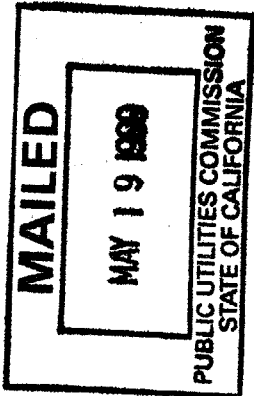


PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-3600
MAY 13, 1999

RESOLUTION



RESOLUTION E-3600. IN COMPLIANCE WITH COMMISSION DECISION (D.) 98-12-067, PACIFIC GAS & ELECTRIC COMPANY (PG&E), SOUTHERN CALIFORNIA EDISON COMPANY (SCE), AND SAN DIEGO GAS & ELECTRIC (SDG&E) REQUEST APPROVAL OF REVISIONS TO ELECTRIC TARIFFS, *COMPETITION TRANSITION CHARGE RESPONSIBILITY*, TO CLARIFY THE COMPETITION TRANSITION CHARGE (CTC) APPLICABILITY FOR NEW OR INCREMENTAL CUSTOMER LOAD, WHERE SUCH LOAD IS BEING MET THROUGH A DIRECT TRANSACTION AND THE TRANSACTION DOES NOT OTHERWISE REQUIRE THE USE OF THE UTILITY'S TRANSMISSION AND DISTRIBUTION FACILITIES. SPECIFICALLY, REVISIONS ARE MADE TO CLARIFY THE REQUIREMENTS FOR NEW OR INCREMENTAL CUSTOMER LOAD TO QUALIFY FOR THE CTC EXEMPTION IN PU CODE SECTION 369. APPROVED WITH MODIFICATIONS.

BY PG&E'S ADVICE LETTER 1835-E, FILED ON DECEMBER 23, 1998
SCE'S ADVICE LETTER 1359-E, FILED ON DECEMBER 23, 1998, SCE'S
SUPPLEMENTAL ADVICE LETTER 1359-E-A, FILED ON FEBRUARY
1, 1999, AND SDG&E'S ADVICE LETTER 1142-E, FILED ON
DECEMBER 28, 1998.

SUMMARY

1. In compliance with Commission Decision (D.) 98-12-067, PG&E filed Advice Letter 1835-E on December 23, 1998, SCE filed Advice Letter 1359-E on December 23, 1998, and SDG&E filed Advice Letter 1142-E on December 28, 1998. SCE filed supplemental Advice Letter 1359-E-A on February 1, 1999. The filings clarify the requirements for new or incremental customer load to qualify for the Competition Transition Charge (CTC) exemption stipulated in Public Utilities Code Section 369.

2. Protests were filed by Enron Corp. on January 4, 1998, New Energy Ventures (NEV) on January 4, 1998, The City of San Diego Metropolitan Wastewater Department (MWW) on January 15, 1999, and Modesto Irrigation District (MID) on January 21, 1999. Enron filed an additional protest to SCE's supplemental Advice Letter 1359-E-A on February 10, 1999.
3. This Resolution approves PG&E's, SCE's, and SDG&E's electric tariff revisions with the modifications specified in the Discussion section herein.
4. The utilities must supplement the Advice Letters within ten (10) days to make the changes required herein.

BACKGROUND

1. Assembly Bill (AB) 1890 (Stats. 1996, Ch. 854) added Section 369 to the PU Code¹. Section 369 exempts new customer load or incremental load of an existing customer from the CTC payment where the load is being met through a direct transaction that does not otherwise require the use of the transmission and distribution (T&D) facilities owned by the utility.
2. D.98-12-067 addresses the application of CTC to new customer load consistent with Section 369. D.98-12-067 determines that new customer load served by a direct transaction that does not require the use of the utilities' T&D system may be connected for standby service and still be exempt from CTC payments. When standby service is used, CTC applies to the standby power consumed. D. 98-12-067 establishes a physical test to determine whether the direct transaction requires the use of the utilities' T&D system.
3. In compliance with D. 98-12-067, PG&E, SCE, and SDG&E filed Advice Letters specifying the tariff modifications regarding Section 369 exemptions. Changes to PG&E's Preliminary Statement Part BB, SCE's Preliminary Statement, Part W, and SDG&E's electric Rule 23, stipulate the requirements for new customer load to qualify for the Section 369 CTC exemption.

NOTICE

1. In accordance with Section III, Paragraph G, of General Order No. 96-A, Advice Letters 1835-E, 1359-E, 1359-E-A, and 1142-E were served on other utilities, government agencies, and all interested parties. Public notice of this filing was made by publication in the Commission's daily Calendar.

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

PROTESTS

1. Protests to PG&E's Advice Letter 1835-E, were filed with the Energy Division by Enron Corp., NEV, MID. Protests to SCE's Advice letter 1359-E were filed by Enron Corp. and NEV. Protests to SDG&E's Advice Letter 1142-E, were filed by MWWD and Enron Corp. The majority of the protested issues concern the terms and conditions surrounding the physical test, which was established by D.98-12-067 to determine whether the direct transaction requires the use of the utilities' T&D facilities.
2. PG&E filed a response to Enron's and NEV's protests on January 13, 1999. On March 2, 1999, PG&E filed a response to MID's protest. SDG&E filed a response to Enron's protest on January 11, 1999 and to MWWD's protest on January 22, 1999. SCE filed a response to Enron's original protest on January 14, 1999 and to NEV's protest on January 19, 1999.
3. On February 1, 1999, SCE submitted Supplemental Advice Letter 1359-E-A. The supplemental Advice Letter modifies Preliminary Statement, Part W, integrating changes SCE agreed to in response to Enron's and NEV's protests. Supplemental Advice Letter 1369-E-A replaces SCE's original filing in its entirety.
4. On February 10, 1999, Enron filed a protest to SCE's Supplemental Advice Letter 1359-E-A. On February 18, 1999, SCE filed a response to Enron's protest.
5. The following are the protested issues in the Advice Letter filings and the parties' position with regard to each:

Uniform Tariff Language for All Three Utilities

6. Enron requests the tariff provisions to implement D.98-12-067 be made uniform for all three utilities.
7. PG&E says that it generally supports equivalency in the tariffs, but not total uniformity. SDG&E shares PG&E's position. SCE does not object to uniform tariff language.

PG&E's and SDG&E's 'Other' Section Pertaining to Non-Standby Third-Party Transmission and Distribution Situations

8. NEV opposes PG&E's provision relating to exemption qualification of third-party T&D providers. NEV requests clarification that a third-party system and/or the balance of the customer's load, that is not seeking an exemption, not be subject to the

physical test.

9. In response to protests, PG&E disputes NEV's suggestion that the balance of a customer's load not be subject to a physical test. PG&E argues that the purpose of the physical test is to demonstrate there is actually, not just theoretically, no use of the utility's system.
10. MID argues that use of FERC jurisdictional facilities, even the T&D system owned by PG&E, should not be considered in determining whether a Section 369 CTC exemption applies. MID requests that language to this effect be included in PG&E's BB.6.c.2.
11. In response to protests, PG&E argues that MID's protest should be rejected since Section 369 is specific with regard to utility ownership of the facilities and makes no reference to jurisdiction.

What Does The Physical Test Entail and Should There Be Exceptions to It?

12. Enron requests that the Commission require SCE to adopt the provision contained in PG&E's Preliminary Statement Part BB, Section 6.c and SDG&E's Sheet 12 , Section D.3.e, which provides for exceptions to the physical test.
13. PG&E and SDG&E state that exceptions to the physical test, as contained in the "Other" portion of the tariffs, are limited to situations involving third-party T&D for reasons of practicality. For conventional standby arrangements, PG&E and SDG&E state that a physical test is required without exception. PG&E and SDG&E argue that Enron's request should be rejected.
14. Like PG&E and SDG&E, SCE states that for standard standby relationships a physical test is required without exception. SCE argues that a substitution for a physical test cannot be construed as satisfying a physical test as mandated by D.98-12-067 and should therefore be rejected.
15. MID asserts that all that should be required of one seeking a Section 369 exemption, is a simple demonstration "by drawing or narrative description" that the generator's facilities are adequate to serve the customer load (MID Protest, p.2).
16. PG&E believes MID's position should be rejected as inconsistent with D.98-12-067 since the Commission in that Decision established a physical test to determine whether the generator uses the utilities' T&D system.
17. NEV requests a provision for circumstances involving generic technology and generators of similar type and design. NEV suggests that once a specific type of generator has passed a physical test, generators of similar design should not be

required to undergo additional tests.

18. In response to protests, SCE disputes NEV assertion that if a particular type of generator passes the physical test, all like generators should automatically receive the CTC exemption. SCE argues that while two generators may have similar design and technology, there may be operational differences that would enable one generator to pass the physical test and another to fail.

Subsequent Physical Tests

19. In its protest to SDG&E's 1142-E, MWWD requests that the tariff language differentiate between an initial physical test and subsequent physical tests. If subsequent physical tests are allowed by the Commission, MWWD requests that a customer may provide written certification in lieu of a subsequent physical test.
20. In response to protests, SDG&E concedes to MWWD's request by including a provision stating that in lieu of a subsequent physical test the utility may, at its sole discretion, accept written certification from the customer regarding the customer's continued compliance.

Failure of the Physical Test

21. Enron, NEV, and MWWD oppose the stipulation that failure of a physical test will result in the obligation to repay the exempted CTC for the previous year. In addition, Enron and MWWD request a second opportunity to take the physical test, if failed the first time, prior to losing the CTC exemption.
22. In response to protests, PG&E, SCE and SDG&E distinguish between the failure of the initial test and failure of subsequent tests. The utilities maintain that failure of an initial test, will result in the repayment of CTC for the previous year. Failure of a subsequent test will invalidate the CTC exemption until another test is passed.
23. All three utilities concede to allowing a second opportunity to demonstrate that the customer can pass the physical test if the test is failed the first time.

Requirement that the Party Seeking a CTC Exemption Provide the Utility As-Built Schematics and Drawings Prior to the Physical Test

24. Enron disputes the requirement that the owner/operator submit as-built electrical schematics and drawings that demonstrate the generator's capability of continuous operation while isolated from the utilities' system.
25. PG&E and SDG&E maintain that this information is appropriate and necessary, but are agreeable to reasonable confidentiality limitations.

26. SCE, in response to Enron's 1358-E-A protest, maintains that for sound engineering practice, a physical test should not be conducted without reviewing the schematics of the installation.

Clarification That Only Loads Served by a Direct Transaction that are Seeking a CTC Exemption Should be Subject to the Physical Test

27. NEV and MWWO oppose the stipulation that the generator prove that all loads can be served while completely isolated from the utilities system. The parties request clarification that only the loads for which an exemption is claimed need be completely isolated from the utilities' system.
28. The utilities respond by specifying that the loads to be assessed are electrically separate loads for which an exemption is claimed.
29. Enron's protest to SCE's Advice Letter 1359-E-A opposes the language 'electrically separate' as being inconsistent with D. 98-12-067.
30. SCE responds that the portion for which the exemption is claimed should be able to be electrically separated.

Generator Requirements

31. Enron objects to the requirement that the generator be a synchronous generator with 'permanent, on premise, black start capabilities'. Enron argues the language 'permanent, on premise' should be removed since it is contained in neither D.98-12-067 nor SCE's original Advice Letter filing, 1359-E.
32. SCE states the generator's ability should be permanent and on-going and is consistent with the Commission Decision.

DISCUSSION

Uniformity in Tariff Language Among the Three Utilities

1. Enron requests uniform tariff provisions to implement D.98-12-067.
2. The utilities generally concede to Enron's request with the exception of PG&E, which has provisions concerning third-party T&D providers that SCE does not have in its tariffs. For the sake of uniformity, SCE has consented to include PG&E's and SDG&E's language concerning third-party T&D entities

3. The Commission agrees that the tariff language to implement D.98-12-067 should be uniform among the utilities.
4. In light of SCE's concern, there will be consideration for differences in tariff structure and design. PG&E's and SDG&E's 'Other' Section concerning third-party T&D entities is to be modified as discussed below.
5. Enron's protest on this issue is granted.

PG&E's and SDG&E's 'Other' Section Pertaining to Third-Party Transmission and Distribution Entities

6. PG&E's Preliminary Statement BB.6.c and SDG&E's Sheet 12, Section D.3.e., entitled 'Other', refer to situations characterized as "non-standby, typically third party transmission" (PG&E response to MID's protest, p.2). The 'Other' Section stipulates the CTC exemption qualification requirements for non-standby situations. In addition, it establishes the terms and conditions of the physical test in non-standby situations as well as makes a provision for exceptions to the physical test in circumstances where a physical test is impractical to perform.
7. SCE's tariffs do not have provisions for non-standby situations.
8. In reference to CTC applicability, Section 369 states:

....provided , that the costs shall not be recovered for new customer load or incremental load of an existing customer where the load is being met through a direct transaction and the transaction does not otherwise require the use of transmission and distribution facilities owned by the utility.
9. D.98-12-067 addresses how CTC is applied to new customer load being met through a direct transaction that does not otherwise use the T&D facilities owned by PG&E, SCE, and SDG&E.
10. The Decision considers three possible scenarios relating CTC applicability pursuant to Section 369 (Mimeo, p.19-20):
 - The non-utility generator (NUG) serves new customer load by delivering power by way of the incumbent utilities' T&D system.
 - The NUG serves new customer load and in no way uses the incumbent utilities' T&D system.

- The NUG provides energy directly to the new customer without using the utility's T&D system, but that customer is connected to the utility solely for the purpose of standby power.
11. The applicability of CTC in the first two scenarios is straightforward. In the first situation CTC applies. In the second, where the utility's system is not used in any way, the party is exempt from CTC pursuant to Section 369. The dispute addressed by D.98-12-067, surrounds the third scenario pertaining to the applicability of CTC in standby situations.
 12. The fundamental question addressed by the Decision is whether connection to the utility, solely for the purpose of standby, disqualifies the party seeking a CTC exemption when there is otherwise no use of the T&D system owned by the utility. That standby service is the central issue addressed in the Decision is clear:

The crux of this dispute is whether connection to the utilities' system for standby service constitutes use of the utilities' transmission and distribution system in terms of the direct transaction contemplated by statute or whether this use is a separate transaction that may be distinguished for the purpose of CTC applicability (Mimeo, p.21).
 13. The Decision concludes that interconnection to the utility solely for standby service does not negate the CTC exemption, but that CTC applies for the standby power consumed.
 14. D.98-12-067 states that "all parties agree that Section 369 was intended to benefit self-sufficient self-generation transactions" (Mimeo, p.21).
 15. PG&E's Preliminary Statement BB 6.c and SDG&E's Sheet 12, Section D.3.e., entitled 'Other', are inconsistent with the intent of D.98-12-067. The 'Other' section relates to non-standby situations, typically involving third-party T&D entities. The Commission determines that the Decision narrowly concentrated on the issues surrounding CTC applicability in standby, typically self-generation situations. The inclusion of tariff language referring to non-standby situations involving third party T&D providers is beyond the Decision's scope. The 'Other' portion of PG&E's and SDG&E's tariffs should be removed.
 16. Although, D.98-12-067 refers to third-party T&D providers in the context of the physical test, the Decision did not intend to address third party T&D issues beyond those relating to the physical test for standby relationships (Mimeo, p.24).
 17. Similarly, PG&E's Preliminary Statement BB, 6 and SDG&E's Sheet 10, Section D.3.e contain the language "...that does not make use of the transmission or distribution facilities owned by PG&E / SDG&E (either directly or indirectly through

a third party)".

18. Section 369 states "the use of transmission and distribution facilities owned by the utility." The inclusion of any further specification is unnecessary and counter to the objective of adhering as closely as possible to the language of the statute. The language 'either directly or indirectly through a third party' should be removed from PG&E's and SDG&E's tariff language.
19. Since the Commission directs PG&E to remove the language contained in Section BB.6.c., NEV's protest regarding language contained in that section is moot.
20. Section 369 explicitly refers to facilities owned by the utility and makes no reference to FERC jurisdiction. MID's protest requesting that use of FERC jurisdictional not be considered in determining whether a Section 369 CTC exemption applies is denied.

What Does The Physical Test Entail and Should There Be Exceptions to It?

21. An exception to the physical test or a substitution for the physical test is inconsistent with D.98-12-067. The Decision states "We adopt a simple physical test to determine whether or not utilities' systems are used to implement a direct transaction" (Mimeo, p.24). It does not address exceptions to or substitutions for the physical test. Accordingly, Enron's, MID's, and NEV's protests regarding exceptions to the physical test are denied.

Subsequent Physical Tests and Dispute Resolution

22. PG&E's Preliminary Statement BB.6.b.2, SDG&E's Sheet 11, Section D.3.e.2., and SCE's Part W, 4.b.1.b. stipulate that a physical test be conducted every year.
23. D.98-12-067 states:

We adopt a simple physical test to determine whether or not utilities' systems are used to implement a direct transaction as follows: if the direct transaction can be consummated, that is, start and operate on an ongoing basis, without the parties to the direct transaction, i.e., the generator, the customer (new or incremental load), or third-party transmission/distribution providers, being connected to the utilities system, then the direct transaction does not otherwise require the use of the utilities' systems and is exempt from CTC under Section 369. In essence, to be exempt from CTC, Section 369 requires that new or incremental customer load be able to be "islanded" to demonstrate that the direct transaction does not require the use of the utilities systems. Once that standard is met, connection to the system is allowed without invalidating the CTC exemption. (Mimeo, p.24. Emphasis Added).

24. The language "Once that standard is met, connection to the system is allowed without invalidating the CTC exemption" implies successful completion of a physical test entitles the generator to the CTC exemption. The Decision does not specifically address the issue of subsequent tests to confirm continued compliance. However, Conclusion of Law 5 of D.98-12-067 specifies that for new customer load to be exempt from the CTC under Section 369, a direct transaction "operate on an ongoing basis" without the parties to the direct transaction being connected to the utilities' systems. Allowing the utility to conduct subsequent tests at 18 month intervals, rather than every 12 months, is a reasonable way to provide for ongoing compliance with D.98-12-067, without imposing undue hardships on entities subject to such tests. D.98-12-067 notes that after June 30, 2000, certain direct transactions shall be exempt from CTC under Section 372. Thus, subsequent physical tests for those direct transactions are unnecessary. Successful completion of an initial physical test, and if the utility chooses, subsequent tests at 18 month intervals (i.e., for direct transactions which are not otherwise exempt from CTC after June 30, 2000) satisfies the CTC exemption qualification requirement. The portions of the utilities' proposed tariffs which address subsequent physical tests should be modified to clarify the following points:

- the utility has the option of conducting subsequent physical tests no more frequently than every 18 months (i.e., rather than every 12 months as proposed by the utilities);
- parties to direct transactions which are otherwise exempt from CTC after June 30, 2000, are under no obligation to undergo subsequent physical tests;
- the results of a subsequent physical test shall not affect CTC eligibility for the previous 18 month period, i.e., CTC exemptions based on a direct transaction's passing the initial test will not be affected if that direct transaction fails a subsequent test conducted 18 months later.

25. If the utility disputes the continued compliance of the party receiving a 369 exemption, parties may resort to a dispute resolution process. The utilities should include a tariff provision stating that disagreements involving new or incremental load served by a direct transaction are subject to the dispute resolution process as set forth in PG&E's paragraph BB.4.f., SCE's Section W.5.e., and SDG&E's Rule 23, Section D.6.

Failure of the Physical Test and Retroactive CTC Payments

26. The parties agree that a customer may be allowed a second opportunity to demonstrate that it can pass the physical test if the test is failed the first time. This is reasonable and is adopted. Since the utilities have conceded to Enron's, NEV's, and MWWD's requests, protests on this issue are moot.

27. Failure of the second physical test will obligate the owner/operator to repay the exempted CTC from the date that the exemption was claimed and received.
28. Enron's, NEV's, and MWWD's request that loss of the CTC exemption apply only on a prospective basis is denied.

Requirement that the Party Seeking a CTC Exemption Provide the Utility As-Built Schematics and Drawings Prior to the Physical Test

29. In their proposed tariffs, all three utilities stipulate, "Prior to the physical test, the owner/operator shall provide to the utility as-built electrical schematics and installation drawings that demonstrate that the generator is capable of continuous operation while completely isolated from the utilities' T&D system."
30. Enron disputes the as-built electrical schematics and drawings requirement. Enron argues that the proposed tariff language "is not expressly stated in, nor can it be reasonably inferred from, the Commission's Decision (Enron's protest to 1359-E-A, p.1). Enron states that the requirement for schematics would reveal competitively sensitive information. Enron argues that D.98-12-067 adopts a physical test, not a paper test.
31. PG&E and SDG&E maintain that this information is appropriate and necessary.
32. In response to Enron's 1359-E-A protest, SCE states that this requirement is already contained in SCE's Rule 21 for interconnection to the utility's grid. SCE maintains that for sound engineering practice the physical test should not be conducted without reviewing the schematics of the installation.
33. Conclusion of Law No. 6 of D.98-12-067 states:

"Whether or not the utilities' facilities are used to implement the direct transaction is a factual question that can be resolved by the parties by application of the physical test described herein" (Mimeo, p.27)

34. The utilities themselves argue that D.98-12-067 established a physical test. In addressing Enron's request for exceptions to the physical test SCE states:

"Submission of a plan, as proposed by Enron can in no way be construed as satisfying a physical test" (SCE's response to Enron's 1359-E protest, p.3).

35. Similarly, PG&E and SDG&E state:

"D.98-12-067 indisputably adopted a "physical test" as a preferred way to determine whether a utility system is being used to implement a direct

transaction” (PG&E response to protest, p.2).

36. We agree with Enron regarding the as-built schematics requirement. In accordance with the Decision, the utilities have established a physical test as outlined in SCE’s Part W, 4.b.1.b., PG&E’s Preliminary Statement BB.6.b.3. and SDG&E’s Rule 23, Section D.3.e.3. The physical test as detailed in those sections of the tariffs is sufficient to implement the Commission’s mandate for a physical test. Requirements beyond the physical test described in the tariff sections named above are unreasonable and inconsistent with D.98-12-097. The utilities should eliminate the sentence, “Prior to the physical test, the owner/operator shall provide to the utility as-built electrical schematics and installation drawings that demonstrate that the generator is capable of continuous operation while completely isolated from the utilities’ T&D system.” This finding does not alter any existing tariff requirements.
37. Enron’s protest regarding as-built schematics and drawings is granted.
38. PG&E’s Preliminary Statement Part BB.6.b.2., SCE’s Part W, Section 4.b.1.b, and SDG&E’s Rule 23, Section D.3.e.2 should be modified to read as follows:

A physical test for customers interconnected with the utility’s T&D facilities for standby service will be performed within three (3) weeks of an exemption being claimed by an owner/operator. The owner/operator shall permit the utility to inspect the installation and operation of the generator. Failure of the physical test or failure to permit the initial test on the date scheduled by the utility, or on a mutually agreeable alternative date, will result in loss of the CTC exemption from the date that the exemption was claimed and received, billing for the exempted Departing Load for the period in which the exemption was received, and continued billing for the Departing Load until a physical test is successfully completed. If a physical test is failed, the customer claiming that transition costs do not apply may request another opportunity to demonstrate that it can pass the physical test which the utility shall schedule within three (3) weeks of the request or at a mutually agreeable date. A customer which fails a physical test twice within a two (2) month period is not entitled to request another physical test for twelve months from the date of the latter of the failed tests.

Clarification That Only Loads Served by a Direct Transaction that are Seeking a CTC Exemption Should be Subject to the Physical Test

46. The language in SCE’s Part W, 4.b.1., PG&E’s Preliminary Statement BB. 6.a. and SDG&E’s Rule 23, Section D.3.e. is inconsistent with D.98-12-067. Therefore, the parenthetical sentence at the end of the paragraphs named above should be replaced by the following language:

(i.e., the new or incremental customer load is able to be “islanded” to demonstrate that the direct transaction does not require the use of the utility’s

T&D systems. Once this standard is met, connection to the system is allowed without invalidating the CTC exemption).

47. Enron's, MWWD's, and NEV's protests regarding specifications of the loads subject to the physical test are granted.

Generator Requirements

48. D.98-12-067 states, "if the direct transaction can be consummated, that is, start and operate on an ongoing basis" (Mimeo, p. 24). That the transaction must be able to operate on an ongoing basis implies that the generator is permanent. Enron's request to remove the language 'permanent, on premise' is denied.

COMMENTS

1. The Energy Division mailed the draft resolution in this matter to parties in accordance with PU Code Section 311(g). Comments were filed on April 23, 1999 by MID, PG&E, and SCE. The remainder of this section discusses the comments submitted by each party.
2. MID: In its comments, MID addresses the manner in which the physical test is conducted. MID requests that the Draft Resolution be modified to allow for flexibility and fairness in the scheduling of the physical test as well as a mechanism for dispute resolution for scheduling conflicts. MID also renews its argument that FERC-jurisdictional facilities should not be considered in determining whether a Section 369 CTC exemption applies.
3. The scheduling concerns that MID raises focus on the possibility of inadequate time to prepare for an impending test. MID is also concerned that the "utility has the upper hand in scheduling" since the date is scheduled at the utility's discretion. The specifications for scheduling in the draft resolution are issues that MID should have raised in protest to PG&E's Advice Letter filing. Therefore, we find no reason to make the modifications proposed by MID.
4. MID's attempt to reargue its position concerning FERC-jurisdictional facilities is dismissed as inappropriate since comments are not meant to merely readdress issues raised in protest.
5. PG&E: In its comments, PG&E disputes the Commission's direction to remove the "other" section of the proposed tariffs relating to non-standby typically third-party T&D situations. It argues that the Commission intended D.98-12-067 to be applied broadly to all direct transactions, not simply those involving connection to the utility for standby service. PG&E also opposes the removal of the parenthetical language

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and SDG&E AL 1142-E / KTH * *

'either directly or indirectly through a third-party' in Preliminary Statement Part BB.6. PG&E argues "tariffs are intended to clarify issues of application, not merely to parrot statutory language" (PG&E comments, p.4).

6. In its comments, PG&E provides a lengthy explanation of the history and circumstances from which D.98-12-067 evolved. PG&E's description of the proceeding ignores the fact that the scope of the hearings, which led to the Decision, was expressly limited to the issue of whether entities taking standby service would be eligible for section 369 exemptions. (See D.98-12-067 at p. 4-5)."
7. D.98-12-067 contemplated the issue of standby service in the context of Section 369. The Decision addresses three possible scenarios with regard to CTC applicability pursuant to Section 369:

- i) The Direct transaction in no way uses the T&D facilities of the incumbent utility (CTC does not apply);

- ii) The Direct transaction serves the customer by way of T&D facilities of the incumbent utility (CTC applies); and

- iii) The direct transaction serves the customer without the use of the incumbent utility's T&D system, but that customer is connected to the utility solely for the purpose of standby power (CTC applies only to the standby power consumed).

The Decision states that the crux of the dispute surrounds the question of whether connection to the utility solely for standby service negates the CTC exemption. The Decision concludes that connection to the utility only for standby service does not negate the 369 CTC exemption.

8. Although the Commission asked the parties whether the direct transactions to be considered at the hearings were solely over-the-fence transactions, PG&E failed to raise the issue of whether direct transactions utilizing third party T&D providers would be eligible (See D.98-12-067 p. 5, Item 5). PG&E now raises a fourth scenario to which it argues that the applicability of Section 369 must be resolved: a direct transaction in which the NUG serves the customer by means of a third party T&D system. In its comments, PG&E argues that in such a scenario the customer served by the third party T&D provider is not entitled to claim a Section 369 exemption. PG&E has drafted tariff language to preclude Section 369 exemptions in such a scenario.
9. We acknowledge that the applicability of section 369 to such scenarios should be addressed by the Commission. However, neither PG&E nor any other party framed this issue for consideration in the proceeding leading to D.98-12-067. Consequently, the Decision did not address this scenario, as the language from the Decision quoted above demonstrates. It is improper for PG&E to attempt to obtain resolution of an

issue not addressed in the Decision in a compliance filing.

10. PG&E's argument that D.98-12-067 resolved the third-party T&D issue is incorrect. The single reference to third-party T&D providers on page 24 of the Decision, can only be viewed in the context in which it is framed--third-party T&D issues relating to the physical test for standby relationships.
11. For similar reasons, PG&E's request to maintain its parenthetical language referring to indirect or direct third party connection to the utility is denied. This language is a further specification that is unnecessary and in referring to third parties is beyond the scope of the D.98-12-067.
12. While non-standby situations involving third-party T&D providers is outside the scope of D.98-12-067, we believe that PG&E raises valid issues that should be addressed openly and properly. The question of how CTC applies in non-standby situations involving third-party T&D providers, that may be connected to the utility, has not been resolved and should be brought before the Commission in a manner that allows for the issue to be fully and fairly discussed by interested parties.
13. SCE: In its comments, SCE disputes the Commission's findings concerning third-party T&D, subsequent physical tests, and as-built schematics. PG&E shares SCE's position relating to the deletion of the as-built schematic requirement and provision for on-going reviews to measure continued compliance. We believe that the response to PG&E's comments concerning third-party T&D, adequately addresses SCE's comments on the matter. Therefore, the response to SCE's other two issues will be the focus of this reply to comments.
14. In its comments, SCE renews its argument concerning as-built schematics. Curiously, however, SCE has shifted the thrust of its argument from a standpoint that schematics are necessary as an initial screening prior to the physical test (SCE response to Enron's protest, p. 3) to a position that as-built schematics are fundamental to worker safety and system reliability (SCE comments p. 3). Indeed, SCE in response to Enron's protest states "The requirement to review the schematics is only the first screen and it takes place before the physical test is conducted" (SCE's response to protests p.3 dated Jan. 12, 1999). There is no mention of safety issues in the SCE's response. SCE also states "for interconnection of the generators to the utility's grid, SCE is already allowed access to such information pursuant to its Tariff Rule 21.D.8...". In response to Enron's protest to SCE's supplemental, SCE reiterates "this requirement is already contained in SCE's Rule 21 for interconnection to the utilities' grid" (Response to protest, Feb. 18, 1999, p. 2. In the finding concerning as-built schematic, the Commission believed that the fundamental question to be resolved was not related to safety concerns, but whether schematics are necessary as a screening device before the physical test.

15. In comments, SCE states that it could rest on Rule 21 provisions to avoid safety and reliability problems, but that specificity in the tariffs is necessary to avoid confusion:

Although SCE could continue to rest on the Rule 21 provisions, the Draft Resolution's deletion of the requirement for system schematics for system schematics could lead to confusion as to which is the controlling authority. To avoid such inference, SCE recommends that this requirement remain in its tariffs implementing Section 369 as well, by adding a reference to the schematic requirement in SCE's Rule 21, Section 2.1.2 to its Preliminary Statement Part W.4.b.(1).(b). (SCE Comments. P.4).

16. We find that SCE's comments are merely renewing issues raised in protests. SCE itself states that safety and reliability factors are addressed by Rule 21. That confusion will be created if there is not a direct reference to schematics in the tariffs is speculation on SCE's part.
17. In comments, SCE renews its argument for subsequent tests to measure compliance. SCE argues that it cannot assess the generator's on-going ability to start and operate if it cannot conduct on-going reviews. SCE also states that a dispute resolution process is an inadequate means to resolve compliance issues since without the ability to conduct subsequent tests it will not be able to know whether there is, in fact, a dispute to resolve.
18. SCE makes a compelling argument. The utilities' proposed tariffs provide for a physical test no more than once every 12 months. The draft resolution recognizes that the Decision makes no provisions for subsequent physical tests. However, it is consistent with the intent of D.98-12-067 and we will allow the utilities to conduct subsequent physical tests no more frequently than every 18 months for those direct transactions which are not otherwise exempt from CTC after June 30, 2000. Such subsequent physical tests will provide for ongoing compliance with D.98-12-067 at reasonable time intervals. We have modified the Discussion section of the draft resolution to incorporate this change.
19. In light of PG&E's fourth scenario concerning the applicability of Section 369 to non-standby third-party T&D situations, a question is raised as to the appropriate expiration date of the exemption. If the utilities wish to bring before the Commission the issue surrounding PG&E's fourth scenario, then the question of the expiration of the possible exemption as well as the issue of subsequent tests under those circumstances, should be addressed at that time.

FINDINGS

1. By PG&E's Advice Letter 1835-E, SDG&E's 1142-E, and SCE's 1359-E, the utilities request approval of revisions to the electric tariffs to clarify the requirements for new or incremental customer load to qualify for the Competition Transition Charge (CTC)

exemption stipulated in Public Utilities Code Section 369.

2. Protests were filed with the Energy Division by Enron, New Energy Ventures (NEV), San Diego Metropolitan Wastewater Department (MWWD), and Modesto Irrigation District (MID).
3. Enron requests uniformity in the tariff provisions to implement D.98-12-067.
4. The utilities generally concede to Enron's request with the exception of PG&E, which has provisions concerning third-party T&D providers that SCE does not have in its tariffs.
5. Enron's recommendation that the utilities' tariffs contain uniform provisions is adopted.
6. PG&E's Preliminary Statement BB 6.c and SDG&E's Sheet 12, Section D.3.e, entitled 'Other', refer to situations characterized as "non-standby, typically third party transmission".
7. The fundamental question addressed by the Decision is whether connection to the utility, solely for the purpose of standby, disqualifies the party seeking a CTC exemption when there is otherwise no use of the T&D system owned by the utility.
8. The inclusion of tariff provisions for non-standby situations involving third party T&D providers is beyond the scope of D.98-12-067.
9. The 'Other' portion of PG&E's and SDG&E's tariffs should be removed.
10. The Decision did not intend to address third party T&D issues beyond those relating to the physical test for standby relationships.
11. The language 'either directly or indirectly through a third party' should be removed from PG&E's Preliminary Statement BB.6 and SDG&E's Sheet 10, Section D.3.e.
12. NEV protests language contained in PG&E's Section BB.6.c. PG&E is directed to remove the language contained in Section BB.6.c. This issue is moot.
13. Section 369 explicitly refers to facilities owned by the utility and makes no reference to FERC jurisdiction. MID's protest requesting that use of FERC jurisdiction not be considered in determining whether a Section 369 CTC exemption applies is denied..
14. Enron, MID, and NEV request exceptions to the physical test.

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15. The utilities state a physical test is required without exception for standard standby relationships.
16. An exception to the physical test or a substitution for the physical test is inconsistent with D.98-12-067.
17. Enron's, MID's, and NEV's requests for exceptions to the physical test are denied.
18. PG&E's Preliminary Statement BB.6.b.2, SDG&E's Sheet 11, Section D.3.e.2, and SCE's Part W, 4.b.1.b. stipulate that a physical test be conducted every year. The utilities' proposed tariff language should be modified as described in the Discussion section to:
 - allow the utility to conduct subsequent physical tests after the initial test no more frequently than once every 18 months;
 - establish that parties to direct transactions which are otherwise exempt from CTC after June 30, 2000 are under no obligation to undergo a subsequent physical test, and;
 - establish that the results of a subsequent physical test shall not affect CTC eligibility for the previous 18 month period, i.e., CTC exemptions based on a direct transaction's passing the initial test will not be affected if that direct transaction fails a subsequent test conducted 18 months later.
19. The provision for subsequent tests is consistent with the intent of D.98-12-067.
20. Successful completion of an initial physical test, and if the utility chooses, subsequent physical tests at 18 month intervals, satisfies the CTC exemption qualification requirement.
21. The utilities should include a tariff provision for the dispute resolution process to be followed for disputes involving new or incremental load served by a direct transaction.
22. Enron, NEV, and MWWD oppose the provision that failure of a physical test will result in the obligation to repay the exempted CTC for the previous year.
23. Enron and MWWD request a second opportunity to take the physical test, if failed, prior to losing the CTC exemption.
24. The utilities concede to allowing a second opportunity to demonstrate that the customer can pass the physical test if the test is failed the first time.

25. Upon failure of a physical test the generator/operator will have another opportunity to demonstrate that it can pass the physical test.
26. Failure of the second physical test will obligate the generator/operators to repay the exempted CTC from the date that the exemption was claimed and received.
27. Enron's, NEV's, and MWWD's request that loss of the CTC exemption apply only on a prospective basis is denied.
28. A physical test shall be conducted within three (3) weeks of an exemption being claimed
29. A customer which fails a physical test twice within a two (2) month period is not entitled to request another physical test for twelve months from the date of the latter of the failed tests.
30. Enron requests removal of the utilities' requirement for as-built electrical schematics and drawings prior to the physical test.
31. PG&E and SDG&E maintain schematics and drawings are appropriate and necessary.
32. SCE states that this requirement is already contained in SCE's Rule 21 for interconnection to the utility's grid. SCE maintains that for sound engineering practice the physical test should not be conducted without reviewing the schematics of the installation.
33. The physical test as detailed in SCE's Part W, 4.b.1.b., PG&E's Preliminary Statement BB.6.b.3. and SDG&E's Rule23, Section D.3.e.3 is sufficient to implement the Commission's mandate for a physical test.
34. Requirements beyond the physical test described in PG&E's Preliminary Statement BB.6.b.3. and SDG&E's Rule23, Section D.3.e.3 are unreasonable and inconsistent with D.98-12-097.
35. The utilities should eliminate the sentence "Prior to the physical test, the owner/operator shall provide to the utility as-built electrical schematics and installation drawings that demonstrate that the generator is capable of continuous operation while completely isolated from the utilities' T&D system".
36. Enron's protest regarding the as-built schematics requirement is granted.
37. NEV and MWWD request clarification that only the loads for which an exemption is claimed need be completely isolated from the utilities' system.

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38. The utilities specify the loads to be assessed are electrically separate loads for which an exemption is claimed.
39. Enron opposes the language 'electrically separate' as being inconsistent with D. 98-12-067.
40. SCE responds that the portion for which the exemption is claimed should be able to be electrically separated.
41. The language in SCE's Part W, 4.b.(1), PG&E's Preliminary Statement BB. 6.a. and SDG&E's Rule 23, Section D.3.e. should more closely reflect D.98-12-067. The parenthetical sentence at the end of the paragraphs named above should be replaced by the following language:

(i.e., the new or incremental customer load is able to be "islanded" to demonstrate that the direct transaction does not require the use of the utility's T&D systems. Once this standard is met, connection to the system is allowed without invalidating the CTC exemption).
42. Enron's, MWWD's, and NEV's protests regarding specifications of the loads subject to the physical test are granted.
43. Enron requests removal of the language 'permanent, on premise' contained in SCE's Part W, Section 4.b.1.a.
44. SCE states the generator's ability to be independent from the utility's system should be permanent and on-going.
45. The Decision states "if the direct transaction can be consummated, that is, start and operate on an ongoing basis" (Mimeo, p. 24). That the transaction must be able to operate on an ongoing basis implies that the generator is permanent.
46. Enron's protest regarding the requirement that the generator is permanent and on premise is denied.

THEREFORE, IT IS ORDERED THAT:

1. PG&E's Advice Letter 1835-E, SCE's 1359-E-A, and SDG&E's 1142-E requests are approved subject to the following modifications:
 - A) PG&E's Preliminary Statement Part BB.6.b.2., SCE's Part W, Section 4.b.1.b, and SDG&E's Rule 23, Section D.3.e.2 should read as follows:

A physical test for customers interconnected with the utility's T&D facilities for standby service will be performed within three (3) weeks of an exemption being claimed by an owner/operator. The owner/operator shall permit the utility to inspect the installation and operation of the generator. Failure of the physical test or failure to permit the initial test on the date scheduled by the utility, or on a mutually agreeable alternative date, will result in the loss of the CTC exemption from the date that the exemption was claimed and received, billing for the exempted Departing Load for the period in which the exemption was received, and continued billing for the Departing Load until a physical test is successfully completed. If a physical test is failed, the customer claiming that transition costs do not apply may request another opportunity to demonstrate that it can pass the physical test which the utility shall schedule within three (3) weeks of the request or at a mutually agreeable date. A customer which fails a physical test twice within a two (2) month period is not entitled to request another physical test for twelve months from the date of the latter of the failed tests.

To provide for ongoing compliance with D.98-12-067, the utility may conduct subsequent physical tests no more frequently than once every 18 months. Customers otherwise exempt from CTC after June 30, 2000 pursuant to Public Utilities Code Section 372 are under no obligation to undergo a subsequent physical test. The results of a subsequent physical test shall not affect a customer's CTC exemption status determined pursuant to the results of any prior physical test conducted not less than 18 months before the subsequent test.

- B) The parenthetical sentence at the end of SCE's Part W,4.b.(1), PG&E's Preliminary Statement BB. 6.a. and SDG&E's Rule 23, Section D.3.e. should be replaced by the following language:

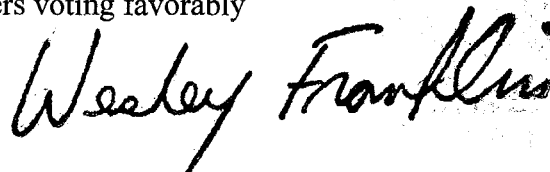
(i.e., the new or incremental customer load is able to be "islanded" to demonstrate that the direct transaction does not require the use of the utility's T&D systems. Once this standard is met, connection to the system is allowed without invalidating the CTC exemption).

- C) PG&E's Preliminary Statement BB 6.c and SDG&E's Sheet 12, Section D.3.e, entitled 'Other', are removed from the tariffs
- D) The language 'either directly or indirectly through a third party' is removed from PG&E's Preliminary Statement BB.6 and SDG&E's Sheet 10, Section D.3.
- E) The utilities include a tariff provision stating that disagreements involving new or incremental load served by a direct transaction are subject to the dispute resolution process as set forth in PG&E's paragraph BB.4.f., SCE's Section W.5.e., and SDG&E's Rule 23, Section D.6.

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2. PG&E, SCE, and SDG&E shall file a Supplemental Advice Letter incorporating the tariff changes described herein within 10 days of the adoption of this Resolution. The Supplemental Advice Letters shall be deemed effective January 1, 1998 in accordance with the Ordering Paragraph of D.98-12-067 after review by the Energy Division and if found to be in compliance with this Resolution.
3. The protests to Advice Letters 1835-E, 1359-E, and 1142-E are resolved as described in the Findings of this Resolution.
4. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on May 13, 1999; the following Commissioners voting favorably thereon.



WESLEY M. FRANKLIN
Executive Director

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners