BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Rulemaking Regarding Whether, or Subject to What Conditions, the Suspension of Direct Access May Be Lifted Consistent with Assembly Bill 1X and Decision 01-09-060	Rulemaking 07-05-025 (Filed May 24, 2007)

OPENING COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E) ON PROPOSED DECISION

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SUBJECT INDEX LISTING RECOMMENDED CHANGES

Pursuant to Commission Rule of Practice and Procedure 14.3(b), Pacific Gas and Electric Company provides the following subject index listing the recommended changes to Administrative Law Judge Pulsifer's *Proposed Decision Adopting Direct Access Reforms* ("PD") issued August 23, 2011:

- **RPS Adder:** The Commission should adopt the Renewable Energy Credits ("RECs") Index pricing proposal advocated by PG&E and the Division of Ratepayer Advocates ("DRA") to determine the Renewable Portfolio Standard ("RPS") Adder, or, alternatively, should use Department of Energy ("DOE") data to determine the RPS Adder as proposed by Southern California Edison Company ("SCE") and San Diego Gas & Electric Company;

- **RPS Adder:** If the Commission adopts the proposal in the PD to partially use the Joint Parties' Green Benchmark to determine the value of the RPS Adder, the PD needs to be modified to clarify that the value of capacity should be removed from the Green Benchmark, which the parties in this proceeding have agreed is appropriate, and the cost of Utility-Owned Generation ("UOG") needs to be levelized to ensure that the Green Benchmark is not distorted by ratemaking anomalies;

- **RPS Adder:** The RPS Adder should not be applied to energy associated with pre-2003 RPS-eligible contracts because pre-2003 contracts do not have similar market value as post-2003 RPS-eligible contracts and thus should be treated differently;

- **MPB Weighting:** The Market Price Benchmark ("MPB") should be weighted based on the Investor-Owned Utilities' respective forecast generation profiles or, alternatively, the historic bundled load profile as proposed by SCE, rather than the hybrid approach adopted in the PD which was not advocated by any party;

- **Indifference Amount Calculation**: If the Indifference Amount calculated in a given year is negative, the Commission should modify the current methodology to specify that the Power Charge Indifference Amount ("PCIA") will be set to zero to ensure bundled customers are indifferent and that that all customers are treated equally consistent with California statutory law; and,

- **Minor Modifications**: Two minor modifications to the PD are required to ensure that it is complete and accurate.

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OPENING COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E) ON PROPOSED DECISION

Pacific Gas and Electric Company provides these opening comments on the *Proposed Decision Adopting Direct Access Reforms* ("PD") issued by Administrative Law Judge ("ALJ") Pulsifer on August 23, 2011 pursuant to Commission Rule 14.3. In a September 2, 2011 e-mail, ALJ Pulsifer granted a request to increase the page limit for opening comments from 15 pages to 25 pages.

The PD carefully and thoroughly addresses a number of contentious issues raised in this proceeding regarding the limited re-opening of direct access ("DA") and proposed modifications to the methodology for determining the surcharges for DA and Departing Load ("DL") customers to ensure these customers pay their fair share of costs incurred on their behalf. With some notable exceptions, PG&E fully supports the conclusions reached in the PD and believes that the PD fairly balances the interests of customers, the Investor-Owned Utilities ("IOUs"), Electric Service Providers ("ESPs") and Community Choice Aggregators ("CCAs"). However, there are some aspects of the PD that require modification in order to appropriately maintain bundled customer indifference.

First, the PD's adder for Renewable Portfolio Standard ("RPS")-eligible energy that would be included in the calculation of the Market Price Benchmark ("MPB") used to determine

the value of and corresponding above-market costs associated with each IOU's portfolio does not reflect the short-term market value of renewable attributes. PG&E agrees that an RPS adder should be included in the MPB calculation. However, as explained further in Section I below, the RPS adder proposed in the PD is flawed. In particular, the PD adopts an RPS adder that is based on a "Green Benchmark" proposed by the Joint Parties[1] for 68% of the adder, with the remaining 32% of the RPS adder based on data from the Department of Energy ("DOE"). The Green Benchmark has a number of fundamental flaws. Given these flaws, the PD should be revised to adopt the RPS adder advocated by PG&E and the Division of Ratepayer Advocate ("DRA") which is based on publicly available, market-based indices that establish the market value for renewable power in California. Alternatively, the RPS adder should solely be based on the DOE data, rather than the Joint Parties' Green Benchmark proposal.

Second, if the Commission adopts the PD's proposal to partially use the Joint Parties' Green Benchmark, several modifications need to be made in order to ensure that the Green Benchmark is just and reasonable. All of the parties in this proceeding have agreed that the value of capacity needs to be removed from the Green Benchmark. Although the PD acknowledges this fact, it neglects to specifically direct that the capacity value be subtracted from the Green Benchmark. In addition, the Joint Parties' Green Benchmark unreasonably skews the cost of RPS-eligible utility-owned generation ("UOG") by using the first two years of UOG costs, which are substantially higher than UOG costs in later years. UOG costs used in the Green Benchmark need to be levelized to ensure that the RPS adder is just and reasonable.

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[1] The Joint Parties include the City and County of San Francisco, the Alliance for Retail Energy Markets, the Direct Access Customer Coalition, BlueStar Energy, the Marin Energy Authority, the Energy Users Forum, San Joaquin Valley Power Authority, and the California Municipal Utilities Association. *See* PD at p. 5.

Third, the PD applies the RPS adder to all RPS-eligible energy in an IOU's portfolio, rather than limiting it to post-2003 contracts for RPS-eligible energy as proposed by PG&E. Although the Commission and California statutes have recognized the difference between pre- and post-2003 RPS-eligible energy, the PD fails to do so. PG&E's proposal regarding the treatment of pre-2003 RPS-eligible energy is reasonable and consistent with California law.

Fourth, the PD determines that the MPB should be weighted based on the IOUs' respective historic generation profiles. However, no party proposed this weighting approach. Instead, PG&E proposed using the forecast generation profile, which is consistent with the MPB because it is developed on a forecast basis to reflect generation costs. PG&E's proposal should be adopted in the final Commission decision. To address confidentiality concerns raised by DRA, SCE proposed as an alternative using historic bundled load profiles to weight the MPB. PG&E agrees that this is a reasonable alternative approach. However, PG&E does not support PD's hybrid approach to use historic generation profiles.

Fifth, the PD rejects PG&E's proposal to set the PCIA to zero in certain circumstances to ensure that all customers are treated equally with regard to collection of the Ongoing Competition Transition Charge ("CTC"). PG&E's proposal corrects the current rules, which result in bundled customers paying certain costs that should be borne by DL customers and also results in unequal treatment between DL customers. The PD provides no reasoned basis for rejecting PG&E's proposal, nor does it provide any remedy for resolving existing inequitable treatment of customers.

Finally, there are two minor modifications to the PD that are required to ensure that it is complete and accurate.

All of these issues are addressed in more detail below. In addition, PG&E has included in Appendix A proposed modifications to the PD's Findings of Fact, Conclusions of Law and

Ordering Paragraphs so that they are consistent with PG&E's recommendations. With these modifications, PG&E fully supports the PD and believes that it is well-reasoned and fairly balances the interests of customers, IOUs, ESPs and CCAs.

I. THE RPS ADDER SHOULD BE BASED ON PG&E'S PROPOSAL.

Virtually all of the parties in this proceeding agreed that the current MPB methodology, used to determine the market value of each IOU's portfolio, needs to be modified to address the market value of RPS-eligible energy.[2] There were three separate proposals for an RPS adder that could be used in the MPB methodology. First, the Joint Parties proposed a Green Benchmark that is based on IOU-only contract costs from contracts that started delivery within the last two years. Second, Southern California Edison ("SCE") and San Diego Gas & Electric ("SDG&E") proposed an RPS adder that is based on certain publicly available DOE renewable energy price information. Third, DRA and PG&E advocated the use of a publicly available, robust Renewable Energy Credit ("REC") index recently developed for the California market. The PD adopts a weighted hybrid approach that is based 68% on the Joint Parties' Green Benchmark and 32% on DOE data.[3] As explained in more detail below, the PD should be revised to adopt the RPS adder proposed by PG&E and supported by DRA. In the alternative, the Commission should base the RPS adder 100% on DOE data given the fundamental flaws in the Joint Parties' Green Benchmark.

A. PG&E's Proposed RPS Adder Should Be Adopted.

Most of the parties in this proceeding agree that an RPS adder should be based on "the market value of renewable attributes . . .."[4] The MPB formula adopted by the Commission in

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[2] PD at p. 9.

[3] *Id.* at pp. 21-22.

[4] Exhibit ("Ex.") 100 at p. 26, line 25 (Joint Parties, Meal); *see also* Ex. 600 at p. 4, lines 12-17 (DRA, Ouyang); Ex. 301 at p. 10, lines 9-11 (SCE, Schichtl); Ex. 400 at p. 1-13, lines 3-6 (PG&E, Barry).

2006 and used consistently for the past several years is based on a year-ahead forecast of market prices for conventional power supplies. Consistent with the parties' positions in this proceeding and Commission precedent, PG&E proposed the development of an RPS adder based on a RECs index price.[5] Because RECs best represent the short-term value of RPS-eligible energy (*i.e.*, the short-term value of renewable attributes), a RECs Index price is the best indicator of the market value of renewable attributes. At the hearing in this proceeding, PG&E presented ample and unrefuted evidence that a renewable attributes market exists in California and is becoming increasingly robust.[6] PG&E also presented evidence that one publisher, SNL, has begun publishing a California RECs Index that reflects the value of renewable attributes (*i.e.*, RECs).[7] SNL's REC Index is based on multiple broker quotes and is updated on a weekly basis.[8] Although SNL is a subscription service, a subscription for a year is only a few thousand dollars.[9] Given the billions of dollars that the Joint Parties assert are at issue in ensuring that the MPB is accurate, a few thousand dollars is certainly a small price to pay. The development of REC Indices reflects the growth of a robust market in California for renewable attributes. California is not alone with regard to the development of RECs markets. Fourteen other states permitted the use of RECs before California and in those states robust RECs markets have developed, as is now happening in California.[10] PG&E's RPS adder proposal was supported by DRA.[11]

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[5] Ex. 400 at pp. 1-12 to 1-14 (PG&E, Barry).

[6] Ex. 400 at pp. 1-13 – 1-14 (PG&E, Barry); Ex. 401 at pp. 14-17 (PG&E, Pappas); Transcript ("Tr.") at pp. 285-287 and 375-376 (PG&E, Pappas).

[7] Ex. 401 at p. 16, lines 15-29 (PG&E, Pappas).

[8] Tr. at p. 286:21 – 287:7 (PG&E, Pappas).

[9] *Id.* at 285:15 – 286:15 (PG&E, Pappas).

[10] Tr. 375:4 – 376:27 (PG&E, Pappas).

[11] Ex. 601 at pp. 7-8 (DRA, Ouyang).

Despite the fact that a RECs Index best reflects the market value of renewable attributes in California, the PD rejected PG&E's proposal for two reasons. First, the PD concludes without any citation to the record that the types of transactions in the SNL Index are unclear and the information in the index may be subject to unspecified "deficiencies."[12] Second, the PD notes that as a result of the recent passage of Senate Bill 2 (2011-2012 First Extraordinary Sessions) ("SB 2 (1X)"), and limitations on the use of RECs in that statute, and Commission decisions, REC prices may not accurately reflect the value of renewable attributes.[13]

Both of these concerns are unfounded. As described in detail above, PG&E provided ample evidence concerning the data sources used for the SNL Index and demonstrating that the index was robust. The PD ignores this evidence and instead relies on communications between the Joint Parties and unnamed "brokerage services" that provide information to SNL. Notably, these communications are not in evidence in this proceeding, nor is there a citation in the PD to any evidence to support concerns about the SNL Index. The purported concerns raised in the PD are simply rhetorical.

Furthermore, even with the recent enactment of SB 2 (1X) and Commission decisions regarding the use of RECs, REC Index prices are the most accurate reflect of the market value of renewable attributes. At the hearing, PG&E witness John Pappas explained that all markets have limits and regulatory requirements, but this does not mean that there can never be a market price.[14] In fact, in fourteen other states where RECs have been authorized, robust RECs markets have developed, despite the fact that some of those states have even more restrictions than California.[15] Moreover, as Mr. Pappas explained, given the volume of renewable energy

[12] PD at p. 19.

[13] *Id.* at pp. 19-20.

[14] Tr. at p. 287, line 25 to p. 289, line 2 (PG&E, Pappas).

[15] Tr. at p. 374, line 1 to p. 376, line 27 (PG&E, Pappas).

required for all Load-Serving Entities ("LSEs") to meet the RPS requirements, there will still be a significant volume of REC transactions, even with the limitations on the amount of RECs that an LSE can use for compliance.[16] The market for RECs is substantially larger and broader than the limited IOU-only cost information proposed by the Joint Parties for their Green Benchmark. The Commission itself stated in adopting the REC rules that it intended to facilitate the development of a robust REC market.[17] In short, the PD's concern about legal or regulatory limitations on the use of RECs is overstated, as the evidence and testimony in this proceeding demonstrate.

B. Alternatively, The RPS Adder Should Be Based On DOE Data Rather Than The Flawed Green Benchmark.

Alternatively, if the Commission decides not to adopt the RPS adder advocated by PG&E and DRA, it should revise the PD so that the RPS adder is based solely on DOE data as proposed by SCE and SDG&E. The Joint Parties' proposed Green Benchmark is fundamentally flawed and cannot be used to determine a just and reasonable RPS adder.

First, as the PD acknowledges, the MPB is designed to determine the market value of an IOU's resource portfolio.[18] However, as the PD also repeatedly explains, the Joint Parties' Green Benchmark uses IOU contract costs (that are often for long-term contracts) rather than short-term market values.[19] If cost rather than value is used for the MPB, and the MPB is then compared to the same costs in the portfolio, there will never be a difference between the MPB and the portfolio cost.[20] The result of the Joint Parties' proposal will be that bundled customers

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[16] *Id.*; *see also* Tr. at p. 294, line 23 to p. 295, line 13 (PG&E, Pappas).

[17] *See e.g.* D.10-03-021 at pp. 2-3.

[18] PD at p. 9.

[19] *Id.* at pp. 12, 13 and 21.

[20] Ex. 401 at p. 16, lines 1-6 (PG&E, Barry).

must cover a substantial portion of the above-market costs associated with RPS-eligible resources created when load departs, because the Joint Parties' Green Benchmark uses actual IOU costs for the MPB and then compares the MPB to actual IOU costs.[21] If the same logic were to be applied to the entire PCIA (*i.e.*, determining the MPB based on the IOUs' actual costs), there would be no PCIA. While this might serve the interests of the Joint Parties, it would guarantee that bundled customers are left holding the bag when load departs, in direct conflict with state law and long-standing Commission precedent.

Second, the Joint Parties' Green Benchmark only looks at prices for contracts that have started deliveries within a two-year window. It may be that in a given year, one or more of the three IOUs does not have any new RPS-eligible contracts that have started deliveries. For example, if SDG&E were the only utility having a contract that commenced deliveries in 2010 and was forecast to commence deliveries in 2011, which is entirely possible given that the IOUs have entered into contracts many of which will take 4-5 years to commence operations, then the entire Green Benchmark would be based on the prices paid by SDG&E. Moreover, there is no guarantee that in a given year a "wide variety" of resources will commence operation. Notably, the current MPB, which reflects the value of conventional generation, is not based on IOU-only data, and is not based solely on conventional generation resources commencing operation in the given year.

Third, contracts entered into four or five years earlier than they commence deliveries clearly do not represent the current market value of renewables, or the cost of the "next increment" that the IOUs could purchase today.[22] Indeed, the undisputed evidence in this proceeding is that RPS prices are headed downwards and thus the Joint Parties' proposal to use

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[21] *Id.*

[22] Ex. 301 at 11, lines 2-5 (SCE, Schichtl).

contract prices for agreements entered into 4 or 5 years ago does not reflect current market prices.[23]

Fourth, the Green Benchmark is based on the IOUs' long-term contracts and thus does not reflect the short-term market value of RPS-eligible energy. The PD acknowledges this shortcoming in the Green Benchmark, but fails to address it.[24] The purpose of the MPB is to determine the short-term market value of the IOUs' respective portfolios to ensure that DL customers pay their fair share and the remaining bundled customers are indifferent. Including long-term RPS-eligible contract costs into a benchmark intended to reflect short-term market value will skew the MPB so that bundled customers are no longer indifferent.

The PD acknowledges these fundamental flaws, but then proceeds to adopt the Green Benchmark because none of the parties' proposals were "entirely acceptable."[25] The Commission should not adopt an admittedly flawed proposal simply for administrative convenience. If PG&E's RECs Index proposal is rejected, the PD should be modified to eliminate usage of the Green Benchmark and instead base the RPS adder on the DOE data advocated by SCE and SDG&E. Using the DOE data is consistent with recent Commission decisions regarding the value of renewable attributes.[26] If the Commission decides to use the DOE data for the RPS adder, it should clarify that once RECs are traded over a twelve-month period and pricing information is publicly available, that the RPS adder will be based on RECs pricing instead of the DOE data. This is the approach adopted by the Commission in D.11-06-016 when it determined the value of renewable attributes.

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[23] Ex. 301 at p. 14, line 3-11 (SCE, Schichtl).

[24] PD at p. 18.

[25] PD at p. 21.

[26] D.11-06-016 at p. 47 (using DOE data to determine renewable value for excess energy).

II. IF THE GREEN BENCHMARK IS TO BE ADOPTED, MODIFICATIONS ARE ESSENTIAL.

If the Commission adopts the PD and decides to use the Joint Parties' proposal, there are, at a minimum, two modifications that need to be made to the Green Benchmark. First, as the PD acknowledges, the Joint Parties agreed that their Green Benchmark proposal needed to be refined to eliminate the "value for capacity to avoid double counting."[27] Although no party disputed the need to subtract the capacity value from the Green Benchmark, the PD does not expressly adopt this change. The Commission should revise the PD to make clear that the value of capacity should be eliminated from the Green Benchmark.

Second, the Joint Parties' Green Benchmark proposal is inequitable with regard to the treatment of utility-owned renewable projects. Because rate base declines over the project life, UOG resources are typically substantially more expensive in the early years of the life of the asset. The Joint Parties' proposal does not use levelized prices for UOG resources when determining their Green Benchmark. Instead, the Joint Parties propose using the first two years of UOG costs, which will likely be the highest.[28] This would significantly skew the Green Benchmark. The Green Benchmark uses the first two years of Power Purchase Agreement ("PPA") pricing. However, PPAs typically have levelized energy prices throughout the contract term that recover the cost evenly over the entire term. PPA prices generally do not start at a higher level and then decrease over the life of the contract to reflect depreciation. UOG costs are not levelized, but rather, decrease over time. To include UOG and PPA costs on the same basis for use in the MPB, UOG costs should be levelized, similar to what a developer does for a PPA, so that the UOG costs are spread over the life of the project. The PD recognizes that the Green

[27] PD at p. 18.

[28] Tr. 20:22 – 23:25 (Joint Parties, Fulmer).

Benchmark is "front-loaded" with regard to costs, but fails to correct this problem.[29] The PD should be modified to provide that the levelized price of UOG resources will be used for the Green Benchmark, rather than the first two years of UOG costs.

III. THE RPS ADDER SHOULD NOT BE APPLIED TO PRE-2003 RPS-ELIGIBLE CONTRACTS.

In its opening testimony, PG&E suggested that the MPB used to determine the Indifference Amount should only include an RPS adder that reflects the percentage of RPS-eligible contracts in the PCIA, which effectively would exclude contracts signed before January 2003.[30] Post-2003 contracts are included in the PCIA, while pre-2003 RPS-eligible contracts (*i.e.*, Qualifying Facility and irrigation district contracts) are included in the Ongoing CTC calculation. In its rebuttal testimony, PG&E explained that: (1) the Commission has previously determined that the Ongoing CTC is calculated based on the statutory methodology and that the indifference calculation, which is the subject of this proceeding, has no bearing on the determination of the Ongoing CTC; and (2) that California RECs cannot be derived from pre-2003 resources.[31] As such, it is not appropriate to impute a renewable attribute value into the MPB used to determine the Ongoing CTC when the underlying contracts do not transfer ownership of the REC to the buyer and the underlying MWhs are not eligible to be unbundled and counted as a California tradable REC. Otherwise the MPB used to determine the Ongoing CTC would overstate the value in the underlying portfolio relative to the energy (or renewable attribute) value in the market place.

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[29] PD at p. 18.

[30] Ex. 400 at pp. 1-13 – 1-14 (PG&E, Barry).

[31] D.05-12-045 at p. 16; Ex. 401 at pp. 6-7, p. 15 (PG&E, Barry), Exs. 415 and 416; and Tr. 364:24 – 368:3 (PG&E, Barry and Pappas)

The PD rejected these arguments, concluding that pre-2003 RPS-eligible contracts had "value" even if the renewable attributes associated with these contracts could not be transferred to other parties.[32] However, there clearly is little market value for a compliance product that cannot be traded or used by other entities. Moreover, there is no evidence that the pre-2003 RPS-eligible contracts would have the same value as post-2003 contracts especially given the limitations on the transfer of RECs from pre-2003 contracts. The PD ignores this fact. Because no party provided evidence that pre-2003 RPS-eligible contracts have the same renewable attribute market value as post-2003 contracts, the RPS adder should not be applied to the pre-2003 contracts.

The PD also notes that applying the RPS adder to pre-2003 RPS-eligible contracts will not result in double counting.[33] However, the issue is not double counting, but the fact that this proceeding is examining the indifference calculation, not the methodology for determining Ongoing CTCs. The MPB used for Ongoing CTCs, which recover costs for pre-2003 RPS-eligible contracts, should not be adjusted here because this proceeding is focused on the indifference calculation.

IV. THE MPB SHOULD BE WEIGHTED BASED ON A FORECAST GENERATION PROFILE OR, ALTERNATIVELY, HISTORIC BUNDLED LOAD PROFILES.

Parties proposed two different approaches for weighting the MPB. The Joint Parties proposed using load forecast profiles, while PG&E and SCE proposed using forecast generation profiles.[34] In response to DRA concerns regarding the use of confidential generation forecast data, SCE proposed as an alternative using historic bundled load profiles, which are publicly available. The PD did not adopt any parties' proposal, but instead adopted a hybrid approach of

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[32] PD at p. 23.

[33] *Id.* at pp. 23-24.

[34] PD at pp. 31-32.

using historic generation profiles.[35] The PD's approach has several problems. First, historic generation profiles are confidential and thus the approach adopted in the PD does not solve the confidentiality issues raised by DRA. Second, because the MPB is determined on a forecast basis, it is more appropriate to use generation forecasts to weight the MPB rather than historic generation profiles. The PD should be revised to adopt PG&E's proposal to use forecast generation profiles to weight the MPB because it is consistent with the purpose of the MPB (*i.e.*, a forecast of the market value of generation). Alternatively, if the Commission is concerned about the confidentiality issues raised by DRA, the Commission should adopt SCE's alternative proposal to use historic bundled load profiles, which are publicly available. Because the historic generation profiles adopted in the PD are confidential, use of these profiles does not address the confidentiality concerns raised by DRA.

V. PG&E'S PROPOSAL TO SET THE PCIA TO ZERO IN CERTAIN CIRCUMSTANCES IS EQUITABLE AND SHOULD BE ADOPTED.

When the Commission adopted D.06-07-030, it modified the Indifference Amount calculation in part by allowing the PCIA to go negative up to the level of the Ongoing CTC.[36] However, this has resulted in bundled customers carrying costs on behalf of departing customers. Ironically, it has also resulted in discriminatory treatment between different departing customer groups so that some customers (*i.e.*, exempt departing load) are required to pay Ongoing CTCs, while other customers (*i.e.*, non-exempt DA and CCA departing load) are effectively not required to pay any Ongoing CTCs because these customers may get an offset (credit) through the negative PCIA.[37] Under California statutory law, and Commission precedent, all customers

[35] *Id.* at p. 33.

[36] Ex. 400 at p. 1-16, lines 20-26 (PG&E, Barry).

[37] *Id.* at p. 1-17, lines 16-27.

are required to pay Ongoing CTC.[38] Thus, the current Indifference Amount methodology is flawed in that it is contrary to original legislative intent articulated in Public Utilities Code section 367(a) and therefore needs to be corrected.

To understand the current discriminatory situation, some background is necessary. Under D.06-07-030, the Indifference Amount formula is:

Indifference Amount = PCIA + Ongoing CTC

PG&E first calculates the Indifference Amount based on its total portfolio costs and the market value of the portfolio. If the Indifference Amount is negative (*i.e.*, the total portfolio costs are less than the market value of the portfolio), then the Indifference Amount is set to 0.

0 = PCIA + Ongoing CTC

Thus, solving for PCIA, the PCIA is set equal to the negative Ongoing CTC.[39]

When the PCIA becomes negative, the negative amount is debited to the ERRA account effectively increasing the costs paid by bundled customers.[40] In addition, non-exempt customers (*i.e.*, existing and new DA and CCA departing load) who pay both the PCIA and the Ongoing CTC effectively make no contribution to the customer responsibility surcharge ("CRS"), including no Ongoing CTC contribution when the Indifference Amount is set to zero.[41] In contrast, exempt customers who only pay the Ongoing CTC in their CRS, do not get the benefit of a negative PCIA and thus end up paying the Ongoing CTC. In short, the current methodology increases the costs paid by bundled customers who effectively pay the Ongoing CTC for non-exempt customers by having the negative PCIA debited to the ERRA account. Furthermore, it

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[38] *Id.* at p. 1-17, lines 2-5 (citing Public Utilities Code Section 367(a) and D.05-12-045); *see also* Tr. 302:10-28 (PG&E, Barry); Pub. Util. Code § 367(a) (requiring "all customers" to pay Ongoing CTC).

[39] Ex. 400 at p. 1-17, lines 9-27 (PG&E, Barry) (explaining current Indifference Amount calculation).

[40] *Id.* at p. 1-17, lines 20-27; Tr. 312:9 – 313:17 (PG&E, Barry).

[41] *Id.* at p. 1-15, n. 22 (defining "exempt" and "non-exempt" customers) and p. 1-17, lines 16-17 (explaining that non-exempt customers benefit by paying no Ongoing CTC).

results in disparate treatment for customers – non-exempt departing customers get the benefit of an Ongoing CTC offset while exempt departing customers get no such benefit and ultimately pay for their portion of the Ongoing CTC in full even though these customers are similarly situated (*i.e.*, customers are in the same class). The disparate treatment for customers in the same class is unfair and contrary to the statutory intent.

PG&E has proposed a simple solution to this inequitable situation. Under PG&E's proposal, if the Indifference Amount is less than the Ongoing CTC, the PCIA would be set to zero. All customers would then make the same contribution towards the Ongoing CTC obligations and the actual negative PCIA that would have resulted under the formula would be banked for future years to offset potential future positive PCIAs.[42] PG&E's proposal would not add significant administrative burden and, given the tracking that already occurs for the Indifference Amount, would not be complex to implement.[43] This is not simply a theoretical issue. Since 2006, bundled customers have had to shoulder an additional $81 million in Ongoing CTC costs that should have been paid by DA customers.[44] This significant inequity should not be allowed to continue.

The PD rejected PG&E's proposal asserting that it would "violate the bundled customer indifference principle by recognizing only the cost to bundled customers from using above-market CTC resources, while not recognizing the offsetting benefit accruing to bundled customers from also using more below-market utility resources."[45] The PD fundamentally misunderstands PG&E's proposal. PG&E is not proposing to ignore a negative PCIA that occurs

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[42] Ex. 400 at p. 1-18, lines 1-11 (PG&E, Barry); Tr. 303:9 – 304:17 (PG&E, Barry).

[43] Tr. 305:17 – 306:6 (PG&E, Barry).

[44] Ex. 401 at p. 14, lines 22-25 (PG&E, Barry).

[45] PD at p. 39.

in a given year. Rather, PG&E expressly explained that any negative PCIA would be banked for future years to offset a future positive PCIA. Bundled and departing customers remain indifferent as a negative PCIA will simply be carried forward and used in subsequent years. The PD falls to address, however, the fact that the current indifference calculation results in inequitable treatment of certain customer groups that are similarly situated. PG&E's proposal would address this inequity and thus should be adopted.

VI. TWO MINOR MODIFICATIONS TO THE PD ARE REQUIRED.

In addition to the recommended changes described above, there are two portions of the PD that require minor modifications. First, The PD includes a list of three events that can cause the involuntary return of DA customers to bundled utility service.[46] This list should be expanded to include a fourth category – involuntary returns that occur as a result of an ESP defaulting on its energy supply procurement obligations such that the ESP is no longer able to serve its customers. Customers may be involuntarily returned because an ESP defaults on its obligations and either becomes insolvent or goes bankrupt. This fourth category should be added to the list in the PD for completeness.

Second, the PD requires PG&E to return to DL customers any difference back to April 14, 2011 between the current 2011 PCIA and the PCIA adopted by a final Commission decision in this proceeding.[47] This language should be clarified to make clear that this amount can be recorded in ERRA and that PG&E can return this amount to the affected customers in a single payment, rather than payments over time. It is administratively efficient for PG&E to make a single payment of the difference rather than try to refund this amount over a period of time.

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[46] PD at pp. 86-87.

[47] *Id.* at pp. 92-93; Ordering Paragraph 30.

PG&E has included in Appendix A proposed language for Ordering Paragraph 30 to effect this proposed modification.

VII. CONCLUSION

For the foregoing reasons, PG&E respectfully requests that the Commission modify the PD consistent with the changes proposed by PG&E in Appendix A.

Respectfully submitted,

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APPENDIX A
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDERING PARAGRAPHS

Proposed Revisions to Finding of Fact:[1]

9. ~~All of the~~ The Joint Parties' ~~parties~~ proposal~~s~~ for adjusting the MPB to account for renewable resources has ~~have~~ deficiencies that make it ~~the proposals~~ unsuitable as a basis for calculating the indifference amount.

11. The data on renewable resource transactions from SNL Publications is ~~not~~ a reliable source for purposes of calculating a renewable adder to determine indifference costs.

12. Alternatively, ~~T~~the data reported by the United States Department of Energy survey of reported renewable energy contract premiums in the Western United States compiled by the National Renewable Energy Laboratory offers a proxy value that can be used ~~in conjunction with California utility data~~ to produce a weighted RPS adder.

15. The currently pending CAISO ~~CEC~~ proposed "Capacity Procurement Mechanism" price before the Federal Energy Regulatory Commission is not suitable as MPB capacity adder value, particularly because the CPM price is above current RA capacity market values. The FERC has raised questions about the CPM price and has made it subject to refund ~~pending further study~~.

21. ~~By using the utility's bundled load profile for the weighting factors, the shaped energy price for "brown" power would be the same for all PCIA vintages and for the CTC portfolio.~~

23. ~~Bundled customer indifference is determined with reference to total portfolio costs, not isolated costs related to just the ERRA costs.~~

24. PG&E's proposal regarding circumstances where the PCIA should be set to zero would remedy the current disparate treatment of customers and result in all customers paying their fair share of Ongoing CTC costs, as required by California statute. ~~violate the bundled customer indifference by recognizing only the cost to bundled customers from using more above-market CTC resources, while not recognizing the offsetting benefit accruing to bundled customers from also using more below-market utility resources~~.

Proposed Revisions to Conclusions of Law:

4. ~~Since the existing proposals do not offer a suitable basis to determine a market-based adder for RPS resources, the Commission needs to determine a suitable proxy based upon available information~~.

7. The determination of the MPB should be revised to more accurately reflect the IOU's forecast generation portfolio ~~load shape based upon time-of-use variations~~.

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[1] Strikethroughs indicate proposed deletions and underlining indicates proposed additions.

9. For purposes of assessing re-entry fees, an involuntary return of a DA customer to bundled service may occur due to any of the following:

a. The Commission revokes the ESP registration;

b. The ESP Agreement with the utility becomes terminated; ~~and~~

c. The ESP or its authorized CAISO SC has defaulted on its obligations, such that the ESP no longer has an authorized SC; and,

d. The ESP defaults on its energy supply procurement obligations such that the ESP is no longer able to serve its customers.

Proposed Revisions to Ordering Paragraphs:

3. All pre-2004 procurement resources shall not be ~~must be~~ included in the Renewable Portfolio Standard calculation for purposes of the Market Price Benchmark indifference calculation.

4. ~~Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company must each file a Tier 2 advice letter with the Energy Division within 30 calendar days following the issuance of this decision, identifying the:~~

~~a. most recent 12 months figures derived from US Department of Energy survey of Western US renewable energy premiums in calculating a weighted proxy for the Market Price Benchmark compiled by the National Renewable Energy Laboratory; and~~

~~b. all Renewable Portfolio Standard compliant resources that began delivery in year 2010 and those projected in the investor owned utilities' Energy Resource Recovery Account forecast applications that were to begin delivery in 2011. This must include both contracts and IOU owned resources. Confidential cost data submitted to Energy Division will be protected from disclosure.~~

5. The Energy Division will prepare a resolution to adopt the Renewable Portfolio Standard adder to be used to determine a Market Price Benchmark proxy value based on PG&E's proposal to use a RECs Index price ~~consideration and a 32% weighting of the DOE data in relation to a 68% weighting of the investor-owned utility cost data as relevant in the Commission's adoption of an appropriate adder to reflect renewable resources in the calculation of the indifference amount~~.

6. All California Independent System Operator (CAISO) charges that vary based on the amount of load shall be excluded from the total portfolio cost and Market Price Benchmark for purposes of calculating the Power Charge Indifference Amount. The list of load-related CAISO charges identified in Appendix B to the *Opening Comments of Pacific Gas and Electric Company on The Proposed Decision* ~~the testimony of the Joint Direct Access parties (Exhibit 100, Exhibit A)~~ is adopted for use in identifying the applicable load-related charges to be

excluded. As the CAISO charges change over time, the IOUs shall file advice letters to update the excluded charges.

7. The Market Price Benchmark (MPB) calculation must be weighted to reflect variations ~~in load shape~~ on a time-of-use basis based upon the investor-owned utility (IOU) forecast generation ~~load~~ profile data as proposed by PG&E. ~~In order to avoid the necessity to use confidential data, the MPB calculation must make use of most recent historic IOU generation load profile data that is publicly available~~.

12. ~~The~~ PG&E's proposal ~~is denied~~ to set the Power Charge Indifference Amount to zero in those instances where the indifference amount is less than the ongoing Competition Transition Charge is approved.

30. Once Pacific Gas and Electric Company (PG&E) implements the revised Power Charge Indifference Amount (PCIA) consistent with the methodologies adopted in this proceeding, PG&E shall promptly revise its previously adopted 2011 PCIA rate to incorporate this deferred difference. This difference must be applied to transactions beginning from the effective date of April 14, 2011 Administrative Law Judge Ruling through the effective date of the revised PCIA implemented pursuant to the revisions adopted in this proceeding. This resulting difference shall be incorporated as an adjustment to the prospective 2011 PCIA rates based upon the revised PCIA methodology adopted in this proceeding and the resulting difference should be recorded in ERRA. The adjustment to prospective 2011 PCIA rates can be made as a one-time adjustment.