

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-3531
SEPTEMBER 17, 1998**

RESOLUTION

RESOLUTION E-3531. PACIFIC GAS AND ELECTRIC COMPANY (PG&E) REQUESTS APPROVAL TO ADD A SPECIAL CONDITION TO SCHEDULE E-EXEMPT THAT WOULD ALLOW ELECTRIC CUSTOMERS WHO SELECT CERTAIN IRRIGATION DISTRICTS AS THEIR ENERGY SERVICE PROVIDER AND WHO TAKE DIRECT ACCESS SERVICE FROM PG&E, TO BE EXEMPT FROM PAYING THE COMPETITION TRANSITION CHARGE. APPROVED WITH MODIFICATIONS SUBJECT TO PG&E'S CONSENT.

BY ADVICE LETTER 1738-E FILED ON JANUARY 29, 1998.

SUMMARY

1. By Advice Letter 1738-E, Pacific Gas and Electric (PG&E) requests approval to add a special condition to Schedule E-Exempt that would allow electric customers who select certain irrigation districts as their energy service provider (ESP) and who take direct access service from PG&E, to be exempt from paying the Competition Transition Charge (CTC).
2. Timely protests were filed by Merced Irrigation District (Merced), the Office of Ratepayer Advocates (ORA), Southern California Edison Company (Edison), and Laguna Irrigation District (LID). Letters in support were filed by Fresno Irrigation District (FID), Agricultural Energy Consumers Association (AECA), the Zacky Companies (Zacky), California Farm Bureau Federation (Farm Bureau), and Golden State Vintners.
3. This Resolution allows PG&E to voluntarily implement a modified version of its advice letter, by making the tariff applicable only to customers of those irrigation districts which are diligently pursuing distribution facilities, and for a limited period prior to the districts acquiring such facilities.

BACKGROUND

1. Section 374(a) of the Public Utilities Code¹ added by Assembly Bill (AB) 1890, exempts certain loads served by irrigation districts from CTC payment responsibility during the period prior to April 1, 2002.
2. Per Section 374(a)(1), the CEC was authorized to allocate and assign up to 110 megawatts (MWs) of qualifying load to individual irrigation districts. The CTC exemptions were to be divided among the service territories of the three largest electrical corporations in proportion to the number of irrigation districts in each service territory.² Irrigation districts requesting such an allocation had to file their plans for serving the load with the CEC. On March 26, 1997, the CEC granted CTC exemptions to: Modesto Irrigation District (MID) at 35 MW, FID at 20 MW, LID at 8 MW, South San Joaquin Irrigation District (SSJID) at 8 MW, and Pixley Irrigation District at 15 MW (CEC Decision, Docket No. 96-IRR-1890).³
3. Per Section 374(a)(2), 75 MWs of load served by Merced was exempted from CTC payment responsibility.
4. In order to qualify for CTC exemptions, the irrigation districts specified in Section 374(a)(1) and Section 374(a)(2) must own or lease the distribution facilities needed to serve their load.
5. PG&E's existing Schedule E-Exempt provides the terms, conditions, rates and billing criteria for customers who are exempt from paying the CTC charge.
6. On January 29, 1998, PG&E filed Advice Letter 1738-E requesting Commission approval to expand the applicability of Schedule E-Exempt by adding a new special condition. The special condition would allow electric customers who select FID, LID, Merced, MID, or SSJID as their ESP and who take direct access service from PG&E, to be exempt from paying CTC.
7. PG&E proposes that irrigation district ownership or lease of the electric service line to the customer's premises (also called a service drop), combined with direct access service under the Commission's retail direct access program, would satisfy Section 374 requirements. The transaction would be retail service, subject to the Commission's jurisdiction, with the irrigation district serving as an ESP.

NOTICE

¹ All statutory references are to the Public Utilities Code Sections unless otherwise noted.

² The available CTC exemption allocations were 71 MWs for PG&E, 30 MWs for Edison and 9 MWs for San Diego Gas & Electric Company.

³ All, except Pixley Irrigation District, are within PG&E's service territory.

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1. Advice Letter 1738-E was served on other utilities and government agencies, and to all interested parties who requested such notification, in accordance with the requirements of General Order 96-A. The advice letter was also noticed in the Commission's calendar on February 4, 1998.

PROTESTS

1. The Energy Division received timely protests to Advice Letter 1738-E from Merced, ORA, Edison, and LID. Edison and ORA object to the filing in its entirety, contending that it is contrary to Section 374. Merced and LID generally support PG&E's proposal but have discrete concerns over specific provisions.⁴

2. PG&E responded to the protests of Merced, ORA, Edison, and LID.

3. The following are questions that the protests raise and the parties' positions with respect to each question:

In light of parties' disagreements with respect to wholesale transmission service, could "distribution facilities" referred to in Section 374 be broadly interpreted to allow for irrigation district ownership or lease of an electric service line with the irrigation district acting as an ESP?

4. Edison argues that the provisions in Section 374 requiring that any load "shall be served by "distribution facilities owned by, or leased to" the specified irrigation district evidences a legislative intent that the exemptions can only be used when the irrigation district functions as a distribution utility⁵.

5. PG&E believes the phrase "distribution facilities" is ambiguous and is capable of being interpreted in different ways. PG&E states that it has proposed this advice letter as a means of affording irrigation districts an alternative opportunity to benefit from and utilize their CTC exemptions in part because PG&E believes that the irrigation districts have not proposed to acquire sufficient distribution facilities to qualify for wholesale transmission service under federal standards.

6. As explained in its advice letter, PG&E and some of the districts in question have had lengthy discussions over whether, under federal standards, the distribution facilities which the irrigation districts have proposed to develop or lease would be sufficient to entitle the irrigation districts to an order from the Federal Energy Regulatory Commission (FERC) that PG&E should provide the irrigation district with wholesale transmission service.

⁴ Letters in support were also filed by FID, AECA, Zacky, Farm Bureau, and Golden State Vintners. AECA advises that its support is with great reluctance.

⁵ This is just part of Edison's argument; the bulk of Edison's argument regarding this issue is discussed in more detail below.

7. PG&E states that its advice letter is an attempt to advance the Legislature's plan that irrigation districts have an opportunity to utilize their CTC exemptions and reduce the amount of distribution bypass, while avoiding a lengthy dispute at the FERC.⁶ PG&E readily acknowledges that merely owning a service drop does not satisfy what is meant by "distribution facilities" under the Federal Power Act. In that situation, they believe the question is what constitutes a bona fide utility entitled to wholesale transmission service; in this advice letter, they believe the question is only whether an irrigation district as an ESP should be able to use its CTC exemptions. PG&E submits that in this context the best solution is to broadly interpret the phrase "distribution facilities" for this purpose, in light of the legislative intent behind AB 1890 and Section 374.

Does a service drop constitute the "distribution facilities" contemplated in Section 374?

8. ORA protests that PG&E's proposal is inconsistent with Section 374 requirements because it believes the irrigation district's ownership of a service drop (whether by duplicate construction or by leasing PG&E's) ignores the entire process already undertaken by the CEC. ORA cites Section 374 (a)(1)(C) language that says the irrigation districts plans to the CEC shall include "specific information on the irrigation districts' organization of electric distribution, contracts, financing, and engineering plans for capital facilities...". ORA contends that this language demonstrates that the legislature intended for regulatory review of a much larger scope of distribution facility activity and that granting of CTC exemptions must be predicated on more substantial investment by irrigation districts than merely constructing or leasing service drops. ORA believes that approval of this advice letter invites the irrigation districts to ignore their proposals submitted to the CEC in favor of the far less risky investment of constructing or leasing service drops to serve the customer under a CTC exemption.

