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Decision 96-11-041 November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.	R.94-04-031 (Filed April 20, 1994)
Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.	I.94-04-032 (Filed April 20, 1994)

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OPINION ON INTERIM COMPETITIVE TRANSITION CHARGE

Summary

In this decision we approve, with certain modifications, the draft tariff proposed by Pacific Gas and Electric Company (PG&E) to implement the interim competitive transition charge (ICTC) authorized in Decision (D.) 96-04-054. The ICTC is intended to recover certain costs related to the restructuring of the electric utility industry.

Background

On February 15, 1996, PG&E filed an emergency motion asking the Commission to adopt a procedure to apply an ICTC to customers who depart its system before the Commission has adopted a final CTC. In D.96-04-054, we rejected certain portions of PG&E's request but endorsed the principles behind the ICTC. Accordingly, we ordered the Commission Advisory and Compliance Division (CACD) to hold a collaboration to bring the affected parties closer to agreement on the details of the ICTC. CACD held the collaboration on April 24-26, 1996, and issued its report on the collaboration (Report) on May 6. After the close of the collaboration, PG&E circulated a proposed tariff (Attachment 2 to the Report). Responding to a suggestion in the Report, the Administrative Law Judge (ALJ) issued a ruling on May 6 allowing comments on the Report. Comments were filed by 22 parties.[1]

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[1] Comments were filed by the Association of California Water Agencies (ACWA); the California Farm Bureau Federation (Farm Bureau); the California Independent Petroleum Association; California Industrial Users (CIU), consisting of Air Liquide America Corporation, Air Products and Chemicals Corporation, Amoco Chemical Company, Anheuser-Busch

The general topic of transition costs and the specific proposal for an interim CTC were addressed in Assembly Bill (AB) 1890 (Stats. 1996, Ch. 854), which Governor Wilson signed on September 23. On September 30, the ALJ issued a ruling asking whether PG&E wished to continue to press its motion for an ICTC after the signing of AB1890, and, if so, whether AB 1890 affected the relief requested in the motion. Comments on these questions were filed by the California Department of General Services (DGS) and UC/CSU, jointly; Chevron USA Products Company (Chevron) and Shell Martinez Refining Company (Shell), jointly; EPUC; MID; and PG&E.

After addressing the need for evidentiary hearings, we will discuss the issues related to PG&E's proposed tariff and the effect of AB 1890 on the proposed ICTC.

Companies, BOC Gases, The Chevron Companies, General Motors Corporation, Nabisco, Inc., New United Motors Manufacturing, Inc., Owens-Corning Fiberglass Corporation, Praxair, Inc., and Steelcase, Inc.; the California Manufacturers Association; the Coalition of California Utility Employees; the Division of Ratepayer Advocates; the Energy Producers and Users Coalition (EPUC), consisting of Amoco Production Company, Amoco Energy Trading Corporation, ARCO Products Company, CalResources LLS, Chevron Corporation, Mobil Oil Corporation, Shell Martinez Refining Company, Texaco Inc., and Union Pacific Fuels Inc.; Foster Poultry Farms (Foster Farms); Merced Irrigation District (MID); PG&E; Praxair, Inc.; San Diego Gas & Electric Company; San Francisco Bay Area Rapid Transit District (BART); Sonoma County Water Agency (SWCA); Southern California Edison Company; Southern California Gas Company; Texas-Ohio West, Inc.; Toward Utility Rate Normalization; the United States Department of Energy's Oakland Operations Office; the University of California and the California State University, jointly (UC/CSU); and the Western Area Power Administration, Sierra Nevada Customer Service Region. In addition, Basic Compliance Engineering and Capital Energy Systems submitted letters commenting on the report.

III. Evidentiary Hearings Are Not Needed at this Time

The ALJ's ruling of May 6 specifically asked parties to indicate whether they felt evidentiary hearings were necessary, and if so, what facts the party would present to support its position at such hearings. ACWA, Farm Bureau, EPUC, Foster Farms, MID, Praxair, BART, SCWA, and UC/CSU argued in favor of evidentiary hearings. For the most part, the parties presented variations of the argument that evidentiary hearings are necessary to resolve what the party views as disputed issues of fact.

We do not intend to discount those arguments or prejudge those issues, but we will not undertake evidentiary hearings on the ICTC. The ICTC is by definition *interim*, and will be in effect only until we adopt a final CTC approach. The development of the final CTC will require us to consider in detail the same issues that parties would have us now address in evidentiary hearings on the ICTC. It makes little sense to delay the effectiveness of the ICTC to conduct hearings on issues that we will necessarily consider again in a matter of months.[2]

Moreover, the detailed scrutiny that evidentiary hearings allow would be inappropriate for the interim charge. The ICTC is intended to be in effect for only a short period, and all payments are subject to adjustment as we refine the CTC. As we stated in D.96-04-054, the ICTC will necessarily be "somewhat rough; excessive precision is not required for these purposes." (Slip op. at 16.)

[2] We emphasize that the determinations of this interim opinion are not precedential and do not in any way prejudge the issues raised in various applications for rehearing in this docket or the issues raised in our proceedings to develop a final CTC.

EPUC also argued that the ICTC is a rate increase, and Public Utilities Code (PU) § 454 prevents rates from taking effect until the Commission finds that the rate is justified, notice of the proposed rate is issued, and a hearing on the application is held. This issue was also raised in the applications for rehearing of D.96-04-054, and we are evaluating and addressing that argument in our consideration of the applications for rehearing.

III. AB 1890 Allows the Commission To Adopt an ICTC

One of the questions raised in the September 30 ruling was whether the enactment of AB 1890 eliminated PG&E's perceived need for an ICTC. PG&E responds that it still believes an ICTC is needed. It contends that customers' efforts to purchase electricity from other sources and evade paying the CTC have continued and intensified. Although some of these activities may fall within the exemptions from CTC created by AB 1890, others do not. PG&E further notes that PU Code § 373(b), added by AB 1890,[3] makes specific provision for a nonbypassable ICTC, subject to the "firewall" described in § 367(e).[4]

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[3] AB 1890 added §§ 330-397 and §§ 840-847 to the PU Code. This decision will refer both to AB 1890 generally and to specific new sections of the PU Code. All section references are to the PU Code.

[4] Section 367(e) creates a "firewall" intended to ensure that the costs associated with CTC exemptions for customers in the residential and small commercial classes are borne only by other customers within those classes, and the costs of exemption for all other classes are recovered only from customers in those other classes.

We agree that the Legislature has acknowledged the Commission's authority to adopt an ICTC, although the Legislature placed certain restrictions on the details of the ICTC, as we discuss below.

IV. Discussion

PG&E's proposed ICTC tariff provides a convenient focus for our discussion, although AB 1890 has a significant effect on several of its most important provisions. We will structure our discussion by addressing the issues raised at the collaboration in relation to the tariff, with mention of the effects of AB 1890 where appropriate. For convenient reference, PG&E's proposed tariff, with revision reflecting the provisions of AB 1890, is Attachment A to this decision.

A. Customer Versus Account

Some of PG&E's customers have multiple connection points that are metered and billed as separate accounts. PG&E has in the past not allowed these customers to aggregate their usage from these multiple accounts to take advantage of more favorable rate schedules. Not surprisingly, these customers argue that if they could not aggregate their usage to obtain lower rates, their load should not be aggregated for purposes of applicability of ICTC. PG&E agreed to accommodate this concern and a related issue raised by BART concerning conjunctive billing. We agree that out of fairness applicability of the ICTC should be determined on an account basis, with appropriate accommodation of conjunctively billed accounts. PG&E's proposed tariff establishes applicability on an account basis without prejudicing BART's rights to conjunctive billing.

B. <u>The 500-Kilowatt Threshold</u>

PG&E originally proposed to apply the ICTC only to customers with monthly peak loads of more than 500 kilowatts (kW), and in D.96-04-054 we concurred with PG&E's proposed threshold. PG&E now argues, however, that AB 1890 specifies that the ICTC must apply to all who were customers on or after December 20, 1995 (the effective date of our Policy Decision, D.95-12-063). In its comment on the ALJ's September 30 ruling, PG&E asks the Commission to apply the ICTC to customers of all sizes because customers below the 500-kW threshold have already left, and MID has signed agreements with several cities to serve thousands of PG&E customers whose peak loads are well below the 500-kW threshold.

Without regard to the merits of PG&E's request to eliminate the 500-kW threshold, we will not act on that proposal because of the way it was presented. PG&E's original motion proposed that the ICTC would apply only to customers with monthly peak loads of more than 500 kW, and D.96-04-054 approved that proposal. It seems likely that many small customers have stopped following this part of this proceeding because they assumed, in reliance on PG&E's motion and our decision, that it had no relevance to them. PG&E's new proposal would greatly expand the applicability of the ICTC, but a comment on a ruling is not a good vehicle for presenting this proposed expansion. We are very concerned that the affected parties will not receive effective notice of PG&E's proposed expansion, even if they in fact received PG&E's comments. The number of documents produced in connection with this proceeding is enormous, and it is not reasonable to expect every party to read every word of every filing. If PG&E now desires to change the 500-kW limit, it should file and serve a new motion to that effect.

Accordingly, we will here consider how to implement the 500-kW threshold presented in the motion. Parties at the collaboration debated how this criterion should be applied. A simple approach would be to apply the ICTC to departing customers served under PG&E's Schedules E-19 and E-20, since customers served under those schedules generally have demands of more than 500 kW. However, some customers with lesser demands are also apparently served under those schedules. Some parties proposed a criterion of three consecutive months with loads of more than 500 kW, but PG&E feared that many large customers had sufficiently variable demand to avoid meeting that standard. PG&E proposed that one month of demand of more than 500 kW out of the last 12 months would subject a departing customer to ICTC, but others argued that standard would unfairly capture customers with a single demand spike.

For the interim purposes of this decision, we will adopt a variation of PG&E's proposal that attempts to accommodate the stated objection. The ICTC will apply to departing customers who have had monthly demands of more than 500 kW in any two of the preceding 12 months.

C. **Duration of the ICTC**

In Conclusion of Law 7 of D.96-04-054, we stated: "The ICTC should be collected from any customers who leave the system after December 20, 1995 and before January 1, 1998." Some parties thought the tariff should echo this statement. PG&E objected to including a specific end date in the tariff, which would require the Commission to extend or modify this date if implementation of electric restructuring is not completed by our target date. After the collaboration, PG&E submitted the following proposed tariff language: "The Interim CTC Procedure shall remain in effect until superseded or terminated by the Commission."

PG&E's proposed language is acceptable. We have made clear our firm intent to complete the implementation of electric restructuring by January 1, 1998 or earlier, and the Legislature has echoed that intent. (§ 330(l)(4).) However, we also recognize that not all elements of the restructuring are under the jurisdiction or control of the Commission or the Legislature. Important elements of the Independent System Operator and the Power Exchange, for example, will be determined by the Federal Energy Regulatory Commission. PG&E's proposed language recognizes this limitation and contemplates a smooth transition from the ICTC to the final CTC.

D. __Treatment of New Load__

Some parties raised the argument that if a new customer moved into PG&E's service territory, took service from PG&E, and effectively replaced a departed customer who was paying the ICTC, PG&E would double collect the ICTC.

This fear is unfounded. The exit and entry of customers is accounted for in the sales forecast approved by the Commission. The same sales forecast will be used in calculating the ICTC. The only effect of the addition of a new customer is to reduce the transition costs borne by departing, existing, and new customers. The addition of a new customer will reduce transition costs in two ways. First, new customers who take service from PG&E before the implementation date will pay for transition costs initially as part of their bundled rate and later through the final CTC, thus reducing the amounts eventually eligible for transition cost recovery. Second, the added demand created by new customers who commence service after the implementation date may exert upward pressure on the prices of electricity supplied through the Power Exchange and on the market price of generating plants, thus reducing the primary measures of transition costs. (*See* D.95-12-063, as modified by D.96-01-009 (the Policy Decision), slip op. at 113-116.) Since the revenues from the ICTC will be booked in an ICTC balancing account, any "extra" ICTC will eventually reduce the amount of transition costs to be collected. Both departing and remaining customers are responsible for paying transition costs, and both departing and remaining customers benefit from reductions in transition costs.

In addition, § 369 requires the Commission to develop a mechanism that collects transition costs "from all existing and *future* consumers," indicating a Legislative intent that new customers' load would also be subject to the CTC unless they qualified for an exemption.

No modification to PG&B's proposed tariff is necessary due to this issue.

E. Definition of Departing Load

PG&E agreed to make one change to its proposed definition of departing load to clarify that it was concerned about customers who switch to another source of electricity, rather than another source of power, such as natural gas or diesel oil. The change of the word "power" to "electricity" excludes customers who switch to other fuels from the definition of departing load. This change appears consistent with § 371, which contemplates that CTC collection would vary with specified changes in usage, including "fuel switching."

We approve PG&B's proposed change, because it clarifies the intended application of the ICTC.

F. Exemptions

Parties proposed many exceptions to the definition of departing load that would exempt certain customers from the ICTC. Our consideration of these exemptions is guided by two concerns. First, in the Policy Decision we intentionally spread the responsibility for transition costs as broadly as possible. The greater the number of customers who bear this responsibility, the lower the financial effect on individual customers. We were also aware that larger customers have the greatest incentive and ability to leave the utility's system, and we did not want to leave smaller customers, who have the fewest alternatives to service from the utility, to bear the sole responsibility for transition costs. Second, the Legislature has allowed for a number of exemptions in AB

1890, and the ICTC must recognize some of these Legislative exemptions. (§ 373(b).)[5] With these principles in mind, we will briefly address the exemptions proposed by the parties to the collaboration.

1. Existing Unexercised Alternatives

Several parties contended that customers who take advantage of alternatives to utility service that existed before December 20, 1995, should not be subject to the ICTC. Stated in this way, this proposal contradicts our determination to institute the CTC "for all customers who are retail customers on or after [December 20, 1995], whether they continue to take bundled service from their current utility *or pursue other options*." (Policy Decision, slip op. at 110, emphasis added.) AB 1890, however, provides for exemptions that could be viewed as the exercise of existing options. Section 372 provides an exemption to customers served by on site or over-the-fence[6] cogeneration facilities that were operational or committed to construction as of December 20, 1995 for expansion of the facility's capacity by up to 20%. Except for this narrow exemption, we see no reason to change our policy at this time. PG&E should ensure that its proposed tariff accommodates the exemptions provided in § 372(a).

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[5] AB 1890's exemptions are set forth in §§ 371, 372, and 374. Section 371 exempts various changes in usage resulting from, for example, business cycles, weather, equipment modifications, or efficiency improvements. Section 372 describes exemptions for cogeneration and self-generation and for bypass deferral agreements. Section 374 covers exemptions for irrigation districts, certain power authorities, and federal preference power purchases. Under § 373(b), only the exemptions provided in §§ 372 and 374 are required to be recognized in the ICTC.

[6] Over-the-fence cogeneration refers to the type of service described in § 218(b), which allows a cogenerator to sell to up to two customers located on property immediately adjacent to the cogenerator's location without becoming "electrical corporations" subject to this Commission's jurisdiction.

2. Bypass Deferral Contracts

For some time PG&E has been authorized to negotiate special reduced-rate contracts with customers who present a threat of uneconomic bypass; typically, the ability to build a cogeneration or self-generation facility that would allow them to reduce or eliminate service from the utility. Some customers served under these agreements argue that if they decide to build the deferred generation facility, they should be exempt from the ICTC because when they made the economic decision not to build the facility, they had no notice or awareness that they might later be subject to the ICTC.

Thus, the issue is presented: When a bypass deferral contract expires and the customer chooses to proceed to build the deferred generator or to take service from another source, should that customer be subject to the ICTC? Under the broad definition of "departing customer" that we have approved, such a customer would be subject to the ICTC. Customers with bypass deferral contracts are retail customers of PG&E, even though they may pay a discounted retail price for electricity. This conclusion is reinforced by § 372(b)(2), which describes three options available to customers with deferral agreements. Under each of these options, including the option of building the deferred facility, the Legislature makes it clear that the customer would bear some responsibility for an appropriate share of transition costs.

3. Cogeneration Facilities Under Development

Because cogeneration facilities take a substantial time to develop, some customers may have made significant investments in such facilities as of December 20, 1995. Because some of these facilities may have been planned to lower the cost of electricity by avoiding some of the costs we define as ICTC, the economics of these projects might be confounded by our decision to collect the ICTC from all departing retail customers of PG&E. As a matter of fairness, some parties have urged an exemption for customers who before December 20, 1995 (1) had made a substantial investment in a cogeneration or self-generation project, (2) had begun the permitting process for such a project, or (3) had given notice to the utility of their intent to construct such a project. At the collaboration, PG&E indicated its agreement with the first criterion. However, PG&E's proposed tariff is silent on this issue.

There is widespread support for an exemption for customers who had made substantial investments in cogeneration or self-generation projects before December 20, 1995, and AB 1890 reflects this sentiment. Section 372(a)(2) provides an exemption from transition cost responsibility "for a nonmobile self-cogeneration or cogeneration facility for which the customer was committed to construction as of December 20, 1995," with a restriction that the facility must be substantially operational on or before January 1, 1998. It will, of course, be fairly easy on January 1, 1998, to determine which facilities are substantially operational; it is much more challenging to apply this retrospective standard on a forward-looking basis, as § 373 requires us to do for the ICTC. The difficulty is to develop reasonably objective guidelines for the determination of whether a customer was committed to construction as of December 20, 1995.

We addressed a similar question when we set up the Qualifying Facility Milestone Procedure (QFMP) to allocate scarce transmission capacity among a large number of proposed QF projects that were competing for transmission access. Although the QFMP is not directly transferrable to this situation, some of its elements provide guidance about when a project begins the transition from idea to actuality. At a minimum, to qualify for this exemption, a customer should be able to demonstrate that the elements of "project definition," as stated in section IV.A. of the Fifth Edition of the QFMP (Revised Appendix A to D.87-04-077, reproduced here as Attachment B), had been met as of December 20, 1995. In general, this standard requires proof of site control, project description information, and a preliminary project schedule. As a general rule for applying § 372(a)(2) in the context of the ICTC, customers whose projects had not achieved this level of realization by December 20, 1995, should not receive the benefit of this exemption unless they can present other reliable information showing their commitment to construction. Customers who can show that the required elements of "project definition" were in existence on December 20, 1995 (and not reconstructed after that date for purposes of obtaining this exemption) should be allowed this exemption from the ICTC. As part of the truing up of the ICTC, PG&E shall apply § 372(a)(2)'s objective standard of substantial operation by January 1, 1998 to determine finally which customers were entitled to this exemption.

4. Pre-existing Contractual or Statutory Rights

At the collaboration the City and County of San Francisco argued that customers who had contractual or statutory rights to take power from an entity other than PG&E as of December 20, 1995, should be exempt from the definition of departing customer. These two categories of rights require different analyses.

Contractual rights derive from the agreement of two private parties. Our action of declaring that departing retail customers will be subject to the ICTC is a change in circumstances that the parties have either accounted for in their agreement or not. Whether or not our actions require an alteration of the relative rights of the contracting parties is a matter determined by the specific terms of the contract and applicable contract law. We see no reason why the arrangements between two private parties should alter our intended broad application of the ICTC.

Rights conferred by statute, however, raise other concerns. We have no intent or authority to frustrate the purposes of legislation enacted by Congress or the California Legislature. It is clear that the ICTC tariff must reflect the exemptions stated in §§ 372 and 374 and any specific exemption created by subsequent legislation. Whether or not our action in adopting the ICTO would frustrate the purpose of other existing legislation, however, depends on the specific language of the statute, and no party has presented specific statutory language that is alleged to conflict with the ICTO. Nevertheless, we think it appropriate to respond to San Francisco's concerns and to recognize the existence of statutory rights in PG&E's tariff. We will direct PG&E to add to its tariff a variation on language proposed by San Francisco. The tariff should provide an exemption from the definition of departing load for "reductions in a customer's load that result from the exercise of a statutory right that existed on December 20, 1995."

5. Load Variations Due to Variations in Federal Power Deliveries

Some customers take service from both PG&E and federal power agencies. For a number of reasons, deliveries from federal power agencies may vary widely from month to month. These customers seek an exemption from the definition of departing load.

No exemption seems necessary. An important point here is that the reduction in load is not permanent, but is part of normal and continuing variation in the federal deliveries and residual PG&E service. As described in the Report, these customers do not fall within the definition of departing load, since they continue to be PG&E customers under the same arrangements that governed their service from PG&E before December 20, 1995, and any reductions in load that fall within the existing arrangements are not "*subsequently* served with electricity from a source other than PG&E." This conclusion may not apply if the existing arrangements were altered in a way that reduced service from PG&E and substituted service from another source.

In addition, the concerns raised by these parties may be obviated by the provisions of § 374(b) and (c), which provide exemptions from transition cost responsibility for loads served by preference power purchased from a federal power marketing agency.

6. Modesto Irrigation District

MID sought an exemption because of its special rights as an irrigation district. MID may qualify for a portion of the 110-MW exemption granted to irrigation districts in § 374(a)(1). To the extent that MID's request extends beyond this statutory exemption, however, we will not grant the requested exemption here. MID has made similar arguments in its application for rehearing of D.96-04-054, and we will consider and address those arguments in our decision on the applications for rehearing.[9]

7. Interruptible Customers

Customers who receive service on interruptible rate schedules argue that they should not be subject to the ICTC because their interruptible status means that PG&E did not have to plan to meet their power needs, and accordingly these customers did not contribute to any "stranded" generation costs.

There are several flaws in this argument. If interruptible customers were completely interruptible and had no expectation of service, there might be some logic to this requested exemption. But the interruptible tariffs place limitations on PG&E's ability to cease serving these customers. Moreover, until recently these customers enjoyed service with only rare and brief interruptions, if any. Precisely because PG&E had excess capacity (which we now call "stranded"), these customers have had the benefit of favorable rates without having to incur the costs of interruption. It is disingenuous for these customers to have enjoyed for years the benefits of a system with ample resources, only to seek to foist off on other customers the costs that made those benefits possible. We will not exempt interruptible customers from the ICTC.

8. Master Meter Customers

Some customers purchase power at retail and resell it to the ultimate consumer. Mobile home park owners and shopping mall owners are two examples of this arrangement. Some of these master meter customers argued for exemption from the ICTC, since they are analogous to power wholesalers.

We reject this proposed exemption. These customers receive service under retail schedules, and they, not their tenants, are the customers of PG&E. They should be subject to the ICTC to the same extent as other retail customers.

9. Reductions Due to Improved Efficiency

A customer who both improved efficiency, thus reducing load, and replaced PG&E as its electric supplier could be subject to an ICTC for the "phantom" load that was eliminated by the efficiency improvements. PG&E agreed to adjust historical demand to account for the portion of the load reduction resulting from efficiency improvements. Section 371 allows for adjustments to the CTC collected from customers based on "changes in usage occurring in the normal course of business," which includes installation of demand-side management equipment or facilities and energy conservation efforts. Although we are not required to incorporate the provisions of § 371 in the ICTC, PG&E's offer is consistent with the spirit of this section. We authorize PG&E to make such adjustments. No alteration of the proposed tariff is necessary to accomplish this adjustment.

10. Claims of Exemption

In its comments on the September 30 ruling, MID objected to the proposed tariff's treatment of a customer's claims of exemption under §§ 371-374. When a departing customer presents its required notification of its claim of exemption, the tariff gives PG&E the power either to confirm the claimed exemption or to reject the claim and submit the ICTC projection to the customer. MID thinks that a customer's claim of exemption should be honored unless PG&E challenges the claim by filing a motion with the Commission or perhaps with the California Energy Commission.

We appreciate MID's concern, but we prefer to follow the usual practice of giving PG&E the initial responsibility for administering its tariff, including the determination of whether an exemption applies to a particular customer. If PG&E violates its tariffs, the customer may seek to remedy the violation by following the procedure we describe below for resolving disputes about the ICTC projection.

G. Notice of Departure and ICTC Projection

Section 4(A) of PG&E's draft tariff requires a customer to give PG&E notice of its intent to depart. PG&E has shortened the required notice period to 30 days before departure, rather than the 90 days in the tariff accompanying its emergency motion. We approve this change. PG&E also listed specific information to be provided in the notice, and we agree that this is also an improvement. Parties raised concerns about the wording of the provision that makes the ICTC immediately due and payable if notice is not given, but in our view the wording PG&E proposes is acceptable.

PG&E has accommodated parties' requests to allow a customer to obtain an ICTC projection before it decides to leave the system, and this is a worthwhile addition.

Section 4(B) concerns preparation and delivery of the ICTC projection and the procedures for disputing the projection. Some parties objected to the provision stating that a failure to protest in a timely manner is deemed an acceptance of the projection. We find the general framework of this section acceptable, but the procedure proposed by PG&E is confusing and cumbersome.

PG&E proposes that objecting customers would file a "Motion for Evaluation of Interim CTC Projection" in the electric restructuring proceeding. PG&E then states that a "failure to protest" constitutes acceptance of the ICTC projection. Referring to a customer's objection to PG&E's ICTC estimate as both a motion and a protest is confusing because the Commission's Rules of Practice and Procedure describe filings called "motions" and "protests" in very different ways. Under our Rules, a protest objects to an *application* (Rule 44); a *motion* requests the Commission or an ALJ to take specific action related to a proceeding (Rule 45(b)).

PG&E's proposed procedure is cumbersome because under our Rules a customer objecting to an estimate that affects only the customer would have to serve its objecting motion on a service list of several hundred parties. (Rule 45(d).)

A greater degree of informality will simplify this process. If a departing customer believes that PG&E's ICTC projection does not comply with the terms and conditions of the ICTC tariff and related decisions, it should notify PG&E in writing of the grounds for its belief within 20 days after receiving the projection. If PG&E does not accept the customer's position, it should respond in writing within 5 days after receiving the customer's notification. PG&E and the customer should then confer to attempt to resolve the differences. If necessary, the parties may also consult with members of our Energy Division to attempt to achieve resolution. If no resolution is reached within 10 days, the customer may then file the motion described in the draft tariff. PG&E and the customer may agree to extend this 10-day period to allow for further negotiations or other resolution techniques. PG&E should amend its tariff to reflect these provisions.

H. The ICTC Agreement

In D.96-04-054 we endorsed PG&E's proposal to require each departing customer to sign an agreement requiring payment of its share of transition costs and waiving jurisdictional objections to collection of those costs. (*Id.*, slip op. at 9-10, 18-19 (Conclusion of Law 6).) PG&E attached an ICTC agreement to its proposed tariff. Section 4(D) of the tariff refers to this agreement.

Some parties objected to the provision of section 4(D) that states that whether a departing customer signs the ICTC agreement or not, the customer will be deemed to have agreed to the terms of the agreement by taking retail service on or after December 20, 1995. This provision echoes the language and intent of D.96-04-054 (slip op. at 10), and is consistent with the intent of AB 1890 that all customers (with defined exceptions) should bear their fair share of transition costs. (*See* §§ 369, 370.) We have no objection to its inclusion in the tariff.

Parties also objected to having to sign a contract with no termination date. The agreement attempts to delineate the term of the contract in section 1, but this description is necessarily vague, since some of the elements of restructuring, and thus the schedule of implementation, are under the control of other agencies. The customers might feel slightly more comfortable if the agreement states that it will terminate on January 1, 1998 (the date both the Legislature the Commission have set for implementation), subject to annual renewal by PG&E until the effective date of the Commission's final CTC order. PG&E should incorporate such a provision in the agreement.

I. Interest

Parties to the collaboration debated the appropriate interest rate that should apply to payment of refunds and collection of underpayments. Some parties argued that the interest rate should reflect the differences between the costs of capital for PG&E and for the customer; in general, this would mean that PG&E would pay a higher interest rate on refunds than the customer would pay on underpayments.

We conclude that the same interest rate should apply to refunds of overcollections and collection of underpayments. PG&E's tariff proposes to use the rate applied to energy balancing accounts, currently the three-month commercial paper rate. We agree that this is an appropriate rate to apply to refunds and underpayments.

CIU notes that some customers may be unable to make payment of unexpectedly large undercollections in a lump sum. We recognize that this may be a problem, and we direct PG&B to allow such customers a reasonable period to make the payments. Interest on any outstanding balance should accrue at the three-month commercial paper rate until the full sum is paid.

J. Reference Period Bill

PG&E proposes to give departing customers the choice of calculating an average monthly bill based on the customer's usage over either 12 or 36 months preceding the notice of intent to depart. PG&E also proposes to adjust the ICTC projection to account for improvements in energy efficiency. As we have noted, this provision is consistent with § 371. Although PG&E did not offer its specific proposed tariff language until after the collaboration, we have reviewed these provisions and find them acceptable.

K. True-ups and Adjustments to the ICTC

Several related issues arose concerning truing up individual customers' ICTC accounts and adjusting the ICTC. We find it helpful to limit the term "true-up" to the reconciliation of estimated or forecasted elements of the ICTC with the corresponding actual figures that become available either as time passes and the forecasts are supplanted by actual events or as we make our determinations in this and other proceedings. The primary purpose of the true-up is to revise individual customers' ICTC tracking accounts so a customer pays neither too much nor too little of its fair share of interim transition costs. By "adjustments to the ICTC," we mean modifications to the rate used to collect interim transition costs, which may be appropriate as new forecasts replace older ones.

1. **A Full, Two-way True-up Should Be Used**

Parties debated whether a true-up was necessary or desirable, whether certainty was more important than accuracy. Some parties argued that the ICTC should function only as a cap on interim transition cost collection, so that the only true-up would be refunds for overcollections.

We agree with the parties favoring a full, two-way true-up. All customers, including departing customers, should bear their fair share of transition costs, but no customer should pay more than its fair share.

2. **Interim True-ups and Adjustments**

Because we intend that the ICTC will be short-lived, true-ups of a customer's ICTC account (*i.e.*, comparing forecasted with actual figures and making appropriate refunds to or additional collections from the customer) need only be made once, when the ICTC is replaced by the final CTC. Additional true-ups during the interim period create an administrative burden and serve no substantial good purpose.

By contrast, interim adjustments to the ICTC should be made as new forecasts are adopted. The actual ICTC customers pay should reflect the most current information available. Many of the components of the method for calculating ICTC we adopt today, such as Energy Cost Adjustment Clause (ECAC) revenues, are forecasted on an annual basis. Thus, it is convenient and appropriate to revise the ICTC as of January 1, 1997, to reflect our adopted forecasts for 1997 for appropriate components of the ICTC calculation. More frequent adjustments to the ICTC are not necessary.

Another type of interim adjustment may also be appropriate. Our proceedings on the final CTC might result in determinations that could affect the application of the ICTC. Thus, adjustments may be appropriate as and if we issue interim decisions on the final CTC.

3. Changes in SRAC Methodology

In Investigation (I.) 89-07-004, we have been considering changes to the way we calculate SRAC. Section 390, however, requires the calculation of short-run avoided energy costs to be based on a specified formula. We will address the application of § 390 in a decision issued in I.89-07-004. The ICTC calculation should reflect any changes we adopt to the SRAC methodology. If adopted, the changes to the SRAC methodology should be incorporated into the January 1, 1997 interim adjustment to the ICTC discussed in the preceding section.

4. Adjustment of ICTC Payments When Final CTC Is Adopted

In D.96-04-054, we stated our intention that "all [ICTC] payments will be subject to adjustment when we adopt our final CTC." (*Id.*, slip op. at 16.) As will become clear in our subsequent detailed discussion of our adopted approach to the ICTC, the comparison between the ICTC and the final CTC may not be as direct as we contemplated, and the adjustment of ICTC payments may not be as automatic as we had hoped. We affirm our intent to make such an adjustment, but the details of how to make this adjustment should be considered and decided as part of our determination of the final CTC. It will be much easier to figure out how to make this adjustment when the details of the final CTC are known.

L. ICTC Projection

How to calculate the ICTC projection was, not surprisingly, one of the most controversial issues of the collaboration. One of the fundamental disputes was whether the ICTC is intended to allow interim recovery of the elements of the final CTC or to recover during 1996 and 1997 the transition costs currently embedded in bundled rates.

The latter interpretation is our intent. In D.96-04-054, we rejected PG&E's proposal to collect a lump-sum payment of a customer's total projected CTC in favor of monthly payments of the ICTC. We also clarified that it was appropriate for the ICTC to consist of the transition costs included in current bundled rates, and we justified ICTC collection in terms of the effects on remaining customers. (D.96-04-054, slip op. at 10-12.) Departing customers, like all other customers, will be subject to the final CTC when we adopt it, and the ICTC is intended merely to collect transition costs from departing customers on roughly the same basis as they are collected in bundled rates from remaining customers, until the final CTC is adopted. It is sufficient for purposes of the ICTC to collect an estimate of the transition costs included in current rates.

1. Cost Components

Praxair presented a detailed approach to identifying transition costs. It considered generation and certain types of contracts by category, and for each category decided whether the associated costs should be included in the ICTC, and, if so, whether the costs should be included as a credit or debit. For example, geothermal generation costs are included as a debit; fossil generation costs are excluded because Praxair believes that the sale of fossil units will eventually result in a credit to the calculation of final transition costs. The credits and debits are totaled and compared with a measure of the market price for power; the difference is divided by forecasted sales to arrive at the ICTC. Praxair's approach resulted in interim transition costs for 1996 of $1.3 billion.

ACWA provided an approach similar to Praxair's in its written proposal preceding the collaboration. However, ACWA stated that it would limit the ICTC to two cost components, the Diablo Canyon revenue requirements associated with net book value, and the fixed payments to QFs under the long-term standard offers. ACWA estimated that these two items resulted in 1997 transition costs of $3.75 billion.

PG&E took a very different approach. PG&E reasoned that a quick and easy-to-implement approach could be based on the revenue requirements associated with generation assets and contracts. The first step under this approach would be to add up the approved generation-related revenue requirements of four key components: the ECAC, the Annual Energy Rate (AER), the general rate case (GRC), and the Diablo Canyon plant. The resulting total would be reduced by an estimate of the market value of forecasted sales. The resulting estimate of transition costs for 1996 is $2.9 billion.

The contrasts between the different approaches are striking. Praxair's approach follows more closely the discussion of transition costs and the CTC of the Policy Decision. Because it assumes that the ICTC should be an interim estimate of the final CTC, however, it makes some questionable, and from its perspective hopeful, assumptions. It excludes the costs of fossil plants entirely because it assumes that the sale of these plants will completely offset any associated transition costs. It also eliminates the fixed costs of purchases from QFs on the erroneous assumption that those costs would not endure past 1998.

PG&E's approach, on the other hand, reflects the discussion of our Policy Decision only indirectly, if at all. Contrary to the determinations of the Policy Decision, it includes the variable costs of all generation on the theory that the utility's obligation to serve during the interim period will prevent it from shutting down plants that may have uneconomic variable costs. It ignores the possibility that the sale of generation plants during the interim period will reduce transition costs. It does, however, reflect the presence of economic as well as uneconomic generation plants. It also provides a reasonably accurate estimate of the transition costs associated with probably the two largest sources of transition costs: purchases from Diablo Canyon and from QFs.

For purposes of the ICTO, we conclude with some reservations that PG&E's is the superior approach. Although it does not attempt to replicate precisely the final transition costs, it provides a reasonably accurate estimate of the interim costs, the transition cost components of current rates. It has the great virtue of being easily implemented without further proceedings or comments. Although parties may differ over whether revenue requirements are an appropriate basis for calculating transition costs, the actual figures incorporated in PG&E's approach are derived, in an apparently uncontroversial manner, from numbers we have approved in our decisions in several cases. Although the resulting estimate of transition costs and the ICTO calculated from those costs may not be exact, our goal in attempting to develop an ICTO was not to achieve excessive precision but to arrive at a "necessarily somewhat rough" figure for *interim* purposes. (D.96-04-054, slip op. at 16.) PG&E's approach best accomplishes that goal.

Our reservation about PG&E's approach have to do with its inclusion, in both the ECAC and GRC components, of variable costs of generation. In the Policy Decision, we excluded the variable costs of fossil-fueled generation from the CTC except for units needed for voltage support. (Policy Decision, slip op. at 135.) We overcome this reservation to PG&E's approach on four grounds. First, we agree with the argument that during the interim period, PG&E retains its obligation to meet the power demands of its remaining customers and that meeting this obligation will require use of many of its generation resources. Second, it would be difficult during this transitional period and in this interim context to determine precisely which plants are not needed for voltage support and to segregate the variable costs of those plants. Third, if we are aware that PG&E's quantification of interim transition costs is somewhat overstated, we will be able to compensate to some degree for this overstatement in other components of the ICTC.

Finally, including variable costs of generation in the interim transition cost quantification is consistent with our observation that we should strive for accuracy but err on the side of an ICTC that is "high enough to cover all transition costs embedded in current rates" (D.96-04-054, slip op. at 15).

2. **Market Price Proxy**

In D.96-04-054, slip op. at 14, we suggested that "today's short-term energy wholesale market conditions, with projections limited to the next 20 months, should be the measure of the extent to which a generation resource or power purchase is uneconomic, and thus part of the ICTC." The parties offered some market price proxies that vary somewhat from the current wholesale market price standard that we suggested.

PG&E urges that a composite of available market indices would come closest to the wholesale market measure the Commission suggested. However, because of its approach to estimating costs and in the spirit of compromise, PG&E recommends using as a proxy the SRAC energy and as-delivered capacity prices approved by the Commission for payments to certain QFs. ACWA also recommends a SRAC proxy. PG&E would calculate the SRAC energy price based on the adopted gas price forecast for 1996 and 1997 and would exclude the operation and maintenance (O&M), geothermal, and cash working capital adders. Even with these exclusions, PG&E acknowledges that the SRAC proxy is likely to be higher than prices in the wholesale market, but believes that this overstatement of market prices fits well with its cost approach, which likely overstates interim transition costs. The advantages of the SRAC proxy are that its values are approved by the Commission, its calculation is open and public, and it has been in use for QF pricing purposes for several years. PG&E agreed that the gas price and as-delivered capacity price forecasts that are inputs to the SRAC proxy would be trued up to reflect actual prices posted in 1996 and 1997. PG&E calculates that the 1996 market price proxy would be 2.89¢ per kilowatt-hour (kWh) under this approach.

Praxair suggests using the Incremental Cost Incentive Pricing (ICIP) PG&E has proposed for its Diablo Canyon power plant in Application (A.) 96-03-054, its Diablo Canyon ratemaking proposal. Praxair suggests that this proxy best approximates the replacement of a large block of generation, and Praxair believes that the ICIP will simulate the market price, including recovery of fixed and variable costs, rather than just the system marginal price. The 1996 market price proxy resulting from this method is 3.46¢ per kWh.

SDG&E proposed using the marginal cost of fossil generation or the system marginal operating cost as a market price proxy. This proposal was not discussed in detail at the collaboration.

We conclude that the SRAC proxy, excluding O&M, geothermal, and cash working capital adders but including as-delivered capacity payments, would be the most transparent and acceptable approach to estimating market prices for purposes of calculating the ICTC.[7] The parties acknowledge that this proxy likely overstates market prices to some degree, but this overstatement has the virtue of compensating for the likely overstatement of interim transition costs in the approach we have adopted. The result will be an acceptable estimate of the net interim transition costs that form the basis for the

[7] The changes to the SRAC methodology required by § 390 and under consideration in I.89-07-004 could substantially alter the components of the SRAC. Even if it is substantially changed, the SRAC will provide a reasonable market proxy for purposes of the ICTC.

ICTC. The resulting market price estimate should be revised as gas price forecasts for SRAC energy prices and as-delivered capacity prices for 1997 are adopted.[8]

3. **Allocation**

Three approaches to allocating the ICTC to customer classes were discussed at the collaboration.

PG&E proposed to express the ICTC as a uniform systemwide percentage and to apply that percentage to a reference bill calculated for each departing customer. The percentage would be derived by dividing the net interim transition costs by total PG&E revenues. Using PG&E's assumptions and approaches to ICTC, the systemwide percentage is 39.2%.

Praxair's method focuses more on the cost responsibility of the different customer classes and of the major categories within those classes, such as the three voltage levels--transmission, primary distribution, and secondary distribution--and the firm or nonfirm service options of Schedules E-19 and E-20. Praxair believes that underlying PG&E's uniform systemwide percentage is the unrealistic assumption that all customers depart the system at the same time. An approach based on the departure of small blocks of load would be superior for purposes of allocating the ICTC. In addition, Praxair thinks PG&E's method fails to recognize that large customers' bills reflect relatively larger charges for distribution and transmission services; because Schedule E-19 and E-20 customers have high load factors, their cost-based rates have relatively lower energy and demand rates. Thus, Praxair argues that a uniform systemwide

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[8] These specific components may become irrelevant if the SRAC methodology is substantially changed in I.89-07-004. The January 1, 1997 revision to the market price proxy should adjust appropriate components of the SRAC methodology then in effect.

percentage will require departing large customers to pay more than their fair share of interim transition costs.

Praxair's method of allocating interim transmission costs develops an average cents-per-kWh charge for each customer class by applying the ratio of the class's percentage of total revenues to its percentage of total sales to modify the proportion of net interim transition costs to total system sales. Praxair thus calculates separate ICTCs for each customer class and for the different voltage levels and service options (firm v. nonfirm) for Schedule E-20.

ACWA developed a method that it believes accurately estimates the ICTC associated with the departure of a single customer. This method begins by multiplying the ratio of interim transition costs to total revenues by the average rate in cents per kWh that would apply to the departing customer. This "total ICTC responsibility" is reduced by the market price proxy to arrive at the ICTC for that customer.

By the end of the collaboration PG&E had agreed with Praxair that the ICTC should reflect the difference among customer classes, service voltages, and firmness of service. PG&E believes that its approach, which develops the ICTC as a percentage to be applied to the customer's reference (average) bill, provides that differentiation. Interruptible customers, for example, receive lower rates in exchange for their willingness to endure interruptions, and their reference bills and associated ICTC will be proportionately lower. With that clarification, the only difference between PG&E's and Praxair's approaches is that PG&E would apply its percentage to the customer's average monthly bill, while Praxair applies its allocation to the average rate for each customer class. Praxair argues that its approach will tie the ICTC more closely to the costs of generation and purchases, which it presumes to constitute the bulk of transition costs, so that large customers are not forced to bear an unfair share of interim transition costs. By expressing ICTC on a cents-per-kWh basis, however, it appears that Praxair's approach has the opposite effect: Large customers generally have flatter load shapes and pay relatively larger fixed rates and lower energy rates. If the ICTC is tied to energy consumption, these high load-factor customers would appear to bear more than their share under Praxair's approach.

PG&E has shown that its approach recognizes differences in customer classes, voltage levels, and firmness of service, and it appears to be fairer to large customers. Although it would be desirable to avoid applying the ICTC to transmission and distribution charges that are presumably not included in transition costs, that level of precision is beyond the modest goals of our effort to estimate the ICTC. Because large customers' average total rates are less than those of other customer classes, applying the allocation percentage to the average bill should produce less distortion than tying the ICTC to energy consumption. Because high load-factor customers by definition consume much of their total usage during off-peak hours at low time-of-use rates, the average total bill reflects the high load factors of these customers in a way that a pure cent-per-kWh charge does not.

More important, the rates established for large customers are near our equal percent of marginal cost (EPMC) goal. Applying a percentage to the average bill maintains the EPMC relationships among customer classes and among the bill's components; applying the allocation to the energy component only, as Praxair suggests, would lead to distortion of the cost relationships among bill components and among customer classes.

PG&E's approach is also extremely easy to calculate, administer, and understand. For all these reasons, we conclude that PG&E's approach to interim transition cost allocation should be adopted for purposes of the ICTC.

M. Disposition of ICTC Revenues

PG&E will maintain individual tracking accounts for customers subject to the ICTC. The accumulated revenues should be accounted for in an ICTC balancing account. The disposition of the funds remaining in this account after the true-up described above will be addressed in our proceeding on the final CTC.

Findings of Fact

The ICTC will be in effect only until we adopt a final CTC approach. The development of the final CTC will require us to consider in detail the same issues that some parties urge us to address now in evidentiary hearings on the ICTC.

2. We are evaluating and addressing the question whether Public Utilities Code § 454 applies to the ICTC in our consideration of the applications for rehearing of D.96-04-054.

3. PG&E has in the past not allowed customers with multiple accounts to aggregate their usage from their different accounts to take advantage of more favorable rate schedules.

4. Basing applicability of the ICTC on whether a departing customer had experienced one month of demand of more than 500 kW out of the last 12 would unfairly capture customers with a single demand spike.

5. Not all elements of the restructuring are under our jurisdiction or control.

6. Both departing and remaining customers are responsible for paying transition costs, and both departing and remaining customers benefit from reductions in transition costs.

7. It is appropriate to exclude customers who switch to other fuels from the definition of departing load.

8. The greater the number of customers who bear responsibility for transition costs, the lower the financial effect of transition cost recovery on individual customers.

9. Customers with bypass deferral contracts are retail customers of PG&E, even though they may pay a discounted retail price for electricity.

10. Customers who were committed to construction of cogeneration or self-generation projects as of December 20, 1995, should not be subject to the ICTC for load reductions resulting from the operation of those projects. To qualify for this exemption, a customer should be able to demonstrate that the elements of "project definition," as stated in section IV.A. of the Fifth Edition of the QFMP (Revised Appendix A to D.87-04-077, reproduced here as Attachment B), had been met as of December 20, 1995.

11. PG&E's tariffs place limitations on its ability to cease serving interruptible customers.

12. Master meter customers receive service under retail schedules.

13. The same interest rate should apply to refunds of overcollections and to underpayments of interim transition costs. The rate should be the rate applied to energy balancing accounts, currently the three-month commercial paper rate.

14. PG&E's approach provides a reasonably accurate estimate of interim transition costs, and it is easily implemented without further proceedings or comments.

15. The figures incorporated in PG&E's approach are derived from numbers we have approved in our decisions in several cases.

16. The advantages of the SRAC proxy are that its values are approved by the Commission, its calculation is open and public, and it has been in use for QF pricing purposes for several years.

17. The ICTC should reflect the difference among customer classes, service voltages, and firmness of service.

Conclusions of Law

1. It makes little sense to delay the effectiveness of the ICTC to conduct hearings on issues that we will necessarily consider again in a matter of months.

2. The ICTC will apply to departing customers who have had monthly demands of more than 500 kW in any two of the preceding 12 months.

3. Whether or not our action of declaring that departing retail customers will be subject to the ICTC requires an alteration of the relative rights of contracting private parties is a matter determined by the specific terms of the contract and applicable contract law.

4. We have no intent or authority to frustrate the purposes of legislation enacted by Congress or the California Legislature.

5. All customers, including departing customers, should bear their fair share of transition costs, but no customer should pay more than its fair share.

6. The ICTC is intended to recover during 1996 and 1997 the transition costs currently embedded in bundled rates.

7. PG&E's proposed tariff on ICTC, as modified to reflect the determinations of this opinion, should be approved.

8. Because some customers may imminently depart PG&E's system, and to provide more certainty for all customers, this decision should be effective immediately.

ORDER

IT IS ORDERED that within 10 days of the date of this decision, Pacific Gas and Electric Company shall revise its proposed "Amendment to the Electric Preliminary Statement--Interim Competition Transition Charge Procedure" and its proposed "Interim Competition Transition Charge Agreement" to comply with the determinations of this decision and submit them as an Advice Letter for approval.

This decision is effective today.

Dated November 26, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
JOSIAH L. NEEPER
Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.

We will file a joint concurring opinion.

/s/ JESSIE J. KNIGHT, JR.
Commissioner

/s/ JOSIAH L. NEEPER
Commissioner

ATTACHMENT A

AMENDMENT TO THE ELECTRIC PRELIMINARY STATEMENT

INTERIM COMPETITION TRANSITION CHARGE PROCEDURE

1. PURPOSE: The purpose of this section is to establish an Interim Competition Transition Charge ("CTC") Procedure for Departing Load customers that, as specified in greater detail below, terminate or reduce purchases of electricity from PG&E and have such load met by an alternate supplier of electricity. On December 20, 1995, the Commission issued D. 95-12-063 (as modified by D. 96-01-009) which, among other things, authorized PG&E to collect retail transition costs associated with electric restructuring. In its order, the Commission ruled that the CTC will be nonbypassable and will apply to retail customers of record on or after December 20, 1995. On April 10, 1996, the CPUC issued a decision adopting and establishing this Interim CTC Procedure (D. 96-04-054). This Interim CTC Procedure is temporary in nature and complements the Commission's electric industry restructuring proceeding (Order Instituting Rulemaking 95-04-031 and Order Instituting Investigation 95-04-032, collectively referred to as the "Restructuring Proceeding"). The Interim CTC Procedure shall remain in effect until superseded or terminated by the Commission.

2. APPLICABILITY: This Interim CTC Procedure shall apply to all retail electric customers of PG&E ~~with a monthly peak demand greater than 500 kilowatts~~ who received or will receive service on or after December 20, 1995 and meet the definition of Departing Load. ~~An applicable retail customer's monthly peak demand for an individual account must have been greater than 500 kilowatts in any one month during the 12 billed month period prior to the customer's provision of "notice" in accordance with Section 4(A), below.~~ This Interim CTC Procedure is subject to the exceptions described in Public Utilities Code Sections 371-374. In order to abide by the firewall provisions described in Public Utilities Code Section 367(e), the CTC amounts which would have otherwise been paid by the exempted load will be calculated on the same basis as described below for departing load, and tracked separately. These amounts would only be eligible for future recovery from those customers on the same side of the firewall as the exempted load.

3. DEFINITION OF DEPARTING LOAD: Departing Load is that portion of a PG&E electric customer's load for which the customer, on or after December 20, 1995, (1) discontinues or reduces its purchases of electricity from PG&E; (2) purchases or consumes electricity supplied by a source other than PG&E to replace such PG&E purchases; and (3) remains physically located at the same location or within PG&E's service area as it existed on December 20, 1995. Reductions in load qualify as Departing Load only to the extent that such load is subsequently served with electricity from a source other than PG&E. The definition of Departing Load specifically does not include: (1) a customer's load that moves to a new location outside PG&E's service area as it existed on December 20, 1995; or (2) a customer's load that is no longer served with electricity from any source.

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4. INTERIM CTC PROCEDURE: Departing Load customers are obligated to pay to PG&E the Interim CTC Projection in accordance with the following procedure.

   A. Notice: Customers shall notify PG&E (in writing or by reasonable means through a designated PG&E account representative) of their intention to take steps that will qualify their load as Departing Load at least 30 days in advance of discontinuation or reduction of electric service from PG&E. The customer shall specify in its notice the following: (1) the date of the departure or reduction of load; (2) its preferred method of determining the "average monthly bill" as described in Section 5(B) below; (3) the load level that will depart or be reduced; and (4) the PG&E account number; and (5) exemptions that may be applicable pursuant to Public Utilities Code Sections 371-374. Failure to provide notice will result in an immediate breach of this tariff and the monthly Interim CTC Projection described below due as of the departure date shall become immediately due and payable.

   A customer may also request PG&E to prepare, on an informational, non-binding basis, an Interim CTC Projection for the customer's consideration ("Informational Request."). If the customer elects to depart, it must notify PG&E (in accordance with this Section A) and PG&E may prepare at that time a new Interim CTC Projection (in accordance with Section B below) if any conditions or circumstances underlying the Informational Request have changed.

   B. Interim CTC Projection: Within 20 days of receipt from a customer of notice or an Informational Request, PG&E shall prepare and deliver to the customer an Interim CTC Projection (in accordance with the formula specified in Section 5 below or a letter confirming exemptions pursuant to Public Utilities Code Section 371-374. Within 20 days of receipt of such Interim CTC Projection, a Departing Load customer may file a "Motion for Evaluation of Interim CTC Projection" with the Commission in the Restructuring Proceeding if the customer believes that the Interim CTC Projection has not been established in accordance with the terms and conditions of this Interim CTC Procedure. In such an event, the customer shall pay the Interim CTC Projection provided by PG&E and the payment shall be subject to immediate refund if the Commission establishes a different Interim CTC Projection for that customer. Failure to protest the Interim CTC Projection within the specified period shall constitute acceptance of such Interim CTC Projection and the procedure described herein.

ATTACHMENT A

C. Obligation To Pay Interim CTC Projection: The Interim CTC Projection shall be payable in monthly amounts until the Interim CTC Procedure is replaced by the CPUC with a final CTC procedure or terminated. The first monthly payment is due within five days prior to the date electric service from PG&E is discontinued or reduced. A Departing Load customer's obligation to pay the Interim CTC as established herein shall continue after the Departing Load customer discontinues or reduces its purchases of electricity provided by PG&E either pursuant to tariffs or special contracts on file with the Commission. Failure to pay the Interim CTC Projection or provide notice as specified herein will result in a breach of the customer's continuing legal obligations and may be enforced by PG&E in any court of competent jurisdiction.

D. Interim CTC Agreement: Departing Load customers shall execute an "Interim CTC Agreement" with PG&E five days prior to the date electric service from PG&E will be discontinued or reduced. A standard "Interim CTC Agreement" has been filed with and approved by the Commission in the Restructuring Proceeding. The customer will agree under the Interim CTC Agreement to accept and pay to PG&E its appropriate share of CTC as ultimately determined by the Commission in the Restructuring Proceeding. The Interim CTC Agreement shall specify that once the true-up amount described in Section 6 is established, such customer shall pay such final Interim CTC and PG&E shall either refund to or collect from such customer, with interest at the applicable rate for energy balancing accounts, the difference between the Interim CTC Projection and the customer's final Interim CTC responsibility. Whether a Departing Load customer signs the agreement or not, the customer will be deemed to have agreed to the terms of the Interim CTC Agreement by taking retail service on or after December 20, 1995.

E. Payment Options Under the Interim CTC Agreement, the Departing Load customer may agree either: (1) to pay a monthly Interim CTC; or (2) to post a bond, provide a letter of credit, or pledge readily marketable securities in an amount that will increase each month to cover the Departing Load customer's continuing obligation to pay a monthly Interim CTC Projection, commencing with the departure date.

Under the first alternative, the monthly Interim CTC payment shall be paid by the Departing Load customer and shall be collected by PG&E subject to refund or recalculation pending the true-up described in Section 6.

ATTACHMENT A

Under the second alternative, the Departing Load customer will be required to post a bond, provide a letter of credit, or pledge marketable securities as collateral in the full amount of the increasing balance of monthly Interim CTC Projection amounts owed, commencing with the departure date. The bond, letter of credit, or collateral account shall be from a financial institution and under terms acceptable to PG&E. Once the true-up amount described in Section 6 is established, PG&E shall draw on the bond, letter of credit, or collateral account posted by the Departing Load customer in the amount of the final Interim CTC responsibility. If the final Interim CTC responsibility is greater than the sum of monthly Interim CTC Projection payments owed, and, thus, greater than the bond, letter of credit or collateral account, the Departing Customer shall be required to pay the difference between the final Interim CTC and the Interim CTC Projection, with interest in an amount equal to PG&E's then-current balancing account rate.

5. INTERIM CTC PROJECTIONS:

A. The Interim CTC Projection will be derived as follows: The ICTC Projection is equal to the product of (1) the customer's average monthly bill associated with Departing Load (defined in Section B below) and (2) the ICTC multiplier of 39.20%. For purposes of this calculation, rates in effect as of January 1, 1996, for the Departing Load customer's rate class and option (during the reference period described in Section 5(B) below) shall be applied.

B. The "average monthly bill" associated with Departing Load is based upon one of the following reference period options (to be selected by the Departing Load customer in its notice, submitted pursuant to Section 4(a) above): (1) the customer's demand and energy usage over the 12-month period prior to the customer's submission of notice; or (2) the customer's average 12-month demand and energy usage, with such average as measured over the prior 36 months.

C. In circumstances where Departing Load has been reduced following departure from PG&E due to usage of energy efficiency or for other reasons, the customer and PG&E may agree in writing to use metered or other data on a prospective basis to verify such load reduction for such Departing Load. If such metering agreement is reached, PG&E shall reduce the monthly Interim CTC Projection to accommodate the reduction.

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6. TRUE-UP CALCULATIONS

All revenues collected through this ICTC Procedure from Departing Load Customers during 1996 and/or 1997 will be subject to a true-up calculation to be conducted shortly after January 1, 1998. The true-up will be limited to possible adjustments for the following three factors:

1) Differences between the preliminary unbundled revenue requirement for generation assumed for purposes of determining the Interim CTC and the final methodology to be adopted for rate unbundling purposes.

2) Differences between the SRAC forecast and the actual SRAC energy and capacity prices posted during 1996 and 1997.

3) Differences between the Interim CTC allocation and the CTC allocation method adopted by the Commission to be used for Departing Load customers on a prospective basis.

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6. TRUE-UP CALCULATIONS

All revenues collected through this ICTC Procedure from Departing Load Customers during 1996 and/or 1997 will be subject to a true-up calculation to be conducted shortly after January 1, 1998. The true-up will be limited to possible adjustments for the following three factors:

1) Differences between the preliminary unbundled revenue requirement for generation assumed for purposes of determining the Interim CTC and the final methodology to be adopted for rate unbundling purposes.

2) Differences between the SRAC forecast and the actual SRAC energy and capacity prices posted during 1996 and 1997.

3) Differences between the Interim CTC allocation and the CTC allocation method adopted by the Commission to be used for Departing Load customers on a prospective basis.

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Premises #:____________
Account #:____________

Pacific Gas and Electric Company's
Interim Competition Transition Charge Agreement

This is an agreement between ____________________ (hereinafter "Customer", and PACIFIC GAS AND ELECTRIC COMPANY (PG&E), hereinafter referred to individually as "Party" and collectively as "Parties". This agreement will be herein referred to as "Agreement".

RECITALS

A. On December 20, 1995, the California Public Utilities Commission ("CPUC"), issued D. 95-12-063 (as modified by D. 96-01-009) which, among other things, authorized PG&E to collect retail transition costs associated with electric restructuring. In its order, the Commission ruled that the Competition Transition Charge ("CTC") will be nonbypassable and will apply to retail customers of record on or after December 20, 1995.

B. On April 10, 1996, the CPUC issued D. 96-04-054 adopting an Interim CTC Procedure (hereinafter referred to as the "ICTC") and accepting the ICTC as an amendment to PG&E's Electric Tariff Preliminary Statement.

C. Under the ICTC, customers that meet the requirements of "Departing Load", as that term is defined in the ICTC, are required to pay in a monthly amount the Interim CTC Projection and to execute an Interim CTC Agreement five days before such Customer discontinues or reduces purchases of electricity from PG&E and has its load or the reduced portion of its load met by an alternate supplier of electricity..

D. Under this Interim CTC Agreement, Customer also agrees to pay its allocated share of the final CTC amount that will be determined by the CPUC pursuant to orders in the Order Instituting Rulemaking (R.) 95-04-031 and Order Instituting Investigation (I.) 95-04-032 and in subsequent decisions implementing the final decision in those proceedings (collectively referred to as the "Restructuring Proceeding").

E. Customer's premises and its current electrical load requirements are located at ____________________, County of ____________________, California.

ATTACHMENT A

AGREEMENT

In consideration of the promises and mutual covenants and agreements contained herein, the Parties agree as follows:

1. Customer agrees that it is responsible for payment of its share of CTC as determined by the CPUC pursuant to orders in the Restructuring Proceeding. The CPUC will determine the magnitude of the CTC and the method of payment applicable to customers subject to the Interim CTC Procedure as part of its orders in the Restructuring Proceeding. Such order or orders will be referred to as the "Final CPUC CTC Order." Customer agrees to pay the final CTC in accordance with the Final CPUC CTC Order or as may otherwise be agreed upon by the Parties in a superseding agreement. Until such time that the Final CPUC CTC Order is issued and the new mechanism is implemented, Customer agrees to pay the monthly Interim CTC Projection or pledge its equivalent as described below.

2. Customer agrees to (select one of the following two options):

   [ ] Pay a monthly Interim CTC Projection of $________ to PG&E.

   The monthly CTC Projection shall be paid by Customer and shall be collected by PG&E subject to the true-up described in Section 6 of the ICTC. Customer shall pay to PG&E the initial monthly charge five days prior to its departure or reduction of purchases from PG&E and shall pay all subsequent monthly charges within 20 days of receipt of invoice.

   Once the true-up amount described in Section 6 of the ICTC is established, PG&E shall either refund or collect, with interest at the applicable rate for energy balancing accounts, the difference between the Interim CTC Projection payments collected by PG&E and Customer's final ICTC responsibility.

   [ ] Post a bond or provide a letter of credit.

   Customer has the option to post a bond, provide a letter of credit, or pledge readily marketable securities as collateral in the full amount of the sum total of the Customer's monthly Interim CTC Projection payments due, commencing with the departure date. The bond, letter of credit, or collateral account shall be from a financial institution and under terms acceptable to PG&E.

   Once the true-up amount described in Section 6 of the ICTC is established, PG&E shall draw on the bond, letter of credit, or collateral account posted by the Customer in the amount of Customer's final ICTC responsibility.

ATTACHMENT A

If the final ICTC responsibility is greater than the Interim CTC Projection, and thus, greater than the posted bond, letter of credit, or collateral account, the Customer shall be required to pay, with interest at the applicable rate for energy balancing accounts, to PG&E the difference between the final ICTC and the Interim CTC Projection.

3. After the true-up amount described in Section 6 of the ICTC is established, PG&E shall deliver to Customer a bill specifying, to the extent possible, Customer's final ICTC responsibility and a calculation comparing the Interim CTC Projection with actual ICTC amounts owed for the period and identifying any amounts to be refunded to or collected from Customer.

4. The Agreement shall be effective as of the date that it is fully executed by Customer and PG&E, and will remain in effect until such time that Customer has paid to PG&E its full share of CTC responsibility as established by the CPUC in the Final CPUC CTC Order.

5. Customer may, with PG&E's written consent, assign this Agreement if the assignee will, in writing, agree to perform the obligations of the Agreement and Customer agrees to remain responsible in the event the assignee fails to perform.

6. This Agreement shall, at all times, be subject to such changes or modifications by the Commission as it may from time to time direct in the exercise of its jurisdiction.

7. If the Customer's Departing Load (as defined at the time this Agreement was executed): (1) no longer consumes electrical power from any source whatsoever; or (2) is physically moved from the location listed in Recital "D" to a new location outside PG&E's service area as it existed on December 20, 1995 prior to the issuance of the Final CPUC CTC Order, then Customer's obligation to pay a monthly Interim CTC Projection shall cease. Any amounts due to or owed by Customer during the period its load qualified as Departing Load will be determined in accordance with the true-up procedure described in Section 6 of the ICTC. If the Customer reduces the consumption of electricity by its Departing Load for a 12 month period following departure from PG&E through the use of customer energy efficiency measures or for other reasons, and PG&E is able to reach agreement with Customer on a means to verify to its satisfaction such average 12 month load reduction, including through the use of metered data, PG&E shall substitute the actual 12 month average data during such period for the assumed reference period data to accommodate the reduction.

8. Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising under this Agreement, shall not be deemed a waiver with respect to any subsequent default or matter arising in connection therewith. Any delay, short of the statutory period of limitations in assessing or enforcing such right, shall not be deemed a waiver of such right.

ATTACHMENT A

9. The Parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking herein.

10. Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and unappealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in full force and effect as if this Agreement had been executed without the invalid portion.

11. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

12. Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against either Party, but shall be construed in a manner that most accurately reflects the intent of the Parties when this Agreement was executed and the rulings and policy objectives of the CPUC in the Restructuring Proceeding and in the Final CPUC CTC Order.

13. The signatories hereto represent that they have been appropriately authorized to enter into this Agreement.

Dated this ________ day of ______________, 19___.

Customer: ______________________	PACIFIC GAS AND ELECTRIC COMPANY
BY: ______________________ (signature)	BY: ______________________ (signature)
______________________ (type/print name)	______________________ (type/print name)
Mailing Address: ______________________	Mailing Address: ______________________
______________________	
______________________	
______________________	

(END OF ATTACHMENT A)

IV. Specifics

A. Project Definition

A QF must supply the information to define the project in the form required by the utility. Such information includes, but is not limited to:

a. Proof of site control, such as:

i. Proof that the developer owns the site, or

ii. A notarized statement signed by the site owner granting the developer exclusive land or development rights, or

iii. For third party cogeneration developers, proof of exclusive rights to negotiate a power sales agreement and develop the project,

iv. For projects on public land, proof of acquiring development rights with the relevant government agency, or

v. For hydro projects on public land, have acquired either a FERC preliminary permit or have filed a non-competing license or exemption, as defined by FERC, or

vi. For hydro projects on private land, meet conditions i, or ii above, or have acquired a FERC license granting eminent domain over the site.

b. Project description information, including:

i. Type of project (technology), and

ii. Capacity, and

iii. Estimated average annual energy output, and

iv. Location and description of site, and

v. Project ownership or management, and

vi. Fuel source, and

vii. Type of equipment, and

viii. Justification of electrical generation capacity for site, if it is more than appears appropriate to the utility for the site and technology.

c. Preliminary project schedule, including:

i. Method for affirming primary energy source, and

ii. Permit application schedule, and

iii. Permit receipt schedule, and

iv. Construction start date, which is expected date sustained construction on a major project component, as identified by the QF, is to begin, and

v. On-line date.

The QF must notify the utility of changes in the final project development schedule (milestone 8).

(END OF ATTACHMENT B)

Commissioners Jessie J. Knight, Jr., and Josiah L. Neeper, concurring:

One of the most controversial aspects of our restructuring of the electric services industry has been the Competitive Transition Charge. So it should be no surprise that this Commission's decision to allow Pacific Gas and Electric (PG&B) to institute an Interim Competitive Transition Charge (ICTC) would also engender a great deal of controversy. In light of our past votes and opinions on the issue and the effort to conform with AB 1890, we find it necessary to memorialize our thoughts on this important subject.

In our minds, the major problem with PG&B's original proposal for an ICTC was that it was based on the premise that this Commission's restructuring decision had created the necessity for such a charge. This is truly a fiction. In fact, none of the competition that would result in stranded costs requiring recovery through an Interim Competitive Transition Charge was facilitated in any way by this Commission's decision to open the electric market to retail competition. The competition that the ICTC is designed to address is actually competition resulting from changes in technology and the changed federal regulation of the Energy Policy Act of 1992. The resultant impact was to give electricity consumers greater choice.

Consumer Choice weakened the ability of monopoly electric utilities to recover uneconomic costs. It is this weakened ability to continue to recover uneconomic costs that has prompted PG&E to seek the regulatory protection of an ICTC to repair its economic dilemma.

Let us be clear. The ICTC is required to enable the recovery of uneconomic costs stranded by the existing level of competition. In our judgment, this is again proof that the status quo is unsustainable. As the Commission pointed out in April of 1994, and the utilities have come to realize, the command-and-control aspects of cost-of-service ratemaking and government regulation that uses central planning are managerial techniques that are traditional norms in this industry that are fundamentally at odds with today's competitive electricity market.

In April of this year, the Commission voted to allow PG&E to institute an interim Competitive Transition Charge. It was a decision that we strongly opposed and publicly decried. It appeared to us that PG&E's proposal would have had the pernicious effect of reducing rather than increasing competition. We were deeply concerned that options once available to California businesses, who are striving to remain competitive in a global economy, would be needlessly hampered by the imposition of an overly restrictive Competitive Transition Charge. We were also deeply troubled that the imposition of a CTC on all departing customers would hinder the development of transmission and distribution competition. We do note that the decision before us may have the same effect.[1] However, as events have rapidly transpired over the past year, it is our beliefs that distribution and transmission competition cannot be stopped forever by regulatory fiat; it can merely be deferred. It is only a matter of time when this phase of competition will burst upon economic scene with a vengeance.

Finally, we were most troubled by the Commission's decision at that time to impose the ICTC, without allowing the legislative policy process to address this issue, as formally requested by some 21 California legislators at the time.

However, today we are prepared to vote in favor of the proposal before us. The California legislature has acted to adopt a policy regarding recovery of stranded costs and to provide the policy guidance on the type of exemptions to the CTC that we envisioned and argued for in our original oppositions. Because of these limited exemptions, the ICTC does not completely shelter PG&E and this Commission from the effects of competition, rather it serves only to blunt the effects for a time.

We support the exemption for ICTC recovery of smaller customers with demand less than 500 kilowatts. We support the CTC exemption for cogeneration facilities that were under development prior to December 20, 1995. We support the exemption to customers served by on site or over the fence cogeneration for expansion of facility capacity by up to 20%. We support exempting those entities with pre-existing statutory rights from the shackling definition of departing load. We support the interpretation that those customers whose load varies due to variation in the delivery of Federal Power do not fall within the fettering definition of departing load. We whole-heartedly support the 110 megawatt exemption for Irrigation Districts. We support the change in the definition of departing load that limits the definition only to those customers departing to use another electricity provider and exempting those whose demand for electricity is reduced due to fuel switching or efficiency gains.

The objective of the decision today is to require those departing customers for which the ICTC is applicable, to pay the same proportion of uneconomic costs that are currently bundled in today's rates. It is important to stress the fact that in essence, all customers are paying an interim CTC, only departing customers will have their charge unbundled and separately stated.

We do have concerns that PG&E's methodology may result in some customers that depart the system having to pay for some costs that should be economic. However, we believe that this estimate, as derived from the PG&E methodology, is acceptable for recovering those costs related to uneconomic generation costs. We are concerned with the inclusion of components of variable costs associated with generation. However, we do note that these generation costs are netted out against a "Market Price Proxy" that is set at short run avoided cost (SRAC). Since the SRAC is set to estimate the short run avoided cost of generation (i.e. those costs that are variable), we believe that the concern regarding variable costs is adequately addressed in the order.

Finally, we support the use of a uniform system-wide percentage in allocating ICTC to customer classes. Since it is the objective to recover the amount of uneconomic costs currently recovered in existing rates, it is appropriate to recover IOTC as a percentage of a consumers bill. PG&E's methodology is easy to calculate, administer and understand. For this reason we endorse this mechanical approach.

In conclusion, in a perfect world there would be no uneconomic costs and there would be no competitive transition costs. But this is not a perfect world, and certainly not this one. The electricity industry has been marred by the existence of monopolies and regulation for far too long. Uneconomic costs and CTO are the crosses we must bear for our reliance on regulated monopolies in this industry. We will continue to do what we can to remedy this situation in this industry, and the other industries we regulate as we march down the road toward true competition.

While with some reservations, we do support this decision.

Dated November 26, 1996 at San Francisco, California.

/s/ Jessie J. Knight, Jr.
JESSIE J. KNIGHT, JR.
Commissioner

/s/ Josiah L. Neeper
JOSIAH L. NEEPER
Commissioner

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