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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Portions of AB 117 Concerning Community Choice Aggregation	)))	R.03-10-003 (October 3, 2003)

JOINT RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) AND SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO THE PETITION OF THE CITY OF VICTORVILLE FOR MODIFICATION OF DECISION 07-01-025 RELATING TO THE MARKET PRICE BENCHMARK FOR CALCULATING THE COMMUNITY CHOICE AGGREGATION COST RESPONSIBILITY SURCHARGE

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On behalf of Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company

Dated: **April 11, 2008**

LAW #1494866

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I.

INTRODUCTION

Pursuant to Rule 16.4(f) of the Commission's Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE) (collectively the Joint Utilities) file this joint response to the Petition of the City of Victorville for Modification of Decision (D.) 07-01-025 (Petition).

In its Petition, the City of Victorville (the City) claims that the market price benchmark adopted by the Commission in D.07-01-025 (the Decision) for calculating the community choice aggregation (CCA) cost responsibility surcharge (CRS) is "artificially low" and should be replaced by the Market Price Referent (MPR). Alternatively, the City argues that renewable resources should be removed from the utilities' total portfolios in determining the above-market costs to be recovered from CCA customers. Alternatively, the City requests that the CRS

Working Group be reconvened. In essence, the City looks for any alternative that may result in a lower CCA CRS.

The Petition seeks to modify the method for calculating CCA CRS that is the product of years of work by the CRS Working Group established in the Direct Access (DA) proceeding (R.02-01-011) and numerous Commission decisions over the last five years. The Petition suggests that despite the efforts of the Working Group, its recommendations, which arose out of a consensus process involving CCA, DA, and investor-owned and publicly-owned utility interests, were wrong in rejecting the use of the MPR and instead advocating the use of a transparent market price benchmark in determining the above-market costs of utilities' portfolios. The Commission should decline to overturn the findings and conclusions of numerous Commission decisions and the consensus recommendation of parties representing all affected interests based on the City's belated and meritless recommendations, which were already expressly considered and rejected by the CRS Working Group and by the Commission.

Specifically, the Commission should deny the Petition for the following reasons:

- The inclusion of the above-market costs of renewable resources in the CRS calculation is required by D.05-12-041, which found that excusing CCA customers from such costs originally incurred on their behalf would shift those costs to the bundled service customers in violation of Assembly Bill (AB) 117. Moreover, in D.04-12-048 while finding that the above-market costs of utilities' non-renewable resources should be recovered from departing customers for 10 years, the Commission found that the above-market costs of utilities' renewable resources should be recovered from such customers over the life of those resources.

- The clear direction of AB 117 and from the Commission is that above-market costs of generation resources, including renewable resources, be shared by all customers for whom the resources were procured. This includes bundled service, DA, CCA and Departing Load (DL) customers.

Customers who leave the utilities' procurement portfolios and may be exposed to the "above-market" costs of all types of generation resources procured by their new electricity provider should not be excused from the relevant vintage of above-market utility costs reflected in the CRS.

- The Working Group, on whose recommendations the Commission relied in adopting the method for calculating CRS, expressly considered and rejected the MPR as an appropriate benchmark for determining the above-market costs of the utilities' procurement portfolios. The futures-based market price benchmark was preferred and adopted because it reflects resource adequacy requirements better than model-derived market prices, after-the-fact spot prices, or administratively-determined values from other proceedings.

- The City's main argument for using the MPR as the benchmark for calculating the CCA CRS is that MPR more accurately represents the cost of renewable resources. However, currently renewable resources provide less than 20 percent of the utilities' bundled service customers' energy needs. The City does not provide any justification for why the MPR should be used for determining the above-market costs of the non-renewable resources (the other more than 80 percent) in the utilities' total portfolio. The only motivation for the City's proposal seems to be the fact that the 2008 10-year MPR is higher than the current market price benchmark for 2008.

- The City is incorrect in asserting that the market price benchmark must accurately reflect the cost of all types of resources in the utility's portfolio. The total portfolio cost includes the cost of all such resources; however, the market price benchmark should represent the revenue the utility will

be able to extract from the market for power left behind by the former bundled service customers who departed to CCA service.

- The futures-based energy prices used in calculating the market price benchmark accurately capture the portion of generation resource costs the utilities could avoid by selling in the market energy stranded by migration of CCA customer. The MPR does not. Rather, the MPR represents a long-term, levelized price at which the proxy power plant (a natural gas fired baseload unit) revenues exactly equal the expected proxy power plant costs on a net-present value basis. As such, the MPR is suited for evaluating procurement to meet the Renewable Procurement Standard (RPS), but it is not suited for determining above market costs of the utilities' portfolios.

- The City's claim that the costs of renewable resources solely responsible for increases in the CCA CRS is unsubstantiated and an oversimplification that ignores other factors.

- The Petition is incorrect in asserting that until the utilities meet the RPS requirement (20 percent by 2010), there will be no stranded or uneconomic costs associated with the utilities' renewable resources. If renewable resource costs are above-market, as the City asserts, then migration of customers to CCA will increase the average portfolio cost for the remaining bundled service customers and result in cost shifting to bundled service customers if the current method for calculating the CCA CRS is modified.

- The City provides no reasonable justification for the lateness of the Petition. The City was represented in the proceedings which lead to the

Commission decision adopting the method for determining the CCA CRS. As such, the City had a full and fair opportunity to raise this issue in a timely manner but failed to do so. Accordingly, the timing of the City's resolution to implement a CCA program is not a reasonable justification for its untimely Petition, and if accepted, would essentially mean that any and all previous CCA decisions could be challenged whenever a city or county resolves to implement a CCA program. Having no finality on the Commission's CCA decisions is not in the interest of any party, including the CCA parties.

II.

THE JOINT UTILITIES' RESPONSE TO ISSUES RAISED IN THE PETITION

A. The City Has Not Justified Late Submission of the Petition

The City provides no reasonable justification for why the Petition could not have been presented within a year of the effective date of the Decision. The record in this proceeding makes clear that the City participated directly and was also represented by Cal-CLERA in this proceedings (R.03-10-003) which lead to the Decision adopting the method for calculating the CCA CRS.[1] As such, the City had a full and fair opportunity to raise its concerns in a timely manner. Having failed to do so, it now seeks a second bite at the apple by arguing that the resolution to implement a CCA program within the City boundaries was only recently adopted.[2]

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1 *See,* the April 15, 2004 Prepared Testimony of Charles J. Cicchetti, Ph.D., on behalf of the California Clean Energy Resources Authority (Cal CLERA) and the City of Victorville, on recommendations for CCA CRS; *see also* May 7, 2004 Reply Testimony.

2 The timing of the City's Petition coincides with recent reports that total costs to build the Victorville 2 Hybrid Power Plant which the Petition references at p. 3 are now expected to reach $850 million -- a $50 million increase over most recent estimates and a $350 million increase over original projected costs. *See* Victorville Daily Press, March 15, 2008. These reports may explain the City's sudden interest in seeking to lower the CCA CRS.

The timing of the City's CCA resolution is not a reasonable justification for the lateness of the Petition in light of the fact that the City could have, but failed, to raise its concerns in a timely manner through its participation in the CCA proceeding which lead to the Decision. Moreover, accepting the timing of the City's CCA resolution as a basis for allowing the late Petition would be tantamount to doing away with the one-year rule for modifying Commission decisions, as any such decision would be subject to challenge *whenever* a city or county resolves to implement a CCA program. Having no finality on the Commission's CCA decisions is not in the interest of any party, including the CCA parties.

Having failed to explain the lateness of the Petition, the City asserts that no party is prejudiced by the late filing because the utilities' 2007 CCA CRS tariffs have not yet been approved, and the 2008 CCA CRS tariffs have not yet been filed.[3] This assertion is disingenuous. For example, approval of SCE's 2007 CCA CRS filing, Advice 2109-E, has been held up due to a protest by the City of Cerritos, which is represented by the same counsel as the City of Victorville, and as a result, SCE has been unable to update the not-yet-approved tariffs for the 2008 CCA CRS. The CCA parties cannot in good faith protest approval of the tariffs and then use the delayed approval as a justification for belatedly petitioning to modify the underlying decision authorizing the tariffs.[4] Moreover, Commission decisions are effective on the date they are rendered and not on the date utility tariffs filed in compliance with those decisions are implemented.

The City has not justified the lateness of the Petition. Accordingly, the Petition should be summarily rejected. However, in case the Commission decides to review the merits of the Petition despite the above procedural infirmities,[5] in the following sections the Joint Utilities

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3 *See* Petition at p. 18.

4 It should be noted that the City of Cerritos never raised the issue presented here of the appropriateness of the market price benchmark in determining the CCA CRS.

5 It should also be noted that some modifications requested in the Petition require modifications to a number of Commission decisions (particularly in the utilities' Long-Term Procurement Proceedings) other than D.07-01-025.

respond to the arguments raised by the City in support of the Petition and show that they lack merit and do not justify any modification to the Decision..

B. The Commission Has Already Considered and Appropriately Rejected the MPR in Favor of the Market Price Benchmark for Calculating the CRS

In its first decision in the Rulemaking to Implement Portions of AB 117 Concerning Community Choice Aggregation, D.04-12-046, the Commission found that "Section 366.2 (d)(1) of AB 117 provides that the costs associated with CCA's procurement of power for local residents and businesses must not require remaining utility customers to assume additional costs."[6] In other words, the Commission concluded that AB 117 requires ***bundled service customer indifference*** to the CCA program. The Commission determined that the CRS would be "the ratemaking vehicle for assuring former utility procurement customers assume their fair share of utility generation and procurement costs that would otherwise be stranded with the initiation of CCA service."[7]

In its decision implementing the CCA program, D.05-12-041, the Commission stated its intent to consider the applicability of the DA/DL CRS methodology to calculating the CCA CRS.[8] Accordingly, upon the issuance of D.06-07-030, which adopted the CRS Working Group Report recommendations to modify the method for calculating the CRS for DA and municipal departing load (MDL) customers, the Commission held a workshop and sought comments on the applicability of that method to calculating the CCA CRS. [9] In their comments, the utilities identified modifications adopted in D.06-07-030 which should be applied to CCA CRS. Among these were two modifications relevant to the Petition:

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6 D.04-12-046, *mimeo* at p. 23.
7 *See id.* at Section IV.
8 *See* D.05-12-041, *mimeo* at p. 26.
9 *See* ALJ Malcolm's August 10, 2006 Ruling Scheduling Process for Considering Modifications to the Cost Responsibility Surcharge Applicable to Community Choice Aggregator Customers.

- For all CCA CRS calculations, replace the CCA "in and out" total portfolio calculation described in D.04-12-046 with a calculation that compares a market price benchmark to projected utility power costs; and

- Use the adopted procedure in D.06-07-030 for deriving the market price benchmark.

CCA parties in their comments generally supported the application of D.06-07-030's method to calculating the CCA CRS. Parties agreed that the method adopted in D.06-07-030 was an improvement over the CCA "in and out" approach particularly in its transparency.

The Commission in the Decision adopted the D.06-07-030's method as the basis for calculation of CCA CRS. As noted in the Decision, "CCA Proponents' comments generally agree with the application to CCAs of the modifications to the CRS adopted in D.06-07-030."[10] No CCA proponent contested the applicability of the "adopted procedure for deriving the market price benchmark" to calculating the CCA CRS, in spite of the fact that the MPR was considered by the CRS Working Group and ultimately rejected in favor of the currently authorized market price benchmark.[11]

The market price benchmark methodology recommended by the Working Group and adopted in D.06-07-030 was the product of many years of work by numerous parties. In D.04-12-046, the Commission wisely recognized that the development of the CCA CRS should follow "the lessons learned and the policies adopted" in proceedings that developed calculations and models for the CRS applicable to the DA and DL customers. This is precisely what the Decision did in adopting the same market price benchmark for calculating the CCA CRS, and the opposite of what the Petition now requests. In fact, D.06-07-030 provides the

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[10] D.07-01-025, *mimeo* at p. 3.

[11] R.02-01-011, "Final Report of the Working Group to Calculate CRS Obligations Associated with Municipal Departing Load and Direct Access", dated January 30, 2006 at Section III, p. 30 stating "[MRP among other methods] was proposed and discussed within the Working Group. However, it is the recommendation of the Working Group that a futures-based benchmark be applied, as it is an appropriate measure of the power being valued, it relies on readily available published data, it is capable of replication by other parties, and it can be projected over the necessary forecast period."

following, among other aspects, as an advantage of the adopted market price benchmark methodology:

> "A futures-based benchmark reflects current resource adequacy requirements better than model-derived market prices, after-the-fact spot prices, or administrative values from other proceedings. Resource adequacy requirements dictate that the IOUs have 90% of their power forward-contracted or self-supplied a year in advance and rely on spot power for no more than 5% of their resources."

The MPR is precisely the type of administratively-determined and "model-derived" market price over which the Commission preferred the currently authorized and more transparent market price benchmark.

The City's main argument for using the MPR as the benchmark for calculating the CCA CRS is that MPR more accurately represents the cost of renewable resources. However, currently renewable resources provide less than 20 percent of the utilities' bundled service customers' energy needs. The City does not provide any justification for why the MPR should be used for determining the above-market costs of the non-renewable resources, which comprise more than 80 percent of the utilities' total portfolios. The only motivation for the City's proposal seems to be the fact that the 2008 10-year MPR is higher than the current market price benchmark for 2008.

The Commission should decline to overturn the findings and conclusions of numerous Commission decisions and the consensus from years of work by parties representing all affected interests in favor of the City's recommendation to use the MPR, which was considered and rejected by the CRS Working Group and ultimately by the Commission in adopting the Working Group recommendations.

C. The "Necessary Corrections" to the Market Price Benchmark Proposed in the Petition are Fundamentally at Odds With the Concept of the Indifference Rate

The Petition includes statements that suggest the City misunderstands the concept of indifference and the role of the market price benchmark as it relates to the CRS.

The Petition correctly recognizes that "[u]nder the procedure adopted in D.06-07-030, the market price benchmark is intended to reflect the avoided cost of power for the utilities."[12] In D.06-07-030, the Commission explained that "[t]he incremental costs attributable to changes in DA load forms the basis to derive bundled customer 'indifference'."[13] The Working Group Report identified the indifference rate component of CRS as insurance that "the bundled customers' average rate for delivered power does not increase due to the departure" of DA load from bundled service.[14] Although D.06-07-030 and the Working Group Report pertained to DA and DL CRS, the concept is the same with respect to the CCA CRS. Variations in bundled load as customers elect service with a CCA may impact bundled service customers through the average cost of the utility's portfolio. If the power formerly sold to these departed CCA customers is instead sold into the market for a price below the average portfolio cost, the average cost to the remaining bundled service customers increases. As noted above, the market price benchmark reflects the utilities' avoided, or avoidable, cost of power and the indifference rate in turn approximates those which are "unavoidable."

The City appears to understand this principal when it states, "[i]n simplified terms, if the utilities' total portfolio cost is higher that the market benchmark, departing customers will pay a CRS; if the utilities' total portfolio cost is lower than the market price benchmark, departing customers will not pay a CRS."[15] However, the Petition then contradicts this principle by stating "[i]t is important that the market price benchmark accurately reflect all components associated with the utilities' cost of power because the CRS will be determined by comparing the utilities' total portfolio cost with the market price benchmark."[16] This is incorrect and inconsistent with earlier statements in the Petition. The total portfolio cost includes the cost of all resources in the

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12 Petition at p. 1.
13 *See* D.06-07-030, *mimeo* at p. 5.
14 *See* R.02-01-011, "Final Report of the Working Group to Calculate CRS Obligations Associated with Municipal Departing Load and Direct Access", dated January 30, 2006, at p. 13.
15 Petition at p. 2.
16 *Id.*, (emphasis added).

utility's resource portfolio; however, the market price benchmark will reflect only the avoidable component.

This confounding of the market price benchmark and total portfolio cost serves as the basis for another incorrect statement in the Petition that sums up the basis for the Petition: "[u]nder the current CCA CRS methodology, the market price benchmark used for determining the CCA CRS does not accurately capture the cost of renewable resources, and as a result CCA customers will be unfairly subsidizing bundled customers' contribution to the cost of the utilities' renewable resources. This is inequitable, and must be remedied."[17] The market price benchmark is not intended to explicitly capture the cost of any single resource, except to the extent the cost of those resources are reflected in the future price of power in the market. The market price benchmark should represent the revenue the utility will be able to extract from the market for power that is no longer sold to bundled service customers who departed to CCA service.

The City's preferred "correction" to the market price benchmark is its replacement with the MPR. The Petition contends that the current market price benchmark used for calculating the CCA CRS "does not accurately capture the cost of renewable resources".[18] This is incorrect, and the Petition provides no support for this position. The primary component of the current market price benchmark is the average of a one-year strip of power futures quotes for South of Path 15 (for SCE and SDG&E) and North of Path 15 for PG&E for the coming calendar year.[19] To the extent renewable generation is being traded in the market its cost may be reflected in the futures price. However, the market price benchmark is not intended to mimic the cost of each specific resource type in the total portfolio but rather to provide a reasonable measure of the avoidable costs of the total portfolio. The City's preferred replacement, MPR, explicitly excludes renewable generation, as it represents the levelized cost of a combined cycle generation turbine

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[17] Petition at p. 2-3.

[18] *See id.* at p. 2.

[19] The average futures price is adjusted to account for baseload usage, capacity/resource adequacy requirements, and losses.

(CCGT).[20] The only basis for associating the MPR with renewable resources is its use in RPS solicitations, not because it "accurately captures the cost of renewable resources." As discussed in more detail below, the MPR has no relation to the cost of renewable resources included in the utilities' total portfolios.

D. The Petition's Assertion that Renewable Contracts are "Dramatically" Increasing the CCA CRS is Unsupported

The Petition asserts several times that the utilities' average portfolio cost exceeds the current market price benchmark, and thus drives the CRS "artificially" higher due to the above-market cost of renewable resources.[21] However, the Petition presents nothing to support this claim. The Petition simply points out that successive vintages of CRS have increased over time, and "presumes" that this must be due to the cost of renewable resources. For example, the Petition claims "[a]n overarching conclusion can be made with respect to CCA CRS: the CCA CRS is increasing at a significant rate, *presumably* as a result of renewable resources priced at a level that is currently above the market price benchmark used in determining the CCA CRS."[22] The Petition makes several other similar claims.[23]

These assertions serve as the backdrop, and even the basis, for the Petition's preference for replacing the existing market price benchmark with the MPR. But they are completely unsupported by data and in some cases simply wrong. For example, the CCA CRS, or more precisely the vintaged indifference rate, is a function of two values: the utility's total portfolio cost and the market price benchmark. The Petition claims that an increasing CRS must be the result of additional above-market resources (read renewable resources) in the utilities' portfolio,

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[20] *See*, D.04-06-015, *mimeo* at p. 6.

[21] *See e.g.,* Petition at p. 2.

[22] Petition at 7, emphasis added.

[23] The Petition asserts that successively higher CCA CRS for the vintage years 2005 through 2008 demonstrate that above-market generation costs are increasing each year, "presumably as a result of the utilities' acquisition of renewable resources" (at p. 8) and that the increasing CRS is evidence "that each year SCE is adding resources, presumably renewable resources, that are priced at a level that is greater than the corresponding market price benchmark used to determine the CCA CRS" (at p. 8).

but these increases can also obviously result from changes in the market price benchmark and other factors that affect the utilities' total portfolio (*e.g.*, DWR revenue requirements and contract allocations). The Petition also assumes, incorrectly, that only the cost of renewable resources is likely to be "above-market".

In addition, the Petition's assumption that incremental renewable resources are the driver of indifference rate increases from 2004 through 2008 is inconsistent with historical data. For example, for SCE's portfolio, renewable resources currently comprise roughly 15 percent of the energy supplied from all resources annually. But roughly 91 percent of that energy is provided from renewable resources of 2003 vintage or earlier and thus cannot be the source of year-to-year increases in above-market costs cited in the Petition. In fact, as noted in Section G below, roughly 83 percent are 2001 vintage, with any associated above-market costs shared with DA customers. While SCE continues to actively contract for renewable resources to meet the RPS requirement, those resources will only be reflected in the total portfolio when they come online and begin providing power, and thus cannot be driving annual changes in the CRS as the Petition claims. Indeed, removing all renewable resources from the total portfolio would lower the 2008 vintage CRS by only 0.2 cents per kWh.[24] Moreover, removing only those renewable costs which are 2004 vintage or later would only lower the 2008 vintage CRS by 0.07 cents per kWh. Clearly, renewable resources are not the main driver of year-to-year indifference rate increases as the Petition claims.

Most significantly, the Petition appears to assume that all renewable resources costs exceed the market price benchmark, at least in those years when the MPR exceeds the market price benchmark (*e.g.*, 2008). The Petition's request that the Commission replace the market price benchmark with the MPR is based on the mistaken conclusion that "the MPR serves as the generally prevailing price for RPS contracts."[25] Because RPS contracts priced "equal to or less

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[24] As a comparison of the Petition's two alternatives, replacing the market price benchmark with the MPR would actually *eliminate* the CRS for 2008.

[25] Petition at p. 9.

than the MPR are deemed to be reasonable per se," the Petition then reasons that RPS contracts must be priced at MPR, and because MPR is above the market price benchmark, the Petition claims this explains the increase in the CCA CRS. The problem with this reasoning is that MPR serves only as an administratively-determined and model-based measure against which to judge contract prices in a competitive solicitation for renewable resources; it does not set the market price for any kind of power. In fact, a considerable percentage of the utilities' renewable contracts cost below both the MPR and the market price benchmark.

E. CCA Customers Do Not Subsidize the Bundled Service Customers under the Authorized Market Price Benchmark

The City's assertion that CCA customers are "subsidizing" the renewable costs for bundled service customers rests entirely on the assumption that the market price benchmark is understated or renewable resources costs are above-market. Asserting the superiority of the MPR, the Petition notes, "[t]he MPR and the market price benchmark used to calculate the CCA CRS are similar in one key respect; both are designed to reflect the utilities' avoided cost. However, the MPR differs from the market benchmark used to calculate the CCA CRS in other key respects, most notably, the overall price."[26] Accepting the observation that, at least in 2008, the MPR exceeds the adopted market price benchmark, there are several problems with this statement, including the obvious question of why the two prices differ? The adopted SCE MPR for 2008 operational resources is $0.09271 per kWh for 10-year contracts, while the market price benchmark for SCE is $0.07791, roughly a cent-and-a-half less. The Petition does not address the difference; rather it simply selects the larger of the two. While there is the previously-discussed relationship between MPR and renewable resource solicitations, which the Petition uses to justify the preference for MPR, but this relationship is only relevant if it is accepted that renewable resources are all priced at the MPR which has been shown not to be the case.

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[26] Petition at p. 10.

The fact is that, while the market price benchmark does reflect the revenue the utility can extract from the market in any year for the power left behind by the customers departing to a CCA,[27] the MPR does not. The futures-based energy prices used in the determination of the market price benchmark accurately capture the portion of generation resource costs the utilities could avoid by selling energy stranded by CCA customer migration in the market. The MPR, on the other hand, represents a long-term, levelized price at which the proxy power plant revenues exactly equal the expected proxy power plant costs on a net-present value basis.[28]

As a levelized price, the MPR cannot accurately reflect the revenue the utility will be able to obtain for the energy and capacity stranded by the bundled service customers leaving for a CCA in any particular year, especially not the first year, as the City suggests. This is because many of the cost components included in the MPR are escalated over the assumed term of the procurement contract (the Petition proposes the use of the 10-year MPR). One of these components is the cost of natural gas fuel, which represents approximately 75 percent of the lifetime cost of the gas-fired combined cycle plant.[29] It stands to reason that if the MPR is a levelized price, and the most significant cost component is escalated over the life of the plant, the first-year MPR is over-stated relative to the actual cost in that year, at least with respect to fuel costs.

By mistakenly equating the market price benchmark and the MPR as "avoided costs", and by incorrectly assuming that renewable resources are priced at the MPR, the Petition falsely concludes that CCA customers pay a disproportionate amount of the costs of the utilities' renewable resources:

> "[t]he mismatch in price between these two avoided cost calculations means that by paying the CCA CRS, which is derived using the market price benchmark of $0.07791 per kWh, CCA customers in SCE's territory will be unfairly subsidizing bundled

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27 The market price benchmark is updated annually to include current futures prices, which allows for tracking of short-term changes in market prices.

28 D.04-06-015, *mimeo* at p. 6.

29 D.05-12-042, *mimeo* at p. 8.

> customers' contribution to the (sic) SCE's acquisition of renewable resources, which will be priced at approximately $0.09271 per kWh."[30]

The Petition then approaches the "subsidization" claim from a different angle. It claims that departure of customers to a CCA results in an "automatic" increase in the utility's RPS percentage and a "benefit" to bundled service customers.[31] The Petition is not clear as to what exactly the "benefit" to bundled service customers is, although the utility certainly may, other things being equal, attain its required RPS sooner. It is important to note that the renewable resources the CCA customers are leaving behind were contracted for while they were bundled service customers. What the Petition does not address is the potential impact to bundled rates resulting from this increase in renewable resources as a percentage of the total portfolio. This is precisely the circumstance the CRS is intended to address, whether the cost of "stranded" resources are above or below the market price benchmark.

Finally, the Petition again claims subsidization by arguing that under the current CCA CRS structure "CCA customers will pay twice; in addition to having to contribute through the CCA CRS to the cost of the utilities' renewable resources, CCA customers will also have to contribute to the cost of their community choice aggregators' renewable resources."[32] Once again, this statement seems to assume that the cost of utilities' renewable resource are all above-market, which is the only instance in which CCA customers would continue to have an obligation toward them. Even if it were the case, the Petition has not demonstrated why this result would be counter to the concept of indifference. The clear direction of AB 117 and the Commission is that above-market costs of generation resources be shared by all customers (bundled service, DA, CCA and DL) for whom the resources were procured. Nowhere has the Commission found that departing customers, who may be exposed to "above-market" costs of all

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30 Petition at p. 11.
31 *See id.*
32 Petition at p. 12.

types of generation procured by their own supplier should be exempted from paying the relevant vintage of utility's above-market costs reflected in the CRS.

F. There Is No Justification for Excluding the Cost of Renewable Resources From the Utilities' Total Portfolio Costs

The City proposes, as an alternative to its preferred modification, that the utilities be directed to exclude the cost of their renewable resources from their total portfolio costs until they reach the 20 percent RPS requirement. While the Petition claims "the logic of this remedy is fairly simple,"[33] it is also fatally flawed.

As the Petition correctly points out, the inclusion of stranded renewable resource costs in the CRS calculation is required by D.05-12-041: "[AB 117] requires that [the Commission] set CRS so as to make bundled customers indifferent to the CCA's offering of service. Excusing CCA customers from RPS liabilities incurred originally on their behalf would force utility customers to make up the difference in violation of AB 117."[34] While this is simply another way of expressing indifference, in this case with respect to the cost of renewable resources, the Petition mistakenly interprets this statement's reference to "RPS liabilities" to mean "RPS requirements."[35] The Petition reasons that because CCAs are now obligated to meet RPS requirements, it doesn't make sense to continue to include RPS-related costs in the CRS calculation.[36] But the RPS liabilities incurred on behalf of CCA customers refers to the cost of resources contracted for by the utility when the CCA customers still received bundled service. These liabilities are distinct from the RPS requirements which now apply to the CCAs.

"Until the utility achieves the 20% RPS," the Petition claims, "bundled customers, not CCA customers, are solely benefiting from the RPS contracts."[37] This is the same argument

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33 *See* Petition at p. 15.
34 D.05-12-041, *mimeo* at p. 26.
35 *See* Petition at p. 14.
36 *See id.*
37 Petition at p. 15.

proffered by the City in support of the claim that departing CCA customers are subsidizing the bundled service customers by driving up the utilities' RPS percentage. Again, the Petition never explains what the nature of the benefit is to bundled customers in this situation, unless the City is suggesting that low-cost renewable resources are driving down the utility's average portfolio cost as they make up a larger portion of the total portfolio.

The Petition also asserts that "[u]ntil the utilities meet the RPS requirement (20 percent by 2010), there will be no stranded or uneconomic costs associated with the utilities' purchase of renewable resources, since departure of CCA customers merely means that the utilities can meet the RPS requirement faster."[38] This is one of the more confusing statements in the Petition. If, as the City asserts, renewable resources' costs are above-market, then migration of customers to CCA will increase the average portfolio cost for the remaining bundled service customers and result in unlawful cost shifting to those customers if the current method for calculating the CCA CRS is modified.

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[38] *Id.*

G. The Petition Presents No Compelling Reason to Convene the Working Group to Consider the Issues Raised by the City

Finally, the City offers its "willingness" to work jointly with the CRS Working Group to "further develop" the CRS methodology. The Joint Utilities object to this proposal. The Decision was rendered just over one year ago, and the City has not demonstrated that the issues it raises in the Petition were not considered when the DA CRS methodology was substantially adopted for calculating the CCA CRS. Nothing has changed since these issues were last considered to require further "development" of the methodology, other than the City's interest in forming a CCA. For that matter, D.06-07-030 is barely two years old and that decision represented several years work by numerous parties in developing the underlying CRS methodology. The Petition seeks to overturn these decisions, or at least "reconsider" them, based on the City's unsupported assertion that the adopted benchmark is simply too low and the CCA CRS is simply too high.

The Joint Utilities also emphasize that this is not a CCA-specific issue as the Petition suggests. The Petition distinguishes the CCA CRS from the DA CRS based on a presumption that the vintage of CRS applicable to DA customers does not include renewable resources. This is not true. For example, at the time DA was suspended SCE had considerable renewable resources in its portfolio and the above market costs of those resources, if any, are reflected in the DA CRS. The arbitrary distinction between the DA CRS and CCA CRS drawn by the City with respect to RPS and renewable resources is only designed to allow the potential City CCA customers to avoid some portion of their CRS obligations and unlawfully shift those obligations to bundled customers. There is simply no rationale for excluding the renewable resources or any other generation resource with above-market costs from the CCA CRS calculation.

III.

CONCLUSION

Based on the foregoing, the Joint Utilities respectfully request that the Commission deny the Petition and reaffirm the adopted market price benchmark methodology for calculating the CCA CRS.

Respectfully submitted,

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April 11, 2008

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of JOINT RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E), AND SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO THE PETITION OF THE CITY OF VICTORVILLE FOR MODIFICATION OF DECISION 07-01-025 RELATING TO THE MARKET PRICE BENCHMARK FOR CALCULATING THE COMMUNITY CHOICE AGGREGATION COST RESPONSIBILITY SURCHARGE on all parties identified on the attached service list(s).

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **11th day of April 2008**, at Rosemead, California.

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