9. PG&E responds that Section 374 (a)(1)(C) vested the CEC with the discretion "to allocate the load covered by this section in a manner that best ensures its usage with the allocation period." PG&E argues that FID, LID, MID, and SSJID are the four irrigation districts from PG&E's service territory that the CEC determined to have the most viable submission and to have the best chance of using the CTC exemptions being awarded. PG&E contends that nothing in its advice letter changes the validity of the CEC's decision.

10. Furthermore, PG&E states that in PG&E's 1997 Rate Design Window proceeding, the Commission concluded that PG&E should not be permitted to discount its distribution rates to compete with an irrigation district using a valid CTC exemption under Section 374, noting that "this limitation best [carries] out the Legislature's intent to allow the irrigation district to maximize their use of such exemptions during the transition period..." (D.97-09-047, p.43) PG&E believes that this decision language demonstrates that the Commission would support PG&E's broad interpretation of the phrase "distribution facilities" for the purpose of this advice letter filing as it would allow irrigation districts to maximize their use of CTC exemptions.

⁶ In their letters in support, FID, AECA, and Zacky state that the negotiations of transmission interconnection agreements with PG&E have taken longer than expected and that absent a remedy as proposed in PG&E's advice letter, the irrigation districts and their customers will lose the benefit of their CTC exemption.

Can an irrigation district acting as an ESP instead of as an electric distribution utility be eligible for CTC exemptions under Section 374?

11. Edison contends that allowing an irrigation district to utilize its CTC exemptions while acting as an ESP is contrary to the legislative intent of Section 374. They argue that language in that section reflects a legislative intent to exempt the irrigation districts only in their capacity as electric utilities.

12. To support this argument, Edison says that in Section 374 (a), the Legislature stated that its purpose in providing CTC exemptions to qualifying irrigation districts was "in recognition of statutory authority and past investments existing as of December 20, 1995." Edison believes this language indicates that the Legislature acknowledged the irrigation districts' existing "statutory authority" to serve as electric utilities⁷ and that in connection with that "statutory authority", the irrigation districts had made "past investments existing as of December 20, 1995," in facilities to serve as electric utilities.

13. Edison believes that recognizing the kinds of investments irrigation districts made in their role as electric utilities, the Legislature required, in Section 374 (a)(1)(C), each irrigation district that seeks to qualify for a CTC exemption to submit to the CEC "detailed plans that show the load that it serves or will serve and for which it intends to utilize the allocation within the time frame requested" and that the requisite content of such plans should include "specific information of the irrigation districts' organization for electric distribution, contracts, financing and engineering plans for capital facilities, as well as detailed information about the loads to be served."

14. PG&E responds that Edison's argument does not withstand scrutiny.⁸ PG&E states that although Edison correctly cites Water Code Sections 22115 and 22120 as the existing statutory authority referred to, they ignore the significance of every word, phrase, and sentence in those statutes. PG&E argues that Water Code Section 22115 permits an irrigation district to act as a distribution utility, but it also permits an irrigation district to sell electric power to municipalities, public utility districts, or persons. In other words, PG&E believes Water Code Sections 22115 and 22120 not only permit an irrigation district to distribute electric power as a distribution

⁷ See, CAL. WATER CODE § 22115:

Any district heretofore or hereafter formed may purchase or lease electric power from any agency or entity, public or private, and may provide for the acquisition, operation, leasing, and control of plants for the generation, transmission, distribution, sale, and lease of electric power, including sale to municipalities, public utility districts, or persons.

See also, CAL. WATER CODE § 22120:

A district may sell, dispose of and distribute electric power for use outside of its boundaries.

⁸ FID also argues that Edison's logic is flawed because they believe that "the Legislature looked to *both* the ongoing statutory authority granted irrigations in terms of their ability to compete in the market *along with* their historic investments." FID believes that "those investments, made in reliance upon the continued viability of that statutory authority simply reinforced the Legislatures' motivation to provide the CTC exemptions".

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utility, but also permit an irrigation district to function as a wholesaler of electric power or as an ESP. PG&E states that many irrigation districts have been doing this for some time. PG&E asserts that Section 374 (a) does not, as they believe it easily could have, refer to existing statutory authority for an irrigation district to "operate as a distribution utility" or "to distribute electricity." PG&E alleges the statutory authority referred to is much broader, and includes the activities contemplated by this advice letter proposal. They believe that if the "past investments" language were indicative of legislative intent, the irrigation districts referenced in the statute and selected through the CTC exemption allocation process would have had a history of distribution services. PG&E claims most did not.

15. Contrary to Edison's reading of Section 374, PG&E believes that nothing in the code indicates that the Legislature did not intend to allow an irrigation district to utilize its CTC exemptions if it serves as an ESP with the local investor-owned utility as the provider of distribution services. PG&E states that by arguing that the CTC exemptions are only available to an irrigation district operating as a distribution utility, is in effect saying that the Legislature is encouraging the construction of duplicate distribution facilities. PG&E believes that this is not the intent and that Edison's argument runs contrary to the Commission's acknowledgement in Decision (D.) 97-09-047 that:

Nothing in the plain language of AB 1890 states that the Legislature intended to encourage the construction of duplicate T&D facilities. While AB 1890 clearly sought to establish and encourage a new market for the generation of electricity, no such encouragement was intended for T&D, which by contrast was to remain a regulated - not a competitive - domain. (mimeo at p. 45; citations omitted).

Must the CTC Exemptions be construed as narrowly as possible?

16. Edison argues that in Section 369, the Legislature enacted a mandate that the Commission establish an effective mechanism to ensure CTC recovery from all existing and future customers, except where specific exemptions apply, means that exemptions must be narrowly construed. Edison stated that the Commission itself noted this in D.97-06-060 that: "[A]s a matter of public policy, we believe that to the extent possible transition cost responsibility should be subject to as few exemptions as possible." Edison believes PG&E's proposal in this advice letter does not effectuate the Commission's policy of keeping CTC exemptions narrow.

17. PG&E responds that it is not seeking to add new exemptions, or to expand the amount of CTC exemptions beyond the already determined amounts.

Does the advice letter wrongfully enable PG&E to prevent distribution bypass?

18. PG&E claims that its proposal would benefit other PG&E ratepayers by retaining distribution revenues from customers who would otherwise depart PG&E's system.

19. In its protest, Edison points out that the Commission, in D.97-09-047, approved schedules that were designed to help avoid the uneconomic bypass of PG&E's transmission and distribution (T&D) system but, to assure that the schedules promote fair competition, made them subject to the limitation that the "rates should not apply where the competitive offer is made by an irrigation district using a valid CTC exemption under § 374." Edison believes that the Commission thus denied PG&E's request for pricing flexibility to meet the threat of T&D bypass by irrigation districts holding Section 374 exemptions. Edison argues that PG&E's advice letter proposal should be denied as they believe it is a vehicle to accomplish what D.97-09-047 denied.

20. To the contrary, FID argues that PG&E's advice letter preserves the incentive for distribution competition created by the Legislature notwithstanding disputes over interconnection.

Must the irrigation districts register with the Commission as ESPs?

21. Merced and LID protest PG&E's proposed Special Condition 2 (i) which would require FID, LID, Merced, MID, and SSJD to register with the Commission as ESPs and provide independent verification of a customer change in electricity supplier. They claim that the irrigation districts are not legally required to do either of these. They state that under Section 394(a), as a "public agency offering electrical service to residential and small commercial customers within its own political jurisdiction, or within the service territory of a local publicly owned electric utility", the irrigation districts are not required to register with the Commission as an ESP. Similarly, under Section 366.5 (e) as "public agencies", irrigation districts need not provide independent verifications. Merced suggests that Special Condition 2 (i) be rewritten to add the following words at the end after "22":

...except that the Section 374 Irrigation Districts need not comply with Rule 22 (D)(2).

22. PG&E concurs with Merced and agrees to modify its proposal to incorporate this revised language.

Should PG&E's proposed notice requirement under Special Condition 2(g) be modified?

23. Merced protests the provision that prior to departing PG&E's system, customers must provide advance notice of either 12 months or the amount of time remaining until the CTC collection date, whichever is the lesser. Failure to provide this notice would result in the customer having to repay up to 12 months of the CTC exemptions which it had received prior to departure.

24. Merced claims structure of the notice provision is inflexible and requires a commitment to departure from the PG&E system from a customer earlier than may be practical. Merced suggests alternative language, analogous to that contained in a lease with an option to extend, which it believes provides flexibility for customers. Merced's language would require the customer to stay on the tariff for a minimum of 1 year but would reduce the notice provision from 12 months to 2 months.

25. PG&E finds Merced's suggested revision unacceptable. PG&E claims that this notice provision is designed to protect the interests of PG&E's other ratepayers by reducing uneconomic distribution bypass and ensuring that the customers served under this special condition contribute to the recovery of PG&E's distribution revenue requirements for a significant period of time. PG&E states that this 12-month period is consistent with other such voluntary tariff options PG&E offers its customers.

26. Merced also made two other suggestions in its protest regarding PG&E's proposed Special Condition 2(g). It suggested language to specify the manner by which a customer should give notice and to clarify a perceived ambiguity about whether a customer keeps its CTC exemption after it departs PG&E's system. PG&E does not object to Merced's proposed language.

Should Special Condition 2(k) discuss residential customers?

27. Merced points out that Special Condition 2(k), which provides that, with one exception, a CTC exemption allocated to an account may not be transferred to another account, fails to take into account residential customers, focusing instead on business customers. Merced states that if a resident who later relocates outside the irrigation districts service area, that CTC exemption should be reallocable at that time. Merced proposes changed language to accommodate this concept.

28. PG&E acknowledges the error in its response and accepts Merced's proposed language.

Can the Section 851 application filing and approval process be expedited, including an approval of a pro forma lease?

29. Under Special Condition 2(j), if the irrigation districts lease meters or service lines from PG&E, the lease must be approved by the Commission.

30. Merced points out that these leases of utility property will likely fall under the provision of Section 851 requiring an application for the proposed lease to be filed by PG&E and an order from the Commission authorizing it. Merced suggests that the Commission require an expedited filing and processing of the application. Specifically, Merced requests that the Commission require PG&E to file an omnibus Section 851 application containing a proposed "boilerplate" lease agreement no later than March 31, 1998 (the date of direct access implementation), and that the Commission commit to expedited consideration of that application. Merced suggests that the Commission approve the boilerplate lease in a fashion that will allow PG&E to lease service lines to irrigation districts without requiring a separate application under Section 851 to be filed for every lease.

31. In its protest, LID expressed concern that it does not know what PG&E will require in a lease, or what facilities PG&E will require to be owned or leased by the district.

32. PG&E responded that it endorses Merced's approach and stated that it plans to circulate a draft lease agreement for comment to the various irrigation districts before March 31st. PG&E, however, later decided not to create a draft lease agreement, and instead, to await the outcome of Advice Letter 1738-E.

Would Commission approval of PG&E's advice letter be precedential?

33. Edison has requested that if the Commission approves PG&E's Advice Letter 1738-E, it should limit its application to PG&E's territory. PG&E does not oppose any such limitation if the Commission deems it appropriate.

Should Special Condition 1 be modified?

34. LID objects to Special Condition 1 which provides that schedule E-Exempt will expire on the earlier of March 31, 2002, or the date on which the Commission-authorized costs for utility generation-related assets and obligations have been fully recovered. LID states that this schedule should not expire on either of those two dates.

35. In response, PG&E points out this provision is already in the currently effective Schedule E-Exempt and not the subject of Advice Letter 1738-E.

Must the point of connection be established at PG&E's sole discretion?

36. With respect to the electric service lines to be owned or leased by the irrigation districts, LID protests PG&E's language in the last paragraph of its proposed special that the "PG&E-designated point of connection will be established at PG&E's sole discretion". LID believes that this should be a matter that is discussed between PG&E and the irrigation district. LID is concerned that granting PG&E "sole discretion" would permit PG&E to require unnecessary and expensive reclosure devices or create unnecessary delays in implementing CTC exemptions. LID suggests that when PG&E owns the transformer, the point of connection should simply be designated as "the low side of the transformer. When an irrigation district owns the transformer, the point of connection should be designated as "the high side of the transformer, or other mutually agreed location."

37. PG&E responded that its proposed language is intended to accommodate a wide variety of retail service installations, both overhead and underground, and at a variety of different voltages. They state that the tariff is not intended to codify physical service arrangements for each type of electric service. PG&E points out that in some instances, there may be more than one acceptable point of connection on PG&E's system; in these cases, PG&E expects to have a dialogue with the irrigation district to identify a connection point which is mutually beneficial to both PG&E and the district. But, to ensure public safety and the integrity of PG&E's electrical system, PG&E believes the ultimate discretion as to the connection point on PG&E's system must rest with PG&E.

Should multiple customers be allowed service under the tariff?

38. LID protests the last paragraph of PG&E's proposed special condition, where it states that "[t]his schedule is not applicable to multiple retail customers served or submetered on the low side of an irrigation district owned meter or to any customer served by irrigation district-owned transformation facilities." LID states that there is no public policy reason that these customers should not be allowed to take service under this tariff.

39. PG&E responded that it added this exclusion because if one customer wants to switch between ESPs, PG&E does not want to be in a situation where it cannot replace the irrigation district's cable because other customers are served from it.

Can advice letter 1738-E be made effective retroactive to January 1, 1998?

40. LID requests that advice letter be made retroactive to January 1, 1998 so that LID can obtain all of the benefits of the CTC exemption that was awarded by the CEC.

41. PG&E responded that its proposal is directly linked to the commencement of direct access and thus it is not appropriate to make the filing effective before that date.

PROPOSED MODIFICATIONS OF FID, ET. AL.

1. Resolution E-3531, originally placed on the Commission's May 21, 1998 meeting agenda (Item E-4), would have denied Advice Letter 1738-E. It was held until the Commission's June 4 meeting, and was again held until the June 18 Commission meeting (Item E-3).

2. On June 12, 1998 FID, LID, AECA, Zacky, and SSJID (collectively referred to as FID, et. al.) submitted by letter to the Director of the Energy Division, proposed amendments to Advice Letter 1738-E that have the effect of limiting the applicability of the exemptions to customers of irrigation districts which meet specific requirements. According to FID et. al., the amendments serve two purposes: 1) to address the central concerns raised in the resolution, and 2) to provide a "transitional remedy" for customers of irrigation districts awarded CTC exemptions pursuant to Section 374 but have been denied these exemptions "due to PG&E's refusal to interconnect the distribution facilities of the irrigation districts with PG&E's electric system." On June 17, a follow-up to the June 12 letter was submitted by counsel representing FID clarifying some minor ambiguities in the June 12 letter, and requesting an additional amendment on behalf of SSJID.

3. Pursuant to the receipt of FID et. al.'s proposed amendments, Resolution E-3531 was held until the July 23, 1998 meeting. By a letter dated June 18, 1998, the Energy Division requested comments by June 30 on the proposed amendments of FID et. al., from all parties which had protested or responded to Advice Letter 1738-E. Timely comments were received by PG&E, ORA, Edison, Farm Bureau, and Merced. Comments from AECA were received one day late. Energy Division learned on July 2 by phone conversation with Robert Darby, General Manager of Bulk Operations for Golden State Vintners (GSV) that it did not receive Energy

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Division's original June 18 request for comments, even though it was among the parties being served the request by both fax and mail. Having received and reviewed another copy of the request, Mr. Darby told Energy Division that GSV supports the position of FID as stated in the June 12 and June 17 letters. FID, et. al.'s proposed amendments were noticed as a protest to Advice Letter 1738-E on the Commission's Daily Calendar on August 5, 1998. FID et. al.'s proposed amendments and the comments of other parties are summarized below.

FID, et. al.'s Proposed Amendments

4. To address concerns about "second guessing" the CEC's determination regarding qualifying distribution facilities under Section 374, FID, et. al. would amend Advice Letter 1738-E to limit application of the tariff to customers of irrigation districts "diligently pursuing" development of such facilities. Applicability would be limited to (a) those irrigation districts which had obtained either an interconnection agreement or an order requiring one, or (b) irrigation districts whose request for an interconnection agreement had been denied by PG&E and were awaiting a resolution by the FERC of the interconnection dispute. For those districts having obtained an interconnection agreement or an order requiring one, the tariff would apply for only 12 months following the execution of the interconnection agreement or order, to provide time for construction and/or acquisition of facilities and negotiation of service terms with customers. For those districts awaiting a decision by the FERC on an interconnection dispute with PG&E, the tariff would no longer apply if and when FERC denies interconnection, or the tariff would apply for 12 months following the time of a FERC order in the event FERC approves interconnection. FID, et. al. would replace PG&E's proposed Special Condition 2(e), which requires Section 374 irrigation districts, other than Merced, to agree that at least 50 percent of the non-agricultural pumping CTC exemptions allocated by Section 374 will be served under Special Condition 2, with tariff language implementing this amendment.

5. To "facilitate distribution competition by Section 374", FID, et. al., would modify PG&E's proposed Special Condition 2(g) to shorten from 12 months (or the amount of time remaining until CTC collection) to two months, the notice a customer must give PG&E to depart its distribution system. FID et. al. would commensurately shorten the period of CTC exemption which must be refunded for failure to give notice. This is similar to what Merced proposed in its protest, however it does not require that the customer take service under the tariff for a minimum of 12 months which Merced had proposed.

6. To facilitate implementation of the amended tariff, FID, et. al. would require PG&E to seek pre-approval of a standard lease for use of the service drop facilities the irrigation district would lease from PG&E.

7. The June 17 letter also requests an amendment to PG&E's proposed Special Condition 2(h) which restricts use of CTC exemptions under Schedule E-Exempt to an irrigation district's water service boundary. This amendment would allow SSJID to use its CTC exemptions in portions of San Joaquin or Stanislaus Counties that are outside SSJID's water service boundary. According to the June 17 letter, this amendment conforms to AB 1890 because the statute does not contain the water service boundary restriction for SSJID.

8. FID, et. al. also endorse changes to PG&E's proposed special conditions 2(i), 2(g) and 2(k) that had been proposed by Merced in its protest to Advice Letter 1738-E, and which PG&E did not dispute. These are described in paragraphs 21, 22, 26 and 27 of the "Protest" section of this Resolution.

9. The proposed amendments described above would require specific modifications to the tariff language filed in Advice Letter 1738-E. In addition to those changes, FID, et. al. request that the Commission's decision approving the amended advice letter make the following findings: 1) that Schedule E-Exempt is specific to PG&E and sets no precedent for other utilities, 2) that the purpose of the amendments to the tariff is to implement AB 1890 and to foster distribution competition, and 3) that the amendments provided limited transitional relief to customers of irrigation districts awarded CTC exemptions in Section 374, but whose ability to "commence service to customers and utilize their exemptions has been thwarted by PG&E's refusal to interconnect to their distribution facilities."

Comments by Parties on Procedural Issues

10. In their comments PG&E, ORA, Edison, and Farm Bureau addressed procedural issues relating to FID, et. al.'s proposed amendments to Advice Letter 1738-E. PG&E states that it is improper for protestants such as FID, et. al. to propose amendments to tariff changes sought through a voluntary advice letter. PG&E notes that parties may protest advice letters and suggest possible solutions to problems but they may not "highjack" a utility's proposal to their own ends." PG&E points out that Section III(H) of General Order 96-A allows a protest to an advice letter within 20 days, but does not allow the protesting party to make changes to a proposal pending before the Commission. PG&E further notes that the proposal of FID, et. al., goes beyond the provisions of Section III(I) of GO 96-A which allows the utility (i.e., and not a protestant) to make minor changes to its advice letter, or to make modifications to respond to a protest. PG&E cites the example of its proposed sale to the Modesto Irrigation District in asserting that the Commission should act on the proposal before it, i.e., PG&E's proposal.

11. ORA notes the unusual nature of being asked to comment on letters, by parties other than the applicant, which propose to amend an advice letter which the Energy Division by draft resolution has previously proposed to deny. ORA points out that the usual practice would have been for PG&E to file a new advice letter with those changes it deemed appropriate.

12. Edison states that nothing in GO 96-A, any Commission order, or statute gives non-utility parties such as FID, et. al. standing to propose "amendments" to utility tariffs. Edison also states that even if it had authority to propose these amendments, FID, et. al., failed to notice the affected parties according to the requirements of GO 96-A. Edison asserts that PG&E's proposed expansion of Schedule E-Exempt and FID, et. al.'s proposed amendments go beyond the authority approved in D.97-12-039 in A.96-08-001, et. al. The tariffs filed by the utilities in compliance with that decision include specific provisions for CTC exemptions pursuant to Section 374. Based on the controversy reflected by the number of protests to Advice Letter 1738-E and the proposed amendments, Edison now argues that a petition to modify D.97-12-039

is the proper vehicle for considering the issues raised in PG&E's advice letter and FID, et. al.'s proposal.

13. Farm Bureau comments that "the procedural evolution of Advice Letter 1738-E has taken somewhat of an unusual course". Farm Bureau states that since controlling rules do not dictate the proper scope for comments, its comments "err toward over-inclusiveness."

PG&E's Comments on Proposed Amendments

14. PG&E does not support the proposed amendments of FID, et. al., is surprised by and takes exception to the fact that the amendments, as stated in the June 12 letter, change the focus of Advice Letter 1738-E from avoiding lawful distribution competition intended by Section 374 to facilitating it. PG&E notes that FID, LID, AECA, and Zacky all filed letters in support of AL 1738-E, and it ill-behooves these parties to now charge that the original focus of the advice letter was improper.

15. PG&E states that its proposal to modify E-Exempt burdens ratepayers, except for those served under the tariff, by allowing certain irrigation districts to utilize their CTC exemptions earlier and more fully than they otherwise would have. PG&E notes however that this burden is offset through retention of distribution revenues from customers who would otherwise be served by duplicate distribution facilities "built solely to take advantage of the CTC exemptions." According to PG&E, the proposed amendments would remove this balance of interests because they would allow irrigation districts to utilize their CTC exemptions quickly and more fully, but remove the ratepayer benefits of minimizing the level of duplicate and "otherwise uneconomic" distribution facilities. For this reason, PG&E opposes FID et. al.'s proposal to replace Special Condition 2(c) with the amendment limiting application of the tariff to irrigation districts diligently pursuing development of distribution facilities.

16. PG&E asserts that FID, et. al.'s proposed amendments do not adhere to the process undertaken by the CEC more closely than PG&E's original proposal. PG&E further states that they would permit "liberal use of E-Exempt with none of the responsibilities" since an irrigation district could use its CTC exemptions while its request for interconnection at the FERC is being considered but would not have to repay CTCs if that request was denied. PG&E states that FID et. al.'s proposal does not tie use of E-Exempt for a particular customer to plans to build lines directly to that customer, or to plans submitted to the CEC or FERC. Thus, according to PG&E this proposal pretends to mimic irrigation districts' plans to build facilities before they are implemented, yet allows the districts to ignore these obligations to build they would otherwise incur.

17. PG&E objects to the proposed amendment which would reduce the notice requirement in Special Condition 2(g) from 12 to two months. PG&E states that the 12 month notice provision protects the interests of its ratepayers by reducing uneconomic distribution bypass and ensuring that customers served under Special Condition 2 contribute to the recovery of its distribution revenue requirements for a significant period of time. PG&E also objects to the proposed amendment to Special Condition 2(h) which would allow SSJID to use its CTC exemptions

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outside of its water service boundary. PG&E states that it had discussed this potential change with SSJID when SSJID complained that PG&E's proposed sale to Modesto Irrigation District took away approximately two-thirds of SSJID's service territory. Since D.98-06-020 denied PG&E's application to sell its facilities to Modesto, PG&E believes that SSJID's concern, and thus its reason for this change, is moot. PG&E also notes that SSJID's build proposal presented to the CEC did not contemplate serving load outside its service territory, thus this modification to Special Condition 2(h) is not justified.

18. PG&E supports having a uniform, pre-approved lease, but only in conjunction with its original proposal. PG&E also indicates that it had agreed to the changes to Special Conditions 2(i), 2(g), and 2(k) endorsed by FID, et. al., proposed by Merced in its protest to Advice Letter 1738-E. PG&E included with its comments, specific changes to these special conditions as well as a change to Special Condition 2(j) addressing the pre-approved lease, that it is willing to make.

19. PG&E finds acceptable the first of the three proposed Commission findings, i.e., that Schedule E-Exempt is specific to PG&E and sets no precedent for any other utility. PG&E has "little problem" with the second proposed finding that the purpose of the amendments is to implement AB 1890 and to foster distribution competition insofar as the resolution approve PG&E's original advice letter with the changes agreed to by PG&E. However, PG&E points out that the Commission noted in D.97-09-047 that AB 1890 did not encourage the construction of duplicate T&D facilities, and that T&D was to remain a regulated, not a competitive domain.

20. PG&E strenuously objects to the third proposed finding that irrigation districts' ability to utilize their CTC exemptions has been thwarted by PG&E's refusal to interconnect, stating that this is untrue and completely unwarranted. To protect its due process rights, PG&E requests a hearing to the extent the Commission is contemplating such a finding.

Comments of ORA and Edison on Proposed Amendments

21. ORA and Edison continue to support Resolution E-3531 which denies Advice Letter 1738-E. ORA states that the proposed amendments do not address the fundamental fault of the Advice Letter, i.e., that it would sanction a definition of distribution facilities that is clearly at odds with Section 374 and common usage of the term, and ignores the process undertaken by the CEC. ORA notes that the advice letter is an attempt to provide CTC exemptions to customers of irrigation districts while disputes over interconnection are pending at FERC. However, ORA states that the Commission should not undo the conditional linkage placed by the legislature between the CTC exemptions and investments in distribution facilities the districts must make in order to serve load.

22. ORA states that if the Commission wants to assist the irrigation districts serve potential load, then some of FID et. al.'s proposed amendments have merit. ORA finds acceptable the amendment allowing irrigation districts which have obtained an interconnection agreement or an order requiring one, a 12 month period of CTC exemptions under Special Condition 2, which would presumably assist the district in business planning. According to ORA, this amendment

would establish that the district clearly has the legal or contractual basis to service load. ORA disagrees however, with allowing Special Condition 2 to apply to an irrigation district whose request for interconnection has been denied by PG&E and is awaiting resolution by FERC, since the Commission cannot forecast the timing or manner in which the issue is resolved by FERC. ORA agrees with the amendments to shorten the notice period under Special Condition 2(g) from 12 to two months, and to provide for a pre-approved lease under Special Condition 2(j).

23. Edison states that the proposed amendments exacerbate the defects of Advice Letter 1738-E and raise several new issues that further counsel its rejection. Edison notes that since the proposed amendments attempt to implement CTC exemptions before distribution facilities are constructed or acquired, i.e., while districts are "diligently pursuing" their development, they violate the requirement of Section 374 that the exemptions apply only to load served by distribution facilities irrigation districts own or lease. Edison further notes that because the CTC exemptions provided by the proposed amendments elapse after just 12 months, one must conclude that they do not satisfy Section 374(a)(4) which establishes an expiration date of March 31, 2002 for exemptions.

24. Edison believes that the "no precedent" language proposed by FID, et. al. is inadequate. Edison points out that it had stated in its protest to Advice Letter 1738-E that if the Commission were to approve PG&E's filing "as worded" without viewing that approval as precedential, then it would not protest. However, since the proposed amendments materially change PG&E's advice letter, the "no precedent" language in its protest does not apply. Edison also notes that the extent to which "no precedent" disclaimers are effective is unclear.

Comments of Other Parties on Proposed Amendments

25. Merced and GSV support the proposed amendments. AECA submitted comments to reinforce its support of the amendments that it and the other parties joining FID propose. Farm Bureau supports approval of AL 1738-E, or if necessary for approval, as modified by most of the proposed amendments. Farm Bureau points out that the tariff language provided by FID, et. al. needs to be changed to include a mechanism for termination of the tariff for those irrigation districts whose application for an interconnection agreement at the FERC has been denied. Farm Bureau also recommends revising the proposed finding regarding transitional relief for those districts whose ability to use their exemptions has been thwarted by PG&E's refusal to interconnect to "better reflect the level of advocacy" around this debate. Farm Bureau interprets the amendments as intending to retain the requirements of Section 374 even though they are to be an interim solution, in particular the requirement to dedicate 50% of the exempt load for agricultural pumping.

26. Farm Bureau responds to concerns raised in Resolution E-3531 over usurping the process undertaken by the CEC by stating that it is within the parameters of AB 1890 for the Commission to address the issues raised by Schedule E-Exempt. According to Farm Bureau it was clear that issues would arise and require further resolution as the process for allocating the exemptions unfolded. Farm Bureau states that neither the CEC nor AB 1890 provided clear directives for ongoing disputes and it is reasonable for the Commission to make necessary

decisions to resolve these issues.

DISCUSSION

Procedural Matters

1. With respect to the procedural issues parties raised regarding FID et. al.'s proposed amendments, it is within the Commission's authority to make exceptions to the provisions of G.O. 96-A. The proposal of FID, et. al. amounts to additional protests by parties to Advice Letter 1738-E filed later than the date provided for under G.O. 96-A. Section XV states that "Exceptions to the operation of this Order will be authorized upon proper showing by any interested party." FID, et. al.'s proposal deserves consideration by the Commission and warrants modification of the procedures identified in G.O. 96-A. Edison raises the issue of noticing the proposed amendments to all parties originally served Advice Letter 1738-E. However, the June 12 and June 17 letters containing FID, et. al.'s proposed amendments were sent to PG&E on the same day they were provided to the Energy Division. PG&E is the only party that must be served a protest according to G.O. 96-A.⁹ Energy Division also circulated the proposal for comment to those having either protested or commented on Advice Letter 1738-E to get input from other active parties, and the proposed amendments contained in the June 12 and June 17 letters from FID, et. al. were noticed on the Commission's Daily Calendar which is the normal procedure for advice letter protests.

2. FID, et. al.'s proposal is a simple request that the Commission approve Advice Letter 1738-E with specific limitations as to which customers are eligible. Simply proposing such amendments does not constitute a "highjacking" of the process.

3. Advice Letter 1738-E and the proposal of FID, et. al. do not change D.97-12-039 as Edison argues. Rather than modifying D.97-12-039, these proposals expand the applicability of portions of tariffs filed in compliance with that decision.

The CEC's Process

4. In pertinent parts, Section 374 requires (1) the irrigation districts requesting a CTC exemption allocation to submit detailed plans to the CEC which shall include "specific information on the irrigation districts' organization of electric distribution, contracts, financing, and engineering plans for capital facilities, as well as detailed information about the loads to be served"¹⁰, (2) the CEC to assess the viability of each irrigation district's detailed proposal and determine whether it could be accomplished in the proposed timeframe, (3) the CEC to allocate the CTC exemption load in a manner which best ensures its usage within the allocation period,

⁹ Section III.H. of G.O. 96-A requires that on the same day a protest is made to the Commission, the protestant shall serve a copy on the subject utility.

¹⁰ Merced did not have to submit plans to the CEC because it received its allocation directly from Section 374 (a)(2).

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and (4) Merced, and the irrigation districts granted allocations from the CEC, to own or lease the distribution facilities needed to serve their load.

5. In the CEC decision which assigned CTC exemption allocations to individual irrigation districts, the CEC stated that "[d]eterminations of the viability of an irrigation district's proposal were based on the district providing information regarding: its distribution facilities, its generation resources, the district's likelihood of retaining customers beyond the exemption period, a potential customer base including significant agricultural loads, financial resources, and the district's commitment to implement its plans....Of these factors, those most central to viability involve the quality of information concerning the distribution system and the detail and credibility of the customer load description." (Docket No. 96-IRR-1890, 3/26/97 CEC Decision, p.3)

6. The CEC's conclusions regarding the viability of each of the irrigation districts proposals were based in large part upon the irrigation districts' submission of plans and detailed information regarding the "distribution facilities" that would be needed to serve their load. FID et. al.'s proposed amendment that would limit the applicability of the tariff to customers of irrigation districts which are diligently pursuing distribution facilities is consistent with the process undertaken by the CEC in allocating CTC exemptions. It provides a transition period during which irrigation districts may use the exemptions granted by the legislature and allocated by the CEC while they acquire their distribution facilities and obtain interconnection agreements.

Owning Distribution Facilities versus Leasing a Service Drop in Conjunction with Irrigation Districts Acting as ESPs

7. It is appropriate to broadly interpret the language in Section 374 by allowing an irrigation district in its role as an ESP to lease PG&E's service drop and use its CTC exemptions for an interim period while interconnection disputes are being resolved and the districts are acquiring their facilities.

8. With respect to Edison's argument about narrowly construing CTC exemptions, permitting irrigation districts to utilize their CTC exemptions in this manner does not broaden CTC exemptions, rather it allows irrigation districts to utilize their exemptions provided by Section 374 for an interim period. Edison's argument that approving Advice Letter 1738-E would permit PG&E to prevent distribution bypass is moot, since this Resolution allows the irrigation districts a limited period of time to utilize their CTC exemptions as ESPs. After the interim period, the irrigation districts will either use their exemptions by serving customers through distribution facilities in competition with PG&E, or absent having distribution facilities of their own, they will not be able to use their exemptions.

FID, et. al.'s Proposed Tariff Changes

9. This resolution allows PG&E to voluntarily implement the tariff changes to Advice Letter 1738-E proposed by FID et. al, with some modifications discussed below. PG&E asserts that these changes upset the balance struck in Advice Letter 1738-E by eliminating the ratepayer

benefit of minimizing the level of duplicate distribution facilities. However, allowing for the construction of duplicative facilities provides a competitive check on the ability of the utility to pass through unreasonable costs to ratepayers in distribution rates and provides discipline to both the utility and the Commission in determining the rate design for distribution services.¹¹

10. It is appropriate to allow both those irrigation districts which have obtained an interconnection agreement, and those which have a request pending at the FERC, an interim period of CTC exemptions via acting as an ESP and leasing service drops. However, those irrigation districts whose petition for an interconnection agreement is ultimately denied by the FERC should not be granted CTC exemptions as FID, et al. proposes. ORA's point is well taken that the Commission cannot predict when and how the FERC will resolve the interconnection disputes. If the FERC decides to deny a district's petition, it would neither be fair nor consistent with the intent of Section 374 and the process undertaken by the CEC to permit that district to utilize CTC exemptions by means of Special Condition 2.

11. Thus, the tariff language proposed by FID, et al. should be modified to reflect that customers selecting an irrigation district with a petition pending at the FERC as their ESP, will pay CTC while the petition is pending. However, PG&E must track each customer's CTC payments, including interest, until a decision on the petition is rendered by the FERC. If the FERC approves the district's petition, PG&E shall continue to track the CTC payments and interest for up to 12 months after FERC's approval of the petition. The amount tracked by PG&E shall be returned to a customer if and when the customer takes service from the irrigation district through the distribution facilities which satisfy FERC's requirements for an interconnection agreement with PG&E. If the FERC denies the petition, the tracking account will be eliminated and no refunds will be made. Farm Bureau is also correct that the tariff language provided by FID et. al., needs to be modified to include the time limit for the districts which have a petition for an interconnection agreement pending at the FERC. The following language should be added to that proposed by FID, et al., replacing PG&E's Special Condition 2 (c):

"Every customer selecting a Section 374 irrigation district which has a petition pending at the FERC shall pay CTC. PG&E shall track each customer's CTC payments while the petition is pending, including interest which will accrue at the 3-month commercial paper rate. If the FERC grants the petition, PG&E shall continue to track the CTC payments and interest for up to 12 months after FERC's approval of the petition. The amount tracked by PG&E shall be returned to the customer if and when the customer takes service from the irrigation district over distribution facilities which qualify the district for wholesale transmission service under federal standards. Special Condition 2 shall apply to the Section 374 Irrigation District for up to 12 months following an order from the FERC granting an interconnection agreement with PG&E. In the event that the FERC denies the Section 374 Irrigation District's petition, Special Condition 2 shall not

¹¹ See Resolution E-3528, April 23, 1998, p. 6; Stanislaus County Local Agency Formation Commission's Request for a Commission Opinion on the Effect of the Proposed Reorganization of Patterson Water District within PG&E's Service Territory.

apply, and the amount tracked by PG&E while the petition was pending shall not be refunded to customers selecting such a district as their ESP. PG&E shall file an advice letter with the Commission after the FERC rules on an irrigation district's petition, describing how the FERC ruled, the amount of CTC payments and interest PG&E tracked, and whether refunds will be made to customers."

12. Special Condition 2(e) as proposed by PG&E in Advice Letter 1738-E, which states that at least 50 percent of the CTC exemptions used by Section 374 irrigation districts under Special Condition 2 be applied to non-agricultural pumping load, is arbitrary and restrictive. As such it should be replaced in its entirety with the language proposed by FID, et. al., modified as discussed above. Farm Bureau's interpretation of FID, et. al.'s proposed amendments that the requirements of Section 374 are retained is correct. Specifically Section 374 (a) (1) (D), requiring a district to use at least 50 percent of its annual allocations for agricultural pumping load, applies if the district is using its exemptions under the interim approach approved by this Resolution.

13. FID, et. al.'s proposal to amend Special Condition 2(g), shortening the period from 12 to two months, which a customer must give PG&E to depart its system, or switch to an ESP other than a Section 374 irrigation district, is not justified. However, the 12 month notice requirement originally proposed in Advice Letter 1738-E is unduly restrictive, and establishes a barrier to exit PG&E's system. A four month notice period provides a proper balance. Therefore, Special Condition 2(g) should be revised to change "twelve months" to "four months" wherever it appears. Merced's suggested changes to Special Condition 2(g), regarding the manner in which a customer provides notice (i.e., delivered in writing or by reasonable means through a designated PG&E account representative authorized to receive such notification), and clarifying that a customer departing PG&E system retains its CTC exemption, were not contested and should also be incorporated.

14. No party disputes FID, et. al.'s proposal requiring PG&E to seek expedited pre-approval of a standard lease of the use of the service drop facilities by irrigation districts. This proposal would facilitate the implementation of the tariff and it should be approved. FID, et. al.'s proposed tariff language implementing this lease arrangement should be incorporated in Special Condition 2(j).

15. SSJID's request that the restriction on the use of CTC exemptions to an irrigation district's water service boundary be modified to recognize that it can use its exemptions in portions of San Joaquin or Stanislaus Counties that are outside its water service boundary is consistent with Section 374. Section 374 (a) (1) (F) states that the exempt load to be allocated among the irrigation districts by the CEC is applicable to "any load within the Counties of Stanislaus or San Joaquin, or both, served by any irrigation district that is currently serving or will be serving retail customers." Since SSJID will be serving retail customers within these counties, the statute permits it to use its exemptions in those areas within the counties outside its water service boundary. Thus, Special Condition 2(h) proposed by PG&E in Advice Letter 1738-E should be amended to add the following language:

"and except that, for any Section 374 irrigation district whose water service boundary is within Stanislaus or San Joaquin County, the customer's account may be in any portion of those two counties, inside or outside of that district's water service boundary."

16. The change to Special Condition 2(i) removing the requirement that Section 374 irrigation districts register as ESPs and to provide independent verification, originally proposed by Merced and LID, and supported by FID, et. al., was not disputed. However, while Sections 394(a) and 366.5 may contain exceptions for irrigation districts which provide electrical service to customers, in this case the Commission is permitting PG&E to modify its tariffs and benefit irrigation districts by allowing them to utilize their CTC exemptions when acting as ESPs. It is therefore reasonable to require the districts to provide written certification to PG&E, that the district complies with the requirements set forth in Sections 394(a) and 366.5. The following language should be added at the end of Special Condition 2(i):

"Section 374 irrigation districts need not comply with Rule 22(D)(2), however, these irrigation districts must provide written certification to PG&E that they meet the requirements of Sections 394 (a), and 366.5 (a) and (b), without actually registering with the CPUC."

17. Merced's proposed change to Special Condition 2(k) allowing a residential customer to transfer its CTC exemption to another account when it changes residence is supported by FID, et. al., and was accepted by PG&E in its response to Merced's protest. Special Condition 2(k) should be rewritten using the language provided by Merced at page 5 of its February 17, 1998 protest to Advice Letter 1738-E.

Other Tariff Change Proposals from Protests to Advice Letter 1738-E

18. LID's protest of PG&E's tariff language stating that the "PG&E-designated point of connection will be established at PG&E's sole discretion" is valid. This language constitutes poor tariff construction. It creates a situation in which PG&E's sole discretion may become an arbitrary decision on PG&E's part, and may not be uniformly applied to all customers. LID's specific language changes should not, however, be approved because it is not appropriate to specify detailed terms and conditions on points of electrical interconnection which may not apply to all customers. All references in the last paragraph of the special conditions to the "PG&E-designated point of connection" should be modified to "point of connection", and the sentence which reads "The PG&E-designated point of connection will be established at PG&E's sole discretion." should be deleted. PG&E may voluntarily propose specific terms and conditions to put in its tariff regarding how the point of connection shall be determined, however, PG&E should only do so in an advice letter filing that is separate from the advice letter filing it shall make in compliance with this resolution.

19. LID's protest of PG&E's tariff language stating that the schedule is not applicable to multiple retail customers served or sub-metered on the low side of an irrigation district owned meter, or to a customer served by irrigation district owned transformation facilities, is granted.

PG&E's tariff language is unduly restrictive, as it precludes service under this schedule, which is provided to customers under their otherwise applicable tariff. Accordingly, the last three sentences of the last paragraph in the special conditions section of PG&E's proposed tariff (beginning with "The electric service line must provide...") should be deleted. Granting this protest does not prejudice the outcome in ongoing Commission proceedings in which similar or related issues are being considered. PG&E shall add language in the place of these three deleted sentences to make clear that for master- or sub-metered customers, Special Condition 2 applies to those customers which are currently eligible for master-metered or sub-metered service. This restriction applies only during the period in which the rate freeze is in effect. If PG&E wants to extend this restriction after the end of the rate freeze period, it must first obtain Commission approval.

20. LID's request to make the effective date of Advice Letter 1738-E January 1, 1998 is denied since the tariff will not go into effect until service is transferred from PG&E to the Section 374 irrigation district according to the Commission's direct access rules. This would not occur until the first billing cycle after a customer switches from PG&E's bundled service to direct access service.

21. LID's protest relating to Special Condition 1 is denied because it relates to tariff language that has already been approved and is not the subject of Advice Letter 1738-E.

FID, et. al.'s Proposed Commission Findings

22. The proposed Commission finding that Schedule E-Exempt is specific to PG&E only and sets no precedent with regard to any other utility is appropriate. Although Edison is not convinced that such a statement by the Commission is adequate, it does make explicit that this resolution in no way intends to apply a similar tariff to Edison.

23. The proposed Commission finding that the purpose of FID, et. al.'s amendments is "to implement AB-1890 and to foster distribution competition" is denied because it does not reflect the intent of this Resolution. The reason why this Resolution adopts many of the proposed amendments is to allow Section 374 irrigation districts to use the CTC exemptions granted to them by the legislature for an interim period, while remaining consistent with the intent of the statute and the CEC's allocation process.

24. The proposed Commission finding that the amendments provide relief to customers of Section 374 irrigation districts but whose ability to utilize their exemptions has been "thwarted by PG&E's refusal to interconnect" is outside the scope of this Advice Letter. Consequently, PG&E's objection to this proposed finding is approved, and FID, et. al.'s request for such a finding is denied.

VOLUNTARY IMPLEMENTATION BY PG&E

1. This Resolution adopts a revised version of Advice Letter 1738-E which PG&E may voluntarily implement. PG&E shall inform the Commission via letter to the Energy Division within 10 days of the effective date of this Resolution as to whether or not it accepts the revisions specified in this Resolution. If PG&E accepts the revisions, it shall file an advice letter within 30 days of the effective date of this Resolution which includes tariff language implementing the changes. In the event that PG&E declines to implement the revisions, Advice Letter 1738-E is denied.

FINDINGS

1. By Advice Letter 1738-E, PG&E requests approval to add a special condition to Schedule E-Exempt that would allow electric customers who select certain irrigation districts as their ESP and who take direct access service from PG&E, to be exempt from paying CTC.

2. Protests to Advice Letter 1738-E were received from Merced, ORA, Edison, and LID.

3. Edison and ORA object to the filing in its entirety, contending that it is contrary to Section 374.

4. Merced and LID generally support PG&E's proposal but have discrete concerns over specific provisions.

5. Letters in support were filed by FID, AECA, Zacky, Farm Bureau, and Golden State Vintners.

6. Resolution E-3531 which was held at the Commission's May 21, June 4 and June 18, 1998 conferences would have denied Advice Letter 1738-E.

7. By letters dated June 12 and June 17, 1998 FID, LID, AECA, Zacky, and SSJID collectively submitted to the Energy Division proposed amendments to Advice Letter 1738-E. These parties stated that the purpose of the amendments was to address the central concerns in Resolution E-3531 regarding Advice Letter 1738-E, and to provide a transitional remedy for customers of Section 374 irrigation districts which had been denied the opportunity to use the CTC exemptions granted by the Legislature.

8. On June 18, 1998 Energy Division requested comments on the amendments proposed by FID, et. al., from all parties which had either protested or provided comments on Advice Letter 1738-E. Comments were received from PG&E, ORA, Edison, Farm Bureau, Merced, AECA, and Golden State Vintners.

9. PG&E, Edison, and ORA believe that the process for considering the proposed

amendments of FID, et. al. is improper, and Farm Bureau believes it is unusual.

10. PG&E objects to the proposed amendments of FID, et. al. ORA and Edison oppose Advice Letter 1738-E, in its original form and with FID et. al.'s proposed amendments.

11. Farm Bureau supports the proposed amendments of FID, et. al., with some clarifications. Merced and Golden State Vintners support the proposed amendments.

12. Section XV of G.O. 96-A permits the Commission to make exceptions to the rules specified in the General Order.

13. It is reasonable to consider the proposal of FID, et. al. a protest to Advice Letter 1738-E, that was appropriately noticed according to the provisions of G.O. 96-A and noticed on the Commission's Daily Calendar, and parties were given the opportunity to be heard.

14. Neither Advice Letter 1738-E nor the proposed amendments of FID, et. al., modify Decision 97-12-039.

15. The CEC's conclusions regarding the viability of each of the irrigation districts' proposals were based in large part upon the irrigation districts' submission of plans and detailed information regarding the "distribution facilities" that would be needed to serve their load.

16. The amendment proposed by FID, et. al. limiting the applicability of the provisions of Special Condition 2 to Section 374 irrigation districts which are diligently pursuing distribution facilities, with the tariff language changes specified in the "Discussion" section of this Resolution, is reasonable. This modification provides for consistency with the legislative intent behind Section 374, and the CEC's process for allocating CTC exemptions to the Section 374 irrigation districts.

17. With the modifications to Advice Letter 1738-E adopted herein, ORA's and Edison's protests that Advice Letter 1738-E is contrary to Section 374 and Edison's protest that Advice Letter 1738-E allows PG&E to prevent distribution bypass, are moot.

18. Edison's protest that CTC exemptions should be narrowly construed is denied.

19. Allowing the construction of duplicative distribution facilities provides a competitive check on the ability of the utility to pass through unreasonable costs through to ratepayers in distribution rates and provides discipline to both the utility and the Commission in determining the rate design for distribution services.

20. Customers selecting as their ESP a Section 374 irrigation district which has a petition for an order requiring PG&E to enter into an interconnection agreement pending at the FERC, should only be exempt from paying CTC under Special Condition 2 if the petition is granted. FID, et. al.'s proposed Special Condition 2(e) should be modified to reflect this as described in the "Discussion" section.

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21. The Farm Bureau is correct that the tariff language provided by FID, et. al. in the June 12, 1998 letter requires modification to include the time limit on the applicability of Special Condition 2 for those irrigation districts which have a petition for an interconnection agreement pending at the FERC. FID, et. al.'s proposed Special Condition 2(e) should be modified to reflect this as described in the "Discussion" section.
22. PG&E's proposed Special Condition 2(e) originally included in Advice Letter 1738-E is arbitrary and restrictive and should be replaced in its entirety by that tariff language proposed by FID, et. al., and modified as discussed herein.
23. The provisions of Special Condition 2(g) as originally proposed in Advice Letter 1738-E are unduly restrictive. FID et. al.'s proposed modifications to the tariff language of Special Condition 2(g), are not justified. Special Condition 2(g) should be revised to change "twelve months" to "four months" wherever it appears. Merced's suggested changes to the tariff language of Special Condition 2(g), regarding the manner in which a customer provides notice to PG&E and clarifying that a customer departing PG&E's system retains its CTC exemptions, are approved.
24. FID, et. al.'s proposed modification to Special Condition 2(j) requiring PG&E to seek expedited approval of a standard lease of service drop facilities by Section 374 irrigation districts is approved.
25. Consistent with Section 374 (a) (1) (F), an irrigation district whose water service boundary is within the Counties of San Joaquin or Stanislaus, may use its CTC exemptions in any portion of those counties. Special Condition 2(h) should be revised as specified in the "Discussion" section to incorporate this circumstance.
26. The changes proposed by Merced and LID to Special Condition 2(i) removing the requirement that Section 374 irrigation districts register as ESPs and provide independent verification is approved with modifications requiring irrigation districts to provide PG&E with written certification that they meet the requirements of Sections 394 (a), and 366.5 (a) and (b).
27. Merced's proposed change to Special Condition 2(k) allowing a residential customer to transfer its CTC exemption when it changes its residence is approved and should be incorporated into the tariff.
28. LID's protest of the tariff language in Special Condition 2 stating that the PG&E-designated point of connection will be established at PG&E's sole discretion, is granted. The tariff changes specified in the "Discussion" section relating to this matter should be incorporated into the tariff.
29. LID's protest of the tariff language in Special Condition 2 regarding the applicability to multiple retail customers and customers served by irrigation district owned transformation facilities, is granted. The tariff changes specified in the "Discussion" section relating to this

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matter should be incorporated into the tariff. As part of these tariff changes, PG&E should specify that for master-metered or sub-metered customers, Special Condition 2 applies to those customers currently eligible for master- or sub-metering. This restriction shall apply for the duration of the rate freeze period. If PG&E wants to extend this restriction beyond the end of the rate freeze period it must obtain Commission approval.

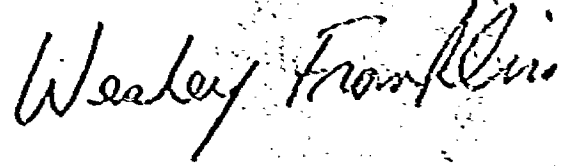
30. LID's protest to make the effective date of Advice Letter 1738-E January 1, 1998 is denied. Customers taking service under Special Condition 2 will begin receiving CTC exemptions commencing with the first billing cycle after a customer switches to direct access service with the Section 374 irrigation district as its ESP.
31. LID's protest relating to Special Condition 1 is denied.
32. Schedule E-Exempt as revised by this Resolution is specific to PG&E only and sets no precedent with regard to any other utility.
33. The request by FID, et. al. that the Commission state the purpose of the amendments to Advice Letter 1738-E is to implement AB 1890 and foster distribution competition, is denied.
34. The request by FID, et. al. that the Commission state that the amendments provide limited, transitional relief to customers of irrigation districts that were awarded CTC exemptions in Section 374, but whose ability to commence service to customers and utilize their exemptions has been thwarted by PG&E's refusal to interconnect their distribution facilities, is denied.
35. PG&E may voluntarily implement the revisions to Advice Letter 1738-E described in the "Discussion" section. Should PG&E decline to implement these revisions, Advice Letter 1738-E is denied.
36. On August 5, 1998 PG&E sent the Energy Division a letter requesting the withdrawal of Advice Letter 1738-E under Section III.K of General Order 96-A. Neither the Commission nor the Energy Division took action approving PG&E's withdrawal, and on September 16, 1998 PG&E wrote the Energy Division rescinding PG&E's request to withdraw the advice letter.

THEREFORE, IT IS ORDERED that:

1. Pacific Gas and Electric Company's request in Advice Letter 1738-E to add a special condition to Schedule E-Exempt that would allow electric customers who select certain irrigation districts as their energy service provider and who take direct access service from PG&E, to be exempt from paying the Competition Transition Charge, as modified as described herein is approved. PG&E may voluntarily implement this revised version of its advice letter.
2. Within 10 days of the effective date of this Resolution, PG&E shall inform the Commission via letter to the Energy Division, as to whether or not it accepts the revisions described herein to Advice Letter 1738-E. If PG&E accepts these revisions, it shall within 30 days of the effective date of this resolution file a supplemental advice letter incorporating the tariff changes described herein. This advice letter should include a standard lease of service drop facilities to be used by the Section 374 irrigation districts whose customers take service under the tariffs, which shall be pre-approved by the Commission after it has been reviewed for compliance by the Energy Division. This advice letter shall become effective after it has been reviewed and found to be in compliance with this resolution, by the Energy Division. Advice Letter 1738-E shall be marked to show that it was approved with modifications by Commission Resolution E-3531. If PG&E declines to accept these revisions, Advice Letter 1738-E is denied.
3. The protests to Advice Letter 1738-E are resolved as described in the Findings of this Resolution.
4. This Resolution is effective today.

September 17, 1998

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on September 17, 1998, the following Commissioners voting favorably thereon:



WESLEY M. FRANKLIN
Executive Director

RICHARD A. BILAS
President

P. GREGORY CONLON
JESSIE J. KNIGHT, JR
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners