entity which uses Municipal Departing New Load. A Consumer may also be a PG&E Customer as defined in PG&E's Gas or Electric Rule 1." SCE does not have an analogous definition but uses the term "consumer" throughout its tariffs.

NCPA/Turlock assert that PG&E's proposed "Consumer" definition is inadequate because it fails to recognize the myriad situations where the party or entity using electricity is not the party or entity liable for payment of the electricity charges. NCPA/Turlock also believes that including a reference to PG&E's Gas and Electric Rules causes undue confusion. Hercules asserts that PG&E's definition fails to clearly identify "consumers" and as a result it is unclear from the tariff who is the responsible party under the tariff. Hercules also questions why a consumer may also be an electric customer as defined in Electric Rule 1. Municipal Utilities claim that because SCE does not define "NMDL consumer", it is impossible to determine who is subject to the provision of the proposed tariff.

To address Hercules' and NCPA/Turlock's expressed concerns, PG&E is amenable to modifying its proposed definition to specify that the "consumer" is the "party or entity <u>that contracts with a POU</u> to use Municipal Departing New Load" (new text underlined). This proposed modification eliminates ambiguity over who is responsible for the charges, and thus alleviates Hercules' and NCPA/Turlock's protests on this matter. The definition should be further revised, however, to clarify what is meant by "to use". Thus, we direct PG&E to revise the definition of "consumer" to state that it is the "party or entity that contracts with a POU for service at premises with NMDL". We also agree with Municipal Utilities that since SCE uses the term "consumer" throughout its tariffs, it should provide a definition upfront. Accordingly, we grant their protest on this issue and direct SCE to modify its tariff to include the above revised definition.

With respect to concerns over the inclusion of references to PG&E's Electric and Gas Rule 1, PG&E responds that it included the statement because it is possible

for a party to receive electric service from a POU at one location and PG&E at a different location, therefore qualifying as both a new MDL consumer for the first location and a PG&E customer under Electric Rule 1 for the second location. Although PG&E has offered a clarification of the need to include this reference in response to Hercules, we agree with NCPA/Turlock that its inclusion can create confusion. Accordingly, we grant their protest on this issue and direct PG&E to remove the reference.

SCE and PG&E shall revise and update their respective lists of entities eligible for specific exemptions, and reference recently adopted protocols.

In Special Condition 2, SCE and PG&E respectively describe exemptions and exceptions and list entities that meet specified exemption eligibility criteria. Municipal Utilities assert that SCE's list does not incorporate entities that were found eligible by the Commission in D.04-11-014. SCE responded that it inadvertently did not identify some of entities found eligible in D.04-11-014 and that it did not identify others because they had not received an exemption at the time AL 1979-E was filed. SCE agrees to update the list at the first opportunity.

Even if SCE made an unintentional error, Municipal Utilities assert that this is "material" and that the Commission should take that into consideration as it contemplates SCE's request to administer CRS billing and collection in circumstances where a similar mistake could result in huge bills and subject POU customers to potential legal proceedings for collections.

Municipal Utilities protest on this issue is granted to the extent that they have correctly pointed out that certain entities were left off of SCE's eligibility list. However, Municipal Utilities' assertion that this inadvertent error should call into question SCE's ability to accurately administer CRS billing and collection is overreaching. Accordingly, other than the correction to the list, no further action is warranted in response to their protest. SCE shall revise the list of entities to include Lassen Municipal Utility District, Sacramento Municipal Utility District, Trinity Public Utility District, Truckee-Donner Public Utility District, Imperial Irrigation District, Merced Irrigation District, Modesto Irrigation District, Turlock Irrigation District, the Cities of Corona, Hercules, San Francisco and the Port of Stockton. Although not raised as a protest issue, PG&E shall also update its corresponding list of entities in Special Condition 2.d to add Corona, Hercules, San Francisco, and the Port of Stockton to reflect subsequent ALJ Rulings

The Commission also recently issued D.07-05-013 which adopted protocols to allocate new MDL exemptions. PG&E and SCE shall add a sentence to their respective tariffs to indicate that left over exemptions will be administered pursuant to the protocols adopted in D.07-05-013.

PG&E's proposed DWR power charge exception specification is consistent with geographic limitations previously adopted by the Commission.

CMUA and SSJID oppose PG&E's proposed geographical limitation on the applicability of the DWR Power Charge exception to new MDL within specified "condemnation" or "annexation" areas proposed in its Special Condition 2.c. Instead, they assert that all new MDL are eligible for an exception. This issue was discussed and decided in Resolution E-3999 with respect to transferred MDL. Specifically, the Commission denied CMUA's and SSJID's protest and found that PG&E's DWR Power Charge exception specification is consistent with geographic limitations previously adopted by the Commission. The applicability of the DWR Power Charge exception similarly should be limited for new MDL because the Commission found that any new load exception should be limited to "the same geographical area in which a publicly owned utility was to assume responsibility for transferred load" (D.04-11-014, Finding of Fact 11). Although the Commission clarified (D.04-12-059, pp. 32-33) that these geographical limitations did not apply to certain POUs that share service territory with PG&E, it did not remove the limitation generally.

SCE's proposed ongoing CTC exemption in "stand-alone" situations is reasonable with minor modifications.

In Special Condition 2.c., SCE proposes that new MDL consumers of existing POUs, who were not formerly bundled service consumers of SCE, are exempt from ongoing CTC if they do not use SCE's Transmission and Distribution facilities.

CMUA protests this provision because it adds two conditions to the ongoing CTC exemption not found in D.03-07-028. Not only would the consumer need to satisfy the condition that its transactions "not use SCE's Transmission and Distribution facilities", but the consumer would also need to prove (1) that it was a consumer of an "existing" POU (as distinguished from a "new" POU; *i.e.,* presumably a utility that was not serving at least 100 customers as of July 10, 2003 consistent with D.04-11-014 and D.06-03-004) and (2) that it was not

formerly a bundled service consumer of SCE. CMUA believes that both of these additional conditions are beyond the requirements set forth in D.03-07-028, which states that "[i]n accordance with Section 369, 'new load' for purposes of [CTC] recovery excludes load being met through a direct transaction that does not otherwise require the use of transmission and distribution facilities owned by the IOU."[15] CMUA believes that no such authority exists to impose these additional conditions, and points out that PG&E does not propose either of these additional conditions. Accordingly, CMUA requests that they be rejected.

In response to CMUA's protest, SCE agrees to remove the word "existing" from Special Condition 2.c, because it acknowledges that the "stand-alone" exemption should apply to new MDL of both existing and new POUs. However, SCE does not agree to remove the other condition objected to by CMUA because SCE asserts that by definition, a new MDL consumer was never served by an IOU. If it was, SCE states then it would be considered transferred MDL. Although SCE is technically correct, inclusion of the phrase "who were not formerly bundled service consumers of SCE" is redundant, may lead to confusion, and is beyond that specified in D.03-07-028. Both this phrase as well as the word "existing" should be removed. Accordingly, we grant CMUA's protest on this issue.

CMUA also requests an evidentiary hearing to determine factual issues associated with whether or not there has been the "use of SCE's Transmission and Distribution facilities." Unlike PG&E, which CMUA believes proposes a more detailed showing on the part of a customer, SCE does not require any showing on the part of a customer, but nevertheless allows SCE to deny an exemption on the grounds that the customer has used SCE's transmission and distribution facilities. CMUA asserts that SCE's simple reference to "use" of SCE's transmission and distribution facilities is unduly vague and susceptible to varying interpretations. SCE responds that "use" means that the distribution and transmission lines were employed to carry electricity to the new MDL consumer and, as such, is not vague or open to interpretation. We agree with SCE. Furthermore, SCE is simply incorporating the condition and utilizing the exact word specified in PU Code § 369 and D.03-07-028. Thus, we deny CMUA's protest on these grounds.

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[15] D.03-07-028 at 76; Conclusion of Law 12. In D.03-08-076, "CRS" was changed to "CTC".

The exemption in "stand-alone" situations shall only apply to ongoing CTC and not other nonbypassable charges.

CMUA also challenges SCE's proposal in Special Condition 2.c that the stand-alone exemption be limited to just the ongoing CTC. Rather, CMUA asserts that the stand-alone exemption should apply to all charges flowing from AB 1890, including the TTA and the ND charges.

CMUA did not offer any rationale or arguments regarding why it is appropriate to extend the CTC exemption to the TTA and ND charges other than simply noting that PG&E had done so in its proposed new MDL tariff. On this issue, SCE stated that the Commission in D.05-07-038, clarified that in "stand-alone" situations, exemptions pursuant to PU Code § 369 only apply to ongoing CTC and not other elements of CRS when applicable. SCE asserts that this can be construed as the Commission's intent to exempt "stand-alone" new MDL from ongoing CTC only. However, because TTA and ND charges are not part of CRS, SCE seeks guidance from the Commission on this issue in this resolution.

Although D.05-07-038 addressed a specific request to extend the CTC exemption to other elements of CRS, the rationale for not doing so was tied to the fact that the statutory exemption language in PU Code § 369 was expressly limited to CTC. Therefore, SCE is correct in its initial assumption that stand-alone exemption should not apply to other nonbypassable charges, and CMUA's protest on this issue is denied. PG&E shall modify its stand-alone exemption provision in Special Condition 2.e of its tariffs to reflect this clarification.

PG&E shall revise its "stand-alone" test to be consistent with the statutory language that was implemented in the CGDL tariffs.

The Districts claim that PG&E's methodology and suggested tests proposed in Special Condition 2.e for determining whether new MDL is exempt from paying ongoing CTC, TTA, and ND raise policy and legal application that requires hearing and ultimate resolution by the Commission. CMUA asserts that PG&E's proposed conditions are unreasonable and unduly discriminatory. CMUA states that instead of using specific and limited language, as PG&E did with respect to CGDL in Schedule E-DCG, PG&E uses broad and all-inclusive language that is unduly vague and susceptible to continuing disputes regarding its interpretation and application.

For example, PG&E states that the exemption is only available if "**no** participant in the transaction including **any** third-party transmission or distribution provider is connected, directly **or indirectly**, to PG&E's transmission and/or distribution system…"[16] CMUA believes that it is unclear what is meant by PG&E when it refers to any third-party transmission provider being "indirectly" connected to PG&E's transmission and/or distribution system, and it is also unclear what PG&E means when it refers to a "participant in the transaction." CMUA notes that the entire western United States electric system is interconnected, so presumably under PG&E's definition an exemption could not be accorded to any new MDL unless the load was completely isolated from the electric system, even new MDL located in an entirely different control area, since, in such a case, the "third-party transmission" provider might be deemed to be "indirectly" connected to PG&E's transmission system since it shares certain tie points with PG&E.

In response to CMUA and the Districts, PG&E states that pursuant to PU Code § 369, transition costs "shall not be recoverable for new customer load or incremental load of an existing customer where the load is being met through a direct transaction and the transaction does not otherwise require the use of transmission and distribution facilities owned by the utility". PG&E asserts that the most reliable means of determining whether a new MDL consumer does not require the use of PG&E's transmission and distribution (T&D) facilities would be to open all of PG&E's switches connecting its T&D system to that of the POU. However, it believes the Commission is unlikely to approve such a test as it would likely cause widespread outages. PG&E asserts that its new MDL tariff represents the next best option. In essence, PG&E proposes to use an engineering simulation model that indicates what would happen if PG&E had opened the switches. PG&E believes that these load flow models are very sophisticated and accurate, yet also reasonable and practical to employ.

We agree with CMUA that PG&E's proposed language is unduly vague and susceptible to continuing disputes regarding its interpretation and application. Instead, PG&E shall adhere to the specific and limited language used in PU Code § 369. This specific language was properly implemented in PG&E's Schedule E-

[16] Proposed Schedule E-MDNL, Special Condition 2.e.1. (emphasis added).

DCG. Similar to our determination discussed above for SCE, PG&E shall remove its additional proposed language and simply state that "new MDL taking service from a POU without the use of transmission and distribution facilities owned by PG&E, is exempt from ongoing CTC". This revision addresses CMUA's concern and renders the Districts' protest on this issue moot.

PG&E's and SCE's proposed "Change of Party" provisions have previously been determined to be justified and lawful.

PG&E's and SCE's new MDL advice letters each contain "Change of Party" provisions[17] which were also proposed in their transferred MDL advice letters. Change of Party occurs when an entity with MDL leaves the premises and another entity (New Party) moves into the premises or otherwise assumes liability for the MDL charges. CMUA, the Districts, Hercules, NCPA/Turlock, Municipal Utilities, and SSJID protest the Change of Party provisions generally as well as specific aspects of them. The protests are denied because issues raised are the same as those which were thoroughly addressed in Resolution E-3999 wherein the Commission determined that the provisions are lawful and justified. The Districts filed an application for rehearing of Resolution E-3999 challenging this determination on numerous grounds. The Districts' challenge was denied in D.07-04-047. This decision is now final and conclusive.

PG&E and SCE shall provide notice to consumers informing them of their obligations under the new MDL tariffs, and consumers must respond to the IOU notice with the provision of specific information.

Special Condition 3.a of PG&E's proposed tariff requires consumers to notify PG&E of their intention to become new MDL at least 30 days in advance of taking electric service from a POU, and requires them to specify certain information in their notice. Failure to do so would constitute violation of the tariff. SCE, on the other hand, in its Special Condition 3.a, proposes to first

[17] See PG&E's proposed definition in Special Condition 1.f. Although SCE does not define or use the term "Change of Party", it proposes procedures in Special Condition 3.d for "Change of Existing NMDL Consumer" and Special Condition 3.e for "Change in Occupancy for NMDL Consumers" which similarly hold any subsequent new MDL consumers responsible for CRS and other NBCs at new MDL premises.

inform the consumer of its obligations to pay MDL charges by sending the consumer a notice. This notice will request the consumer to provide certain information. Failure to return the notice with the requested information would constitute a violation of the tariff.

Hercules requests that PG&E's proposed new MDL tariff be revised, similar to SCE's, to provide procedures for PG&E to fully and fairly inform affected individuals of their obligations under the new tariff. In addition, Hercules asserts that the tariff should specify a reasonable period of time for these individuals to respond to the notice. Hercules states that any notification by such an individual should not be required until after the individual has commenced service with the POU. NCPA/Turlock similarly protest PG&E's proposed tariff provision on the basis that it is unacceptable to place notice requirements on the consumer rather than PG&E. They assert that PG&E is required by GO 96-A to notify affected customers of their potential liability under the proposed tariff. Also, they believe that PG&E has not provided any rationale or justification for its proposed 30-day period. Municipal Utilities assert that it is unreasonable to require new POU customers to provide information such as service date, load description, and rate group classification. Also, they state that SCE's proposed Special Condition 3.a neglects to identify a deadline for submission of such information.

In Resolution E-3999, we determined that although the IOUs are not required by GO 96A to provide notification, it is appropriate as a matter of policy for the IOUs to inform transferred MDL customers of their notice and payment obligations to avoid unintentional defaults. The same policy should apply to new MDL consumers. Accordingly, we grant Hercules' and NCPA/Turlock's protests, in part as discussed below.

PG&E and SCE shall send a notice to all consumers who are subject to the new MDL tariffs informing them of their obligations, and samples of the IOU notices shall be provided to the Energy Division for review and approval prior to distribution. Consumers subject to the new MDL tariffs include: (a) those subject to the tariffs from the date they become effective – July 10, 2003[18] – through the date they are "deemed effective" by the Energy Division; and (b) those subject to

[18] This effective date is discussed below.

the tariffs going forward from the date they are "deemed effective" by the Energy Division.[19] The notices provided to consumers in group (a) and group (b) will differ slightly.

The IOU notices to consumers in group (a) should inform the consumer of the charges, notice requirements, and payment obligations that apply. These IOU notices should also provide an invoice for current charges and any amortized charges for the specific past time period involved. Due to the amount of time that has passed, consumers who became new MDL years ago may owe large amounts and should be given the option to pay such amounts over a 36-month period, or another reasonable arrangement where the 36-month timeframe is not adequate. The IOUs should send these notices where they have a reasonable expectation of the existences of these consumers, within 120 days from the date the supplemental advice letters (required by this resolution) are deemed effective by the Energy Division.

The IOU notices provided to consumers in group (b) should similarly inform the consumer of the charges, notice requirements, and payment obligations that apply where the IOUs have a reasonable expectation of the existence of these consumers but additionally should request that the consumer provide certain specified information. Following receipt of the consumer's notice of departure with the requested information, the IOU will issue a statement for the charges owed. Contrary to the assertion of Municipal Utilities, it is reasonable that consumers be required to provide the IOUs with specific information such as service date, load description, and rate group classification because this information is necessary to ensure billing accuracy. We, therefore, deny Municipal Utilities' protest on this issue.

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[19] Within each of the groups (a) and (b), there are three different types of consumers subject to the new MDL tariffs: (1) entities that intend to contract with a POU for service at premises with new MDL and begin to assume responsibility for paying applicable charges to the IOU; (2) consumers who contract with a POU for service at premises with New MDL, but who intend to take action such that they are no longer responsible for the applicable charges; and (3) a New Party who takes over responsibility for service at premises with new MDL premises, and thus, assumes responsibility for paying the applicable charges to the IOU.

We agree with Municipal Utilities, however, that SCE should identify a deadline for submission of such information. PG&E proposes that the consumer provide the notice and submit required information within 30 days in advance of taking electric service from a POU. NCPA/Turlock believe that 30 days is onerous and unnecessary but they do not offer an alternative time period nor have they effectively argued why a 30-day deadline is unreasonable. Thus, we deny their protest on these grounds. Hercules believes that consumers should have a reasonable amount of time to respond to the IOU notice but that their response should not be required until after service with the POU has commenced because 1) an individual may not have even contracted with a POU 30 days in advance and 2) such a period of time could allow PG&E an opportunity to persuade the individual to take service from PG&E instead.

In Resolution E-3999, we adopted a 30-day timeframe for transferred MDL customers to submit their notice and required information. The 30-day period began after receipt of the IOU notice. Given Hercules' expressed concerns, which were not considered previously in Resolution E-3999, it is reasonable to make a slight modification. PG&E and SCE shall specify that the consumer should provide notification and the required specified information within 30 days of receipt of the IOU notice or as soon as it contracts with the POU for service, whichever is later. Accordingly, Hercules' protest on this issue is granted in part.

As we specified in Resolution E-3999, if at the time the consumer notice is due, an IOU has entered into, or agreed to enter into, bilateral discussions with a POU or a POU customer, then the notice requirement for the new MDL consumer(s) taking service from that POU may be suspended until such time as the IOU and POU, or POU customer, reach agreement on the CRS and other NBC obligations, or the IOU determines that a bilateral agreement will not be feasible. If a bilateral agreement is reached that resolves the CRS and other NBC obligations, then the consumer notice requirement is extinguished. If the CRS and other NBC obligations are not resolved through bilateral negotiations, then the IOU shall send the consumer notices required in this subparagraph within 15 days of concluding such bilateral negotiations.

PG&E and SCE, not the new MDL consumer, shall identify applicable exemptions and exceptions.

In Special Condition 3.a.5, PG&E requires the consumer to identify, in its notice, any exemptions that it believes are applicable to the load. SCE also requests that the consumer identify any exemptions for which the account may be eligible (Special Condition 3.a.4) in its notice but SCE proposes to send a follow-up statement to notify the consumer of whether its exemption claim is approved or rejected (Special Condition 3.b).

Hercules and NCPA/Turlock believe that it is unreasonable to expect a utility consumer to sort through, decipher and identify which of the enumerated exemptions might apply. Instead, they assert it should be incumbent upon the IOU to identify any applicable exemptions. Municipal Utilities assert that SCE does not have the discretion to determine whether any POU customer is eligible for exemption. They state that SCE should simply apply the exemptions as instructed in applicable Commission decisions. If SCE is unable to determine a consumer's eligibility, Municipal Utilities believe SCE should then either give the consumer the benefit of the doubt and apply the exemption or ask the Commission for a determination.

Hercules' and NCPA/Turlock's protests on this issue were addressed in Resolution E-3999 where we agreed that due to the complexity of the technical aspects of the exemption criteria, the IOU should identify the applicable statutory exemptions and Commission exceptions. As a result, we found that SCE's "approval or rejection" procedure was not necessary and should be removed. Based on the same rationale, we direct PG&E and SCE to similarly revise their new MDL tariffs, and thus grant the protests on these issues.

A consumer notice provision to document "change of party" and termination of the existing new MDL consumer's liability of charges under specified circumstances is reasonable; PG&E and SCE shall modify their proposed tariffs to provide greater specificity and to remove their discretion.

In Special Condition 3.c.1 and Special Condition 3.d, PG&E and SCE respectively impose consumer notice requirements in "Change of Party" situations[20]. Specifically, new MDL consumers that intend to take action such that they will no longer be responsible for MDL charges at the premises must provide notice

[20] SCE calls it "Change of Existing NMDL Consumer" instead of "Change of Party".

with specified information to the IOU not less than 30 days of the proposed action. In the notice, PG&E[21] requires that:

a) The Consumer must state the date on which the termination of liability is intended to become effective, and the reason for the termination of liability, subject to approval by PG&E. Reasons for termination of liability may include vacating the property, change of ownership or Change of Party.
b) If the notice of termination is approved by PG&E, PG&E will stop billing the Consumer for Nonbypassable Charges on the effective date of the termination of liability.
c) If the notice of termination is not approved by PG&E, PG&E will advise the Consumer in writing and state the reason(s) for such disapproval.
d) If a Consumer does not agree with PG&E's response to the notice of termination, the Consumer may invoke the dispute resolution provisions of Special Condition 3.e.
e) PG&E will utilize its estimate of the existing Consumer's usage for the New Party at the same premises.[22]

Municipal Utilities and the Districts assert that requiring 30 days prior notice for a change in responsibility for electric service is arbitrary, discriminatory, unworkable and nonsensical. They assert that there are a myriad of reasons why consumers may be making a change in less than 30 days. Also, they assert that there is no justification for the requirement that new MDL must state the reason for the termination, and that it is inappropriate and illegal to subject such reasons to IOU approval.

Hercules alleges that the provisions contain material errors and omissions because they do not definitively enumerate and specify conditions under which

[21] SCE's proposed language is similar but not exactly the same as PG&E's.

[22] SCE states that it will utilize metered consumption for the new MDL consumer if it is available. If not, SCE will use its system average method to bill the account. The issue of the use of actual data versus estimates is discussed below.

consumers would be relieved of their obligation to pay the charges and do not explain the criteria under which the IOU will exercise its approval.

NCPA/Turlock believe that the provisions contain material omissions because they fail to provide any rationale or reason for the notice requirement. Furthermore, they believe the proposed IOU approval requirements contain material omissions because they fail to describe criteria that will be used to approve or disapprove a customer's relocation decisions and fail to provide the customer with any meaningful remedy or recourse should the IOU fail to approve the consumer's request.

In Resolution E-3999, we denied NCPA/Turlock's protest on the basis that the customer notice requirement was not justified. We determined that the provision is reasonable to document a "change of party" and termination of the existing customer's liability of charges under specified circumstances. The need for such documentation justifies the provision. Our rationale and conclusion is the same for new MDL. We also conclude, as we did in Resolution E-3999, that Hercules is correct in pointing out that the provision does not definitively enumerate and specify conditions under which consumers would be relieved of their obligation to pay the charges. Inclusion of these additional details upfront in the tariffs would obviate the need for the IOU to exercise any discretion, and would eliminate subjecting consumers to an unnecessary IOU approval process. Because it may be unrealistic or impractical to require consumers to provide 30 days notice in Change of Party situations where the consumer requests termination of its liability, we direct the IOUs to modify that section of the tariffs to state that consumers should notify the IOU as soon as practicable.

Specifically, PG&E shall revise Special Condition 3.c.1 and SCE shall modify Special Condition 3.d to: 1) remove IOU approval requirements, 2) specify that a new MDL consumer may terminate its liability of the CRS/other NBC obligations if it vacates the premises or another entity becomes liable for the charges at the premises, 3) require that the new MDL consumer give the IOU notice as soon as practicable, stating the date the termination of that consumer's liability is intended to become effective, 4) indicate that the new MDL consumer is liable for applicable CRS and other NBC charges until the IOU receives the required notice from the consumer or until the IOU has actual notice that the consumer no longer occupies the premises, and 5) require that the new MDL consumer specify in its notice the reason for termination of liability. These

revisions alleviate the concerns expressed by the protestants and thus render their protests on these issues moot.

The new MDL consumer, or the POU with permission of its customer, may provide actual metered data to the IOUs for billing purposes in Change of Party situations. In the absence of this consumer-specific data, the IOUs must be allowed to estimate usage utilizing an appropriate method.

In Change of Party situations, PG&E proposes to calculate the applicable charges and bill the New Party based upon its estimate of the previous consumer's usage at the existing premises (see Special Condition 3.c.1.e). SCE proposes to calculate the applicable charges and bill the New Party based on metered consumption data provided by the POU, if available, otherwise SCE will estimate usage utilizing its system average method (see Special Conditions 3.c and 3.d.5).

SSJID asserts that PG&E's proposal is problematic because PG&E does not have the information upon which to make a reasoned estimate of the previous consumer's usage and that as a result, the estimate may bear no resemblance to the consumer's actual usage. Similarly, NCPA/Turlock state that PG&E fails to include any information regarding the procedure by which PG&E creates its estimate of the existing consumer's usage, or how that estimate is applicable or relevant to the New Party. Municipal Utilities assert that SCE's proposal fails to provide any information regarding what SCE's system averages are for purposes of estimating billing, and errs by omitting an option for obtaining accurate usage data directly from new MDL consumers.

As we stated in Resolution E-3999, the solution to concerns over billing accuracy can be resolved if actual metered data is utilized instead of estimates. PG&E explains that it originally provided the option to use metered data, however, it removed such an option after the POUs indicated at workshops that they would oppose any efforts by PG&E to obtain customer-specific metered data or otherwise intervene in the POU's relationships with their customers. SCE allows for the use of metered consumption data but requires it be provided by the POU.

We agree with Municipal Utilities that IOU proposals should provide the option of obtaining accurate usage information from new MDL consumers who are willing to provide it, and thus grant their protest on this issue. Such metered consumption data may come directly from the consumer itself by allowing the IOU at its option to read the meter, or may be provided by the POU with the

permission of its customer, as long as the specific data is provided in a manner acceptable to the IOU. Provision of such usage information would alleviate the need to estimate usage and thus, would alleviate SSJID's and NCPA/Turlock's concern that estimates may bear no resemblance to the consumer's actual usage. However, when actual consumer-specific data is either not offered and/or is not available in an acceptable format, the IOUs must have some other mechanism to derive usage information.

In the absence of the provision of metered data, SCE offers to bill the New Party based on a system average method and PG&E proposes to bill based on the previous consumer's usage at the existing premises. As stated in Resolution E-3999, we decline to anticipate or specify an estimation procedure that would be applicable to every scenario but rather believe it is reasonable for the IOUs to have the flexibility to utilize an appropriate method given the circumstances. This could be the prior consumer's usage data, a system average, an average utilizing similar consumer types, or some other estimate if it would yield a more accurate assessment. Accordingly, we deny all protests made on the grounds that the IOU's must provide specific details on their estimating procedures. Again, if POUs and/or their customers are concerned over the accuracy of an IOU estimate, there is always the option for them to provide actual usage data.

Accordingly, PG&E and SCE shall revise their respective Change of Party provisions of their tariffs to reflect the following: if the New Party, or the POU with permission of its customer, provides the IOU with metered usage data in an acceptable format or allows the IOU at its option to read the consumer's meter, the IOU will use this data in calculating the applicable charges. If the New Party, or POU on behalf of its customer, does not provide the IOU with metered consumption data, the IOU will estimate usage for the New Party (a) utilizing the existing consumer's metered usage data for the New Party at the same premises, (b) a system average method, (c) an average utilizing similar consumer types, or (d) some other procedure if it would yield a more accurate assessment of the New Party's usage.

PG&E's and SCE's proposed New Party notice provisions are reasonable and consistent with approved tariffs applicable to departing load but shall be slightly modified to provide additional clarification.

In PG&E's Special Condition 3.c.2 and SCE's Special Condition 3.e, any New Party[23] must provide notice of its intention to occupy premises with new MDL and assume responsibility for applicable charges at least 2 days in advance of taking electric service from a POU. PG&E and SCE each have slightly different notice specification requirements. SCE requires that the New Party specify the date the entity will begin consuming electricity at the premises, a description of the load and applicable rate group, the name of the POU from which it will take service, and any exemptions for which it may be eligible. PG&E requires only that the New Party specify the date the entity will begin/began consuming electricity at the premises and if known, the name of the prior new MDL consumer or the relevant PG&E account number(s). Both PG&E and SCE state in the tariffs that they will issue a bill for the time period the New Party begins to consume electricity at the premises.

NCPA/Turlock and Hercules believe that that PG&E's provisions contain material errors and omissions because they fail to properly define "New Party" and do not explain how PG&E will notify the New Party of the obligation. NCPA/Turlock assert further material omissions stating that PG&E does not address the instance where the new occupant of a premises may not be assuming responsibility for the charges, does not reconcile how a New Party can be billed for actual usage of another customer or a PG&E estimate instead of its actual usage, and fails to provide information regarding the practice PG&E will employ in order to determine the New Party's estimated usage. Also, NCPA/Turlock believe that PG&E cannot impose an obligation upon the New Party to provide prior consumer information to which the New Party is likely not privy.

Municipal Utilities and the Districts protest the New Party notice requirement on the basis that it is unrealistic and unfair. They assert that the tariff does not indicate how a brand new POU customer with no relationship with the IOU is supposed to know that he or she has an obligation to provide notice nor does it provide any clear explanation regarding the consequences of not providing such notice. In addition, Municipal Utilities state that SCE's proposed language allowing the POU to respond on behalf of the new MDL consumer inappropriately imposes an obligation on the POU. Furthermore, they state that the tariff omits an explanation of what is meant by "other reasonable means".

[23] SCE uses the term "new NMDL" instead of the term "New Party".

We found in Resolution E-3999 that PG&E currently has provisions governing notice and payment responsibility requirements for "New Party at the Existing Premises" in its tariff applicable to Split Wheeling Departing Load and for "New Customers at Existing Premises" in its tariff applicable to CGDL. Although the terminology differs slightly, we found that PG&E's proposed New Party notice provisions for transferred MDL were consistent with the general requirements in those approved departing load tariffs. Nonetheless, we concurred with NCPA/Turlock and Hercules that the term "New Party" could be more clearly defined in the tariff to avoid confusion over who ultimately will be liable for the on-going charges. They raise the same issue with respect to new MDL and thus, the definition should similarly be clarified to address the instance where the new occupant of premises may not be assuming responsibility for the charges. Accordingly, PG&E and SCE shall add a definition to their respective new MDL tariffs to state that a "New Party" (or "new NMDL consumer" in SCE's case) is either 1) a subsequent entity which occupies, and will begin to consume electricity at, existing NMDL premises or 2) a subsequent entity which assumes liability for the charges at existing NMDL premises.

As discussed in detail above, it is appropriate as a matter of policy that the IOUs send a notice to all consumers who are subject to the new MDL tariffs informing them of their obligations. This requirement alleviates the concern raised by NCPA/Turlock, Hercules and Municipal Utilities regarding how a New Party would be informed of their notice and payment obligations. Also, the POU could inform its customer of the IOU notice and payment obligations. However, as Municipal Utilities correctly point out, the Commission cannot impose such a requirement on POUs. However, there should be an option that the POU could provide notice and the required information on behalf of the New Party with that consumer's permission. Along these lines, SCE states that "the new NMDL consumer, or the POU on behalf of the new NMDL consumer, *shall* notify SCE…". Municipal Utilities asserts that this inappropriately imposes an obligation on the POU.[24] On the contrary, it simply provides another option. It

[24] Municipal Utilities also raised this issue regarding SCE's wording imposing notice requirement responsibility *upon the POU*, in its proposed Special Condition 3.d.

Footnote continued on next page

is clear from the new MDL tariffs that the responsibility for compliance with all the terms and conditions ultimately lies with the new MDL consumer. However, to make this clearer, SCE shall remove any phrases in its new MDL tariff directing that the POU, on behalf of its NMDL consumer, "shall" do something and instead add, where appropriate, the following sentence: "With the consumer's permission, notice or required information may be provided by the POU". Because this gives additional flexibility to the consumer and has the potential to improve communication, we also direct PG&E to incorporate such an option into its new MDL tariffs.

NCPA/Turlock's concerns regarding billing the New Party based on estimated rather than actual usage have been addressed above and are not repeated here. And, its concern that PG&E is imposing an obligation upon the New Party to provide prior customer information to which the New Party is likely not privy was addressed in Resolution E-3999. In that resolution we determined that the protest on this basis is without merit because PG&E has only requested that the New Party provide such information "if known". Likewise, Municipal Utilities' protest is without merit on the basis that SCE's tariff does not provide any clear explanation regarding the consequences for not providing notice because such consequences are clearly explained in the tariffs. We deny Municipal Utilities' protest on their issue that SCE's proposed notice requirement is deficient because it omits a definition or explanation of what is meant by that such notice may be given by "other reasonable means". SCE provides this language as an **option** to the requirement that the consumer provide notice in writing. If notice is not given in writing, SCE should have the flexibility, without tying itself to a definition, of what it deems to be "a reasonable means" of notification.

PG&E shall remove references to its electric and gas service rules from its proposed provision concerning the new MDL consumer's obligation to make payments.

In Special Condition 3.f, SCE states that it will issue bills in accordance with the provisions of the new MDL tariff. PG&E states in Special Condition 3.d that

rendering and payment of bills for new MDL charges shall be handled in accordance with the provisions of its Electric Rule 9.E, 9.H. and 9.L. PG&E also states that if it opts to discontinue any service that it is providing to the consumer based on the consumer's non-payment of new MDL charges, PG&E will follow the notice and provisions of Gas or Electric Rule 8.

NCPA/Turlock assert that PG&E's proposal contains material errors and omissions because its referenced rules pertain to bills for "electric service" and do not address charges of the kind contemplated under this tariff. They state that new MDL, by PG&E's own definition, involves a consumer that no longer takes "electric service" from PG&E. [25]

In response to these issues in Resolution E-3999, we agreed with NCPA/Turlock that tariff provisions of PG&E's Electric (and Gas) rules do not adequately address the unique characteristics of a MDL customer and to that extent granted their protest. We stated that none of PG&E's other schedules applicable to departing load (e.g. see Preliminary Statement Part BB, Schedule E-DCG, or Schedule E-SDL) had such references but rather included a statement similar to that proposed by SCE. Accordingly, we directed PG&E to remove the two sentences referencing its Electric (and Gas) Rules 8 and 9 from its proposed Special Condition 3.d, and replace them with a statement that PG&E will issue bills in accordance with transferred MDL tariff provisions. We similarly direct PG&E to make these revisions in the new MDL tariffs, and grant NCPA/Turlock's protest on this issue.

Municipal Utilities assert that there are material omissions in SCE's proposed new MDL consumer payment provision because SCE does not explain whether the bills are to be issued prior to or subsequent to the date the payment obligation is incurred. Nor does SCE identify the billing interval between the date that the payment obligation accrues and the date the bill is issued.

We grant Municipal Utilities' protest in part and deny it in part on these issues. SCE and PG&E shall revise their respective proposed payment provisions to specify that bills are to be issued subsequent to the date the payment obligation

[25] SSJID also protests this aspect of PG&E's proposal but for reasons concerning PG&E's proposed Enforceability provision (see the discussion below).

is incurred. This is consistent with their proposed procedure for billing a New Party. Also, they do not need to identify the billing interval between the date that the payment obligation accrues and the date the bill is issued because it is sufficient, as PG&E and SCE propose, to simply indicate that such bills will be issued monthly.

Consistent with our directives in Resolution E-3999, we also direct PG&E and SCE to incorporate in this tariff provision that they will arrange for payment plans for any new MDL consumer who indicates that it would otherwise have difficulty paying the amount owed. Also, SCE and PG&E shall add to the provision that they shall periodically remind new MDL consumers (e.g. through a notice on their monthly bill) of their notice and/or payment obligations and of the substantial penalties that could result for failure to comply with the tariff requirements.

Dispute resolution procedures applicable to new MDL consumer should be articulated in the tariffs.

In Special Condition 3.e, PG&E states that disputed bills will be handled in accordance with provisions from its Electric Rule 10.A and 10.B. SCE similarly references in its proposed Special Condition 3.g that disputed bills will be handled in accordance with the provisions of its Rule 10.

Municipal Utilities and Hercules assert that their proposed language is problematic because 1) there is no "service" being provided by the IOU to the consumer thus, Rule 10 must be revised to accommodate claims arising from the new MDL tariff and 2) before the new MDL tariff can be implemented, the Commission must revise its practices and procedures for handling complaints specific to this tariff (i.e. complaints can not be accommodated using the existing forms and processing procedures). Municipal Utilities further assert that Rule 10 must be revised to provide that any person disputing a new MDL bill who is unable to deposit the bill amount in dispute, may deposit an amount equal to 90 days at the average disputed charge per day of the disputed bill.

PG&E responds that it believes that no changes to Rule 10 are necessary, however, it would not object if the Commission orders it to revise the rule to include claims arising from the new MDL tariffs. PG&E states there is no reason why complaints related to the new MDL tariff cannot be handled in the same manner as other Commission complaints.

We agree with Hercules and Municipal Utilities that Rule 10 applies to disputes concerning bills for electric service and may not be appropriate for new MDL consumers. However, rather than modify Rule 10 as they suggest, it is reasonable to specify all applicable procedures in the new MDL tariffs. PG&E has had an approved dispute resolution provision applicable to CTC for all departing load in its Preliminary Statement Part BB since January 1, 1998. Neither PG&E nor SCE have demonstrated why a similar provision would not be sufficient to govern the CRS and other NBCs applicable to new MDL. Accordingly, we direct PG&E and SCE to revise their new MDL tariffs to include the dispute resolution procedures specified in PG&E's Preliminary Statement Part BB.4.f and remove their respective references to Rule 10.

PG&E's and SCE's proposed Opportunity to Cure provisions shall be revised.

In Special Condition 3.f, PG&E proposes an Opportunity to Cure provision that enables it to send a failure to comply notice to a new MDL consumer if the consumer fails to provide required notice(s) and provides the consumer with 20 days to cure its breach. PG&E states that if the breach was a failure to provide notice, to cure the breach the consumer must provide the required notice, and pay any amounts that would have been assessed had the consumer provided PG&E with a timely notice. If the breach was a failure to pay, the consumer must pay PG&E all payments that are at or past their due date in accordance with its Gas and Electric Rules 8 and 11 in order to cure the breach. SCE proposes a similar provision in its Special Condition 3.h., but SCE requires that the consumer also pay a deposit if the breach was failure to provide notice. SCE also offers more specificity than PG&E regarding the amount a consumer must pay if the breach was for failure to pay.

Municipal Utilities assert that SCE proposes an Opportunity to Cure for only two of the three notices required by the new MDL tariffs. If this is an oversight, they request that it be corrected. If not, they state it is discriminatory with no apparent justification. Also, Municipal Utilities state that there is a contradiction between SCE's Opportunity to Cure provision and its Demand for Deposit provision in Special Condition 3.i. Specifically, in Special Condition 3.h, a new MDL consumer is required to pay a deposit equal to four times the monthly payment if the breach was failure to provide notice. Yet, in Special Condition 3.i, SCE states that the demand for deposit provision does not apply in instances where the breach was failure to provide required notice(s). Municipal Utilities

believe that the latter provision obviously should apply because a consumer should not be required to pay a deposit (which it asserts is a form of a penalty) merely because that person did not provide notice.

Hercules believes that PG&E's proposed provision contains a material omission because PG&E does not indicate whether the notice provided by PG&E will advise the new MDL consumer of the amount that is due and payable. Without such information, Hercules asserts it is not clear how the consumer can pay all amounts that are due within 20 days of the notice to cure.

PG&E responds that it included the Opportunity to Cure provision in its proposed new MDL tariff because such a provision is included in its Preliminary Statement Part BB tariff concerning the CTC procedure for Departing Load. However, upon closer review, PG&E agrees with Hercules that the provision may be confusing and could be deleted. In order to preserve the principle, though, PG&E offers that the following language be inserted at the end of Special Condition 3.c (Notice to PG&E for Change of Party): "Failure to provide notice including all the elements specified above will constitute a violation of this tariff and a breach of the customer's obligations to PG&E, entitling PG&E (subject to the provisions of Special Condition 3.e, "Dispute Resolution") to collect the applicable Nonbypassable Charges from the customer on a lump sum basis retroactive to the date the New Party began consuming electricity at the premises." Notwithstanding the foregoing, to address Hercules' concern, PG&E states that it would not object to retaining Special Condition 3.f and modifying the provision by adding the following sentence: "Once the consumer cures the breach of Special Condition 3.a or 3.c, PG&E will provide the consumer with a Municipal Departing New Load Nonbypassable Charge Statement pursuant to the provisions of Special Condition 3.b."

Deleting PG&E's proposed Opportunity to Cure provision would not alleviate Hercules' concern nor would substituting PG&E's suggested alternative language because Hercules is concerned that the consumer will not be advised of the amount that is due and payable. PG&E's second suggestion to add a sentence that would provide the consumer with a statement "*once* the consumer cures the breach" also does not address Hercules' concern because the consumer needs such information in order to cure the breach. Accordingly, we grant Hercules' protest on this issue and require that PG&E and SCE include in their respective Opportunity to Cure notice to the consumer, a statement of applicable charges and amounts due.

Municipal Utilities also correctly note that SCE's Opportunity to Cure provision only addresses a consumer's failure to provide two of the required notices. All three should be referenced as PG&E has. Accordingly, we grant Municipal Utilities' protest on this issue and direct SCE to add the notice required in Special Condition 3.e to its Opportunity to Cure provision. In addition, we agree with Municipal Utilities' assertion that there is a contradiction between SCE's Opportunity to Cure provision and its Demand for Deposit provision in Special Condition 3.i, and that it is appropriate to remove the deposit requirement from the provision addressing a breach for failure to provide notice. This is consistent with PG&E's proposed Opportunity to Cure provision.

Furthermore, PG&E shall remove any references to its Electric (and Gas) rules consistent with our directives above because relevant provisions from those rules should be specifically stated in the new MDL tariff. Also, to the extent PG&E intends to impose a deposit for failure to pay two or more consecutive monthly payments, it shall specify (similar to SCE's proposed language) how such a deposit is calculated. Finally, PG&E shall revise its Opportunity to Cure provision to state that PG&E shall send a notice specifying a consumer's failure to comply if the consumer fails to 1) provide the notice specified in Special Condition 3.a. or 3.c. or 2) make payments as specified in Special Condition 3.d. PG&E's current proposed language only requires PG&E to send the consumer a notice if the consumer fails to provide the required notice(s).

PG&E and SCE shall remove references to any electric rules from their respective Demand for Deposit/Return of Deposit provisions and revise them to be consistent with PG&E's tariffs applicable to departing load for CTC responsibility.

In PG&E's proposed Demand for Deposit provision (Special Condition 3.g), PG&E specifies that it will follow procedures of its Electric Rules 6 and 7. SCE, in its Demand for Deposit provision (Special Condition 3.i), on the other hand, doesn't reference its Rules but rather identifies specific procedures that would apply in instances when a consumer's balance is in arrears, and where the consumer fails to cure the breach after receiving at least one notice of Opportunity to Cure. SCE also proposes a Return of Deposit provision (Special Condition j) governing the application and/or refund of a deposit but specifies certain aspects will be in accordance with its Electric Rules Rules 6 and 7. PG&E does not propose a separate Return of Deposit provision.

Municipal Utilities assert that SCE's Demand for Deposit proposal is discriminatory and inconsistent with Electric Rule 7.2 because SCE may demand a deposit from a consumer equal to four times the average monthly billing under its proposed provision whereas pursuant to Electric Rule 7.2, the amount may only be twice the maximum monthly bill. If a 2-month deposit is sufficient to establish credit for a SCE customer, Municipal Utilities assert that SCE bears the burden to justify discriminatory practices against non-customers. They also assert that SCE's proposed Return of Deposit provision is flawed and inconsistent with SCE's Electric Rules 6 and 7.

Hercules asserts that PG&E's proposed Demand for Deposit language contains material errors and omissions because it does not explain which provisions of its rules are applicable. NCPA/Turlock also believe PG&E's language contains material errors and omissions because the provision fails to adequately address the unique characteristics of a new MDL consumer (e.g. neither Electric Rule 7 nor the proposed provision address the specifics of an "account" as that term would be used for a new MDL consumer who have no past contractual relationship with PG&E).

PG&E responds that its purpose in referencing Electric Rules 6 and 7 was to provide new MDL consumers with notice of the means by which they may reestablish credit after termination of service for nonpayment of an energy bill. To the extent the Commission believes that it is confusing to include these references, PG&E is willing to delete them.

In Resolution E-3999 and in other sections of this resolution, we have directed PG&E and SCE to remove references to their general electric (and gas) rules, clearly specify all applicable procedures in the MDL tariffs, and utilize already established procedures applicable to other departing load, where appropriate, as guidance. As pointed out by Hercules and TCPA/Turlock, PG&E's proposed Demand for Deposit provision references its general electric rules, and thus fails to adequately address the unique characteristics of new MDL. Accordingly, we grant Hercules' and TCPA/Turlock's protests on this issue and direct PG&E to incorporate into its new MDL tariffs the corresponding Demand for Deposit and Return for Deposit provisions from its Preliminary Statement Part BB (which governs CTC procedures for departing load). SCE shall also revise its proposed Return for Deposit provision to remove its references to its electric rules and instead incorporate language form the corresponding provision in PG&E's

Preliminary Statement Part BB. This revision renders Municipal Utilities protest on this issue moot.

Although SCE has appropriately modeled its proposed Demand for Deposit provision applicable to new MDL after PG&E's Preliminary Statement Part BB, it requires a 4-month instead of a 2-month deposit. Municipal Utilities state that this is discriminatory and inconsistent with Electric Rule 7.2. While we are not persuaded by a comparison with Electric Rule 7.2, SCE has not provided any justification to deviate from the PG&E's Preliminary Statement Part BB which we determined, in Resolution E-3999, should be used. Thus, SCE must require a 2-month deposit. This directive renders Municipal Utilities' protest on this issue moot.

PG&E's and SCE's proposed lump sum payment provisions are justified but shall be modified to be consistent with previous Commission directives.

PG&E's and SCE's proposed new MDL tariffs contain a provision (Special Condition 3.h and 3.k, respectively) that requires a new MDL consumer to pay an amount equal to 102 percent of the bill for failure to comply with certain terms of the tariff. This is referred to as the Demand for Lump Sum Payment provision. CMUA and Hercules assert that the IOUs' proposed treatment is unfair and violates Commission precedent. Municipal Utilities assert that the provision lacks any explanation or supporting analysis, is vague and ambiguous as to application and procedures, and discriminates against new MDL consumers. NCPA/Turlock claim that the provision is not supported by Commission decisions or the Law, contains material errors and omissions, and results in discriminatory treatment.

The lump sum payment provisions in the IOUs' proposed tariffs applicable to new MDL are the same as those proposed in their transferred MDL tariffs, and the issues raised by the protestants are the same as well. The proposed provisions and the issues were addressed in Resolution E-3999 where we found that a lump sum payment provision was justified and should be applied to transferred MDL customers for failure to provide notice or pay the applicable

charges.[26], and accordingly denied protests on this basis. We did agree with protestants, however, that PG&E's and SCE's proposals requiring the transferred MDL customer to pay the full, undiscounted expected value of the charges, plus an additional 2% was unfair and inconsistent with Commission precedent. We directed PG&E and SCE to revise their lump sum payment calculation methodology to reflect the Net Present Value (NPV) of the transferred MDL customers current and future charge obligations using the most recent Commission-adopted value of the IOUs' weighted cost of capital as the discount rate. We also ordered PG&E and SCE to add language to their respective provisions stating that if a lump sum payment for a charge component is demanded and received, no subsequent consumer at the same premises shall be responsible for that component. PG&E and SCE shall similarly modify their tariffs applicable to new MDL to reflect the orders given in Resolution E-3999.

Consistent with our conclusion in Resolution E-3999, PG&E is not allowed, at this time, to disconnect natural gas service for violation of the tariff applicable to new MDL.

In Special Condition 3.i, PG&E proposes an enforceability provision allowing it to disconnect natural gas service to a new MDL consumer if it determines that the consumer is in default of his or her obligation to pay the charges under the new MDL tariff. PG&E proposed this same provision in its tariff applicable to transferred MDL customers. SSJID asserts that such an enforceability provision it is not justified in the context of a customer who fails to pay a charge when no service is provided. CMUA, the Districts, Hercules, and NCPA/Turlock object to the provision on the basis that it violates applicable laws and/or Commission policy. In addition, NCPA/Turlock believe the proposal contains material errors and omissions and results in discriminatory treatment. The Districts further allege that PG&E's inclusion of this provision reneges on its commitment made at a workshop that it would not shut off gas service for nonpayment of the MDL charges.

These issues are the same as those which were addressed in Resolution E-3999, and the discussion need not be repeated here. Our conclusion remains that

[26] In D.07-04-047, we denied the Districts' application for rehearing challenging this determination. As previously noted, D.07-04-047 is now final.

same. In light of the protests, PG&E's insufficient justification, and the fact that we disallowed a similar practice in D.96-04-054, we do not allow PG&E to deny gas service for nonpayment of MDL related charges. However, we may, if necessary, revisit this issue in the future after we gain experience with this tariff if the IOUs find that they are unable to collect charges.

The new MDL consumer shall have the option to provide metered data because actual usage information is preferable to estimates. However, the use of estimates for billing the charges applicable to new MDL is appropriate in the absence of customer-specific usage data.

In Special Condition 4, SCE proposes that if the POU does not provide metered consumption in a manner acceptable to SCE, the new MDL consumer's usage for billing the applicable charges will be based on SCE's system average for the rate group for similarly situated customers. PG&E similarly proposes in Special Condition 4 to calculate all applicable charges based on the average consumption of PG&E customers within the otherwise applicable rate class. PG&E does not give an option for the provision of metered consumption data.

SRCSD protests PG&E's proposal on the grounds that its method for estimating usage for new load will significantly overstate the actual loads of SRCSD's facility and will subject SRCSD to unreasonable and unjustifiable charges. To enable an accurate calculation of the applicable charges, SRCSD requests that customers have the option of providing actual meter data to PG&E. Municipal Utilities assert that SCE's proposed estimation method is likely to be significantly inaccurate and inconsistent with Commission policy. Specifically, they assert that SCE has provided no citation to legal authority or Commission precedent suggesting that use of SCE class average usage to produce an estimated bill for new MDL consumers is permitted under applicable laws, regulations and policies; SCE has provided no factual evidence or analysis showing that the proposed "class average" billing approach will accurately reflect a new MDL consumer's actual CRS obligation; and SCE does not provide a means by which an individual consumer could voluntarily provide usage data.

As discussed in Resolution E-3999 and above in our discussion of the IOU's proposed Change of Party provisions, we have determined that the use of estimates is appropriate in the absence of customer-specific data. Thus, we deny Municipal Utilities' protest on this issue. We do agree with SRCSD, however, that actual usage information is preferable to estimates and that the consumer

should have the option to provide such specific consumption data. Accordingly, we grant SRCSD's protest. PG&E and SCE shall modify Special Condition 4 of their tariffs to allow the new MDL consumer, or the POU with permission of its customer, the option to substitute metered consumption data instead of estimated usage. PG&E and SCE shall state that if the consumer, or POU with the permission of its customer, does not provide metered consumption data to the IOU either 1) by allowing the IOU at its option to read the consumer's meter or 2) by submitting meter-read data to the IOU in an acceptable format, the new MDL consumer's usage for billing the applicable charges will be based upon an estimation methodology that yields the most accurate assessment. These modifications provide a means by which an individual consumer could voluntarily provide usage data and thus render moot Municipal Utilities' protest on this basis.

There is no limit to the use of estimated bills for new MDL consumers when metered consumption data is not available.

Municipal Utilities argue that PU Code § 770(d)[27] and SCE's Rules 17.A and 17.E.2[28] limit the use of estimates in billing new MDL consumers. They assert that SCE's proposal to calculate new MDL bills based on SCE's customer "class average" violates these provisions, and results in the discriminatory treatment of the new MDL consumer versus the SCE customer. They also assert that PU Code and cases before the CPUC addressing estimated bills support the requirement of a true up provision.

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[27] PU Code § 770(d) states that: "… The Commission shall require a public utility that estimates meter readings to so indicate on its billings, and shall require any estimate that is incorrect to be corrected by the next billing period, except that for reasons beyond its control due to weather, or in cases of unusual conditions, corrections for any overestimate or underestimate shall be reflected on the first regularly scheduled bill and based on an actual reading following the period of accessibility."

[28] SCE's Tariff Rule 17.A provides that "[w]hen regular, accurate meter readings are not available or the electric usage has not been accurately measured, SCE may estimate the customer's energy usage for billing purposes on the basis of information including, but not limited to, the physical condition of the metering equipment, available meter readings, records of historical use, and the general characteristics of the customer's load and operation." SCE's Rule 17.E.2 governs estimated bills for "unauthorized use".

As discussed above, we have determined that actual usage information is preferable to estimates for billing the charges applicable to new MDL consumers. However, because we cannot mandate that new MDL consumers provide or make available actual usage information to the IOU, it is appropriate to allow the IOU to estimate the new MDL consumer's usage. The statute and rules cited above by Municipal Utilities refer to limits on the use of estimates in situations where the IOU has the ability to subsequently compare such estimates to actual metered data. However such limits do not apply to estimates when there is no availability of usage data because there can be no comparison or any subsequent true-up. Accordingly, Municipal Utilities' protest on this issue is denied.

PG&E shall specify that bilateral agreements are an alternative arrangement to the new MDL tariff.

Hercules argues that a new provision should be added to PG&E's proposed new MDL tariff, similar to SCE's language in its proposed Special Condition 3, allowing a POU and PG&E to mutually agree to fund, pay or collect the charges applicable to customers of the POU (with reimbursement for the reasonable costs of such billing and collection).

PG&E responds that it believes the Commission has already made it clear that POUs are welcome to negotiate bilateral billing and collection agreements with the IOUs. PG&E states that it has indicated at workshops that it would consider reimbursing reasonable costs and even drafted a proposed bilateral agreement that incorporated comments from POUs. Therefore, PG&E believes it is unnecessary and confusing to include a provision in the new MDL tariff to allow bilateral billing and collection agreements.

We disagree with PG&E. It would be helpful to notify new MDL consumers that as an alternative to the tariff process and procedures, a POU (or individual consumer) and PG&E may mutually agree upon a mechanism to fund, pay, or collect the CRS and other NBCs applicable to new MDL consumers of the POU. As Hercules points out, SCE includes such language in its proposed new MDL tariff. PG&E shall modify its tariff to state that bilateral agreements between PG&E and the respective POU or POU consumer can be used as an alternative to the process set forth in the new MDL tariff. Accordingly, Hercules protest on this issue is granted.

Tariffs implemented by this resolution must comply with the directives of prior Commission decisions and cannot exempt new MDL from their payment obligations.

Hercules argues that another new provision also should be added to PG&E's proposed new MDL tariff stating that if the costs of identifying, noticing, billing and collecting MDL charges from a customer exceed the amount to be collected, then the charges to the customer or class of customers shall be waived. Also, Hercules and Municipal Utilities assert that the Commission should investigate whether the billing and implementation of the new MDL tariffs will result in a net cost to IOU ratepayers. PG&E responds that the Commission has never, to its knowledge, exempted a class of customers from their payment obligations because the cost of billing them would be too significant.

In D.03-07-028, as modified by D.03-08-076, D.04-11-014, D.04-12-059, and D.05-07-038, the Commission adopted policies and mechanisms to implement the CRS applicable to MDL, and authorized the IOUs to file tariffs to bill and collect the CRS. Although this resolution addresses issues arising from implementation details of proposed tariffs, it must comply with the directives of those decisions. Those decisions clearly did not exempt any MDL customers from their payment obligations due to billing and collection implementation costs. Thus, Hercules' request for a waiver of MDL charge obligations in the event that costs exceed the amount collected is denied.

The effective date of the new MDL tariffs shall be July 10, 2003.

SCE requests that the new MDL tariffs be effective July 10, 2003, which coincides with the effective date of D.03-07-028. PG&E requests that the tariffs be effective as of the date the Commission approves its new MDL advice letter, and allow PG&E up to 120 days after the effective date to implement the new tariff.

In Resolution E-3999, we determined that the tariffs applicable to transferred MDL should be effective on July 10, 2003 because that is the effective date of D.03-07-028 which adopted the CRS applicable to MDL. PG&E and SCE had requested that effective date for transferred MDL but PG&E does not propose to use that date for new MDL. Although we can accommodate any practical limitations by allowing additional time to implement the new MDL tariffs, we

cannot adopt a later effective date. To do so, would allow for cost shifting which we expressly prohibited in D.03-07-028, as modified by D.04-11-014, D.04-12-059, and D.05-07-038[29]. Thus, following verification of compliance by the Energy Division, the supplemental advice letters filed in compliance with this Resolution will be made effective July 10, 2003. PG&E and SCE are allowed up to 120 days, from the date the Energy Division deems its supplemental filing effective, to send the required notices and implement the new tariff.

COMMENTS

Per statutory requirement, a draft resolution was mailed to parties for comment at least 30 days prior to consideration by the Commission.

PU Code § 311(g)(1) provides that a draft resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, a draft resolution was mailed to parties for comment on July 13, 2007. The City of Moreno Valley (Moreno Valley), CMUA, the Districts, Municipal Utilities[30], NCPA/Turlock, PG&E and SCE submitted comments on August 2, 2007. The City of Moreno Valley, CMUA, the Districts, Municipal Utilities, NCPA/Turlock, and SCE submitted reply comments on August 7, 2007.

The draft resolution correctly implements the billing and collection of CRS from new MDL through IOU tariffs as previously directed by the Commission.

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[29] In those decisions we gave the IOUs the legal authority to assess CRS on both transferred and new MDL (and also provided some exceptions where the CRS does not apply) and stated that imposing cost responsibility on MDL is warranted, regardless of the magnitude, in order to hold them responsible for their share of the identified costs. We specifically stated that cost shifting is not determined by how large any resulting cost effects are, but involves consistent application of a legislatively mandated intent independent of the specific magnitude of load" (D.03-08-076, p.12).

[30] "Municipal Utilities" consist of the City of Industry, Rancho Cucamonga Municipal Utility, and Hercules Municipal Utility. Prior to the filing of these comments, "Municipal Utilities" consisted of the Cities of Corona, Industry, Moreno Valley, and Rancho Cucamonga (i.e. entities who filed a joint protest to SCE's AL 1979-E-A).

Moreno Valley, the Districts, and NCPA/Turlock assert that that draft resolution should be rejected because the Commission cannot authorize the IOUs to impose CRS, nor can IOU tariffs[31] be used to bill and collect CRS from new municipal customers that have no past or present service relationship with the IOUs.

These entities are incorrect. The Commission has already authorized the IOUs to bill and collect CRS from new MDL through IOU tariffs; the draft resolution simply implements these Commission directives. Specifically, in D.03-07-028, as modified by D.03-08-076, D.04-11-014, and D.04-12-059, the Commission determined that IOUs had the legal authority to assess CRS on both transferred and new MDL, authorized the IOUs to file tariffs to implement the CRS, and explained why it is appropriate for the IOUs to assess CRS even though a new MDL consumer has no prior contractual relationship for electric services with the IOU. As these decisions discuss, pursuant to the mandate of PU Code § 366.2(d), retail end-use customers who depart bundled service remain responsible for their fair share of costs incurred on their behalf. The Commission determined that new load served by POUs also bear responsibility for their fair share of any costs incurred by the IOUs or DWR on their behalf. The determination was made based on load forecasts, not contractual relationships with customers. As explained in Resolution E-3999, the cost responsibility obligation is on the entity taking electricity service at the premise because IOU forecasts given to DWR for electricity procurement purposes were based on load rojections at locations served by the IOUs' electric systems, as well as load projections for locations in areas that the IOUs expected to serve.

The draft resolution correctly relies upon discussion and conclusions in Resolution E-3999, when appropriate, because that resolution dealt with many issues in the context of both transferred and new MDL.

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[31] NCPA/Turlock also assert that the draft resolution should be modified to require further review of the "APPLICABILITY" provisions of the new MDL tariffs because they argue that there is no legal basis upon which to support a finding that the IOUs' tariffs are the correct tool to authorize the billing and collection of those charges from these new customers.

Moreno Valley, the Districts, and NCPA/Turlock claim that the draft resolution errs in applying conclusions reached in Resolution E-3999 to new POU customers located in greenfield areas without properly distinguishing between new and transferred MDL consumers. As an example, the Districts state that they protested the new MDL advice letters on the basis that the CRS constitutes a tax because there is there is no preexisting, current, or future relationship between an IOU and new MDL consumer. They claim that the draft resolution erroneously dismissed its protest on this issue by simply stating that this issue was addressed in Resolution E-3999. They assert that the transferred MDL is different than new MDL.

The draft resolution relies upon conclusions reached in Resolution E-3999 when issues were decided in the context of both transferred and new MDL. The question of whether or not the CRS (for both transferred and new MDL) constitutes a tax was answered in D.03-07-028, as modified by D.03-08-076, D.04-11-014, and D.04-12-059. Resolution E-3999 explains that after considering the POUs' claims, the Commission found that the MDL CRS was lawful and consistent with statutory obligations under Assembly Bill (AB) 1X, AB 117, and related statutes.

The draft resolution correctly finds that the new MDL advice letters are not seeking to increase rates and thus notice requirements of GO 96A do not apply.

Moreno Valley, Municipal Utilities, and NCPA/Turlock assert that the new MDL tariffs constitute a "rate increase" because they allow billing and collection of charges from customers that have never received any service from the IOU, and that these charges cannot be imposed without advance notice to affected customers. They believe that the draft resolution improperly applies conclusions reached in Resolution E-3999 regarding these issues without properly distinguishing between new and transferred MDL customers.

The draft resolution states that the new advice letters are not seeking to increase rates, and thus the notice portions of GO 96A do not apply. Since this is a procedural issue, pertaining to both transferred and new MDL, which was thoroughly addressed in Resolution E-3999, the draft resolution correctly stated that it had been resolved and did not reiterate the discussion. It is clear that the IOUs are not proposing new charges and/or rate increases in their advice letters but rather are implementing the CRS on new MDL that was already imposed in

D.03-07-028, as modified by D.03-08-076, D.04-11-014, and D.04-12-059. And, they are incorporating components that are approved by the Commission in separate proceedings, such as the annual Energy Resource Recovery Account (ERRA) (e.g. A.05-06-007 and A.05-08-002), Direct Access (R.02-01-011) and DWR Revenue Requirement (A.00-11-038 *et. al.*) proceedings. Since these advice letters are not establishing any new amounts for the Commission to approve or for the IOUs to justify, but rather are providing the framework for the billing and collection of charges whose amounts are determined in other Commission proceedings, the IOUs are not required to issue the customer notices that GO 96A requires for rate increases.

Furthermore, the claim that new MDL customers were not served proper notice of cost responsibility was specifically addressed and rejected in D.03-07-028. In that decision, we found that all electric customers within the IOU service territories were placed on notice of their potential liabilities for DWR's procurement costs when the Legislature enacted Senate Bill (SB) 7X on January 1, 2001, and were placed on further notice by the enactment of AB 1X on February 1, 2001, authorizing DWR to continue its procurement program through December 31, 2002 (D.03-07-028, p. 12.)

The draft resolution does not err in changing the date in the "TERRITORY" section and in the definition of the term new MDL.

The draft resolution orders PG&E to replace its proposed date of December 20, 1995 with February 1, 2001. PG&E asserts that such a change is unlawful because it would erroneously exempt new load consumers who are obligated under the PU Code and Commission decisions to pay their fair share of departing load charges.

The draft resolution appropriately requires using the February 1, 2001 date because the new MDL tariff was implemented to allow the billing of collection of CRS which arose out of the 2000-2001 energy crisis. Although new MDL are not subject to CRS prior to February 1, 2001, they were/are required to pay other applicable nonbypassable charges as prescribed by prior statutes, Commission decisions, and previously-implemented IOU tariffs.[32] As we stated in the draft

[32] See Footnotes 11 and 12.

resolution, the nonbypassable charges from AB 1890 must be collected from all existing and future consumers (i.e. new MDL) in the service territory in which the IOU provided services as of December 20, 1995. PG&E and SCE had express authority to bill and collect these charges from all departing load, including new MDL, under their existing tariffs. Non-CRS charges are simply being consolidated into the new MDL tariff on a going forward basis so that new MDL will be able to refer to a single tariff containing all nonbypassable charge obligations instead of having to refer to multiple tariffs.

The draft resolution appropriately concludes that new MDL is "departing" load and thus is responsible for other nonbypassable charges.

Moreno Valley asserts that new municipal customers are not responsible for the TTA and ND charges because D.03-07-028 only addressed CRS and no other nonbypassable charges. Also, it states that the decisions which authorized these charges provide that they are recoverable from departing load which does not extend to cover new customers who have never taken service from IOUs.

Moreno Valley is merely rearguing positions already addressed. The draft resolution appropriately concludes that new MDL is "departing" load, and that the IOUs are authorized to bill and collect ND, PPP, and FTA/TTA from new MDL pursuant to the cited statutes, Commission decisions, and previously-implemented IOU tariffs.

No changes are required to the draft resolution's discussion of the PPP charge because SCE's tariffs do not allow the billing and collection of the PPP charge from exempt entities.

Moreno Valley asserts that the draft resolution errs in allowing SCE to bill and collect the PPP charge from new municipal customers, and requests that any reference to SCE's ability to collect this charge should be stricken from the tariff. It states that PU Code § 385 requires POUs to collect the PPP charge so SCE cannot impose this charge on new load served by POUs. The Districts agree stating that including any reference to PPP charges in the new MDL context is unnecessary and confusing, and all such references should be removed.

SCE's new MDL tariff clearly states that any new MDL consumer "already paying a public purpose programs charge (PPPC) through another entity is exempt from paying PPPC under this schedule." As SCE points out, this

language is entirely consistent with the statutory construct for PPPC in PU Code § 381, 385 and 399.8, and with D.97-08-056 requiring that the IOUs' tariffs specify that departing load served by an entity that must impose a PPPC pursuant to PU Code § 385 shall not be required to pay the IOU's PPPC. Accordingly, no revisions to the draft resolution are warranted.

The draft resolution has been modified to include SCE in the order to PG&E regarding revisions to the ongoing CTC component, and to update its new MDL tariffs to reflect recent revisions to the DWR Power Charge.

The draft resolution only directs PG&E to make tariff changes to the ongoing CTC and DWR Power Charge amounts. SCE asserts that these changes also need to be reflected in its new MDL tariff. SCE is correct and the draft resolution has been revised accordingly.

The draft resolution should be revised to clarify PG&E's definition of new MDL.

The draft resolution requires PG&E to modify its proposed definition of new MDL to be consistent with the definition proposed by SCE: that is, "load that has never been served by an IOU but is located in an area that had previously been in that IOU's service territory (as that territory existed on February 1, 2001) and was annexed or otherwise expanded into by a POU." PG&E opposes using this definition because, unlike SCE, PG&E has "shared territories" with POUs such as Modesto Irrigation District, Merced Irrigation District, and Hercules. Technically, these "shared territories" are neither "annexed" nor "otherwise expanded into." Therefore, while SCE's proposed definition may be accurate for its service territory, it is inaccurate for PG&E's situation and would only result in further litigation about whether certain new load consumers are subject to the new load tariff. For these reasons, PG&E requests that the draft resolution be modified to adopt PG&E's proposed definition.

The Districts propose a compromise definition for new MDL utilizing February 1, 2001 as the starting date and language from both the draft resolution and PG&E's proposed definition.

The definition of new MDL has been revised in draft resolution to accommodate PG&E's situation but the date remains February 1, 2001 consistent with the discussion above.

The draft resolution should not be modified to interpret the exemption protocols adopted in D.07-05-013; any ambiguities needing resolution should be the subject of a Petition for Modification.

The draft resolution orders PG&E and SCE to add a sentence to their respective tariffs referencing the new load exemption allocation protocols that were adopted in D.07-05-013. PG&E asserts that the draft resolution should be modified to clarify and expressly state that the protocols adopted in D.07-05-013 apply only to "new" (not existing) new load consumers, and that existing new load consumers are deemed exempt form the DWR Power Charge. PG&E cites language out of the decisions which it believes supports such an interpretation.

While SCE agrees that consumers who have already elected the DWR Power exemption should not be provided an opportunity to change that election, SCE states that it does not agree that all "existing" new load consumers are already exempt from the DWR Power Charge exemption and therefore have no opportunity to elect to be subject to the DWR Power Charge protocols.

CMUA asserts that PG&E's request is procedurally defective, and is based on an erroneous understanding of D.07-05-013. NCPA/Turlock assert that PG&E's request should be rejected because PG&E cannot utilize comments on the draft resolution to propose substantive modifications.

The draft resolution directs the IOUs to add a reference to D.07-05-013 in their respective new MDL tariffs, and does not offer any interpretations of the decision. If there are any ambiguities in D.07-05-013 needing resolution, parties should file a Petition for Modification.

The draft resolution appropriately addresses the ongoing CTC exemption in "stand-alone" situations.

The draft resolution addresses PG&E's and SCE's proposed tariff language regarding the "stand-alone" ongoing CTC exemption established pursuant to PU Code § 369. CMUA asserts that the draft resolution appropriately rejects PG&E's methodology. PG&E alleges that the draft resolution errs in rejecting its proposed "stand-alone" test and fails to replace it with any test at all. The Districts assert that the draft resolution should decline to adopt any exemption language in the tariffs pending a hearing on the proper test for application of the

exemption. NCPA/Turlock believe that the draft resolution properly rejects PG&E's proposed "stand-alone" test, yet does not go far enough to address the applicability under the provisions of PU Code § 369 in its entirety.

The draft resolution does not err in its treatment of the ongoing CTC exemption. It appropriately adheres to the specific statutory language of PU Code § 369, and rejects PG&E's proposed test for determining whether new MDL is exempt. Any interpretations of the statutory language are beyond the scope of this resolution.

The draft resolution appropriately concludes that the IOUs must be allowed to estimate usage in the absence of consumer-specific data, and adequately explained why there should be no limit to the use of estimates. The draft resolution did state that the IOUs should have flexibility to use an estimation methodology that would yield an accurate assessment. This directive has been incorporated into other parts of the draft resolution where estimation procedures are discussed.

Moreno Valley, the Districts, Municipal Utilities, and NCPA/Turlock believe that the draft resolution provides impermissible broad authority to the IOUs to estimate the energy usage of new municipal customers for billing purposes. Moreno Valley and NCPA/Turlock assert that the use of estimated billing should be limited. At a minimum, they assert that the IOUs should be required to estimate bills based on available information regarding the type of construction and location. The Districts believe that the Commission should hold a hearing to address the issue. In the alternative, they assert that the Commission should order the IOUs always to use whatever procedure will yield the most accurate assessment of usage at the new MDL location.

The draft resolution appropriately permits the IOUs to estimate a new MDL consumer's energy usage in the absence of actual data, and adequately explains the rationale for doing so. The draft resolution also specifically explained why it was not appropriate to dictate a particular estimation methodology but rather that the IOUs should have flexibility to utilize a methodology that would yield a more accurate estimate. For clarification and consistency, this directive has been included in other parts of the draft resolution where estimation procedures are discussed.

The draft resolution should not be modified to incorporate changes to the dispute resolution process.

The draft resolution requires the IOUs to revise their new MDL tariffs to include the dispute resolution procedures specified in PG&E's Preliminary Statement Part BB.4.f and remove their respective references to Rule 10.

While Municipal Utilities assert that the draft resolution correctly directs the IOUs to separate the dispute resolution procedures from Rule 10, it errs in directing the IOUs to utilize the dispute resolution procedures that were devised for direct access customers. PG&E requests that the draft resolution be modified to incorporate the language of electric Rule 10 because it believes that is provides more flexible deadlines and procedures than Preliminary Statement Part BB for customers.

The dispute resolution procedures ordered in the draft resolution are the same as those which were ordered for transferred MDL in Resolution E-3999. Neither PG&E nor Municipal Utilities have provided any persuasive grounds for why the procedures adopted for transferred MDL are not appropriate for new MDL.

Due to expressed customer privacy and confidentiality concerns, the draft resolution has been revised to remove a footnote allowing the use of PG&E's gas records.

In footnote 20, the draft resolution states that PG&E may use its gas records to monitor who is taking electric service at the premises in question.

The Districts assert that the draft resolution violates PG&E gas-only customers' privacy and confidentiality rights by allowing PG&E to use gas-only customer records to find new MDL. Municipal Utilities state that PG&E should be required to disclose to its gas customers the potential use of confidential gas customer information to enforce the collection of charges not related to gas service.

The draft resolution has been modified to remove the footnote. However, PG&E may use gas service records if it determines it has legal authority.

The draft resolution should not require the IOUs to read the new MDL consumer's meter in lieu of the consumer or the POU providing metered usage to the IOU.

The draft resolution grants the new MDL consumers the option of allowing the IOU to read their meter in lieu of the consumer or the POU providing the IOU their actual usage. SCE asserts that this language is inconsistent with Resolution E-3999 which only allowed the use of actual metered data when provided directly by the transferred MDL customers or their POU. SCE asserts that the option raises numerous operational and legal issues associated with the IOUs reading non-IOU meters. SCE suggests some revisions which alleviate its concerns.

The draft resolution should not deviate from the principles adopted in Resolution E-3999 and has been revised to incorporate SCE's suggested modifications.

The draft resolution has not been revised to allow the IOUs to revisit the issue of monthly billing of new MDL consumers.

SCE requests that the IOUs be permitted, if necessary, to revisit the issue of monthly billing, as opposed to a longer period of time between bills, in the future after the IOUs have gained sufficient experience with the new MDL tariff.

Moreno Valley does not oppose customers being able to pay the bills on a periodic basis if the customer elects to do so, it asserts that customers should receive monthly notices of their total CRS obligation and retain the option to pay those bills on a monthly basis should they choose to do so. The Districts agree with Moreno Valley and assert that any re-visitation of monthly billing must be done on notice to all POUs and all then-existing new MDL.

The draft resolution should not be revised. If necessary, the IOUs may request to revisit the issue at a later date.

The draft resolution should not be revised to allow PG&E"s late request for optional electronic billing.

PG&E requests that the draft resolution be modified to allow electronic bills and to coordinate gas and departing load billings. The Districts do not oppose

providing electronic billing but assert that the tariffs must be revised to require the consent of the POU customer and its serving POU. The Districts and Municipal Utilities assert that electric bills to POU customers should not be combined with PG&E gas bills.

PG&E's request to propose additional tariff language via comments is not allowed.

The draft resolution should not be revised to address PG&E's newly proposed specific procedures concerning new MDL usage data.

PG&E asserts that because the draft resolution orders PG&E to give consumers the option of being billed based on actual metered data, it should be modified to provide specific procedures to ensure feasibility of the actual metered data option.

The Districts state that PG&E's new proposal is too late for consideration. They assert that the proposal should also be rejected as nonsensical and insulting because it implies that POU meter data is untrustworthy and perhaps even manipulated to the detriment of PG&E.

The draft resolution directs the IOUs to give consumers the option of being billed based on actual metered data consistent with the directives in Resolution E-3999. No such new provisions were needed to implement the directives of that resolution and it is not clear why such procedures are needed here.

The draft resolution need not clarify that current new municipal customer located in greenfield areas are only responsible for the CRS associated with their use of energy because the new MDL tariffs do not allow the IOUs to pursue payment of former MDL consumer's unpaid bills from current MDL consumers.

Moreno Valley asserts that the draft resolution should clarify that current new municipal customers located in greenfield areas are only responsible for the CRS associated with their use of energy. This need not be clarified in the draft resolution because it is clear from the IOU's tariffs that new MDL consumers are only liable for charges for the time period beginning with the date they began to consume electricity at the premises and/or assumed responsibility for the charges.

The draft resolution correctly applies an effective date of July 10, 2003.

The draft resolution rejects PG&E's request that the new MDL tariff be effective prospectively from the date of approval and instead orders the same effective date as determined in Resolution E-3999 for the tariffs applicable to transferred MDL. Both transferred and new MDL tariffs should "be effective on July 10, 2003, because that is the effective date of D.03-07-028 which adopted the CRS applicable to MDL."

PG&E disagrees with the draft resolution's conclusion and believes that transferred MDL and new MDL are distinguishable. PG&E asserts that it had express authority to bill transferred MDL under both Preliminary Statement BB and Schedule E-DEPART, and PG&E exercised this authority for years. In contrast, PG&E states that it is arguable whether Preliminary Statement BB expressly authorized PG&E to bill new MDL, and in any event, PG&E never exercised this authority. PG&E asserts that by making Schedule E-TMDL effective retroactive to July 2003, the Commission effectively created a "seamless transition" between the AB 1890-related charges authorized under Preliminary Statement BB and Schedule E-DEPART and the CRS authorized by D.03-07-028. PG&E argues that in contrast, the new MDL tariff has no analogous tariff antecedents, and therefore, retroactive effectiveness is not required. Moreover, PG&E asserts that during the inadvertent expiration of Schedule E-DEPART, PG&E consistently reminded its transferred MDL customers that they would be responsible for departing load charges. In contrast, PG&E states that more than 95% of new MDL consumers are residential, and most were likely never advised by their POU or the developer of their new home that they would be responsible for departing load charges at all, let alone retroactively to July 2003. PG&E asserts that it stated in prior workshops on billing issues that it did not intend its new MDL tariff to apply retroactively, so new MDL consumers could reasonably have anticipated that any charges would be prospective only. For these reasons, PG&E requests that its new MDL tariff be made effective prospectively only.

Moreno Valley, the Districts, Municipal Utilities and NCPA/Turlock agree with PG&E that the new MDL tariffs should be made prospectively but do not agree with PG&E's rationale for the recommendation. They assert that the revision is necessary as a matter of equity, legality, and practicality. They argue that the IOUs should not be authorized to expend further funds in their efforts to identify and collect CRS from consumers located in newly developed areas.

SCE, on the other hand, agrees with the draft resolution. SCE asserts that the Commission has been clear since D.03-07-028 that the collection of new MDL CRS would be retroactive to July 10, 2003. SCE states that IOU bundled service customers have paid for these costs and exempting new MDL from paying their share of these costs would be contrary to the legislative intent in AB 117. SCE asserts that new MDL consumers have been on notice of their obligations since at least July 10, 2003, and should bear their share of the costs effective as of that date, consistent with the Commission's past decisions.

The draft resolution correctly applies an effective date of July 10, 2003. As SCE correctly asserts if the draft resolution makes the tariffs effective prospectively, cost shifting would occur (i.e. bundled customers would have to make up the difference between those charges owed by new MDL from July 2003 until the present) which is in violation of the statutory obligations under AB 1X, AB 117, and related statutes.

The draft resolution should not limit retroactive billing and collecting of new MDL charges because the billing is not analogous to the back billing for billing errors.

Municipal Utilities assert that if the draft resolution sets the effective date of the new MDL tariffs to July 10, 2003, consumers will be responsible for charges for a period of up to four years. They assert that a retroactive billing period of four years is inconsistent with the Commission's policies pertaining to retroactive billing of IOU customers.

SCE states that the billing and collecting of new MDL charges is not analogous to a situation in which the IOU has made a billing error and must act to promptly re-bill the customer. SCE asserts that the rules applicable to back billing for billing errors seek to ensure that the IOUs do not sit on their rights and/or obligations to correct billing errors, and that this principle is not appropriately applied to the retroactivity of the new MDL tariffs. The retroactively of the new MDL tariff is required to prevent cost shifting from POU customers to IOU bundled service customers.

SCE is correct; the draft resolution need not be revised.

The draft resolution should maintain the 36-month payment plan requirement but should direct the IOUs to work with new MDL consumers to reach reasonable arrangements where the 36-month timeframe is not adequate.

The draft resolution states that back bills may be paid off over 36 months and requires that new MDL who would have difficult paying back bills to be allowed access to payment plans. The Districts assert that for residential POU customers, 36 months may not be long enough for a payment plan and request that the draft resolution be revised to allow residential new MDL consumers up to 60 months to pay off past CRS.

To the extent that new MDL consumers require longer than 36 months to pay their respective CRS obligations, SCE states that it will work with then to reach reasonable arrangements. SCE recommends that the draft resolution maintain the 36-month requirements, but direct the IOUs to work with new MDL consumers to reach reasonable arrangements where the 36-month timeframe is not adequate.

SCE's solution is reasonable and the draft resolution has been revised accordingly.

The draft resolution already allows for the filing of limited protests on the supplemental advice letters and should not be revised to allow POUs the opportunity to review and comment on the IOU consumer notices.

The draft resolution directed the IOUs to file supplemental advice letters and to send out notices to new MDL consumers. The Districts request that parties be accorded the same limited opportunity for comment on the supplemental advice letters that the Commission allowed in Resolution E-3999. Municipal Utilities request that notices be required to be included in the supplemental advice letters or, in the alternative, permit interested parties to review and comment upon the draft notices.

Consistent with Resolution E-3999, Ordering Paragraph 3 of the draft resolution specifically allows parties to file protests limited to identification of areas and/or language, if any, where the supplemental advice letter filings do not properly track the resolution. The draft resolution also requires that the IOUs provide the Energy Division with samples of the required notices. As explained in the Resolution E-3999, these samples do not require review by the parties as IOUs

regularly provide various required notices to customers in the normal course of business without oversight by third parties. No changes were made to the draft resolution based on these comments.

The draft resolution implements previous Commission decisions and is not the proper forum to address the "just and reasonableness" of the IOUs' billing and collection costs.

The Municipal Utilities assert that the draft resolution completely ignores the possibility that IOU ratepayers may pay more for billing and collection than the IOUs receive in CRS charges imposed under the advice letters.

As stated in Resolution E-3999, the draft resolution implements previous Commission decisions and is not the proper forum for addressing the "just and reasonableness" of the IOUs' billing and collection costs. No changes were made based on these comments.

FINDINGS

1. On March 8, 2006, SCE filed AL 1979-E and PG&E re-submitted AL 2483-E-A proposing tariffs to implement the billing and collection of the charges applicable to new MDL.
2. On March 17, 2006, Hercules requested that the Energy Division reject PG&E's AL 2483-E-A without prejudice or extend the protest period until PG&E submits missing or incomplete information. The City of Corona and the City of Rancho Cucamonga made the same request regarding SCE's AL 1979-E.
3. On April 5, 2006, the Energy Division sent a letter to PG&E and SCE instructing them to submit certain additional details in a supplemental filing.
4. In response to the Energy Division's letter, PG&E and SCE filed AL 2483-E-B and AL 1979-E-A, respectively, on April 17, 2006. AL 1979-E-A replaces AL 1979-E in its entirety.
5. PG&E's filing was protested by SRCSD, the Districts, SSJID, NCPA/Turlock, and Hercules. Municipal Utilities submitted a protest to SCE's filing and CMUA submitted a protest to both PG&E's and SCE's filings.
6. The procedural issues raised by the protestants regarding new MDL are the same as those which were addressed and resolved by the Commission in Resolution E-3999. Any additional issues are appropriately addressed in this resolution.

7. Proposed legislation should not delay implementation of existing policies and laws applicable to new MDL.
8. PG&E's proposed "APPLICABILITY" section clearly establishes relevance and needs no further review or modification.
9. PG&E should modify the date in its proposed "TERRITORY" section to be consistent with the definition of new MDL.
10. PG&E and SCE are authorized to include other nonbypassable charges in their tariffs applicable to new MDL.
11. PG&E and SCE should revise the ongoing CTC component to reflect approved amounts, and indicate that amounts are subject to change pending any different outcome resulting from judicial review. PG&E and SCE should also update their new MDL tariffs to reflect recent revisions to the DWR Power Charge.
12. PG&E should modify its proposed definition of new MDL to reflect the definition specified in the Discussion section, rename its schedule to E-NMDL – New Municipal Departing Load, and the use the term NMDL instead of MDNL throughout its tariffs.
13. PG&E should modify its definition of "Consumer" to add clarification and to eliminate confusion, and SCE should include an analogous definition in its new MDL tariffs.
14. SCE and PG&E should revise and update their respective lists of entities eligible for specific exemptions as specified in the Discussion section, and reference recently adopted protocols.
15. PG&E's proposed DWR power charge exception specification is consistent with geographic limitations previously adopted by the Commission.
16. SCE's proposed ongoing CTC exemption in "stand-alone" situations is reasonable with minor modifications.
17. The exemption in "stand-alone" situations should only apply to ongoing CTC and not other nonbypassable charges.
18. PG&E should revise its "stand-alone" test to be consistent with the statutory language that was implemented in the CGDL tariffs.
19. PG&E's and SCE's proposed "Change of Party" provisions were previously determined to be justified and lawful in Resolution E-3999.
20. PG&E and SCE should send a notice to all consumers who are subject to the new MDL tariffs informing them of their obligations, and samples of the IOU notices should be provided to the Energy Division for review and approval prior to distribution. Consumers subject to the new MDL tariffs include: (a) those subject to the tariffs from July 10, 2003 through the date they are deemed effective by the Energy Division; and (b) those subject to the tariffs

going forward from the date they are deemed effective by the Energy Division. The notices provided to consumers in group (a) and group (b) will differ slightly.

21. The IOU notices to consumers in group (a) should inform the consumer of the charges, notice requirements, and payment obligations that apply. These IOU notices should also provide an invoice for current charges and any amortized charges for the specific past time period involved, giving consumers the option to pay amounts owed over a 36-month period, or another reasonable arrangement where the 36-month timeframe is not adequate. PG&E and SCE should send these notices where they have a reasonable expectation of the existences of these consumers, within 120 days from the date the supplemental advice letters (required by this resolution) are deemed effective by the Energy Division.
22. The IOU notices provided to consumers in group (b) should similarly inform the consumer of the charges, notice requirements, and payment obligations that apply where the IOUs have a reasonable expectation of the existences of these consumers but additionally should request that the consumer provide certain specified information. Following receipt of the consumer's notice of departure with the requested information, the IOU will issue a statement for the charges owed.
23. It is reasonable that consumers be required to provide the IOUs with specific information such as service date, load description, and rate group classification because this information is necessary to ensure billing accuracy.
24. PG&E and SCE should specify that the consumer should provide notification and the required specified information within 30 days of receipt of the IOU notice or as soon as it contracts with the POU for service, whichever is later.
25. SCE and PG&E should revise their tariffs to state that if at the time the consumer notice is due, an IOU has entered into, or agreed to enter into, bilateral discussions with a POU or a POU customer, then the notice requirement for the new MDL consumer(s) taking service from that POU may be suspended until such time as the IOU and POU, or POU customer, reach agreement on the CRS and other NBC obligations, or the IOU determines that a bilateral agreement will not be feasible. If a bilateral agreement is reached that resolves the CRS and other NBC obligations, then the consumer notice requirement is extinguished. If the CRS and other NBC obligations are not resolved through bilateral negotiations, then the IOU shall send the consumer notices required in this subparagraph within 15 days of concluding such bilateral negotiations.

26. Due to the complexity of the technical aspects of the exemption criteria, PG&E and SCE, not the new MDL consumer, should identify applicable exemptions. As a result, SCE's proposed "approval or rejection" procedure is not necessary and should be removed.
27. A consumer notice provision to document "change of party" and termination of the existing new MDL consumer's liability of charges under specified circumstances is reasonable; PG&E and SCE should modify their proposed tariffs to provide greater specificity and to remove their discretion as directed in the Discussion section.
28. The new MDL consumer, or the POU with permission of its customer, may provide actual metered data to the IOUs for billing purposes in Change of Party situations. In the absence of this consumer-specific data, the IOUs must be allowed to estimate usage utilizing a method that yields the most accurate assessment**.**
29. PG&E should revise its tariffs to allow an option for the substitution of metered data at the consumer's election, and both PG&E and SCE should revise their tariffs to indicate that such data may be provided by the consumer itself or by the POU with permission of its customer, as long as such data is in a format acceptable to the IOU.
30. PG&E's and SCE's proposed New Party notice provisions are reasonable and consistent with approved tariffs applicable to departing load but should be slightly modified to add a definition that for a "New Party" (or "new NMDL consumer" in SCE's case) is either 1) a subsequent entity which occupies, and will begin to consume electricity at, existing NMDL premises or 2) a subsequent entity which assumes liability for the charges at existing NMDL premises.
31. SCE should remove any phrases in its new MDL tariff directing that the POU "shall" do anything. Instead, SCE and PG&E should add, where appropriate, the following sentence: "With the consumer's permission, notice or required information may be provided by the POU".
32. PG&E should remove references to its electric and gas service rules from its proposed provision concerning the new MDL consumer's obligation to make payments, and PG&E and SCE should add to the provision that they will arrange for payment plans for any new MDL consumer who indicates that it would otherwise have difficulty paying the amount owed. PG&E and SCE should also add to the provision that they will periodically remind new MDL consumers (e.g. through a notice on their monthly bill) of their notice and/or payment obligations under the new MDL tariffs and of the substantial penalties that could result for failure to comply with these requirements.

33. PG&E and SCE should revise their new MDL tariffs to include the dispute resolution procedures specified in PG&E's Preliminary Statement Part BB.4.f and remove their respective references to Electric Rule 10.
34. PG&E and SCE Opportunity to Cure provisions should be revised as directed in the Discussion section.
35. PG&E and SCE should remove references to any electric rules from their respective Demand for Deposit/Return of Deposit provisions and revise them to be consistent with PG&E's tariffs applicable to departing load for CTC responsibility.
36. PG&E's and SCE's lump sum payment provisions are justified but should be modified to be consistent with previous Commission directives.
37. Consistent with our conclusion in Resolution E-3999, PG&E is not allowed, at this time, to disconnect natural gas service for violation of the tariff applicable to new MDL.
38. The new MDL consumer should have the option to provide metered data because actual usage information is preferable to estimates. However, the use of estimates for billing the charges applicable to new MDL is appropriate in the absence of customer-specific usage data.
39. PG&E and SCE should state that if the consumer, or POU with the permission of its customer, does not provide metered consumption data to the IOU either 1) by allowing the IOU at its option to read the consumer's meter or 2) by submitting meter-read data to the IOU in an acceptable format, the new MDL consumer's usage for billing the applicable charges will be based upon an estimation methodology that yields the most accurate assessment.
40. There is no limit to the use of estimated bills for new MDL consumers when metered consumption data is not available.
41. PG&E should specify that bilateral agreements are an alternative arrangement to the new MDL tariff.
42. Tariffs implemented by this resolution must comply with the directives of prior Commission decisions and cannot exempt new MDL from their payment obligations.
43. The effective date of the new MDL tariffs should be July 10, 2003.

THEREFORE IT IS ORDERED THAT:

1. PG&E's AL 2483E-A/E-B and SCE's AL 1979-E-A are approved with the following modifications:

a. PG&E shall modify the date in its proposed "TERRITORY" section to be consistent with the definition of new MDL.
b. PG&E and SCE shall revise the ongoing CTC component to reflect approved amounts, and indicate that amounts are subject to change pending any different outcome resulting from judicial review.
c. PG&E and SCE shall update their new MDL tariffs to reflect recent revisions to the DWR Power Charge.
d. PG&E shall modify its proposed definition of new MDL as specified in the Discussion section, rename its schedule to E-NMDL – New Municipal Departing Load, and the use the term NMDL instead of MDNL throughout its tariffs.
e. PG&E shall modify its definition of "Consumer" to add clarification and to eliminate confusion, and SCE shall include an analogous definition in its new MDL tariffs.
f. SCE and PG&E shall revise and update their respective lists of entities eligible for specific exemptions as specified in the Discussion section, and reference recently adopted protocols.
g. SCE shall remove the word "existing" and the phrase "who were not formerly bundled service consumers of SCE" from its proposed Special Condition 2.c.
h. The exemption in "stand-alone" situations shall only apply to ongoing CTC and not other nonbypassable charges.
i. PG&E shall revise its "stand-alone" test to be consistent with the statutory language that was implemented in the CGDL tariffs.
j. PG&E and SCE shall send a notice to all consumers who are subject to the new MDL tariffs informing them of their obligations, and samples of the IOU notices shall be provided to the Energy Division for review and approval prior to distribution.
k. The IOU notices sent to those consumers subject to the new MDL tariffs from July 10, 2003 through the date they are deemed effective by the Energy Division shall inform the consumer of the charges, notice requirements, and payment obligations that apply. The notices shall also provide an invoice for current charges and any amortized charges for the specific past time period involved, giving consumers the option to pay amounts owed over a 36-month period, or another reasonable arrangement where the 36-month timeframe is not adequate. PG&E and SCE shall send these notices where they have a reasonable expectation of the existences of these consumers, within 120 days from the date the

supplemental advice letters (required by this resolution) are deemed effective by the Energy Division.

l. The IOU notices provided to those consumers subject to the new MDL tariffs going forward from the date they are deemed effective by the Energy Division shall similarly inform the consumer of the charges, notice requirements, and payment obligations that apply where the IOUs have a reasonable expectation of the existences of these consumers but additionally shall request that the consumer provide certain specified information. Following receipt of the consumer's notice of departure with the requested information, PG&E and SCE shall issue a statement for the charges owed.

m. PG&E and SCE shall specify that the consumer should provide notification and the required specified information within 30 days of receipt of the IOU notice or as soon as it contracts with the POU for service, whichever is later.

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

o. PG&E and SCE, not the new MDL consumer, shall identify applicable exemptions, and SCE shall remove its proposed "approval or rejection" from Special Condition 3.b.

p. PG&E and SCE shall modify their consumer notice provision to document "change of party" and termination of the existing new MDL consumer's liability of charges to provide greater specificity and to remove IOU discretion as directed in the Discussion section.

q. PG&E shall revise its tariffs to allow an option for the substitution of metered data at the consumer's election, and both PG&E and SCE shall revise their tariffs to indicate that such data may be provided by the consumer itself or by the POU with permission of its customer, as long as such data is in a format acceptable to the IOU.

r. PG&E and SCE shall add the following definition: "New Party" (or "new NMDL consumer" in SCE's case) is either 1) a subsequent entity which occupies, and will begin to consume electricity at, existing NMDL premises or 2) a subsequent entity which assumes liability for the charges at existing NMDL premises.
s. SCE shall remove any phrases in its new MDL tariff directing that the POU "shall" do anything. Instead, SCE and PG&E shall add, where appropriate, the following sentence: "With the consumer's permission, notice or required information may be provided by the POU".
t. PG&E shall remove references to its electric and gas service rules from its proposed provision concerning the new MDL consumer's obligation to make payments.
u. PG&E and SCE shall add that they will arrange for payment plans for any new MDL consumer who indicates that it would otherwise have difficulty paying the amount owed.
v. PG&E and SCE shall periodically remind new MDL consumers (e.g. through a notice on their monthly bill) of their notice and/or payment obligations under the new MDL tariffs and of the substantial penalties that could result for failure to comply with these requirements.
w. PG&E and SCE shall revise their new MDL tariffs to include the dispute resolution procedures specified in PG&E's Preliminary Statement Part BB.4.f and remove their respective references to Electric Rule 10.
x. PG&E and SCE Opportunity to Cure provisions shall be revised as directed in the Discussion section.
y. PG&E and SCE shall remove references to any electric rules from their respective Demand for Deposit/Return of Deposit provisions and revise them to be consistent with PG&E's tariffs applicable to departing load for CTC responsibility.
z. PG&E's and SCE's lump sum payment provisions are justified but shall be modified to be consistent with previous Commission directives.
aa. PG&E shall remove its proposed provision allowing the termination of a new MDL consumer's natural gas service as an enforcement mechanism to collect electric MDL charges.
bb. The new MDL consumer shall have the option to provide metered data because actual usage information is preferable to estimates. PG&E and SCE shall state that if the consumer, or POU with the permission of its customer, does not provide metered consumption data to the IOU either 1) by allowing the IOU at it option to read the consumer's meter or 2) by submitting meter-read data to the IOU in an acceptable format, the new

MDL consumer's usage for billing the applicable charges will be based upon an estimation methodology that yields the most accurate assessment.

cc. PG&E shall specify that bilateral agreements are an alternative arrangement to the new MDL tariff.

dd. PG&E and SCE shall change the term "CTC" to "ongoing CTC" in their new MDL tariffs where the term is in reference to a component of the CRS.

2. PG&E and SCE shall file a supplemental advice letter within 60 days of today's date to modify their proposed new MDL tariffs to reflect these modifications.
3. Consistent with Resolution E-3999, parties shall have up to five business days to file protests limited to identification of areas and/or language, if any, where the supplemental advice letter filings do not properly track this Resolution. Replies to such protests must be filed within three business days.
4. Following verification of compliance by the Energy Division, the supplemental advice letters shall be effective July 10, 2003.
5. PG&E and SCE shall be allowed up to 120 days, from the date the Energy Division deems their respective supplemental filing effective, to send the required notices and implement their new tariff.
6. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 23, 2007; the following Commissioners voting favorably thereon:

/s/ Paul Clanon
Paul Clanon
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH

JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners