

1 SAN FRANCISCO, CALIFORNIA, JUNE 10, 2004 - 9:03 A.M.

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3 ADMINISTRATIVE LAW JUDGE MALCOLM: Please come to
4 order.

5 Mr. Como, you may present your next witness.

6 MR. COMO: Thank you, your Honor. City and County
7 of San Francisco would like to call Mr. Mark Fulmer to
8 the stand.

9 ALJ MALCOLM: Good morning, Mr. Fulmer.

10 MARK E. FULMER, called as a witness
11 by City and County of San Francisco,
12 having been sworn, testified as follows:

13 ALJ MALCOLM: Thank you.

14 MR. COMO: Your Honor, I would like to have Mr.
15 Fulmer's opening testimony, reply testimony and rebuttal
16 testimony marked as exhibits.

17 ALJ MALCOLM: All right. We'll mark Mr. Fulmer's
18 opening testimony as Exhibit 30, his reply testimony as
19 Exhibit 31, and his rebuttal testimony as Exhibit 32.

20 (Exhibit Nos. 30, 31 and 32 were
21 marked for identification.)

22 MR. COMO: Thank you, your Honor.

23 DIRECT EXAMINATION

24 BY MR. COMO:

25 Q Mr. Fulmer, do you have those exhibits before
26 you?

27 A Yes, I do.

28 Q Were those exhibits prepared by you or under
your direction?

1 A Yes, they were.

2 Q Do you have any corrections, changes to be
3 made to those exhibits?

4 A I do have a number of corrections to make. If
5 you could first turn to page 5 of my opening testimony,
6 Footnote 3, the correct reference should be to
7 366.2(c)(17) rather than 9.

8 MR. OUBORG: I'm sorry. What page was that?

9 THE WITNESS: It's on page 5 of my opening
10 testimony.

11 MR. OUBORG: Line?

12 THE WITNESS: The footnote.

13 MR. OUBORG: The footnote. Just state the
14 correction again, please.

15 THE WITNESS: Sure. The correct reference is to
16 subparagraph 17 rather than subparagraph 9.

17 MR. OUBORG: Thank you.

18 THE WITNESS: And if you could now turn to page 15
19 of my opening testimony, line 7, there's a reference,
20 and the reference should be to 366.2 rather than 362.
21 Now, on to page 19, line 9, again, the section number is
22 incorrect. It should be 366.2 rather than 311. And in
23 fact, continuing down on that same page on line 21,
24 there's the same incorrect reference. It also would be
25 366. And on the top of the next page, top of page 20,
26 there's also the incorrect 311 which should be 366.

27 And carrying that theme into my reply
28 testimony, if we go to page 5, line 8 of my reply,

1 again, it's 366 rather than 311.

2 MR. COMO: Q Are those all the changes or
3 corrections you want to make to these exhibits?

4 A Yes.

5 Q Last Friday, Mr. Fulmer, PG&E witness Peter
6 Labberton provided some additional direct testimony
7 concerning the 70 cent charge for bill presentation and
8 processing. Do you remember that?

9 A Yes, I do.

10 Q And you are going to provide us with a reply
11 to that testimony today?

12 A Yes, I am.

13 Q Before you go on, though, I just wanted to ask
14 you, except for your reply today in that area, do the
15 opinions contained within these exhibits that were just
16 marked represent your best professional judgment?

17 A Yes, they do, with any updates that I'll be
18 giving right now on this limited issue.

19 Q Have you reviewed his testimony from last
20 Friday?

21 A Yes, I have. Mr. Labberton provided some
22 additional details beyond that provided in the
23 workpapers and in the response to discovery as to how he
24 arrived at that 70 cent per bill estimate. Mr.
25 Labberton noted that when he queried his staff
26 concerning the incremental time spent addressing
27 irregularities to UDC consolidated bills for direct
28 access customers, that the average time spent ranged

1 greatly from five minutes to over an hour and a half.
2 Since the average is about 40 minutes, simple arithmetic
3 would indicate that roughly half -- excuse me -- roughly
4 as many incidents that require an hour and a half of
5 work as there were incidents that required five minutes.

6 Also Mr. Labberton noted that his department
7 spends, quote, "a lot of time reconciling the DA
8 accounts." He elaborated by saying that this effort was
9 to research and address ESP questions concerning why an
10 account wasn't billed, why the credit due the ESP wasn't
11 what was expected, that kind of thing.

12 A major difference that I have with Mr.
13 Labberton is the categorization of these kinds of
14 efforts. I've interpreted these kinds of efforts to
15 fall under the account assistance fee category as shown
16 on page 7-3 of PG&E's opening testimony.

17 One of the activities listed under the account
18 assistance fee category is reconciliation of aggregator
19 and PG&E account balances and statements of account. To
20 me, the reconciliation activities that Mr. Labberton
21 described as taking a lot of time would fall into the
22 account assistance fee category rather than the bill
23 presentation and processing category. If that were the
24 case, then the labor complement of the bill presentation
25 and processing fee would likely be greatly reduced,
26 perhaps even down to the level that I had recommended in
27 my rebuttal testimony.

28 Q Could you turn to page 11 of your rebuttal

1 testimony.

2 A Okay.

3 Q I believe you recommended that the fee for
4 bill presentation and processing be based on five
5 minutes of labor rather than 40; isn't that correct?

6 A That's correct.

7 Q Based on Mr. Labberton's new testimony, do you
8 still recommend this change?

9 A No, I do not. Instead I recommend that in
10 Phase 2 PG&E recalculate the bill presentation and
11 processing fee such that these more lengthy
12 reconciliation efforts would be charged under the
13 account assistance fee category and that the remaining
14 activities, such as updating the CCA subaccounts, would
15 be covered under the bill presentation and processing
16 fee.

17 I further recommend that PG&E more explicitly
18 track down how long it spends on the different kinds of
19 activities associated with UDC consolidated billing for
20 direct access customers. This will provide a more valid
21 estimate of the charges and provide a better basis for
22 establishing the CCA billing -- CCA bill presentation
23 and processing fee. It would also allow PG&E to develop
24 a better cutoff criteria between account assistance and
25 bill presentation processing.

26 Q What does it matter if these costs are
27 included in one category or another? Wouldn't the
28 amounts be the same?

1 A Generally, I believe it's better to have clear
2 cost causation in assignment than to have a rolled-in
3 average. It would also provide the CCA and PG&E
4 incentives to balance the cost of these exceptional
5 activities versus their benefits. For example, I don't
6 think it would make sense for CCA to explicitly incur a
7 \$50 charge to reconcile a \$4 difference in a \$22
8 residential bill. Or another example that Mr. Labberton
9 had provided is when an ESP will sometimes ask PG&E --

10 MR. OUBORG: Your Honor, I'm sorry. Are we now
11 talking about other charges Mr. Labberton recommended
12 other than the 70 cent charge?

13 THE WITNESS: To my mind, this is all to the 70
14 cent charge and the activities that he included in the
15 70 cent charge that I see as more appropriately included
16 in the account assistance charge.

17 MR. OUBORG: Okay. You just referred to \$50, and
18 I just want to know where that came from so that I know
19 what you're talking about.

20 THE WITNESS: That's fine. That was an arbitrary
21 number. That's roughly an hour's worth of work. I
22 think he provided a \$50 rate. So I just picked it out
23 of the air.

24 MR. OUBORG: All right.

25 THE WITNESS: Okay. Well, Mr. Labberton had
26 provided an example on Friday where an ESP will
27 sometimes ask PG&E to rebill an account after PG&E has
28 created a bill based on an estimated read. For a

1 bundled customer, I understand that for the subsequent
2 month PG&E can get an actual read on that meter and any
3 errors in that estimated read would just come out in the
4 wash. Mr. Labberton said that an ESP will sometimes ask
5 PG&E to go back and explicitly rebill that customer
6 with, quote, "good reads" for that month and that
7 PG&E -- for that month that PG&E had estimated reads.

8 I think if an ESP or a CCA were explicitly
9 faced with the actual cost of performing the service, it
10 may very well decide that simply keeping the estimated
11 bill and truing up the difference in the subsequent
12 month would actually make more sense, and which is in
13 fact the way that PG&E does it.

14 Also having to produce an invoice for specific
15 actions, as would be the case with the account
16 activities fee, would provide some effective auditing of
17 the PG&E activities in that category. It provided
18 incentive, to my mind, for PG&E to work efficiently
19 because it will have to be explicitly accountable for
20 their work and also provide the CCA some assurance that
21 the activities that they're being billed for are indeed
22 correct and appropriate.

23 MR. COMO: Q Mr. Fulmer, does that complete your
24 additional testimony?

25 A Yes, it does.

26 MR. COMO: Your Honor, Mr. Fulmer is available for
27 cross-examination.]

28 ALJ MALCOLM: Thank you. Before we do that, I

1 want to make sure I understand how page 11 of
2 Mr. Fulmer's rebuttal testimony has changed, because I
3 don't want to have this paper document in the record if
4 it's incorrect. So are we withdrawing the answer to
5 Question A -- I mean, the answer to the question that
6 starts on line 15?

7 MR. COMO: I believe we thought this to be
8 additional, as a rebuttal to additional direct
9 testimony, so I'm not sure. I think that it's offered
10 for parties to use in their briefings to the extent that
11 they believe what Mr. Fulmer is now saying overrides
12 something else Mr. Fulmer said.

13 ALJ MALCOLM: No. That's right. I understand.
14 Let's go off the record.

15 (Off the record)

16 ALJ MALCOLM: On the record.

17 Exhibit 32 will be modified to delete the
18 answer to the question on page 11 at the bottom,
19 starting on line 15. And that's replaced by
20 Mr. Fulmer's testimony on the stand here.

21 All right. Thank you, Mr. Como.

22 Mr. Fenn, do you have questions for this
23 witness?

24 MR. FENN: I do not. Thank you, your Honor.

25 ALJ MALCOLM: Mr. Ross, you just got here.

26 MR. ROSS: Well, we know that we don't, so --

27 ALJ MALCOLM: Okay. Mr. Ouborg?

28 MR. OUBORG: Yes, your Honor. Thank you.

1 CROSS-EXAMINATION

2 BY MR. OUBORG:

3 Q Good morning, Mr. Fulmer. My name is
4 Peter Ouborg, representing PG&E. I think I'm first
5 going to give a short line of cross on the testimony we
6 just heard, while it's fresh in everybody's memory. So
7 let me just do that right now.

8 And I guess my first question is: you
9 testified a minute ago that Mr. Labberton had estimated
10 that the costs of doing this billing work ranged from
11 five minutes to one and a half hours after he talked to
12 his staff. And then I think you testified that if one
13 takes the average of that, you get about 40 minutes.
14 And therefore, I think, using arithmetic argument, there
15 would be half -- half of the actions would be less than
16 the 40 minutes, and half would be more than 40 minutes,
17 and therefore, the average -- the average should be less
18 than 40 minutes?

19 A No, no. That's -- I was just making a simple
20 observation that there are many activities that take
21 much less than 40 minutes. And there are -- in order to
22 balance those off, there have to be many activities that
23 take more than 40 minutes.

24 Q And so I am trying understand. Mr. Labberton
25 testified -- and I'm reading from it at this point -- he
26 asked his staff.

27 And they said -- I quote -- "On average," they
28 said, "it takes about 40 minutes to do that work."

1 Are you questioning his estimate?

2 A I have no basis to question his estimate. No,
3 I'm not questioning that.

4 Q Okay. Thanks.

5 That second point you made was that there is
6 this -- the 70 cents per bill per month charge.

7 Then there's another charge PG&E has estimated
8 for account assistance?

9 A Yes.

10 Q And in Mr. Labberton's testimony, you list
11 some activities under that account-assistance charge.
12 For instance, type of activities, one of which, I
13 believe -- I don't have it right in front of me, but
14 it's along the lines of reconciling balances as to what
15 is owed the ESP versus the utility, that kind of
16 activity.

17 A Yes.

18 Q Okay. I believe Mr. Como questioned
19 Mr. Labberton on that point, and asked him that question
20 as to how that activity in the account-assistance fee
21 differed from the labor that PG&E had included in
22 constructing this 70 cents per account charge.

23 And I believe I heard Mr. Labberton explain --
24 and I want to just confirm this is your recollection --
25 that the account-assistance activities are for
26 large-scale, exceptional type requests. For example,
27 the ESP says, "We have to go back over the last year and
28 look at all of our accounts and balances, and reconcile

1 those," as opposed to the daily questions which come out
2 from these daily reports that are sent to the ESP. I
3 think he drew that kind of distinction. And we can go
4 back and read it, but I just was wondering if that was
5 your recollection.

6 A That's how I remember hearing his testimony
7 also. I am just choosing to draw the line at a lower
8 level than I believe Mr. Labberton was.

9 Q Okay. Thank you. All right. And then the
10 final item: Mr. Labberton testified, I believe, that
11 some of the activities involved in the 70 cent charge
12 are when there's a missing read, and the account is read
13 two months later instead of one month, because it wasn't
14 read the first time, in which case PG&E would estimate a
15 read in the normal course. And Mr. Labberton explained
16 that his experience under ESP consolidated billing is
17 that many ESPs found that practice unacceptable, and
18 would request a true-up to that intermediate read that
19 PG&E used before; that they would ask for a different
20 estimate; for example, proration, based on the two-month
21 read instead of PG&E's original estimate.

22 Do you remember? Is that your understanding
23 of how he explained it?

24 A That is.

25 Q Okay. And I think you said a moment ago that
26 you felt CCAs would prefer, in your judgment, to simply
27 stick with PG&E's practice, which would eliminate that
28 additional read activity or reduce it greatly.

1 A Well, I think that it might be better for the
2 CCA to be able to have an option, and realize that going
3 back and getting that precision on that missing read has
4 a real economic impact. It costs real money to go back
5 and make corrections, even though in that two-month
6 period it does all effectively come out. The same
7 amount will be billed, but perhaps that additional
8 precision isn't worth the additional effort.

9 Q Okay. So is it -- you're not saying that PG&E
10 requires the ESP under DA practice to do that?

11 A That's not my understanding.

12 My understanding from what he said: it's a
13 work class.

14 Q Right. Thank you. Thank you, Mr. Fulmer.
15 That was helpful. And I believe some of your
16 suggestions are -- would assist in defining this feed
17 better, and I think they're thoughtful.

18 A Thank you.

19 Q If we can turn, Mr. Fulmer, to a different
20 subject -- one second while I organize my notes.

21 Your Honor, could we go off the record?

22 ALJ MALCOLM: Off the record.

23 (Off the record)

24 ALJ MALCOLM: Back on the record.

25 MR. OUBORG: Q Mr. Fulmer, I wanted to just walk
26 you briefly through your understanding of PG&E's
27 proposal for categorization of costs, and then also how
28 those costs would be recovered in PG&E's proposal.

1 A Okay.

2 Q Is it generally your understanding that PG&E
3 has defined three types of costs?

4 Namely, basic implementation costs, which
5 would be the costs of programming and system work
6 necessary to make some basic CCA program functional; and
7 that PG&E's proposal for those costs is that they would
8 be paid by all ratepayers?

9 A That is my understanding.

10 Q And then a second category of costs PG&E has
11 identified are exceptional implementation costs, which
12 would be requests by specific CCAs for functionality
13 that goes beyond the basic system; and that PG&E's
14 proposing that the CCA requesting those implementation
15 services would pay those costs themselves?

16 A That's my understanding. PG&E would have a
17 labor rate, and they would charge that labor rate to
18 accomplish that task.

19 Q All right. And then the third category PG&E
20 then had in its testimony is labeled, "Transactions
21 Costs." And PG&E's proposal is those would be based on
22 incremental activities and costs of performing mostly
23 functions that vary by volume over function, and that
24 PG&E's proposal would be that those costs would be
25 paid -- billed to and paid by CCAs?

26 A That is my understanding of PG&E's position.

27 Q Now, let's turn for a moment to your position.

28 Oh. And then just one final clarification of

1 what PG&E is proposing. Returning to the basic
2 implementation costs, is it your understanding that,
3 with respect to cost rate recovery of those dollars from
4 all ratepayers, PG&E is proposing that that be done on a
5 forecast basis, and rolled into PG&E's distribution
6 revenue adjustment mechanism, or DRAM, and tried up at a
7 later date?

8 A That was my understanding of PG&E's position.
9 I haven't taken explicit position of the mechanisms for
10 how PG&E would exactly account for those moneys.

11 Q Okay. Now we will turn now just to your
12 position. You're also proposing that, I believe -- that
13 implementation costs be first established on some sort
14 of a forecast basis, and not -- I could refer you to a
15 part of your testimony. I think it's at -- I think your
16 opening testimony, page 17, you have a fairly extensive
17 list of steps for determining implementation costs. Is
18 that correct?

19 A I see some Q and A is on implementation costs,
20 yes.

21 Q Good. And particularly at line 13, you state,
22 The Commission must require the
23 utility to provide documented cost
24 estimates for these services prior
25 to implementation.
26 And then you go on after the parenthesis.
27 The Commission should review the
28 activities to determine if they're

1 indeed incremental.

2 Now, can I just clarify? Are you talking here
3 about costs which would loosely equate to the basic
4 implementation costs that PG&E is talking about, or are
5 you talking more about costs underlying the
6 transactional costs?

7 A Specifically, it appears that I'm talking here
8 about the implementation costs.

9 The same type of oversight, I think, is
10 appropriate for the transaction costs also.

11 Q Okay. And then when that's been
12 established -- that estimate -- by the process you
13 outline here, you would -- the Commission would then
14 divide those into a portion that would be recovered from
15 all ratepayers, and a portion -- a portion which would
16 be charged to CCAs. Is that correct? Is that -- I'm
17 just reading.

18 A That's the general categorization of costs,
19 yes.

20 Q Okay. And that those costs would then be
21 placed in a memorandum account?

22 A That was one option that I had suggested.
23 With respect to the basic implementation costs, my
24 preference is in agreement with your -- with PG&E's
25 position.

26 In fact, I think I stated that in later
27 testimony, is that it be recovered from all ratepayers
28 as a fallback.

1 If the Commission disagrees with me on that,
2 then my recommendation would be to have it through the
3 memorandum account, rather than just charged out as it
4 came to the first CCA.

5 Q Mr. Fulmer, thank you for that. Could you
6 turn to page 8 of your opening testimony?]

7 And on line 1 you state any utility cost
8 savings attributable to the implementation of the CCA
9 program should be credited back to the CCAs.

10 A I see that.

11 Q Now earlier in your testimony, and I think a
12 few moments ago you confirmed this, that generally your
13 recommendation is that with respect to costs, the basic
14 costs of the CCA program, that those should be charged
15 to all ratepayers.

16 A That's true. If I can clarify the statement
17 here a little bit.

18 Q I have a question about the statement.

19 A Please, go ahead.

20 Q I haven't asked you a question about the
21 statement yet.

22 In general, if CCA implementation results in
23 utilities being able to operate more efficiently and
24 save costs and resources in some fashion, is your
25 understanding that under GRC ratemaking procedures that
26 those savings would basically work themselves into
27 future revenue requirements through lower forecasts of
28 utility costs?

1 A For the basic implementation costs, I think
2 that's a fair characterization.

3 Q And in that process, those benefits, if you
4 will, would flow to all ratepayers through some
5 incrementally lower revenue requirement?

6 A Since all ratepayers are paying those costs,
7 it is only appropriate that all ratepayers reap any
8 benefits.

9 Q So I agree with you fully. And so my question
10 now about this statement is, and perhaps you can just
11 clarify it, I take it, then, you are not -- well, can
12 you explain what you mean by the statement that the cost
13 savings be credited back to CCAs, and whether you are
14 talking about a subset of the cost savings or if you are
15 talking about the general cost savings that might occur
16 from these programs?

17 A What should be credited back to the CCAs are
18 any efficiencies or cost savings that occur from
19 activities that the CCAs are explicitly paying for.
20 Pretty much if the CCA is paying for something in a
21 transaction cost, then if the utility ends up saving
22 costs for some reason through those, then those benefits
23 should go to the people who are paying for it, the CCAs.
24 That's what I was trying to say.

25 Q Okay. I appreciate that.

26 So what you really are stating here is that
27 the incremental costs of services that are charged to
28 CCA should be net, they should be truly incremental,

1 should be the additional cost the utility incurs net of
2 any savings in providing that service, basically?

3 A The idea of the incremental cost is to avoid
4 the cost shifting. And cost shifting can go both ways.
5 I don't want it to be strictly cost shifting from CCA to
6 bundled. But if in some theoretical instance there is
7 some cost shifts that go could go the other way, I would
8 like that also to be taken into account.

9 Q And is it your understanding from having read
10 the testimony of PG&E and perhaps other utilities that
11 the incremental cost methodology that we have used, that
12 the utilities have used, attempts to capture simply the
13 net incremental effort and takes out any change --
14 excuse me -- takes out any activities which will be
15 saved, for example?

16 MR. COMO: Objection. Can we clarify that
17 Mr. Fulmer agrees that each one of the IOUs is using the
18 same methodology.

19 MR. OUBORG: Let me restate it.

20 Q I think that would be too much to ask. Is
21 your understanding that three IOUs have used generally
22 similar methodology -- in reading their testimony, I am
23 not sure it has all been applied exactly the same way --
24 but that the general idea of incremental cost
25 activity-based costing, which is the technique we have
26 all purportedly used to construct our fees, is based on
27 the idea of incremental cost and we look at the
28 activities and we look at what is extra, and in that

1 process the utility would not include something which
2 was either already being done for a bundled customer or
3 some activity that was avoided?

4 A I agree that all three utilities appear to be
5 using activity-based costing. I have confidence that an
6 activity-based costing correctly attributes cost to the
7 CCA. This activity is directly associated with
8 something with the CCA cost.

9 My concern with that overall statement is that
10 I think there may be costs that are attributable to a
11 CCA using this method that may not actually cause cost
12 shifting. Perhaps an example?

13 Q Sure.

14 A This is sort of an extreme one, but I think it
15 illustrates my point. The time you are spending talking
16 to me is incremental to the CCA program. If we didn't
17 have AB 117 and we didn't have CCA, you all wouldn't be
18 sitting here. Strictly speaking, you can sort of say
19 that at least an activity of the law department
20 multiplied by the amount of time you are sitting here
21 would be some cost and somehow that should be charged to
22 the CCA under some strict interpretation of the activity
23 based costing.

24 My understanding is regulatory affairs like
25 this, that is an explicit category in the revenue
26 requirement and covers this kind of thing. So even
27 though it is attributable to the CCA and using
28 activity-based costing could conceivably point to those

1 costs being charged to the CCA, I don't think, at least
2 I hope, no one is suggesting that the city receive a
3 bill for your regulatory affairs time.

4 Now that is an extreme example. But I think
5 when we get to some of the other costs, we need to be a
6 little bit more nuanced than the strict activity-based
7 costing to see what costs will be reasonably covered as
8 part of the revenue requirement and which ones are
9 generally being shifted to the bundled customer.

10 Q But if a service involves activities that are
11 not in the current revenue requirement and those
12 services would not occur but for the CCA program and
13 providing the CCA with the service, you would agree that
14 those would correctly be charged the CCA?

15 A Not necessarily. I think a lot of things
16 happen in between rate cases. And the revenue
17 requirement handles these changes. There are various
18 changes in rates that happen in storms, all sorts of
19 things happen, that aren't explicitly addressed in the
20 revenue requirement but are generally covered as part of
21 cost of business.

22 There will be undoubtedly some costs that are
23 above and beyond that and which should be appropriately
24 charged to the CCA. But I am just being much more
25 cautious and not assuming simply because this exact
26 activity didn't appear in your last rate case that it
27 doesn't automatically get charged to the CCA.

28 Q I think that's fair enough. I guess you gave

1 an example of something that you thought should not be
2 charged because you felt it was covered by category in
3 the rate case, namely, regulatory proceeding
4 participation or something to that effect.

5 Let's return to our favorite fee, the billing
6 fee. To the extent that PG&E is able to carry its
7 burden that the activities underlying that fee are
8 activities that would not occur if it weren't for the
9 CCA billing, in other words, would not occur for bundled
10 customers and therefore are incremental in that sense,
11 do you have an opinion as to whether that should be
12 charged?

13 A Based on what I read in Mr. Labberton's
14 testimony, I believe that his department will likely
15 have to expand if someone like the City of San Francisco
16 becomes a CCA, and that expansion would be indeed
17 incremental and appropriately charged in one way or
18 another to the CCA.

19 Q So that would not be something that in your
20 view is anticipated in rate case revenue requirement?

21 A As I am sitting here now, that's my opinion.

22 Q Mr. Fulmer, I am going to go on to the topic
23 of learning curve costs. To give you a reference to
24 your testimony, could you turn to page 11 of your
25 opening testimony.

26 A Okay. I have that.

27 Q It is my understanding, Mr. Fulmer, that by
28 learning curve costs you are positing that for certain

1 activities utilities will get better and more efficient
2 over time and the cost associated with that will
3 decrease, the average cost. Is that a fair? I am not
4 trying to get an exact definition, but is that the idea?

5 A That is the gist of what I am calling the
6 learning curve cost.

7 Q I will try to anchor this in specific fee so
8 we can talk about a hypothetical.

9 You are aware that PG&E has proposed \$1.053 as
10 a charge to process opt-out postcards; is that correct?

11 A I understand that PG&E is proposing that, yes.

12 Q And I understand that CCAs have objected in
13 this proceeding to the charging that fee in principle,
14 but I want to put that aside for the purposes of this
15 hypothetical. So we will just talk about a number and
16 how the learning curve might work.

17 Assume for a moment that the Commission
18 approves an opt-out charge and that that's appropriate.
19 And turn again to PG&E's \$1.53. Let's also assume that
20 a year from now PG&E has gotten better at processing
21 these and its estimate is now a dollar per card, so it's
22 gone down by about \$0.50.

23 So am I to understand that you are proposing
24 that at the outset we make an estimate of which fees
25 would be subject to that kind of improvement and
26 initially charge a lower amount for the first mover
27 CCAs, if you will, and then do some sort of true up
28 later on? Is that the proposal?

1 So in my hypothetical, to help you, we would
2 guess that it would go to a dollar, we would charge a
3 dollar for the initial CCAs and we will track the
4 difference in some account. Then a year later we would
5 look at if in fact it was a dollar at some future date
6 and, this is where I am asking you to help me explain
7 what we will do, if in fact it was still \$1.50 would we
8 rebill those early mover CCAs? How do you envision your
9 proposal working?

10 A First, to give a little context here, when I
11 prepared the opening testimony, I hadn't seen anyone
12 else's positions or what exactly they were proposing.
13 So I was admittedly being rather broad when I wrote
14 this.

15 A lot of what I was considering learning curve
16 costs are ones that you as PG&E have categorized as
17 basic implementation costs. Like, for instance, the
18 preparation of the basic operating agreements between
19 the CCA and a utility. The first time one prepares that
20 boilerplate, it will be more costly than preparing that
21 same agreement for the third or fourth CCA.

22 So what I wanted to capture there was those a
23 little bit more major costs.

24 I think as you improve on efficiencies on
25 these transactional items, then the costs charged the
26 CCA should track the actual costs of the utilities. I
27 don't envision significant -- I will stick with that
28 word significant -- improvements such that that having

1 to do this estimate that you suggested would be
2 appropriate.

3 You should just keep charging as your costs
4 are incurred. And if improvements are happening, then
5 those efficiencies I would like to see reflected in the
6 fees.

7 Q In revisions total fees?

8 A That's correct.

9 Q Thank you.

10 Mr. Fulmer, I am going to ask you some
11 questions about liquidated damages since you brought it
12 up.

13 Could you turn to page 6 of your rebuttal
14 testimony. And generally you express a concern that
15 whether utility -- do you have that before you?

16 A Okay, I have that here.

17 Q You generally expressed a concern about timely
18 performance by a utility of work or activities that
19 utilities may need to perform for CCA so that the CCA
20 can become functional.]

21 A That's -- yes, I'd be concerned about that,
22 yes.

23 Q And one proposal you've come up with to give
24 utilities an incentive, if you will, to perform on time
25 is that utilities be assessed liquidated damages for
26 failure to meet estimated implementation deadlines?

27 A I pro -- I did suggest that that is one option
28 to provide an incentive for timely activity, yes.

1 Q Mr. Fulmer, can you explain to me what you
2 mean by the term "liquidated damages" in your testimony,
3 realizing you're not a lawyer?

4 A Yeah. My general understanding is that
5 liquidated damages are a sum amount specified in the
6 agreement for -- associated with nonperformance. So
7 rather than trying -- if one party doesn't do what
8 they're supposed to do, rather than trying to sit there
9 and calculate exactly what the numeric and financial
10 damages were, they have this amount already specified
11 that said if this breach happens, then this is the
12 charge.

13 Q And it's your understanding that once
14 liquidated damages are specified in the contract, they
15 would be assessed regardless of any actual damages,
16 higher or lower?

17 A That's my understanding of the term.

18 Q Mr. Fulmer, are you familiar with the energy
19 service provider service agreement that the Commission
20 adopted for direct access service?

21 A I am aware that such a thing exists. I am not
22 aware of the details.

23 MR. OUBORG: Your Honor, could we go off the
24 record.

25 ALJ MALCOLM: Off the record.

26 (Off the record)

27 ALJ MALCOLM: Back on the record. We'll mark as
28 Exhibit 3 the document Mr. Ouborg has passed out, which

1 is Appendix B of a Commission decision that shows an
2 energy service provider service agreement. What was the
3 decision number again, Mr. Ouborg?

4 MR. OUBORG: 97-10-087.

5 ALJ MALCOLM: Thanks.

6 (Exhibit No. 3 was marked for
7 identification.)

8 MR. OUBORG: Q Mr. Fulmer, can you turn to page 3
9 of that exhibit that we just identified, and there's a
10 section there, Section 6, entitled Limitation of
11 Liability. Do you see that?

12 A I see that section.

13 MR. OUBORG: And your Honor, I'm just going to
14 read the first sentence into the record.

15 ALJ MALCOLM: All right.

16 MR. OUBORG: Q It says there:

17 Each party's liability to the
18 other party for any loss, cost,
19 claim, injury, liability or
20 expense, including reasonable
21 attorneys' fees, relating to or
22 arising from any act or omission
23 in its performance of this
24 agreement, shall be limited to the
25 amount of direct damage actually
26 incurred except as provided for in
27 this section.

28 And then it goes on to say:

1 In no event shall either party be
2 liable to the other party for any
3 indirect, special, consequential
4 or punitive damages of any kind
5 whatsoever ...

6 And so forth.

7 Mr. Fulmer, I'm not going to ask a lot of
8 questions about this, but realizing you're not a lawyer,
9 would you agree that, based on what I've just read and
10 what you have before you, ESP service agreement does not
11 use a liquidated damages approach to --

12 A I believe that's a fair statement.

13 Q Thank you. A final question on liquidated
14 damages. I believe in your rebuttal testimony at page 7
15 you recommend, and this would be on line 18, you state
16 that, if liquidated damages were assessed, then the
17 damages should be paid by shareholders and not bundled
18 customers; is that correct?

19 A I see that statement.

20 Q If the utility has made a good faith effort to
21 comply with its contractual obligations such as they
22 would exist in the CCA program to meet a deadline, do
23 you think that -- don't you think that proposal is
24 somewhat punitive?

25 I mean let me say it another way. Doesn't
26 that proposal, your proposal work like the utility is
27 strictly liable in guaranteeing that it perform or it
28 will be liable no matter what the circumstances are?

1 MR. COMO: I'll object to that. I think that is
2 getting into a legal interpretation of contract damages.

3 MR. OUBORG: Well, I'm asking -- you know, I
4 didn't raise liquidated damages and I didn't raise that
5 shareholders would pay for it. And I'm simply asking
6 him of his lay opinion, not legal opinion, as to whether
7 he thinks it's fair, let's use that term, that
8 shareholders would pay if the utility has been
9 diligently in good faith trying to perform its contract
10 and didn't meet a deadline, you know, or some -- not
11 even a deadline, just some estimate of completion of
12 some activities.

13 ALJ MALCOLM: That's a fair question.

14 THE WITNESS: My overall concern in this whole
15 section is that there are possibilities of real
16 financial damages to CCAs if they have contracts for
17 supply line -- if they have other contracts lined up
18 that take effect on a certain time and on a certain date
19 and that date passes and they cannot use those contracts
20 because of a utility hasn't met some particular
21 obligation that they set or some agreement that they
22 have that they had promised to make. In that case if
23 there are real damages being incurred by the CCA from
24 their suppliers or whoever, I believe it's appropriate
25 that the CCA be compensated for those damages by the
26 party that caused those damages, in this case the
27 utility.

28 This would not be applicable for meeting some

1 interim deadlines or anything like that, and in fact,
2 would be done, I would hope in all seriousness, but I'm
3 very concerned about that and would -- which is why I
4 brought this whole subject up in the first place.

5 MR. OUBORG: Q Well, Mr. Fulmer, I think the
6 utility is also very concerned about not causing
7 significant damages or harm to the CCA and would be very
8 mindful of that in performance of their contracts. And
9 under the clause we looked at in the ESP service
10 agreement the utility would be liable for actual damages
11 that it caused, would it not, if that approach were
12 adopted versus your liquidated damages approach?

13 A My lay interpretation would be similar, yes.

14 Q Thank you. Mr. Fulmer, the next subject is
15 review of opt-out notices. And I'd refer you to page 20
16 of your opening testimony, and on line 7, well, starting
17 at line 4 and through line 8 you basically are
18 responding to a question which assumes the utilities
19 would need to approve an opt-out notification. For
20 example, your question says:

21 Must the CCA obtain the utility's
22 approval of the opt-out
23 notification before it is sent
24 out?

25 Mr. Fulmer, are you familiar with what's been
26 termed the straw man proposal or detail process
27 document?

28 A I have seen it. I'll have to see what your

1 question is before I characterize myself as familiar.

2 Q It's attached to PG&E's direct opening
3 testimony which I provided you a copy of before the
4 hearing.

5 A Yeah.

6 Q Could you turn to page 10 of the straw man.

7 ALJ MALCOLM: That's attached to Ms. Osborne's
8 testimony?

9 MR. OUBORG: It's attached to PG&E's -- it's
10 included in what's labeled Exhibit 12, your Honor. We
11 can provide you a copy.

12 MR. HUARD: Your Honor, off the record.

13 ALJ MALCOLM: I've got it.

14 MR. HUARD: It's also with Ms. Osborne's.

15 MR. OUBORG: Yes. It is attached to all three
16 utilities.

17 ALJ MALCOLM: Okay.

18 MR. OUBORG: When I'm referring to page 10, I'm
19 referring to the original page 10 in the bottom
20 right-hand corner of the document, not some other
21 pagination that the utility may have used for their
22 exhibits.

23 Q Do have you that page in front of you?

24 A I have it in front of me.

25 Q There's a heading Customer Notification and an
26 Item 2 under that, and I can read that all into the
27 record, but why don't I give you a moment to read that
28 and then I'll try and paraphrase it.

1 A Okay.

2 Q And is the gist of that recommendation that
3 the utilities are recommending, A, that the Commission
4 establish a standard notification format and that be
5 done presumably in this proceeding, perhaps in Phase 2,
6 and that secondly, if any CCA wished to deviate from
7 that and have a customized notice, that would be
8 reviewed and approved by the Commission?

9 A That's the way I read that item.

10 Q Mr. Fulmer, do you believe that -- I mean do
11 you think that's a reasonable process? Do you have any
12 opinion about whether that is a way to go for us in
13 dealing with the content of these opt-out notices?

14 A Pretty much I was basing my testimony on my
15 sort of lay reading of the statute, which seemed to me
16 to place the burden of the opt-out notification on the
17 CCA. Now, it's understandable, and I will sort of leave
18 it to, I guess, to briefs to say how much oversight is
19 appropriate for the Commission to have. I just don't
20 think that's -- I'm not sure. In my vision of this,
21 perhaps something like this having a standard format
22 that CCAs can use or modify. In fact, I even said this,
23 that that may be a good idea, but it's the CCA's
24 decision to use this or to do something completely
25 different.

26 Q That's fine. My question was, do you think
27 it's appropriate for the Commission to have a role in
28 both a review of the standard notice and of any

1 customization by the CCA?

2 MR. COMO: Objection. Mr. Ouborg, you're asking
3 for his interpretation of AB 117?

4 MR. OUBORG: No, I'm not. I'm asking, as a
5 general matter, taking into consideration consumer
6 understanding of their options and so on, does he think
7 it is reasonable or appropriate, not from a legal
8 standpoint, that the Commission -- for example,
9 utilities frequently put notices in their bills for rate
10 increases, and those are routinely reviewed and approved
11 by the Public Advisor's Office. I was just asking him
12 if he felt that that was a reasonable or appropriate
13 approach.

14 MR. COMO: Also object on it being vague, because
15 reasonable and appropriate is something that I think is
16 a briefing issue. I think we've established the facts,
17 that he is opining that the CCA be able to provide that
18 notification.

19 ALJ MALCOLM: Well, I mean maybe the term
20 "reasonable" has some legal implications, but he's an
21 expert, and I think he's qualified to give his opinion
22 about what's appropriate or a good idea or whatever term
23 you want to use.

24 MR. COMO: Maybe we can get a definition from Mr.
25 Ouborg as to what he means by "reasonable or
26 appropriate."

27 MR. OUBORG: Okay. Maybe I'll phrase it a
28 different way.

1 Q Mr. Fulmer, do you think you would object if
2 the Commission were to review such notices before they
3 went out?

4 A The way I think they should be done in general
5 should be relatively collaboratively with the CCA having
6 the overall responsibility but in collaboration with the
7 utility they're working with and with the Commission.
8 As to who has what rights in all of this I agree is a
9 legal issue, whether the Commission -- what role the
10 Commission has explicitly in approving or rejecting it I
11 don't know, but I would like to see this kind of thing
12 done collaboratively.

13 ALJ MALCOLM: Well, if we have two political
14 bodies and a large corporation, who makes the final
15 decision?

16 (Laughter)

17 THE WITNESS: Do you have a three-headed coin?
18 That's -- I don't know. It comes down in some respects
19 to how one wants to read the legislation, and my lay
20 reading of it is that the responsibility of doing the
21 service is the CCA's. So they should have the final
22 say.

23 ALJ MALCOLM: Okay. So your opinion is that the
24 CCA should have control of the billing insert and the
25 language in it?

26 THE WITNESS: Should have notification --

27 ALJ MALCOLM: After consulting with the utility
28 and the Commission.

1 THE WITNESS: That's my opinion, yes.

2 ALJ MALCOLM: Okay.

3 MR. OUBORG: Q Thank you, Mr. Fulmer. Mr.
4 Fulmer, my next question falls on page 18 of your
5 opening testimony.

6 A Of which testimony?

7 Q Opening. And on line -- talking here about
8 transactions cost. And on line 7 and 8 it says:

9 CCAs should not be charged the
10 total costs that ESPs or other
11 businesses aren't charged.

12 A Okay. I see that.

13 Q And does AB 117 say that the costs of
14 providing C -- services to CCAs should be charged to
15 CCAs unless those services are provided no cost to an
16 ESP?

17 A It is not that explicit, no.

18 Q Okay. Thank you. And the same question
19 regarding other businesses.

20 A They -- it doesn't address that explicitly,
21 no.

22 Q But it's your position that even if a service
23 involved incremental costs which meet your definition,
24 that they're not recovered in rates and such other
25 qualifications you testified to earlier, that we
26 wouldn't charge that to a CCA even if it met all those
27 requirements in your view as an incremental cost if it
28 weren't being charged to the ESP?

1 A In general, I think it's not being charged to
2 these other entities that probably wouldn't meet my
3 particular criteria. When I said that, I was sort of
4 taking the lead off of the OIR which said that direct
5 access tariffs, let's see, direct access service tariffs
6 established charges allowing that utilities recover
7 incremental costs, again, we might quibble on the
8 definition there, with services to ESPs and that we
9 propose that these tariff rules apply to the CCAs. I
10 was taking the, to me, a reasonable inference, the one
11 step beyond that, that if they weren't charged to these
12 people, then it probably may not be appropriate to
13 charge the CCAs. So I was relying more on that than
14 anything directly from AB 117.

15 Q You're also proposing that opt-out costs not
16 be charged to CCAs; is that correct?

17 A That is true.

18 Q Does AB 117 state that as an exception to the
19 kinds of costs that can be charged CCAs?

20 A Doesn't say one way or another.

21 Q But it doesn't say costs of providing service
22 to CCAs except for costs of processing opt-out notices.
23 It doesn't say that? It's not that explicit?

24 A It isn't -- there's many things that it's not
25 explicit on, and that's one of them.

26 Q Okay. You know, at this point it might
27 actually be appropriate to refer to AB 117. So I'm just
28 going to ask you to turn to that, and in particular,

1 Section 366.2(c)(17). And do you have that in front of
2 you, Mr. Fulmer?

3 A I do.

4 Q And I'm just going to read the last sentence
5 of that section which states:

6 All reasonable transaction based
7 costs of notices, billing,
8 metering, collections and customer
9 communications or other services
10 provided to an aggregator or its
11 customers shall be recovered from
12 the aggregator or its customers on
13 terms and at rates to be approved
14 by the Commission.

15 And I only wanted to get that into the record in
16 front of you because all the questions I'm asking really
17 refer to that section. Does that section limit, you
18 know, these costs to all costs but, except for costs
19 that are charged to ESPs, except for opt-out notice? I
20 think your answer has been explicitly it doesn't say
21 that.

22 MR. COMO: Is Mr. Ouborg referring to the section
23 or just that last sentence?

24 MR. OUBORG: That sentence I just read. If he can
25 point me to some other section of the statute that says
26 those fees are inappropriate, he's welcome to do that.

27 Q I was going to move on to another item.

28 A Okay.

1 Q Rebuttal testimony, page 8, line 3. On that
2 line you recommend -- okay. Basically, there's no
3 proposal currently that you're aware of that -- well,
4 let me back up even one step before that.

5 Is your understanding, Mr. Fulmer, that under
6 direct access any customer who went on direct access
7 service whose demand was greater than 50 kilowatts was
8 required to have an interval meter installed?

9 A Subject to check, that's my understanding.

10 Q Okay. And is it also your understanding that
11 no one in this proceeding that you're aware has proposed
12 a similar metering threshold and that generally the
13 assumption in the proposals before the Commission here
14 are that no metering other than metering that's existed,
15 that exists today for bundled customers be a requirement
16 for CCA service?

17 A To paraphrase, you're saying that the -- so
18 far no one is suggesting that some type of new meter be
19 required simply by the fact of the CCA creation?

20 Q Right. Now, your testimony on this page at
21 line 4 posits that were the Commission to impose such a
22 requirement, in other words, that for certain customers
23 to become CCA customers, they needed to acquire new
24 metering, you're opining here that the party that owns
25 the meter, which I think is a term for the utility,
26 should pay for that meter and not the CCA or the CCA
27 customer; is that correct?

28 A Well, I think you're perhaps expanding my

1 response a little bit more broadly than I was intending.
2 I was reading that to say that if somewhere down the
3 future the Commission makes some ruling on meter
4 requirements for certain types of customers, then
5 whoever is owning the meter at that time will be the
6 appropriate person to purchase that new meter.

7 I wasn't necessarily -- I think we're well
8 into the hypothetical. I wasn't even considering the
9 possibility that somehow in order to be a CCA, you have
10 to get this kind of meter. I just wasn't considering
11 that as a reasonable possibility when I was responding.

12 Q Mr. Fulmer, do you know that under the direct
13 access requirement, 50 kW requirement, who paid under
14 direct access for that meter?

15 A I believe it's either the -- someone other
16 than the utility, either the ESP or the site owner.
17 Now, ESPs --

18 MR. OUBORG: Thank you. Your Honor, can we be off
19 the record for one second?

20 ALJ MALCOLM: Off the record.

21 (Off the record)

22 ALJ MALCOLM: Back on the record.

23 MR. OUBORG: Q Mr. Fulmer, I'm going to ask you
24 some questions about your qualifications, and I want you
25 to understand, there's no intention to question your
26 professional standing at all. I just want to try to
27 understand what it is that your professional experience
28 gives you expertise in.

1 And this refers generally to the first page of
2 your opening testimony where you summarize your
3 professional background and in also the attached resume
4 of all your qualifications and publications and so
5 forth.

6 A Okay.

7 Q Do you have any professional experience,
8 either as an employee or as a consultant, with the
9 design or operation of large-scale utility retail
10 billing systems?

11 A My experience with that came in as a
12 consultant to the Alliance for Retail Energy Markets in
13 the revenue cycle services long-term marginal cost case
14 that occurred in late -- I guess it started in 1999, and
15 we continued into 2000 and then was pretty much dropped
16 in the crisis. AReM was a major intervenor in that.

17 Although I wasn't a witness there, I was the
18 back office person who was actually going through all
19 the workpapers and doing a lot of the detailed analysis.
20 So my experience in that particular area, the best I
21 could point to off the top of my head here would be that
22 proceeding.

23 Q Okay. But you've actually never had
24 professional responsibility either as an employee or
25 consultant for the operations or design of those kind of
26 systems and how they work, how they function, how
27 they're staffed and so forth, apart from looking at the
28 workpapers in that proceeding?

1 A That's a fair statement.

2 Q Thank you. On page -- opening testimony, page
3 8, at line 24 you're talking here about billing and bill
4 presentation. Is that generally the subject?

5 A Yeah. The last part of that page is that.

6 Q And you basically state that to add a CCA's
7 services to a bill requires slight reprogramming of the
8 billing software. Mr. Fulmer, on what experience do you
9 base that conclusion?

10 A I base it on the fact that I believe I've
11 heard or maybe even read in the straw man that the
12 system that was set up for direct access would be
13 generally applicable with some changes to CCA. And
14 perhaps we might disagree on the term "slight," but my
15 understanding, just from the conversations coming into
16 this proceeding, that that basic structure was in place
17 and that it was a modification to that basic structure
18 to accommodate CCA.

19 Q So it was based on an understanding you formed
20 by reading testimony, participating in workshops in this
21 proceeding, not your own personal knowledge or
22 experience of what it takes to reprogram a large billing
23 system?]

24 A It's absolutely true. I have never
25 reprogrammed a large billing system, so --

26 Q Thank you. I have one more question,
27 Mr. Fulmer. On page 21 of your opening testimony at
28 line 8, you -- you're hypothesizing or you're -- you're

1 stating an opinion there that as a result of CCA
2 activities such as opting out, I quote, "utility call
3 centers should not experience a spike in activity."

4 Again, my question, Mr. Fulmer is: is that
5 based on any experience you've had, professional
6 experience with how a call center system volumes vary in
7 various situations, or how they operate?

8 A It's based, again, on the -- what I remember
9 from that earlier proceeding. There were a number of
10 customer inquiry issues that had come up, and a certain
11 amount of just basic knowledge of what I understand a
12 call center to do; that they have -- they're responding
13 to many different calls that would be coming in at
14 different rates.

15 It also ties into the way I see the opt-out
16 notification occurring, where the clear message in that
17 opt-out notification to the customer should be to
18 contact the CCA for this kind of information.

19 Undoubtedly, some people won't use that
20 number, and will use a different number; but if the
21 opt-out notification is framed in the way at least I was
22 envisioning it, the vast majority of the inquiries would
23 be going to the CCA's call center, rather than the
24 utility's.

25 Q But you don't know that. You're assuming that
26 if the notice says that, that's what will occur; but you
27 don't know that that was the experience, for example, in
28 direct access? You don't know that?

1 A Well, for the direct access, it would -- the
2 situation is somewhat different, where you wouldn't
3 necessarily have the CCA so clearly defined. The direct
4 access was a really big concept that people were trying
5 to get their heads around and just trying to basically
6 understand. So with those more vague questions, I could
7 see various people getting spikes in their -- in their
8 call centers.

9 In fact, this -- you might even know better.
10 Perhaps the State even had their own particular hotline
11 to answer questions, but as to whether I know
12 specifically did your utility call center experience a
13 spike due to attributable to direct access, I can't say
14 that you did or didn't.

15 MR. OUBORG: Your Honor, I have no further cross
16 of Mr. Fulmer.

17 ALJ MALCOLM: Thank you, Mr. Ouborg.

18 MR. OUBORG: Oh, I'm sorry, your Honor. I
19 apologize. My colleague, Ms. Walter, has a few
20 questions on customer-information aspects of
21 Mr. Fulmer's testimony. And I apologize again for
22 not -- for passing that over.

23 ALJ MALCOLM: Mr. Buchsbaum doesn't have any
24 questions? Mr. Buchsbaum, he's not here. Will
25 Mr. Buchsbaum be asking any questions?

26 MR. OUBORG: No, he will not.

27 ALJ MALCOLM: Go ahead, Ms. Walter.

28 MS. WALTER: Thank you.

1 CROSS-EXAMINATION

2 BY MS. WALTER:

3 Q Good morning, Mr. Fulmer. I'm Stacy Walter,
4 an attorney for PG&E. And I have a few questions for
5 you regarding your testimony on customer-confidentiality
6 issues.7 To start with, I think we can turn to your
8 rebuttal testimony. And looking at page 4 --

9 A What was the page again?

10 Q Page 4.

11 A Page 4.

12 Q Mm-hm.

13 Right there on line 5, you say that
14 appropriate protective orders can be required by the
15 Commission so that load data the City receives from the
16 IOU is not disseminated.

17 A I see that sentence.

18 Q Mm-hm. Could you expand a bit on what you
19 consider to be appropriate protective steps for the City
20 to take?21 A For the most part, I see a protective order as
22 a sort of a legal document that says that -- that limits
23 who can get which information.24 I don't picture the City being able to share
25 that data outside of the immediate department that's
26 addressing CCA: those who are trying to do the
27 planning, that kind of thing. I don't see them
28 disseminating specific customer information, even to

1 their ESP. I keep -- I see them keeping it just within
2 that -- whatever group is doing the CCA planning or
3 whatever appropriate CCA-related group that would
4 perhaps need it, but it shouldn't go beyond them.

5 Q Mm-hm. And you'd support a Commission order
6 that would put a requirement like that in place?

7 A I think a Commission order would provide a lot
8 of clarity as to what data can and should be provided to
9 the CCA at what time frame.

10 Q Are there any constraints that a city, as a
11 municipal body, may have with respect to keeping
12 information used to make, say, an important
13 determination about procurement or other items on behalf
14 of the city -- keeping information like that
15 confidential?

16 MR. COMO: Just for a point of clarification, is
17 Ms. Walter talking about a city in general, or the City
18 and County of San Francisco?

19 MS. WALTER: Well, if he could speak for the City
20 and County of San Francisco, that would be his area of
21 expertise.

22 MR. COMO: I would say Mr. Fulmer's not an expert
23 in the City and County of San Francisco's, for instance,
24 Sunshine Ordinance and Brown Act issues and that sort of
25 thing.

26 MS. WALTER: Mm-hm. Well, I was trying to
27 establish whether he was or wasn't, because he has made
28 a number of statements with about a city keeping

1 information confidential. So I was wondering whether he
2 was aware of any constraints that a city might be under.
3 That would be helpful for the Commission to understand
4 as well.

5 THE WITNESS: I agree the Commission would value
6 that kind of information, but I'm not in a position to
7 provide it. I don't know.

8 MS. WALTER: Q And Mr. Como mentioned
9 specifically the Sunshine Ordinance. Do you have any
10 idea of how that would apply in this context?

11 A No. I only know very generically what the
12 Sunshine Ordinance is, but I have no idea how it would
13 apply in this case.

14 Q Okay. Thank you. Next, I have some questions
15 that relate to your proposed timing for the release of
16 specific customer name, address, and usage information.
17 So if you flip back to page 3 of your rebuttal
18 testimony --

19 A Yes.

20 Q And looking there at lines 2 to 4, you state
21 that once a city has committed to forming a CCA by
22 submitting a CCA plan to the Commission, then it needs
23 to be allowed full access to the list of customers that
24 it will, but for opt-out, be serving.

25 So to make sure my understanding of your
26 testimony is correct, is it your proposal to the
27 Commission that it should issue an order so that on the
28 day of filing a CCA plan, the utility should be required

1 to turn over specified customer information?

2 A In listening to the testimonies that I've
3 heard so far, ideally, I would like to see the City have
4 access to that kind of information even before it
5 submits its plan. We've talked about needing to know
6 who the large customers are in order to better plan for
7 the overall CCA. I think at a bare minimum, the -- this
8 could serve as a cutoff, although I think for planning
9 purposes, the CCA would benefit by having this
10 information sooner than that.

11 Q So your proposal is that the City should get
12 some information prior even to this submittal of a plan?
13 And, you know, what information specifically?

14 A I think to get -- for -- the soonest that --
15 the information that I think the CCA would be interested
16 in, the soonest would be the contact information for
17 customers over, say, 200 kilowatts or 500 kilowatts.

18 I don't think they need at an early planning
19 stage necessarily what their loads are, but I think it's
20 important to be communicating with these customers as
21 early as they can, so that the customers would be aware
22 of their options, and the CCA can respond to any issues
23 earlier rather than later. These customers can have a
24 big impact on what a CCA's overall load would be. So
25 that level would be fairly early.

26 There would be no point in getting all the
27 small commercial and residential customers' names and
28 addresses quite at that stage; but those big ones, it's

1 important to be preplanning to be able to have some
2 feel, as you start arranging for your, say, procurement,
3 start thinking about your rate design, to have an idea
4 of how many of these folks you're going to be likely
5 serving.

6 Q Then with respect to the timing, you know,
7 we'd turned to AB 117. And I know you have it right
8 there. If you look specifically at
9 Section 366.2 (C)(3) -- and I'm looking at (C)(3)(E).
10 Section 366.2, in general, describes what would be
11 included in the CCA's implementation plan.

12 A Yes.

13 Q And it's under that Section and the specific
14 Subsection there, capital (E). It provides one item to
15 be included in the plan as the rights and
16 responsibilities of program participants, including but
17 not limited to consumer-protection procedures, credit
18 issues, and shut-off procedures.

19 Now, would you agree that maintaining customer
20 confidentiality would be within the broad category of a
21 consumer-protection procedure?

22 A No.

23 Q No?

24 A No. I would agree maintaining their
25 proprietary -- their load data, which they're very
26 sensitive to, would come under consumer protection; but
27 I don't think providing the basic customer contact
28 information to the City would violate consumer

1 protection.

2 I think we're now sort of dipping very deeply
3 into law interpretation, but now, since you asked,
4 that's my lay -- my lay impression.

5 Q Right. Well, you're asking for customer name,
6 and you're asking for address. You're also asking for
7 some usage-related information, because you want to know
8 the size of the customers, right?

9 A I guess by de facto. If you say, "Give us the
10 names and addresses of the customers over a certain
11 level," there is an inferred usage level, but that would
12 be -- you wouldn't be giving them explicitly:
13 Customer A has a load of 1.5 megawatts.

14 Q But you do agree that even names and addresses
15 should be kept confidential, correct?

16 A I think they should be kept confidential by
17 the CCA. I don't think they should be kept confidential
18 from the CCA.

19 Q But do you think that the Commission has a
20 role in establishing, you know, what safety or
21 proprietary measures need to be in place to make sure
22 that this information, which is utility confidential
23 information, continues to remain confidential? Do you
24 see --

25 A I think what the CCA program -- we're going to
26 need more guidelines to make everyone comfortable with
27 this information-transfer process. I am not sure that
28 the existing rules are completely applicable to our --

1 to this brand new situation.

2 Q Mm-hm. I guess I just have kind of a timing
3 concern, because I'm not sure, you know, where -- since
4 I know that the plan had some protections that were
5 going to be included, and at the time of registration,
6 also, when the statute there set an opportunity for the
7 Commission to provide input to CCAs on whether or not
8 what they have in place is adequate on consumer
9 protection.

10 And I'm just wondering. Where would the
11 Commission -- you know, in your plan for the change
12 over, where would the Commission have an opportunity to
13 look at the specifics of the CCA, what they're proposing
14 in order to maintain customer confidentiality and --
15 and -- and provide guidance that, yes, that would be
16 sufficient or not sufficient; changes would have to be
17 made?

18 A I don't know. I think that can be worked out
19 in Phase 2; but just sitting here, I can't point to some
20 specific activity or action necessarily where they'll
21 say, "Okay. We can now do this, where before, we
22 couldn't."

23 Q Mm-hm.

24 A I think we will all have to work together to
25 figure that out in Phase 2.

26 Q Okay. Thanks, Mr. Fulmer.

27 Sort of along that vein, apart from what
28 you're proposing here, which is to have utilities turn

1 over customers' names and addresses and contact
2 information, do you -- has the City explored any
3 alternative methods for obtaining the information that
4 it needs from its residents to find out if they're
5 interested in participating in the CCA program?

6 A The City hasn't shared any information with me
7 on -- on that issue.

8 Q Okay. And then, turning to your opening
9 testimony, looking at page 15 -- and I'm looking
10 specifically at lines 19 to 20. You state there that
11 confidentiality agreements -- and now we're talking
12 about a confidentiality agreement. You're proposing, I
13 think, that there could be a confidentiality agreement
14 between the utility and the CCA, correct?

15 A That's correct.

16 Q And you're saying that these confidentiality
17 agreements with adequate penalties can be developed to
18 ensure that CCAs do not abuse their access to customer
19 data.

20 What did you have in mind as an adequate
21 penalty in the event a CCA were to abuse access to
22 customer data?

23 A I don't have any specific penalties in mind.
24 That's another issue that I think would need to be
25 worked out in Phase 2.

26 Q Okay. Well, in the case of a CCA that does
27 abuse the information, would you agree that utilities
28 should be protected and released from liability for

1 information that they have provided to CCAs, similar to
2 what we had in the -- you know, the DA proceeding?

3 A I think we're treading close to, if not
4 crossed over the line into what -- when the utility
5 would be legally liable for something, and when they
6 wouldn't. So I'm not completely comfortable answering
7 that question.

8 Q Mm-hm. Well, I mean, I'm asking just because
9 you did introduce the idea of adequate penalties for
10 release of information.

11 And one -- you know, another option would be,
12 you know, that CCAs could indemnify utilities if the CCA
13 abused the information, and the -- you know, utility
14 provided the information to CCA under a Commission order
15 or a direction from the Commission. It seems that it
16 would only be a matter of fairness that if the -- if
17 the -- that the CCA would indemnify the utility in that
18 situation.

19 MR. COMO: Your Honor, I think Mr. Fulmer has
20 answered the question; that he -- so that there could be
21 adequate penalties, and that those penalties could be
22 worked out in Phase 2.

23 MS. WALTER: Okay, but on the concept -- on --
24 just to make -- get his opinion as an expert providing
25 an opinion in the direction that perhaps we should take
26 in Phase 2.

27 Q Do you think it would be appropriate for there
28 to be some protection for utilities and CCAs?

1 MR. COMO: I'm going to object.

2 ALJ MALCOLM: I think he answered that question.

3 MS. WALTER: Okay. Thank you, your Honor.

4 Q And finally, my last line of questioning here.
5 If we look farther down the page at lines 21 to 23, also
6 on page 15, you're talking about alternatives to
7 utilities providing information to CCAs. And you
8 propose that an alternative approach that might work as
9 well would be to have a third-party service provider
10 receive confidential utility customer information
11 aggregated in a way to ensure customer confidentiality,
12 and then provide that aggregated data to the CCA.

13 And my question to you is if you could
14 describe how that approach would differ from utilities
15 currently providing information that masks specific
16 customer information under the 1515 rule.

17 A I think it would differ by the CCA having more
18 interactive opportunity with a third party. It's a
19 distant second best, a distant second best to having the
20 CCA directly provided with this. Pretty much, the CCA
21 would be able to work more closely with this third party
22 to get the information that it needed, without violating
23 whatever confidentiality concerns were still on the
24 table at that time. Again, that's a distant second best
25 to just having the CCA do it itself.

26 Q Just a quick follow-up. Are you aware that
27 this idea was previously proposed and reviewed in the
28 context of the direct access proceeding, and that it

1 wasn't adopted by the Commission?

2 A I wasn't aware that it was considered, no.

3 MS. WALTER: Mm-hm. Thank you, Mr. Fulmer.

4 I don't have any further questions,
5 your Honor.

6 ALJ MALCOLM: Thank you, Ms. Walter.

7 We'll be in recess until 10:45.

8 (Recess taken)

9 We'll be back on the record.

10 Ms. Shigekawa.

11 CROSS-EXAMINATION

12 BY MS. SHIGEKAWA:

13 Q Good morning, Mr. Fulmer. I'm
14 Jenny Shigekawa, from Southern California Edison. I'm
15 just going to ask you a few questions this morning about
16 follow-up on some questions that Ms. Walter from PG&E
17 asked you.

18 And if I understood your testimony earlier
19 correctly, you stated that the City of San Francisco
20 would like to have customer name and address and usage
21 information to the extent it was over some amount of
22 usage before an implementation plan is filed with the
23 Commission. Is that correct?

24 A No, it's not. I think what they're looking
25 for is the customer contact information --

26 Q Okay.

27 A -- but not necessarily the usage information.

28 Q Okay. So name and address?

1 A And particular contact at the firm.

2 Q Okay. So does that mean the City would like
3 to receive that sometime between when an order -- a CCA
4 is formed and the implementation plan is filed?

5 A Sometime in that time frame is my
6 understanding, yes.

7 Q What if a customer who became aware that its
8 information was going to be released did not want that
9 contact information released to the City? How would the
10 City ensure that the request of its resident not to
11 obtain that information be honored by the City of San
12 Francisco?

13 A So a customer doesn't want to get contacted by
14 the City about CCA?

15 Q Right. Doesn't want its contact information
16 released to the City.

17 A For the most part, I believe the City -- well,
18 I would imagine the City would want to respect the
19 requests of its citizens and its customers; whether they
20 can or can't, I think, would be an issue for the
21 Commission guidelines that come out on customer
22 information release. As a general rule, I don't think
23 anyone wants to annoy potential future customers.

24 Q And when you said whether they can or can't --

25 A Well, I think there are two issues: whether
26 they should honor that just basic request, or whether
27 somehow that -- the law or something else would override
28 that basic request. And that, I can't speak to.

1 MS. SHIGEKAWA: Okay. That's my only question.

2 ALJ MALCOLM: Thank you, Ms. Shigekawa.

3 Mr. Szymanski.

4 CROSS-EXAMINATION

5 BY MR. SZYMANSKI:

6 Q Good morning, Mr. Fulmer. I'm Paul Szymanski,
7 and I represent SDG&E in this proceeding.

8 A Good morning.

9 Q I'd first like to ask you some questions and
10 follow up just with some questions you received earlier
11 from Mr. Ouborg.

12 Would you please turn to your opening
13 testimony, Exhibit 30, at page 11? And in the middle of
14 the page there, you discuss the utility's learning
15 curve. Do you see that reference?

16 A Let's see. Yes, there in the middle.

17 Q Do you have any facts to support your
18 assertion that there will, in fact, be a utility
19 learning curve?

20 A That would require me to be able to foretell
21 the future, which, of course, I can't do. I assume that
22 the utility will become more proficient at an activity
23 that it does repeatedly. Perhaps I'm wrong, though.

24 Q Okay. I'd like to turn your attention to
25 page 13. At the top of the page, there is a heading
26 that says, "Utilities Should Have an Obligation to
27 Provide Services in a Timely Manner."

28 Mr. Fulmer, I take it from that statement that

1 you have a concern that utilities will not provide
2 services in a timely manner?

3 A In general, I think the utilities will provide
4 the services in a timely manner, but there's always a
5 possibility that it might not happen. And much of the
6 things that we talk about here are things that are
7 perhaps not likely to happen, but would have
8 consequences if they did.

9 So, likely to happen? I fully expect the
10 utilities to be cooperating with the CCAs in providing
11 them information, et cetera, in a timely way; but just
12 in case, I want -- it's these just-in-cases that we
13 spend most of our time talking about. And this is one
14 of those.

15 Q Do you have any facts to support the concern
16 that just in case -- that in some cases, utilities will
17 not perform their services in a timely manner?

18 A The only concern or what raised that concern a
19 little bit more and, I think, perhaps -- well, raised
20 that concern a little bit more was the response to a
21 data request that we received from PG&E, which is, in
22 fact, quoted later on in that page, where it said they
23 don't expect to offer any guarantees to complete work in
24 a timely manner, and they would be providing it subject
25 to the availability of company resources.

26 And that just made me a little uncomfortable.
27 I would like a little bit more commitment to moving this
28 forward than that particular language.

1 Q Is it your expectation, Mr. Fulmer, that at
2 some point in the course of this proceeding or as a
3 result of it, the utilities will adopt tariffs and
4 potentially service agreements that contain the terms
5 and services under which it will be providing the
6 services that it will be directed to provide by the
7 Commission?

8 A That will have to be accomplished eventually.
9 And I think that this is -- this proceeding is where
10 that will occur. Probably the details will be worked
11 out in the next phase -- at least, some of the details;
12 but this is the proceeding. I understand it to be.

13 Q And the Commission will retain oversight,
14 under your understanding, of those tariffs and service
15 agreements? Is that correct?

16 A That's my understanding, yes.

17 Q Now I'd like to turn your attention to your
18 reply testimony, page 7. And on lines 12 -- excuse me.
19 Lines 10 through approximately 14, I think the lines of
20 text don't exactly correspond to the numbers on the
21 left-hand margin, but beginning with the sentence that
22 says, "The CCA has the right and responsibility to
23 provide opt-out notices, notification as it sees best."

24 And the next line says, "This includes not
25 only explicit control over the content of an opt-out
26 notice."

27 A I think I didn't get to the right page. Now,
28 where are you looking, again?

1 Q Your reply testimony.

2 A Okay. I was in rebuttal testimony.

3 Q Exhibit 31.

4 A Okay. I think -- let's continue now. You're
5 on page --

6 Q 7.

7 A 7? Okay.

8 Q On the first half of that top half of that
9 page.

10 A Okay. I think we're together now.

11 Q Mr. Fulmer, is it CCSF's opinion that
12 customers should be fully informed about the program in
13 which they would be participating?

14 A I think the legislation is quite clear that
15 they are obliged to be fully informed; that they have
16 these various opt-out notices to provide that
17 information.

18 Q And is it also true that those -- the
19 customers who'll be participating in the CCA program
20 should be fully informed about the program before the
21 point at which service is commenced -- new service is
22 commenced for that customer?]

23 A I believe that the legislation specifies the
24 notifications occur prior to delivery of power.

25 Q Do you believe that being fully informed as a
26 customer would involve having potential CCA customers
27 understand the differences between bundled and CCA
28 service?

1 A That would be part of the information that
2 would be provided in the opt-out notices.

3 Q And if a CCA were to inform a potential CCA
4 customer of some but not all of the relevant terms and
5 conditions of service, would the customer then be fully
6 informed, in your opinion?

7 A The opt-out notification must include all
8 relevant information.

9 Q And based on your understanding of the
10 statute, are the customers to whom the notices would be
11 directed customers of both the utility and potential
12 customers of the CCA?

13 A The opt-out notice would be delivered to
14 anyone who could potentially be a CCA customer.

15 Q I don't think that was quite in response to my
16 question.

17 A Could you say it again then, please.

18 Q Surely. Are the customers to whom the notices
19 would be directed customers of both the utility and
20 potential customers of the CCA. Do you understand the
21 question?

22 A Yes. And it is sort of a gray area when a
23 customer becomes a customer of a CCA. But the opt-out
24 notices after the power is delivered would be clearly
25 customers that are both of the CCA and of the utility.

26 The opt-out notices that occur, that are
27 occurring before delivery of power are in that gray area
28 as to is this a CCA customer or not, but they are

1 definitely a utility customer at that point.

2 Q And if a customer does in fact elect to become
3 a customer of the CCA, isn't it also true that that
4 customer would continue to be served by the utility for
5 its transmission and distribution services?

6 A That is true.

7 MR. SZYMANSKI: If I can just quickly look through
8 my notes.

9 Q One last question. Mr. Fulmer, in arriving at
10 your opinions regarding the release of customer
11 information, have you done any analysis of any
12 customer's view specifically on the question of a
13 utility releasing their customer information to a third
14 party?

15 A I haven't queried any customers on that issue.

16 MR. SZYMANSKI: That concludes my questions.

17 ALJ MALCOLM: Thank you, Mr. Szymanski.

18 Mr. Como, is there any redirect?

19 MR. COMO: One moment, your Honor.

20 REDIRECT EXAMINATION

21 BY MR. COMO:

22 Q Mr. Fulmer, Ms. Walter from PG&E asked you a
23 question about -- actually, she asked you a few
24 questions about customer confidential information. And
25 she referred to Section 366.2(c)3(e). Do you have that
26 in front of you?

27 A I do.

28 Q And she referred to the phrase "customer

1 protection procedures."

2 Is it your understanding that that customer
3 protection procedure is the customer protection
4 procedure that is required of the CCA when it submits
5 its program to the Commission for review?

6 A I believe that's the part of the statute that
7 it falls under, yes.

8 Q And that refers to procedures that the CCA
9 would implement or would propose to implement as part of
10 its plan?

11 A That would be an element of the plan.

12 MR. COMO: That's all I have, your Honor.

13 ALJ MALCOLM: Thank you.

14 Mr. Como, any recross?

15 (No response)

16 ALJ MALCOLM: Thank you, Mr. Fulmer. You're
17 excused.

18 Let's go off the record.

19 (Off the record)

20 ALJ MALCOLM: Back on the record.

21 Mr. Reiger, you may present ORA's witness.

22 MR. REIGER: Thank you, your Honor.

23 ORA would like to call Mr. Steve Ross.

24 STEVE ROSS, called as a witness by
25 Office of Ratepayer Advocates, having
26 been sworn, testified as follows:

26 ALJ MALCOLM: Thank you.

27 MR. REIGER: Your Honor, I would like to mark for
28 identification the testimony of the Office of Ratepayer

1 Advocates, the reply testimony of the Office of
2 Ratepayer Advocates and the rebuttal testimony of the
3 Office of Ratepayer Advocates as the next exhibits in
4 order.

5 ALJ MALCOLM: Leasing off the record.
6 (Off the record)

7 ALJ MALCOLM: Back on the record.

8 We will mark as Exhibit 34 ORA's opening
9 testimony, as Exhibit 35 ORA's reply testimony, and as
10 Exhibit 36 ORA's rebuttal testimony.

11 (Exhibits Nos. 34, 35 and 36 were
12 marked for identification.)

13 MR. REIGER: Thank you, your Honor.

14 DIRECT EXAMINATION

15 BY MR. REIGER:

16 Q Mr. Ross, do you have in front of you the
17 exhibits marked as 34, 35 and 36?

18 A Yes.

19 Q Did you prepare or have prepared under your
20 direction those exhibits?

21 A Yes.

22 Q Do you have any additions or corrections to
23 make to those exhibits?

24 A I have two corrections. The first would be to
25 the Exhibit 34 opening testimony, page 4, first
26 paragraph, last line. The phrase that reads "fewer and
27 larger CCA customers," that should just read "fewer and
28 larger CCAs."

1 MR. SZYMANSKI: What page are we on?

2 THE WITNESS: Page 4, the opening, first
3 paragraph, last line. The phrase that starts "fewer and
4 larger CCA customers,."

5 MR. BUCHSBAUM: I can't find it.

6 THE WITNESS: Section C, you will see a section
7 header C.

8 MR. BUCHSBAUM: Thank you.

9 MR. REIGER: Q Could you please repeat that
10 correction.

11 A The phrase that currently reads "fewer and
12 larger CCA customers," should read "fewer and larger
13 CCAs."

14 Q Do you have any other corrections?

15 A One other. In the reply testimony,
16 Exhibit 35, page 6, second paragraph, sixth line, the
17 phrase -- the sentence that begins "but bundled
18 utilities do have ability to respond," I want to
19 unbundle that sentence. It should just read "but
20 utilities do have the ability to respond."

21 Q Mr. Ross, are the facts --

22 MR. HUARD: Excuse me.

23 ALJ MALCOLM: Remove the word "bundled."

24 MR. HUARD: Thank you.

25 MR. REIGER: Q Mr. Ross, are the facts and
26 opinions set forth in these exhibits true and correct
27 to the best of your knowledge?

28 A Yes.

1 Q Do you adopt these exhibits as your sworn
2 testimony?

3 A Yes.

4 MR. REIGER: Your Honor, I have no further direct.
5 The witness is available for cross.

6 ALJ MALCOLM: Thank you, Mr. Reiger.

7 Mr. Fenn, do you have any questions?

8 MR. FENN: I don't. Thank you, your Honor.

9 ALJ MALCOLM: Mr. Como.

10 MR. COMO: Just one moment, your Honor.

11 We don't have any cross for Mr. Ross.

12 ALJ MALCOLM: Mr. Blaising.

13 MR. BLAISING: No, your Honor.

14 ALJ MALCOLM: Mr. Buchsbaum.

15 MR. BUCHSBAUM: Thank you, your Honor. I hope to
16 be mercifully brief here this morning.

17 CROSS-EXAMINATION

18 BY MR. BUCHSBAUM:

19 Q I just have a few clarifying questions.

20 First, can you turn to page 3 of your rebuttal
21 testimony. At the bottom of the page you begin to
22 summarize your recommendation regarding the various rate
23 design proposals that have been offered as part of this
24 proceeding.

25 Am I correct in reading your recommendation
26 that at the time being the PG&E alternative is the
27 preferred rate design approach?

28 Let me rephrase.

1 A No. I am just trying to -- I understand that
2 if the PG&E proposal can be implemented quickly,
3 wouldn't cause a delay for CCAs, that that would be the
4 one to use until such time as a GRC, a method that would
5 need a GRC could supersede the PG&E method.

6 Q Thank you.

7 Can you please turn to page 4 of your rebuttal
8 regarding load factors.

9 If I read your recommendation correctly, you
10 have concluded that we should not decide in this phase
11 whether load adjustments, load profile or load factor
12 adjustments should be made to the CRS but that this
13 issue should be addressed at some later point in time;
14 is that correct?

15 A Yes.

16 Q Can you please turn to page 7 of your reply
17 testimony regarding your recommendations for ending the
18 CRS in 2013.

19 My understanding is that you are recommending
20 that the DWR component cease at that time; is that
21 correct?

22 A Yes.

23 Q And as to the New World component, my
24 understanding is it is contingent on various other
25 factors. You mentioned coordination of planning for CCA
26 migration and utility procurement as being one.

27 A Yes.

28 Q Am I correct that this is an objective but you

1 are not asking the Commission to issue a firm ruling in
2 this first phase that would terminate the CCA for New
3 World procurement beginning in 2013?

4 A Correct.

5 Q Can you turn to pages 4 to 6 of your reply
6 testimony. And there you discuss the notice of intent
7 concept that would cut off the period in which
8 procurement or future procurement would be taken into
9 account for a particular CCA.

10 Now without getting into any specifics as to
11 the implementation or how this might be enforced, my
12 understanding is that your recommendation is that the
13 CCAs, like TURN and the utilities have proposed, should
14 have to make some form of a commitment that if they
15 didn't fulfill, would have cost responsibility
16 associated with it; is that correct?

17 A Yes.

18 Q Finally, I would like to switch gears for a
19 moment and go back to the discussion of load factor
20 implications.

21 Just to be clear for the record, my
22 understanding is that the peakier a load is, the lower,
23 under your study, the lower the CRS would be. In other
24 words, the adjustment would actually move inversely to
25 the peaky aspects of the load profile, the load factor?

26 A The terms sometimes can be mixed up.

27 Page 8 of the opening testimony has a bunch of
28 numbers that you can look at -- I use it when it comes

1 up to remind myself which way it goes.

2 The peakier your community, the lower the load
3 factor. The lower the load factor, the lower the CRS.

4 Q I almost think it is easier to not even talk
5 about the load fact for but say the peakier the
6 community is, the lower the CRS.

7 A That's fine.

8 Q The flatter the load factor is, the higher the
9 CRS?

10 A Flatter.

11 Q You were here on Tuesday morning for
12 Mr. Como's and Mr. Fenn's cross-examination of PG&E
13 Witness Bell; is that correct?

14 A Yes.

15 Q Do you recall their questions where they asked
16 Mr. Bell to accept the hypothetical of a group of
17 customers perhaps in Pleasanton who might have a peakier
18 load shape than those in San Francisco that might have a
19 flatter load shape?

20 A Yes.

21 Q Now even though I know we are deferring
22 consideration of this past this first phase, isn't it
23 true that one interpretation of your investigations is
24 that a somewhat lower CRS would be indicated for
25 customers in Pleasanton, all other things being equal,
26 than for customers in San Francisco, given the
27 hypothetical and the assumptions that I have just given
28 to you?

1 A Yes.

2 MR. BUCHSBAUM: That's all I have, your Honor.

3 ALJ MALCOLM: Thank you, Mr. Buchsbaum.

4 Ms. Shigekawa.

5 MS. SHIGEKAWA: Thank you.

6 CROSS-EXAMINATION

7 BY MS. SHIGEKAWA:

8 Q Good morning, Mr. Ross. I am Jenny Shigekawa
9 from Southern California Edison.

10 Does ORA have a position on the phase-in of
11 the CCA program?

12 A I don't recall having written about it
13 anywhere. So --

14 Q Do you know if ORA is in favor or opposed to a
15 phase-in of the CCA program?

16 A It would depend on the length of time of the
17 phase-in. I read the transcripts from yesterday, and
18 there was some talk on the fly from Dr. Barkovich about
19 if there are different phases and different blocks going
20 at different times but the community was able to inform
21 the utility of each block in advance, that would be one
22 way of handling it.

23 But generally, I think that there shouldn't be
24 necessarily a phase-in in terms of years. Maybe months
25 or weeks, but not years.

26 Q Do you know if ORA would support a phase-in
27 program even if it hypothetically cost utilities more to
28 implement than a CCA program without a phase-in?

1 A I haven't thought enough about phase-ins to go
2 too detailed into it.

3 Q Does ORA support the transfer of
4 customer-specific information, name, address, and
5 contact information, to the CCA before the opt-out
6 period expires?

7 A There is a gray area starting on the day that
8 power starts to flow and the last opportunity for an
9 opt-out from the customer. Before that gray area is
10 hit, ORA is not in favor of releasing confidential data
11 to the CCAs. And after that gray period, ORA certainly
12 of course wants the CCAs to have everything about their
13 customers that they need to have, and the gray area is
14 gray.

15 Q Does ORA believe it is important that the
16 customers have knowledge that the transfer of their
17 information will occur before it occurs?

18 A I think I heard Witness Fulmer answer
19 questions saying that the CCAs are somehow obliged to
20 make sure they get that. So, yes, it is important.

21 Q Is ORA familiar with the incremental costing
22 methodology proposed by the utilities for implementation
23 in transactions costs?

24 A No.

25 Q You may have touched upon this area with
26 Mr. Buchsbaum, but if you can turn to page 3 of your
27 opening testimony under the heading B there. You state
28 that the CRS should expire in 2013 on the basis that DWR

1 contracts run out in 2013; is that correct?

2 A Yes.

3 Q A component of the CRS is the cost of utility
4 procurement contracts entered into prior to CCA
5 formation as specified in Section 366.2(f). Is that
6 consistent with your understanding?

7 A I might have to ask you to repeat that. I
8 will just get that section out.

9 Could you repeat your question, please.

10 Q Sure. If you look at 366.2(f), I am asking is
11 it your understanding that a component of the CRS would
12 be the cost of utility procurement contracts entered
13 into prior to CCA formation?

14 A Yes.

15 Q How should those types of costs be recovered
16 after 2013 under your proposal?

17 Maybe it will help if I give you an example.
18 For instance, if a utility enters into new contracts in
19 2005 and a CCA subsequently formed and makes its binding
20 commitment to leave in 2007, shouldn't those contracts
21 entered into in 2005 be included in the CRS calculation
22 for that CCA?

23 A My recommendation, I would like to have the
24 Commission establish an objective that by 2013 there
25 shall be no such costs being incurred anymore because
26 the CCA and utility procurement has been so well
27 integrated that utilities truly know years in advance
28 not to procure for a CCA that is departing.

1 Q But that mechanism would have to be put in
2 place?

3 A And have to be developed. So I would urge the
4 Commission to not simply -- I think that an annual
5 proceeding where a CCA tells a utility a year in
6 advance -- that might not even be enough. That in an
7 annual proceeding, any CCA, potential CCA, could inform
8 the utilities of several years' worth of procurement
9 plans or migration plans. And by 2013 I would like to
10 see that set up sufficiently so that there would be no
11 New World portion of CRS.

12 MS. SHIGEKAWA: Thank you, Mr. Ross.

13 I have no further questions.

14 ALJ MALCOLM: Thank you, Ms. Shigekawa.

15 Mr. Szymanski.

16 MR. SZYMANSKI: Thank you, Judge Malcolm.

17 CROSS-EXAMINATION

18 BY MR. SZYMANSKI:

19 Q Good morning, Mr. Ross. Paul Szymanski
20 representing SDG&E.

21 A Good morning.

22 Q Mr. Ross, I would like to follow up on a few
23 of Ms. Shigekawa's questions to you regarding release of
24 customer information.

25 You referred to a gray area. What period of
26 time does that gray area encompass?

27 A From the time where power starts flowing
28 through the CCA to a customer to the time when the last

1 opportunity for an individual customer to opt out has
2 passed. During that period the customer is a CCA
3 customer because they are actually getting power from
4 that customer. At the same time, the customer has not
5 completely foregone their original status as a utility
6 customer. They haven't made clear -- by doing
7 nothing -- they haven't made clear that they opt out of
8 utility service or opt in to the CCA.

9 And since it is possible that a customer, even
10 after power starts flowing, a customer didn't realize
11 that this was going to happen, they might not truly
12 consider themselves a CCA customer during those 30 to 45
13 days between power starting to flow and the last
14 opportunity to opt out has gone by.

15 So gray because they're both, for the purpose
16 of power, not just on one side power and the other side
17 distribution and transmission, but just gray, both.

18 Q For the purposes of my next question, would
19 you take it on face value that customers expect that
20 utilities will not release customer information unless a
21 customer provides written authorization to the utility
22 that that information will be released?

23 I am not asking you to opine on whether that's
24 the correct statement of the law at this point. I just
25 want you to assume that that's just a given.

26 A For the purposes of your next question that
27 would be fine.

28 Q Right. With that understanding, what would

1 happen if the utility were to release customer
2 information during the gray period without the
3 customer's written authorization or some other legal
4 authority and the customer complained to the ORA or the
5 Commission that the utility improperly released its
6 customer information? How would ORA or the Commission
7 respond to that complaint?]

8 MR. REIGER: Your Honor, if I could object to the
9 part of how would the Commission respond to that part
10 because it calls for speculation. If the witness wants
11 to opine as to how he thinks ORA might respond, that's
12 fine.

13 MR. SZYMANSKI: That's fine.

14 Q How would ORA respond, Mr. Ross?

15 A Concerned especially because it's possible
16 that the customer intended to opt out in part because
17 they didn't want their information shared with another
18 entity. So we would be concerned, sympathetic to that
19 customer's complaint.

20 Q And do I understand it from your statement
21 that you just made that customers should understand that
22 their customer information may be released in the course
23 of the CCA program opt-out process before the customer
24 actually begins service with the new CCA entity?

25 A Two parts to an answer for that, two parts.
26 On the one hand, sure, I think that should be part of a
27 notice. We are going to -- you know, a CCA will have
28 your information. We're going to share that or give

1 that. But second part is, I think that that kind of
2 information would be -- it's assumed that a CCA would
3 have that. A customer would just assume that their
4 supplier has information about their demand, similar to
5 the way a customer opting in or entering utility service
6 assumes that the utility will have this data.

7 So there's two aspects. There's a presumption
8 that yes, my supplier will have this data and maybe even
9 should have this data in order to best satisfy my
10 demands but also because the transfer, I think, is
11 important, that the transfer of supplier implies of
12 course transfer of responsibility for your data or a
13 sharing of the responsibility for the data.

14 Q Do you have any facts to support the assertion
15 that a customer would assume that a CCA should have
16 certain types of its customer information at the time
17 the customer would become a customer of the CCA?

18 A I don't have any studies, if that's what you
19 mean.

20 Q Or any other support for that assumption that
21 you just indicated?

22 A There was something a couple of days ago on
23 the stand where a utility witness, I forget which one,
24 sorry about it, but where we were talking about a
25 presumption that a customer to a utility would -- is
26 assuming or it's assumed that by signing up you're also
27 giving the utility the right to have that data. So
28 based on that discussion that I heard on the stand, I

1 think the same thing applies to CCAs.

2 Q So your opinion derives from that prior
3 testimony heard during these proceedings?

4 A Yes.

5 Q Is there any other basis for that assumption,
6 Mr. Ross?

7 A No.

8 Q Do you generally agree that a customer would
9 be interested in having its customer information
10 released only upon its express authorization that that
11 information can be released?

12 A In the case of a migration to CCA the process
13 is an opt-out for becoming a customer of the CCA. So I
14 think the process would be opt out for sharing of the
15 information with the CCA. So that's -- opt-out is
16 slightly different than express permission, which would
17 be opt-in. So I think that becoming a customer by not
18 taking advantage of the opt-out also means the CCA
19 should have that data because the customer did not opt
20 out.

21 Q Well, I understand that there's an opt-out
22 provision in the statute, but I don't think that
23 response, if I understood it, responds to the question I
24 asked. So I'll try again.

25 Do customers expect their customer information
26 to be released only with their express authorization?
27 And if you don't know, I would understand that as well,
28 but if you do know, I would appreciate an answer.

1 A In the last couple years there's been a big
2 debate about opt in, opt out sharing of private
3 information, and I think customers of all sorts of
4 businesses are starting to assert their right to control
5 their data. I think customers understand that some
6 processes are opt out, some are opt in. I think that if
7 a customer has been told that sharing private
8 information is an opt-in, you have to give express
9 permission in order to have it shared, then they expect
10 an opt-in, but they also know that some programs are
11 opt-out, and then they expect that their information
12 will be shared according to the agreement unless they
13 opt out.

14 So I don't agree with your statement. I think
15 customers expect the form of agreement that they have
16 been told that they're entered to, and some of them are
17 opt-in and some of them are opt-out.

18 Q Did you hear me make a statement, Mr. Ross?

19 A You asked a question. Whether -- okay. Well,
20 then ask your question a third time. I mean if I'm not
21 answering it, ask it again.

22 MR. SZYMANSKI: Now, your Honor, my
23 cross-examination estimate of time is now getting
24 longer, I just want to have people know that, as it did
25 with Ms. Barkovich yesterday. I have a set list of
26 questions, but a lot of it's up to the witness.

27 ALJ MALCOLM: That's fine.

28 MR. SZYMANSKI: Q Mr. Ross, do customers -- I

1 think this calls for a yes or no answer. And I framed
2 it as such in the previous two attempts. I'll try it
3 one more time.

4 Do customers expect to provide authorization
5 when their customer information is to be released by a
6 utility to a third party?

7 A Okay. The previous question didn't specify
8 whether it was a utility to a third party. Your
9 previous question, you just said, does a customer expect
10 to have that. So. And that's why you got a broad
11 answer last time.

12 Q That's fine. I'll take your answer to this
13 narrow question then. And I presume it will be a yes or
14 a no.

15 ALJ MALCOLM: Or an I don't know.

16 MR. SZYMANSKI: Q I gave you that option too, and
17 I'll give you that option again. So it's up to you.

18 A I don't think those rules have been
19 established for sharing for the CCA. I think that's
20 part of what we're trying to do here is -- so I guess
21 the answer is I don't know.

22 MR. SZYMANSKI: Your Honor, can the witness answer
23 the question?

24 ALJ MALCOLM: Mr. Ross --

25 THE WITNESS: I don't know.

26 ALJ MALCOLM: -- you're not answering the question
27 he's asking, which is with regard to utilities and
28 unspecified third parties.

1 MR. SZYMANSKI: I've tried it three times. At
2 this point if he needs it a fourth time, I would ask the
3 stenographer to do it.

4 MR. REIGER: I believe this witness just said "I
5 don't know" twice.

6 MR. HUARD: I heard that too, your Honor.

7 THE WITNESS: I don't know the answer to your
8 question.

9 MR. SZYMANSKI: Okay. I'll move on.

10 ALJ MALCOLM: Thank you.

11 MR. SZYMANSKI: Q I'd like to ask you some
12 questions now about what we've been calling a rate
13 design issue but which, for purposes of these questions,
14 has to do with the applicability of the 130 percent
15 baseline issue that falls out of AB 1X to the AB 117
16 Community Choice Aggregation program. Is that your
17 understanding, by the way, when we use the word "rate
18 design" as a matter of shorthand for that general issue?

19 A Yes.

20 Q Now, can we take a look at your rebuttal
21 testimony on pages 1 and 2. In the middle of the page
22 there's a discussion, and it references SDG&E.

23 MR. REIGER: I'm sorry. What page are we on?

24 MR. SZYMANSKI: I'm sorry. I beg your pardon.
25 I'm on page 1.

26 MR. REIGER: Page 1.

27 MR. SZYMANSKI: The middle of page 1 of ORA's
28 rebuttal testimony. I'm sorry for that improper

1 reference before.

2 MR. REIGER: Thank you.

3 MR. SZYMANSKI: Q And there's a discussion --
4 there's a reference to SDG&E and there's a reference to
5 CCSF's positions. Do you see that there?

6 A Yes.

7 Q And I just want to make sure I understand what
8 your assertions are there. In particular, can you tell
9 me, in your opinion, is cost shifting allowed under the
10 provisions of AB 117?

11 A No.

12 Q Okay. Is there any type of cost shifting
13 that's allowed under AB 117?

14 MR. REIGER: Your Honor, can I clarify that we are
15 asking for his opinion, not a legal definition?

16 THE WITNESS: To the extent that a CRS is not
17 considered a cost shift, but it's a shifting back of
18 costs, that is, there should be no cost shifting. I
19 mean CRS is just setting things back to the status quo.
20 So that I wouldn't call cost shift of the type that is
21 not allowed. That's what we need to do in order to make
22 bundled ratepayers indifferent.

23 MR. SZYMANSKI: Q Mr. Ross, forgive me, but I
24 don't understand what you just said. Could you try it
25 again, please?

26 A Would you ask your question? Or sorry.

27 ALJ MALCOLM: I'm not sure he answered the
28 question. Wasn't your question whether any cost

1 shifting is permitted under AB 117?

2 MR. SZYMANSKI: Yes, that's right, your Honor.

3 THE WITNESS: No.

4 MR. SZYMANSKI: Q Now, I'd like to now turn your
5 attention to pages 3 and 4 of your rebuttal testimony.
6 And in that general area of that testimony you indicate
7 support for PG&E's alternative approach of scaling the
8 CRS; is that correct, Mr. Ross?

9 A Yes.

10 Q Okay. Now, would PG&E's alternative approach
11 provide identical AB 1 benefits to CCA customers? And
12 if it will help, I'll indicate, by "identical," I mean
13 the same cents per kilowatt hour benefit for both
14 bundled and potential CCA customers.

15 A No, it wouldn't.

16 Q Okay. If the overall AB 1X benefits provided
17 to CCA customers under PG&E's alternative approach are
18 not the same as current benefits, could that cause a
19 cost shift to bundled customers?

20 A It could.

21 Q So if this approach were adopted and the
22 subsidy were to appear on CCA customers' bills and at
23 the same time bundled customers' bills continue to
24 reflect the current baseline subsidy, would these
25 benefits reflect an apples to apples comparison on the
26 same cents per kilowatt hour basis, all other things
27 equal?

28 A I'm going to make sure that we're taking this,

1 my support of the PG&E method in its context, that is,
2 until -- PG&E method is until a more rigorous method can
3 be developed in a GRC method such as the one that San
4 Diego proposes. And the reason for supporting PG&E's
5 method in the interim is on the assumption that the more
6 detailed methods cannot be implemented in time to
7 delay -- in time to have CCAs seamlessly move along in
8 their process.

9 If, on the other hand, there were a way to
10 implement some of the other methods so quickly that it
11 would not hinder the CCAs in their process of becoming
12 CCA, that would be even better. Not doing anything at
13 all in the interim would be worse. PG&E's method does
14 not completely duplicate for every customer the AB 1X
15 caps, but it does -- it does address them to some
16 degree. Just better method.

17 Q But it also, as you stated a few moments ago,
18 caused cost shifting, does it not?

19 A It prevents greater cost shifting.

20 Q And I appreciate your response a moment ago
21 about your support being sort of contingent on which
22 program could be -- excuse me -- which proposal could be
23 implemented earlier versus later, but I think the
24 question that I had posed to you was whether or not
25 there would be an apples to apples comparison of the
26 benefits under these two approaches. Did you have a
27 response to that question?

28 A It wouldn't be what I've established.

1 Q Do you agree that most of SDG&E's current AB
2 1X subsidies are administered through commodity rate
3 adjustments, and I'm talking about current AB 1X
4 subsidies?

5 A That's my understanding.

6 MR. SZYMANSKI: If I could just have a moment,
7 your Honor, I'll try to abbreviate some of my questions.
8 Unless of course you wouldn't want me to. I'd be happy
9 to go forward either way. Just a moment off the record.

10 ALJ MALCOLM: Off the record.

11 (Off the record)

12 ALJ MALCOLM: Back on the record.

13 MR. SZYMANSKI: Thanks for your patience, Mr.
14 Ross. Just a few more.

15 Q Are you generally familiar with SDG&E's rate
16 design proposal in this proceeding?

17 A Yes.

18 Q Based on the text that we were looking at on
19 page 1 of your rebuttal testimony, or elsewhere, is it
20 your understanding that total rates would remain
21 unchanged for bundled service customers under SDG&E's
22 proposal?

23 A Yes.

24 Q Is the current AB 1X rate cap subsidy being
25 financed by potential -- strike that. I'll move on.

26 And then do you also understand SDG&E's
27 proposal to be that SDG&E is proposing that the same AB
28 1X benefit be applicable to both bundled and CCA

1 customers?

2 A Yes.

3 Q And do you understand that SDG&E is proposing
4 that the same AB 1X cost subsidy be applicable to both
5 bundled and CCA customers? In other words, the current
6 per kilowatt hour subsidy would also be -- it would be
7 received by similarly situated bundled and CCA
8 customers, and it would also be paid by those who are
9 nonexempt on a cents per kilowatt hour basis?

10 A Yes.

11 Q Do you know if the utilities currently have a
12 tiered rate structure for residential noncommodity
13 rates?

14 A Noncommodity.

15 Q Right.

16 A I don't believe so.

17 Q Do you know if SDG&E is required to have a
18 tiered rate structure for any noncommodity rates?

19 A I don't know that.

20 Q Do you know whether ORA's proposal -- let me
21 restate that.

22 Do you know what ORA's proposal was in SDG&E's
23 most recent rate design window proceeding regarding AB
24 1X subsidies and costs?

25 A No, I can't testify to that. No.

26 Q So the answer is you don't know?

27 A Correct.

28 Q Okay. Are you aware of any utility-specific

1 circumstances that need to be considered in implementing
2 a proposal that avoids cost shifting and provides
3 comparability between bundled and CCA customers and
4 avoids economic distortions?

5 A Just please repeat that again.

6 Q Yeah. And if you want, I could try to break
7 that down a little bit.

8 A Sure.

9 Q If it will help. Based on your understanding
10 of the three utilities' circumstances and why they've
11 proposed what they've proposed, are you aware of
12 circumstances for each utility that need to be
13 considered in implementing a rate design proposal,
14 again, using shorthand for this general issue, that
15 avoids cost shifting and provides comparability between
16 bundled and CCA customers?

17 MR. REIGER: Your Honor, if Counsel could explain
18 what he means by "circumstances." It's an awfully large
19 and vague term. Yes. We can go off the record a
20 second.

21 ALJ MALCOLM: Off the record.

22 (Off the record)

23 ALJ MALCOLM: On the record.

24 MR. SZYMANSKI: Q Mr. Ross, in your prepared
25 testimony, have you indicated that, for example, there
26 may be reasons why SDG&E would want to put the rate for
27 the recovery of the subsidy in one portion of its
28 overall retail rates rather than another portion of the

1 retail rates?

2 A I don't believe I mentioned any specific
3 circumstances regarding San Diego that would drive them
4 to put the adjustments in one rate over another.

5 Q Are you aware that if the nonbypassable charge
6 were located in various aspects of the rate, overall
7 rate for SDG&E, that there might be some, I believe your
8 words were in your testimony, severe impacts? Does that
9 sound remotely familiar of your testimony?

10 MR. REIGER: Your Honor, could Counsel direct the
11 witness to a page number for that paraphrase? We can go
12 off the record again, your Honor.

13 ALJ MALCOLM: Off the record.

14 (Off the record)]

15 ALJ MALCOLM: On the record.

16 MR. SZYMANSKI: Q May I turn your attention,
17 please, Mr. Ross, in response to your counsel's request,
18 to your rebuttal testimony at page 3? If you'd please
19 take a look at the last sentence of the paragraph that's
20 in the middle of the page, it says,

21 Also, the PG&E and SDG&E AB X1-1
22 shortfalls apparently are larger
23 than those forecast for SCE, and
24 might be more awkward to
25 accommodate within distribution
26 rates alone.

27 A Mm-hm.

28 Q Mr. Ross, those are the utility-specific

1 circumstances, or at least, among them, that I was
2 referring to a few moments earlier.

3 A Okay.

4 Q So with that in mind, go back to my question
5 right before that, which was: are you aware, then, of
6 any other -- these or any other utility-specific
7 circumstances that need to be considered in implementing
8 a rate-design proposal, such that it avoids cost
9 shifting prohibited by the operative statute, and
10 provides comparability between bundled and CCA
11 customers?

12 Do you have the question in mind now?

13 A Yes.

14 Q Okay.

15 A I am not aware of anything.

16 Q Well, then, what is it that you meant by the
17 sentence that we just read?

18 A That it might cause you to need to change the
19 distribution rate in a way that might make it awkward
20 for the --

21 MR. SZYMANSKI: Your Honor, I just can't tell if
22 he's completed his statement or if he's done -- or
23 whether he's going to add more. Pardon me.

24 ALJ MALCOLM: Are you done, Mr. Ross?

25 THE WITNESS: I think I'm going to clip that
26 sentence.

27 It would make it look awkward to put all
28 the -- all the extra charges on distribution. It might

1 affect how distribution rates jumped.

2 MR. SZYMANSKI: Q Mr. Ross, are you aware of the
3 magnitude of the subsidy that is contemplated by AB 1X?

4 A I don't have that number.

5 Q Are you aware that SDG&E may have some
6 particularly severe consequences?

7 Let me restate that. Are you aware that the
8 magnitude of the subsidy could have particularly severe
9 impacts for SDG&E?

10 A I am not aware.

11 Q Then what is it that you intended by the
12 sentence you put in your rebuttal testimony that we just
13 read a few moments ago?

14 MR. REIGER: Your Honor, I believe that was asked
15 and answered.

16 MR. SZYMANSKI: Well, the question doesn't -- the
17 answer, if there was an answer, didn't make sense, in my
18 view, in light of the text that he's written here.

19 If it does make sense, then perhaps he can
20 reexplain it in a way that I can understand.

21 ALJ MALCOLM: Did you ask what his intent was
22 before?

23 MR. SZYMANSKI: I asked what he meant by the
24 sentence that I read into the record.

25 I mean, there was quite a bit of discussion
26 about utility-specific circumstances. We located that
27 in his testimony. I am now trying to understand what he
28 meant by that, in light of his statement that he's not

1 aware of any utility-specific circumstances for SDG&E.
2 I don't understand how that sentence makes sense, in
3 light of the statement that he's adopted this morning in
4 his testimony.

5 THE WITNESS: May I try one --

6 ALJ MALCOLM: One minute.

7 I'll allow the question.

8 MR. SZYMANSKI: Thank you.

9 ALJ MALCOLM: Go ahead.

10 THE WITNESS: You don't have to put it in a
11 distribution rate. This one, you can put it into -- you
12 can consider putting it into public purpose program
13 charge.

14 MR. SZYMANSKI: Q And, in fact, is that not
15 SDG&E's proposal?

16 A Yes.

17 Q And isn't that proposal based on the reality
18 that there would be severe impacts for SDG&E if they
19 were put in distribution rates?

20 MR. REIGER: Your Honor, he's asking the witness
21 to state why SDG&E's proposal is what it is. I don't
22 think that's his expertise.

23 ALJ MALCOLM: Maybe you can rephrase it to ask him
24 whether he understands that.

25 MR. SZYMANSKI: Thank you, your Honor.

26 That's where I tried to be for the last
27 15 minutes, which is to make sure I understand only what
28 you have in your own testimony, and not to challenge it

1 as much as to understand it.

2 Q Is it your understanding that SDG&E's proposal
3 of locating the nonbypassable charge with or in
4 conjunction with its public purpose program is designed
5 to ameliorate the otherwise severe effects of locating
6 that charge in some other parts of its retail electric
7 rates?

8 A Yes.

9 Q Based on your understanding of SDG&E's
10 proposal, do you envision any cost shifting resulting
11 from SDG&E's proposal?

12 A No.

13 Q Do you envision any cost shifting due to
14 SDG&E's proposal to recover that nonbypassable charge
15 along with any other nonbypassable charges, such as the
16 PPP?

17 A I don't see your proposal having any cost
18 shift.

19 MR. SZYMANSKI: Thank you. That concludes my
20 cross-examination.

21 ALJ MALCOLM: Thank you, Mr. Szymanski.

22 Let's go off the record.

23 (Off the record)

24 ALJ MALCOLM: On the record.

25 Mr. Reiger.

26 MR. REIGER: ORA has no redirect, your Honor.

27 ALJ MALCOLM: Thank you.

28 Mr. Ross, you are excused.

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We'll be in recess until 1:30.

(Whereupon, at the hour of 12:00
p.m., a recess was taken until 1:30 p.m.)

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AFTERNOON SESSION - 1:35 P.M.

* * * * *

ALJ MALCOLM: Let's go back on the record.

Ms. Grueneich, you may recall your witness,
Mr. Monsen.

MS. GRUENEICH: Okay. Mr. Monsen.

I think we had moved to PG&E.

ALJ MALCOLM: Yes. And I think PG&E had already
cross-examined when we we left. You are still under
oath, Mr. Monsen.

THE WITNESS: Yes.

WILLIAM MONSEN

resumed the stand and testified further as follows:

CROSS-EXAMINATION

BY MR. BUCHSBAUM:

Q Good afternoon, Mr. Monsen.

A Good afternoon.

Q I'm Craig Buchsbaum, and I'm the first of
three PG&E attorneys that will be cross-examining you
this afternoon.

MR. GRUENEICH: This is a first, in my experience.
So feel honored. It's taking three separate attorneys.

MR. BUCHSBAUM: Q Please turn to page 7 of your
opening testimony, the sentence beginning on line 11.
Now, that sentence, like some that you corrected
yesterday, states that the Commission retains
jurisdiction to approve the implementation plans of
CCAs. Is that correct?

1 MR. GRUENEICH: I'm sorry. What page were you on?

2 MR. BUCHSBAUM: I was on page 7 --

3 THE WITNESS: Page 7.

4 MR. BUCHSBAUM: -- line 11. And I did not have
5 that particular sentence corrected.

6 THE WITNESS: Yeah. That's right. I should have
7 corrected that.

8 MR. BUCHSBAUM: Q Okay. Thanks.

9 A So you should strike at the end of line 12
10 "and approve."

11 Q Now, the implication of this sentence is that
12 the Commission has certain jurisdiction over CCAs that
13 it does not have over municipal utilities. Is that
14 correct? Is that your implication?

15 A That's my understanding, but I can't -- I'm
16 not speaking as an attorney with that perspective.

17 Q That's fine. Now, after CCAs are formed, do
18 you believe that the CPUC has any continuing role in CCA
19 rate design or over the price that CCAs being charged
20 for their generation services?

21 A I don't -- I don't know. I don't have --

22 Q That's fine.

23 A You know, I don't have a -- again, I don't
24 understand. I can't say from a legal perspective
25 whether they do, whether the Commission will continue
26 with jurisdiction after the CCA is established.

27 Q That's fine. Please turn to pages 8 to 10 of
28 your testimony.

1 A Okay.

2 Q And there, you list a number of possible
3 benefits, including development of new generation,
4 possible location of new generation near load, and
5 development of renewable resources. Is that correct?

6 A Yeah. Those are some of the benefits I
7 identified, yes.

8 Q Can you identify for the record any real-world
9 examples where these benefits had been realized
10 involving CCAs?

11 A I haven't done an examination of other CCAs
12 around the country, so I can't say. Obviously, in
13 California, there haven't been any examples.

14 Q Okay. Please turn to page 13, line 3. And do
15 you see the sentence where you say, "Customers will
16 likely compare the total generation rate with the
17 bundled generation costs of the incumbent IOU"?

18 A Yes.

19 Q Do you see that sentence?

20 Now, why will customers focus on the
21 generation, and not the entire bill?

22 A Because -- well, the customers may well focus
23 on the entire bill as well. They may look at the entire
24 bill, but in terms of making the decision between CCA
25 and retaining or remaining as a bundled service
26 customer, the services that the CCA provides, they're
27 generation services.

28 Q So the remaining components of the bill are

1 the same. Is that correct?

2 A I would think so. I -- I can't --

3 Q That's fine.

4 A I can't see any other potential -- they're
5 going to be paying transmission and distribution costs.
6 They'll be paying customer services costs. So I don't
7 see any changes.

8 Q Now, in addition to that sentence, you would
9 agree that you make other statements throughout your
10 testimony indicating competition between CCAs and
11 utilities for undertaking procurement for customers.
12 Isn't that correct?

13 A Could you point me to one, maybe?

14 Q Okay. On lines 20 to 21 of page 4 of your
15 opening, you state that CCAs will operate in a highly
16 competitive environment.

17 On page 12, line 3 to 4, "It is imperative for
18 the Commission to establish evenhanded rules of the road
19 that do not disadvantage the fledgling CCAs."

20 These -- this is just strictly a foundational
21 question.

22 A Okay.

23 Q I am not really trying to go anywhere with
24 this.

25 Now, please turn to page 15 -- I mean, page
26 15, line 19, where -- and this statement was quoted
27 yesterday, where you state, "CCAs will operate in a
28 competitive environment -- economic environment because

1 the option for customers to return to bundled utility
2 service means that CCAs will be faced with constant
3 benchmark competition from the local IOU."

4 Do you see that sentence?

5 A Yes.

6 Q Now, I read this sentence as indicating that
7 you contemplate that if bundled rates are lower than CCA
8 rates, that CCA customers can switch back to the IOU.
9 Is that correct?

10 A Could you repeat that again? I --

11 Q Well, when you refer to there being constant
12 benchmark competition --

13 A Mm-hm.

14 Q -- between the CCA and the utility, I figure
15 that once it's established, it has its network of
16 customers.

17 The issue there that I am asking you is, I
18 think there is an assumption that the CCA customers can
19 switch back to the utility if the utility's rates become
20 lower than the CCA's rates.

21 A I don't think that switching rules have been
22 established yet, but I believe that -- well, like I
23 said, the rules haven't been established yet in terms of
24 how customers can return back to the investor-owned
25 utility.

26 Q Now, are you familiar with the rules involving
27 direct access, and switching rules there?

28 A I vaguely --

1 Q In the case of direct access -- well, scratch
2 that.

3 So by the term that you -- by the term
4 "benchmark" -- "continual benchmark competition," you
5 didn't contemplate any switching possibility?

6 A I didn't say that.

7 Q In turn --

8 A I said the rules haven't been established yet.

9 Q So you were contemplating at least some
10 opportunity to switch?

11 A If that's the way that the rules worked out,
12 then, yeah, that would have to be the case; but again,
13 since the rules haven't been established, it's hard to
14 know.

15 Q Now, it's your testimony that new-world
16 procurement costs should not be paid by any CCA
17 customers. Is that correct? What you refer to as "new
18 world procurement costs."

19 A Can you point me --

20 Q Well, I'm looking at your testimony beginning
21 on page 38, yeah, at the bottom of the page.

22 A Mm-hm.

23 Q Then it continues on.

24 A Okay.

25 Q So I understand your testimony to say
26 basically that you don't believe that the utilities
27 should be able to include in the CRS any new-world
28 procurement. Is that correct?

1 A Any out-of-market new-world procurement
2 costs, either above market or below market.

3 Q Now, do you believe that without a decision in
4 this proceeding, that the utilities -- either a decision
5 in this proceeding or a binding statement of intent,
6 that the utilities are in a position to guess the amount
7 of the CCA --

8 A Could --

9 Q -- load?

10 A Could -- yeah. Could you -- you had a couple
11 of remarks there.

12 Q Okay. In your testimony referring to
13 new-world procurement, I understand that one of the
14 bases of your conclusion that the utility should not
15 have been entitled to -- or should not be entitled to
16 put new-world procurement into the CRS is that the
17 utility should have been able to predict the amount of
18 CCA. Is that your testimony?

19 A No. I think -- I think the basis of my
20 testimony is actually on page 39, where I talk about
21 Public Utilities Code Section 366.2. It's Footnote 25.

22 Q So you're relying entirely on the Code
23 Section, not on any public policy argument?

24 A Oh, no, no. There are certainly -- the -- I
25 think that it may -- it's reasonable that the utilities
26 should be able to plan for changes in their bundled
27 service load, because I think that's a function that
28 utilities do today, and have historically done.

1 In terms of changes in load associated with
2 demand-side management, changes in load associated with
3 on-site generation, businesses entering and exiting the
4 utility service territory, those are all things that
5 utilities typically plan for, I believe.

6 Q Now, with respect to the cost shifting, assume
7 that the Commission determines that the utilities should
8 procure today because it is too early to rely on CCAs,
9 and that as a result of that, the utility incurs
10 above-market costs. Now, assume that customers leave
11 the CCAs, and can avoid those above-market costs that
12 have been incurred, that those additional costs now get
13 shifted to bundled customers.

14 A Okay. So let me make sure that I understand
15 what you're saying. In --

16 Q The Commission determines that the utilities
17 should go out and procure because we can't rely on CCA.
18 Those --

19 A In -- okay. So --

20 Q In the procurement proceeding.

21 A Okay. So the Commission makes a decision
22 deciding that --

23 Q -- that utilities should go out and procure.

24 A Yes. For CCAs.

25 Q For CCAs.

26 A And as a part of that decision, do they make
27 any --

28 Q No, nothing else occurs. Now CCA is formed.

1 And the CCAs leave the system. And those costs now get
2 shifted to the smaller pool that still remains. Is that
3 cost shifting? Isn't that cost shifting?

4 A Seems inconsistent to me. It seems to me that
5 if the Commission decides that the utilities should
6 procure for the CCA customers --

7 Q No. Let's go back to the example, because I
8 don't think you're understanding it.

9 A Okay.

10 Q The CCAs -- the Commission issues a decision
11 saying that CCA at this time is out in the future. The
12 utilities have to procure today. The utility goes out
13 and does that. And then those contracts go out of the
14 money.

15 A Okay.

16 Q Step one.

17 Step two is CCA customers leave. And, under
18 my assumption, they do not bear the costs of those
19 underwater contracts. So that -- and assume that the
20 costs then have to be picked up by the remaining bundled
21 customers. Doesn't that constitute cost shifting?

22 MR. GRUENEICH: I have one clarification you could
23 make.

24 MR. BUCHSBAUM: Okay.

25 MR. GRUENEICH: Based upon the way you stated it
26 this time, which was the step one, which was the way the
27 PUC says, "Procure now, because CCAs are in the future."
28 Did you mean to say in the future, or "Procure now,"

1 with no statement as to the future?

2 MR. BUCHSBAUM: It really doesn't depend on that,
3 but -- but the Commission says, "Utilities, go ahead and
4 procure today." Then at some subsequent point in time,
5 the CCAs leave. And as a result of leaving, the rates
6 of bundled customers would have to rise, because these
7 contracts now are out of the money.

8 Q Are you saying that isn't cost shifting?

9 A I guess what I was saying is that as a part of
10 the procurement proceeding, it would be reasonable --
11 and I think a number of parties in this proceeding have
12 said it's important -- to tie the procurement proceeding
13 to the CCA proceeding, such that you don't run into a
14 situation like your hypothetical.

15 So that's what I'm -- you know -- now, if
16 you -- under your hypothetical, you know, under the --
17 as you lay it out, then there would be cost shifting in
18 that case; but again, I don't see how that -- again, my
19 sense and my -- the reason I'm having trouble with this
20 is that I think the Commission has an umbrella
21 proceeding that's trying to make sure that these various
22 proceedings actually march forward with some degree of
23 coherence.

24 Q Thank you. I'll move on.

25 Can you turn in your reply testimony on page 6
26 to lines 21 to 25?

27 A I have to change binders here.

28 MR. HUARD: Excuse me, Mr. Buchsbaum. My pages

1 aren't numbered. If you could, give me a section so I
2 can --

3 THE WITNESS: Probably Section B.

4 MR. HUARD: The beginning of a question and
5 answer, something like that?

6 MR. BUCHSBAUM: It is the second question on your
7 -- SDG&E's "Open Season" heading. And it is the
8 sentence beginning, "Thus, bundled customers can --
9 bundled service customers can reduce load at any
10 time" --

11 MR. HUARD: Thank you.

12 MR. BUCHSBAUM: -- "or increase load at any time
13 and not be at risk."

14 I'm sorry. It's the sentence immediately
15 before that, beginning with the word, "Second."

16 THE WITNESS: Now I'm lost. Which? Which line?

17 MR. BUCHSBAUM: Q It is line 19.

18 A Okay. I've got that.

19 Q I had it right the first time.

20 Now, do you see that sentence where you say
21 that SDG&E's open season discriminates against CCAs as a
22 group, because they would be required to estimate load
23 with consequences, but the bundled customers would add
24 load at any time and not be at risk? Do you see that?

25 A Yes.

26 Q Well, isn't it the case that bundled customers
27 do pay when bundled customers unexpectedly decrease or
28 increase load?

1 A It depends on the perspective that you're
2 looking at that question from.

3 And when I say that, I mean if you take
4 bundled customers as a class, then that's true.
5 However, individual bundled customers -- bundled service
6 customers -- that's not true.

7 MR. BUCHSBAUM: That's fine. I have no further
8 questions.

9 ALJ MALCOLM: Thank you, Mr. Buchsbaum.

10 Mr. Ouborg.

11 Let's go off the record for just one second.

12 (Off the record)

13 ALJ MALCOLM: Back on the record.

14 CROSS-EXAMINATION

15 BY MR. OUBORG:

16 Q Good afternoon, Mr. Monsen.

17 A Good morning -- or good afternoon.

18 Q Mr. Monsen, can you name the member
19 organizations of the Local Government Commission
20 Coalition? I believe that's your -- the party you're
21 representing today, is it not?

22 MR. GRUENEICH: I'd like to object. It's our
23 understanding that when this issue has come up in prior
24 proceedings, there has not been a requirement to name --
25 to provide specific names of organizations -- of the
26 organization or the group that -- for example, with
27 CLECA, it is our understanding that despite, I think,
28 probably two decades of practice before here, they have

1 never been required to identify the specific names of
2 their organization.

3 ALJ MALCOLM: Let's go off the record.

4 (Off the record)

5 ALJ MALCOLM: Back on the record.

6 Mr. Ouborg, do I understand you are moving to
7 have that information presented publicly, or just to
8 PG&E?

9 MR. OUBORG: Your Honor, I'm -- I would request
10 that LGCC be directed to provide this information not
11 just to PG&E, but for the record, so that the Commission
12 is aware of the parties appearing before it and their
13 individual interests.

14 ALJ MALCOLM: All right.

15 Ms. Grueneich.

16 MR. GRUENEICH: Thank you. I'll consult with my
17 client. And then if there does continue to be an
18 objection, I'll notify the Service List of the basis for
19 the objection.

20 ALJ MALCOLM: And can you do that by a date?

21 MR. GRUENEICH: Let's see. Today is Thursday. I
22 should be able to do it by next Wednesday. Yeah.
23 Tomorrow's somewhat of a holiday. And so I'll get in
24 touch with them Monday. And if I need time to draft
25 something on Tuesday, I should be able to have it out on
26 Wednesday. That would be fine.

27 ALJ MALCOLM: All right. And I'll give any party
28 an opportunity to respond to Ms. Grueneich's response if

1 she argues against the disclosure of her client.

2 MR. SZYMANSKI: Your Honor, just so I'm clear,
3 what Ms. Grueneich will be providing is either an
4 objection with a basis for that objection, or the
5 information that was requested by PG&E's attorney?

6 ALJ MALCOLM: That's my understanding.

7 Ms. Grueneich?

8 MR. GRUENEICH: You bet. Mm-hm.

9 ALJ MALCOLM: Yes, by Wednesday. Thank you.]

10 Go ahead, Mr. Ouborg.

11 MR. OUBORG: Thank you, your Honor.

12 Q Mr. Monsen, I am going to ask you a couple of
13 questions about your qualifications. And as with
14 Mr. Fulmer, there is no intention to be disrespectful of
15 your professional standing. But you are testifying in
16 part regarding the transactions that PG&E has proposed.
17 I was just interested in your experience relative -- as
18 an expert, if you will, testifying on those issues.

19 Do you have any work experience either as a
20 consultant or as an employee where you were involved
21 with the analysis, design or operation of large retail
22 billing systems for a utility?

23 A You said the analysis of?

24 Q The analysis of, the design of, the operation
25 of, how they work, both the hardware and the business
26 process, does that go with producing bills for, for
27 example, PG&E, a large utility, where we produce
28 8 million bills a month?

1 You can understand there is a large structure
2 around that, both systems and people and processes. I
3 was just wondering if in your consulting career and your
4 career where you work directly for, for example, PG&E, I
5 know you worked for PG&E, in any of that experience have
6 you developed an understanding or an expertise around
7 how that process works and all those aspects of the
8 process?

9 A I haven't -- I am not a hardware or a software
10 engineer. I am an engineer by training. I have an
11 awful lot of experience in looking at utility filings,
12 cost of service filings and such. And as a result of
13 that -- specifically, I have looked at one time in the
14 long distant past the revenue cycle services testimony
15 that the utilities provided, but that was a long time in
16 the past.

17 Q And a related question. You are not an
18 economist, are you, by educational training?

19 A I tell my children I am an engineer by
20 training and an economist by necessity.

21 Q Thank you.

22 Mr. Mosen, could you turn to page 17 of your
23 opening testimony.

24 A Okay.

25 Q And on line 18 you said direct access existing
26 unit costs could serve as an upper bound on any
27 transaction costs imposed on CCAs.

28 Then on the next page, at the top of the next

1 page, you state on line 2 that unlike direct access you
2 expect a higher volume of transactions for CCA service.

3 And I quote: As a result, the higher volume
4 of transactions should allow the IOUs to amortize the
5 fixed costs of such services over more transactions,
6 resulting in lower per-unit charges.

7 My question is, does that statement apply to
8 charges based on incremental costs which by definition
9 would not include any fixed costs?

10 It is more of a question of clarification. I
11 am not trying to challenge anything.

12 I think you yourself have pointed to the fact
13 that this economy of scale, if you will, would exist if
14 there were fixed costs to spread over more units.

15 But when something is based on the incremental
16 cost, there is no fixed cost by definition. That is
17 just incremental.

18 A I guess I would have to differ with you a
19 little bit in that regard. There can certainly be
20 incremental costs that are spread -- what would be a
21 good example of an incremental cost that is not per
22 unit? It would be a lumpy addition, something like you
23 have to buy a computer and that computer can serve
24 300,000 customers, right? Well, for customers 1 through
25 299 up through 300,000, is that a sunk cost, or is it an
26 incremental cost?

27 And I would say that is an incremental cost.
28 And so -- but it doesn't change the -- the cost of that

1 doesn't change with unit-by-unit incremental additions
2 of number of customers.

3 So in that regard I think I would have to
4 differ with you a little bit.

5 Now if you are talking specifically about just
6 the incremental cost or the marginal cost of serving one
7 additional customer and that would be things like paper,
8 ink, then that isn't what I was addressing here in my
9 testimony.

10 Q Is your understanding -- you have reviewed
11 PG&E's testimony, have you not?

12 A Yes.

13 Q And the workpapers?

14 A I have looked at them briefly, yes.

15 Q And based on that review, do you know whether
16 any of PG&E's transactions costs that we have proposed
17 or estimated in this proceeding contain fixed costs?

18 A It's my understanding that PG&E is different
19 than the other two utilities in that regard. And PG&E's
20 approach has been to propose that there's a set of fixed
21 costs that are going to be recovered from all
22 ratepayers, not just the CCAs, and that there are
23 incremental costs that are going to be recovered from
24 CCAs -- incremental transactions costs that are going to
25 be recovered from the customers of the CCAs.

26 So in that regard I think your specific
27 position is slightly different than or is significantly
28 different than the other two utilities.

1 Q I am going to try and move this along. Let me
2 ask this one more time.

3 We have implementation costs, which is
4 one bucket. We have transactions costs, which is
5 another bucket. Transactions costs are based on
6 activity-based costing where we look at the activities
7 taken to do a bill, for example, and we then cost that
8 out by the labor and any materials like ink and paper
9 and we come up with a cost. That is how we did our
10 transaction cost estimates.

11 A Hm-hmm.

12 Q Given that description -- does that meet your
13 understanding of how PG&E's transactions costs were
14 derived?

15 A Yes.

16 Q And given that description, do those
17 transactions costs, would they have fixed cost in them,
18 which would -- would those costs decline over time
19 assuming the --

20 A No.

21 Q I don't know if the record clearly stated
22 that.

23 A No.

24 Q Thank you.

25 Can you turn to your reply testimony at
26 page 18. At line one you state if an IOU -- do you have
27 that in front of you?

28 A Yes.

1 Q There you state if an IOU is able to provide
2 specific transition or transaction services without
3 having to hire additional staff or incur additional
4 overtime or contractor costs to provide these services,
5 then the cost of providing those services are not
6 incremental costs.

7 MS. GRUENEICH: Excuse me. Could I double-check
8 on the page cite again.

9 ALJ MALCOLM: Our page 18 doesn't say that.

10 THE WITNESS: Mine does.

11 MS. GRUENEICH: Page 18?

12 MR. OUBORG: Yes 18. Page 18 of the reply, line
13 1 at the very top.

14 ALJ MALCOLM: Let's go off the record.

15 (Off the record)

16 ALJ MALCOLM: Back on the record.

17 The copy of Exhibit 29 that is going to be
18 entered into the record refers to this statement at page
19 17, line 21, for the record.

20 Sorry, Mr. Ouborg.

21 MR. OUBORG: May I proceed, your Honor?

22 ALJ MALCOLM: Yes.

23 MR. OUBORG: Q Mr. Monsen, do you have that
24 sentence in mind that I read a short while ago?

25 A Yes, I do.

26 Q Let me just clarify. You are not saying
27 that -- I understand you are saying that if the utility
28 doesn't add staff, that then there is no incremental

1 cost, but you are not saying that there is no cost at
2 all?

3 In other words, if an activity needs to be
4 performed, a service provided, there is real work and
5 real cost that goes into doing that? What you are
6 referring to is who pays for that cost in this
7 particular example, right?

8 In other words, if no costs are added, you are
9 assuming the utility is recovering that cost from
10 somebody else, namely ratepayers, is that correct?

11 A I am talking specifically about personnel,
12 personnel costs here to begin with. And this gets into
13 the question that we were talking about before, which is
14 what is an incremental cost versus a sunk cost.

15 Q Let me just stop you there. Maybe you are
16 making it more complicated than my question. All I'm
17 asking is -- and maybe it is so simple you are just not
18 understanding me -- you would agree that there is a cost
19 to provide that service? You yourself used the term
20 cost.

21 You are simply saying in this example with no
22 additional labor added, it is not an incremental cost.
23 All I am asking from you is your agreement that there is
24 a cost associated with that service?

25 A In terms of cash cost, yes, there is a cash
26 cost. There could be -- there is a cost of performing
27 that service, yes.

28 Q Thank you. That's all I was after.

1 If the utility spends an hour performing some
2 function for a CCA or CCA customer, is that hour
3 available to be allocated to other utility work?

4 A Could you repeat that, please.

5 Q If an employee of PG&E spends an hour
6 performing some function for the CCA program, perhaps
7 billing a customer, something like that, is that hour
8 spent doing that available to the utility to be used in
9 some other function of the utility apart from the CCA
10 program?

11 A If the employee is fully -- under your
12 hypothetical, I am assuming that you mean that the
13 employee is spending the entire hour working on nothing
14 but CCA-related activities? Is that what you are
15 assuming?

16 Q That's correct.

17 A And that there's no break in work, that they
18 are going to start it out minute one and work through
19 minute 60 on that specific topic, is that what you're
20 saying?

21 Q Yes.

22 A Then unless the utility employee -- unless the
23 services that they are providing to the CCA can be used
24 in some other manner --

25 Q Let's assume it is a service -- an activity
26 that would not occur if the customer were not a CCA
27 customer. In other words, the employee is doing
28 something that would not be done otherwise except for

1 the existence of the CCA program.

2 A Then, yes, that employee would spend the
3 entire hour working on CCA-related activities. And if
4 there is absolutely no other use of those services by
5 the utility, then that would be work that could not be
6 applied to the other utility customers.

7 Q And, Mr. Monsen, you are an economist by
8 necessity but not by training. Are you familiar with
9 the economic term "opportunity cost"?

10 A Yes.

11 Q Would you agree that in the example we just
12 talked about that there is an opportunity cost
13 associated with performing that work for the CCA;
14 namely, the lost opportunity to use that hour of labor
15 on some other function for the utility?

16 A Again, under the hypothetical that we talked
17 through, which is there's no other use for those
18 services, that the employee is working at a hundred
19 percent capacity over the entire hour, then yes, that is
20 an opportunity cost.

21 Q Thank you.

22 You have stated on your reply testimony,
23 page 18 --

24 I am trying to hurry this along, your Honor, I
25 have got two more questions.

26 Same page, line 11, you basically are
27 testifying that you don't believe the utility will need
28 to add resources to accommodate CCA program from your

1 review of the testimony; is that correct?

2 A No, I didn't say that at all.

3 Q Let me ask you this: Do you believe from your
4 review of PG&E's testimony that PG&E in all likelihood
5 would have to add resources to accommodate the CCA
6 program?

7 A I don't have an opinion. I didn't review them
8 in enough detail to make that assessment.

9 Q Mr. Monsen, are you aware that PG&E has
10 presented testimony estimating that for billing, its
11 employees spend approximately 40 minutes on 2 percent of
12 accounts per month on average doing billing-related
13 tasks for ESPs, and by extension, is estimating the same
14 would occur for CCAs?

15 ALJ MALCOLM: ESP customers?

16 MR. OUBORG: Q Based on our experience with ESP
17 customers, PG&E estimates it will spend 40 minutes on
18 average on 2 percent of its accounts that will bill in
19 the CCA service per month doing various follow-up
20 corrective and other investigative work on those
21 accounts. This was the testimony of Mr. Labberton. I
22 can refer you to a cite in his testimony.

23 A That would be -- I will take it subject to
24 check.

25 Q I am not asking you to agree that that is
26 accurate. I am just asking you if you can accept that
27 we have estimated that.

28 A That's your estimate, yes.

1 BY MS. WALTER:

2 Q Good afternoon, Mr. Monsen. I am Stacy
3 Walter, attorney for Pacific Gas and Electric Company.

4 I just have a couple questions for you on
5 customer information issues that you covered in your
6 testimony.

7 Turning first to page 3 of your reply
8 comments. This would be line 21 to 24, or lines 20 to
9 23 for those that don't have the page numbers.

10 You state that customer representatives --

11 A Could you hang on a second?

12 Q Sure.

13 A What line numbers?

14 Q 21 to 24 on yours.

15 A I think mine lines up with yours, yes. Okay.

16 Q You state that customer representatives have
17 expressed no concern in this proceeding about release of
18 information to CCAs. And I just wondered if you could
19 expand a little bit on what efforts the Local Government
20 Commission Coalition or its members have made to confirm
21 with customers or customer groups that they don't have
22 any concerns about release of their confidential utility
23 customer information?

24 A I haven't done an assessment. I just based
25 that testimony on looking around at who is in the room
26 and looking who has filed testimony related to -- who
27 has been involved in workshops, who has -- this is my
28 reply testimony, so who served opening testimony in the

1 proceeding.

2 Q But have you or LGCC done any outreach at all
3 with customer groups or customers?

4 A In terms of --

5 Q Determining their concerns about their
6 information?

7 A The members of LGCC reviewed my testimony. As
8 I think is indicated in my opening testimony, there are
9 cities and counties who will be by definition considered
10 customers. And they didn't express concern.

11 Q You mean the city and counties weren't
12 concerned about the utility releasing the city and
13 counties' particular customer information to the city
14 and county? I mean the city and counties are in fact
15 customers?

16 A Yes.

17 Q And they might not have a concern about
18 releasing their own utility information to themselves.
19 But I am talking about other noncity or county
20 customers, have you discussed it with any noncity or
21 county --

22 A No.

23 Q Thanks.

24 Moving on, turning to page 4 of your reply
25 comments, the next page, that would be line 6 to 10 on
26 yours and lines 5 to 8 on the others. Do you see that
27 section there?

28 A Yes.

1 Q You state that under the 15/15 Rule, and I am
2 quoting, the CCA would be refused access to any
3 information regarding medium and large industrial
4 customers or even large commercial customers such as
5 office buildings.

6 A Hang on. On line 6? It says in addition
7 under the 500 kW Rule, not the 15/15 Rule.

8 Q You are right, it would be the 500 kW rule
9 which is a component of the 15/15 Rule.

10 A Okay.

11 Q But I just wanted to make sure that you
12 understand or that you would agree that utilities would
13 provide and actually have provided aggregated usage
14 information that would include the usage data of
15 industrial and commercial customers? In other words,
16 not customer-specific information but aggregated
17 information that would include all usage for that class
18 of customers.

19 A I think what my testimony says is, again, if
20 you look at what is in the 15/15 Rule, the 500 kW rule
21 component of it says that no information is going to be
22 provided associated with customers over 500 kW. And so
23 that is what my testimony says.

24 Q Right. I just wanted to clarify because that
25 would be a specific line item for one customer larger
26 than 500 kW. The utilities would not release that. But
27 if you took a group, and I think the witnesses for all
28 three utilities testified, that if you aggregated data,

1 say, to the industrial class, they provide usage data
2 that would include the usage data, not on a line item
3 customer-by-customer basis, that wouldn't be permitted,
4 but they would include aggregated data.

5 So --

6 MS. GRUENEICH: I think we need a question
7 pending, which might be are you aware of testimony
8 provided in this proceeding.

9 Mr. Monsen hasn't been here for the other days
10 of the testimony. So he may or may not be aware of that
11 testimony.

12 MS WALTER: Q When the 15/15 Rule and 500 kW --

13 MS. GRUENEICH: If I could ask you to state your
14 question.

15 MS. WALTER: Okay.

16 Q Have you been following the testimony provided
17 by the utilities in both their written testimony and in
18 the hearings where they explained that the 15/15 Rule
19 prohibits the release of a specific customer's
20 information if it is over 500 kW?

21 However, information related to those larger
22 customers can and has been released in an aggregated
23 format, say, for the commercial customer class. In
24 other words, lumped data would include the information,
25 usage information, for those larger customers.

26 A I haven't been -- like Ms. Grueneich
27 indicated, I haven't been following the transcripts on
28 that particular issue. But if the utilities have

1 indicated that they are willing to provide information
2 about customers over 500 kW in aggregated form, then
3 that is a good thing, I think. That would certainly
4 make it somewhat easier.

5 Again, it depends on the level of aggregation
6 that that load data is provided for. For example, if
7 you were to take customers over 500 kW and group them
8 with other very dissimilar customers, it would be very
9 hard to understand what the characteristics are of those
10 typical customers. You would have a big lump over here
11 and a big lump over here. And you add them together and
12 you wouldn't have any idea what's going on.

13 Q But just so that I understand, because I read
14 through that and I thought that was a little bit of a
15 misunderstanding relayed there, saying that you never
16 got access to that information, with the understanding
17 that at a customer class level utilities do provide it,
18 wouldn't you agree that it is true -- it is not true
19 that CCA would have no access to usage data for the
20 larger than 500 kW customers?

21 A Again, if the data is included in an
22 aggregation, then obviously it is included. I guess my
23 concern is that if the data is included but it is not
24 included in a manner that is useful, then it is not
25 particularly useful.

26 Q Okay. Thank you, Mr. Monsen.

27 Moving on to page 10 of your reply comments,
28 this would be lines 22 to 25, which is lines 11 --

1 starts at line 11 for the nonpage numbered ones.

2 A Okay. I have got that.

3 Q Here you say that you believe that customer
4 information provided to the CCA prior to the formation
5 of the CCA should not include information that would
6 enable the CCA to identify specific customers.]

7 A That's right.

8 Q Okay. My question to you is, how will the
9 date of CCA formation be established under your
10 proposal?

11 A I believe I addressed that further up in -- if
12 you go two questions up, CCA will be formed with
13 approval of the governing body responsible for the CCA.
14 So at that point that would be the time in which the CCA
15 would be formed.

16 Q And that's -- if you could just elaborate on
17 that. For instance, we've had, you know, some
18 ordinances have been passed with intent to form CCAs.
19 Would it be, you know, we could have a series of -- a
20 series of CCA formation steps that a city might go
21 through. Is there any things that will need to take
22 place as part of the ordinance?

23 A I don't have anything in mind, specifically in
24 mind.

25 Q Okay. Because one of the issues I'm trying to
26 get at here is in terms of the city will act, will
27 create an ordinance, and if you're saying that after
28 that point then the CCA should get all of the customer

1 information, customer specific information?

2 MS. GRUENEICH: His testimony is after the
3 formation of the CCA.

4 THE WITNESS: Yes.

5 MS. WALTER: Yeah.

6 Q My question is, how then -- we've had some
7 discussion earlier this morning, I'm not sure if you
8 were here, about the Commission's role and oversight on
9 what kind of protections there are going to be and what
10 kind of agreements there are going to be in terms of
11 protecting the utility confidential customer
12 information. And my question is there is, how would --
13 you know, if there's -- the point is the creation of the
14 ordinance, how would the Commission have an opportunity
15 to review any proposal or plans for consumer protection
16 or keeping customer information protected at the point
17 where you're saying all the information should be
18 provided to the CCA?

19 MS. GRUENEICH: I'm sorry. I think I'm going to
20 have to object. We lost, or at least I lost somewhere
21 the actual question. Maybe we could rephrase it a
22 little more cleanly.

23 MS. WALTER: Right.

24 Q I guess I could be more specific. When we
25 were looking specifically, and for purposes of saving
26 time, I'm trying not to pull out that statute, but
27 there's a point at which the CCA files their plan, their
28 implementation plan with the Commission.

1 A Okay.

2 Q And it seems to me that the ordinance date and
3 the date that the Commission -- the filing can be made
4 with the Commission, that there is a time lag, time
5 problem there in that there wouldn't be any input from
6 the Commission at the time the ordinance is formed, that
7 that comes before the plan filing. Is that your
8 understanding?

9 A The ordinance date most likely, I think, most
10 likely will precede the date that the implementation
11 plan is filed with the Commission. I would agree with
12 that.

13 Q Okay. And then just finally, moving on to
14 page 11 of your reply comments, and that would be page
15 10. On page 11 of your reply comments, lines 1 through
16 5, or page 10 of the unnumbered one, line 18 to 22, you
17 propose that the Commission authorize a third party data
18 manager to receive confidential utility customer
19 information aggregated in a way to ensure customer
20 confidentiality and then provide the aggregated data to
21 the CCA?

22 A Yes.

23 Q How would that approach differ from the
24 utilities providing information under the 1515 rule in
25 terms of customer protection?

26 A I guess the preparation of a lot of this
27 section of testimony was on the presumption, I think the
28 written testimony of the witness from San Diego, that

1 indicated that under the 1515 rule or under the 500 kW
2 rule 500 kW customer data would not be provided. So
3 that's the basis of this -- of this answer is that if
4 there's no way that the utility can provide those data,
5 then we have to figure out some other way to do it. But
6 since we've talked today, you've indicated that the 500
7 kW and above data will be provided by the utilities.

8 ALJ MALCOLM: I don't think you're answering her
9 question.

10 THE WITNESS: Okay. Yeah. I'm trying -- I guess
11 that what I'm saying is that the -- there shouldn't be
12 a -- I mean if -- to the degree the utilities are
13 willing to aggregate data in multiple forms at
14 reasonable costs in the same, you know, as a some sort
15 of third party data manager might be willing to do, then
16 there's no difference.

17 MS. WALTER: Okay. Thank you, Mr. Monsen. That
18 was my last question.

19 ALJ MALCOLM: Is there any redirect?

20 MS. GRUENEICH: Just one minute.

21 ALJ MALCOLM: Off the record.

22 (Off the record)

23 ALJ MALCOLM: Back on the record.

24 MS. GRUENEICH: Just a couple of questions, your
25 Honor.

26 REDIRECT EXAMINATION

27 BY MR. GRUENEICH:

28 Q If I could follow up right now with the item

1 that you were just discussing, which is the statement in
2 your testimony that, for example, the IOUs are concerned
3 with providing confidential customer data to CCAs prior
4 to the on-line date of the CCA, and you gave as an
5 example of one approach that might be used is a third
6 party data service?

7 A Yes.

8 Q In your reference to the IOU concerned with
9 providing confidential customer data to CCAs, was that
10 based upon your understanding that there might be
11 concern from the IOUs with the CCAs' business
12 relationship with ESPs and the ESPs' access to
13 confidential customer data?

14 A I think I missed the last part of the
15 question. Could you run that past me again?

16 Q Yes. When you stated that the IOUs are
17 concerned with providing confidential customer data to
18 the CCAs --

19 A Right.

20 Q -- was that based upon your understanding that
21 one area of that concern had to do with the possibility
22 that CCAs might in turn provide that confidential
23 customer data to ESPs?

24 A Yes.

25 MR. SZYMANSKI: Your Honor, could we have a page
26 cite again for this appropriate cite?

27 MS. GRUENEICH: It was the one we were just
28 discussing, which was the --

1 ALJ MALCOLM: Page 10.

2 MS. GRUENEICH: -- reply testimony, page 10. In
3 mine it's page 11.

4 Q The question was, could these data providers
5 also provide services to CCAs that have been officially
6 established but have not yet come on line?

7 ALJ MALCOLM: Which is page 11 on my Exhibit 29.

8 MS. GRUENEICH: It's the last question just above
9 Section 4.

10 MR. SZYMANSKI: Go off the record again. I think
11 the page might -- can we go off the record for just a
12 moment?

13 ALJ MALCOLM: Off the record.

14 (Off the record)

15 ALJ MALCOLM: Back on the record.

16 MR. SZYMANSKI: Your Honor, my objection is I have
17 no idea why this -- what this question has to do with
18 ESPs. As I understand -- perhaps I'm mistaken, but I don't
19 recall any cross-examination dealing with ESPs, but I
20 seem to recall Ms. Grueneich's redirect dealing with
21 ESPs. And so I'm -- perhaps I'm mistaken, but I just
22 didn't understand the foundation for her question.

23 MS. GRUENEICH: The question that had come from
24 PG&E was whether the use of the independent third party
25 would satisfy -- my memory was whether the use of the
26 third party approach would satisfy the concern with
27 regard to providing confidential customer data.

28 MS. WALTER: I think my question really was, how

1 would that approach differ from utilities having a third
2 party do it? How would that differ from having third
3 parties aggregate data in a way that you couldn't
4 determine individual customer information from data that
5 was released to CCAs? How would that approach differ
6 from utilities providing information in the 1515 rule?
7 That was my question.

8 MR. SZYMANSKI: That's what I understood Ms.
9 Walter's question to be as well.

10 MS. GRUENEICH: I'm happy to strike my question.
11 I misunderstood. My question and answer. We have to
12 get moving, and I'm happy to strike it.

13 ALJ MALCOLM: Okay.

14 MS. GRUENEICH: Q You were also asked some
15 questions today under a hypothetical that, as I recall,
16 this is the multistep hypothetical. So if I have this
17 question wrong, let me know. But generally, the
18 assumption had been, I believe, that if there had been a
19 Commission decision on procurement in which the
20 Commission had determined there were no CCAs and the
21 utilities should procure 100 percent. Do you recall
22 that hypothetical?

23 A Yes.

24 MR. BUCHSBAUM: I don't think I said no CCAs. I
25 just said that there was a determination that
26 procurement should be undertaken.

27 MS. GRUENEICH: Okay.

28 ALJ MALCOLM: And that subsequently that CCA

1 customers would transfer over to the CCA?

2 MR. BUCHSBAUM: Yeah. Just that basically the
3 Commission made a determination that a certain amount of
4 procurement by the utility should be undertaken.

5 MS. GRUENEICH: Okay.

6 MR. BUCHSBAUM: That then --

7 MS. GRUENEICH: That's fine. I can go with that
8 one.

9 Q You are familiar, are you not, with the
10 testimony that's been filed in this case with regard to
11 the possibility of pursuing an open season approach?

12 A Generally familiar with it, yes.

13 Q I'd like to focus in terms of the hypothetical
14 on the assumption that we're in the time frame where
15 there is a Commission direction to procure 100 percent
16 and no open season rule is yet in effect.

17 A Mm-mm.

18 Q And then I'd like to take you in a
19 hypothetical, or let me strike that.

20 To your knowledge, has the Commission issued
21 an order to the utilities directing them to procure 100
22 percent?

23 A I believe that the current -- that the
24 utilities are developing their procurement plans right
25 now and those plans haven't been approved yet. And so I
26 don't believe the reasonableness of the assumptions in
27 those procurement plans has been examined yet by the
28 Commission.

1 Q And let me be a little bit more precise.
2 Let's assume we are as we are now in year 2005. To your
3 knowledge, has there been any Commission prohibition on
4 a utility assuming that there would be some CCA
5 occurring in 2006, and therefore, in terms of its
6 procurement decisions that it would make between now and
7 2006 it could procure for less than 100 percent in 2006?
8 To your knowledge, has there been a prohibition on that?

9 A Not to my knowledge.

10 MS. GRUENEICH: Those are all the questions I
11 have.

12 ALJ MALCOLM: Any recross? Thank you, Mr. Monsen.
13 You're excused.

14 THE WITNESS: Thank you.

15 ALJ MALCOLM: We'll be in recess until 3:50 -- I'm
16 sorry -- 2:50.

17 (Recess taken)

18 ALJ MALCOLM: Back on the record. Mr. Florio is
19 on the stand for TURN. Mr. Florio, you will conduct
20 your own preliminary examination.

21 THE WITNESS: Yes. Thank you, your Honor. TURN
22 previously distributed a document entitled the Reply
23 Testimony of Michel Peter Florio, dated March -- May
24 7th, 2004. Could I have that marked.

25 ALJ MALCOLM: Yes. We'll identify that as Exhibit
26 37.

27 (Exhibit No. 37 was marked for
28 identification.)

1 THE WITNESS: Okay. And I guess I need to be
2 sworn.

3 MICHEL PETER FLORIO, called as a
4 witness by The Utility Reform Network,
having been sworn, testified as follows:

5 ALJ MALCOLM: Thank you.

6 DIRECT EXAMINATION

7 THE WITNESS: My name is Michel Peter Florio, last
8 named spelled F-l-o-r-i-o.]

9 Exhibit 37 represents my testimony in this
10 proceeding.

11 I have one correction at the top of page 1.
12 The title should read, "Prepared Reply Testimony,"
13 rather than, "Prepared Direct Testimony."

14 And with that correction, Exhibit 37 is my
15 prepared direct testimony. The facts stated therein are
16 true and correct, to the best of my knowledge. And the
17 opinions stated therein represent my best informed
18 opinion and judgment.

19 And I am available for cross.

20 ALJ MALCOLM: Thank you, Mr. Florio.

21 Any cross-examination -- oh, Mr. Blaising, you
22 had some?

23 MR. BLAISING: Yes.

24 CROSS-EXAMINATION

25 BY MR. BLAISING:

26 Q Good afternoon, Mr. Florio.

27 A Good afternoon, Mr. Blaising.

28 Q I represent in this proceeding the Inland

1 Valley Development Agency, which is a public agency in
2 San Bernardino County potentially interested in becoming
3 a community choice aggregator.

4 My questions are limited to your discussion in
5 Exhibit 37, your reply testimony, dealing with the
6 indifference fee. Specifically, if you would, turn to
7 page 4, please.

8 A I am there.

9 Q On line 4, the sentence begins there. You say
10 that the purpose of the indifference fee is to assure
11 that bundled service customers are economically
12 indifferent to the migration of customers to CCA or DA
13 service.

14 I believe in the page preceding this, you
15 described the indifference fee as being made up of
16 ongoing CTC and the DWR power charge. Is that correct?

17 A Yes. That's correct.

18 Q Okay. If you would, maybe describe your
19 understanding of how this indifference fee would work as
20 background. You recall that we have had testimony by
21 Department of Water Resources on this topic. I am not
22 asking for an elaborate discussion, but more just a
23 layman's description of how this would work.

24 In a situation where DWR contracts are above
25 market, how would you -- how do you describe this charge
26 being established?

27 A Well, the calculation is done on a total
28 portfolio basis. So each of the IOUs has DWR contracts

1 assigned to it, and costs associated with those
2 contracts and their own utility-retained generation and
3 contracts. So that whole portfolio under current
4 circumstances tends to be above market.

5 What the indifference calculation does is
6 looks at, in essence, the change in the average cost of
7 that portfolio when some of the load departs. And
8 because you have fixed costs that are spread over a
9 smaller base, the average cost to the customers that do
10 not depart in one way or another goes up.

11 So the indifference fee is a mathematically
12 calculated figure that, when charged to the load that is
13 departing, leaves the remaining bundled customers paying
14 the same average generation rate that they were before
15 the departure.

16 Q Mr. Florio, you indicated that it's primarily
17 the fixed costs that are spread. Is that your
18 understanding?

19 A Well, fixed in the sense that there are firm
20 contract obligations. It may be an obligation to take
21 energy at a per-kilowatt-hour price, but if that
22 obligation is take or pay, it is essentially a fixed
23 obligation.

24 I think "unavoidable cost" is the term that
25 was used in the statute.

26 Q Mr. Florio, based on your understanding, would
27 there ever be a situation where market prices would be
28 such that the total portfolio would actually be less

1 than the market price?

2 A That would be a wonderful day; or actually,
3 maybe it might not. I mean, if market prices escalated
4 substantially, you could have a situation where the
5 utility portfolio as a whole, because of its fixed
6 components, was below market, but that would occur only
7 because the market price had -- had gone very high.

8 So, you know, it would be good in the sense of
9 not having stranded costs, but it might be a bad thing
10 in the larger context.

11 Q In that scenario that we've just described
12 where, in fact, the market price is such as that the
13 total portfolio is actually below market, are you aware
14 of any proposal to provide a credit to community choice
15 aggregation customers?

16 A I am not aware of any. I think that the --
17 it's not a situation that the Commission has ever dealt
18 with, with direct access or other forms of departing
19 load.

20 Arguably, it would make sense to pay people to
21 leave, but I think the incentive for people to leave
22 under that circumstance would -- there would be no
23 incentive, because leaving the portfolio would result in
24 incurring higher market prices. So, you know, when a
25 scenario like that occurred in the past, what we saw
26 with direct access was most of those customers coming
27 back to bundled service. So, you know, theoretically,
28 in February of 2001, it might have made sense to pay

1 people to leave, but that wasn't the direction they were
2 going. And I'd suspect it's unlikely to occur in the
3 future, but it's theoretically possible.

4 Q Would you state in a situation where
5 customers from the beginning of a community choice
6 aggregation program -- say, for example, in 2006 -- pay
7 cost responsibility surcharges based on the total
8 portfolio being above market, and subsequently, that
9 total portfolio becomes below market -- would you agree
10 that it would be reasonable, since those customers have
11 actually paid for the above-market portion, to receive
12 some type of credit or other mechanism, financial
13 mechanism, when, in fact, that -- the total portfolio is
14 below market?

15 A Well, there was a provision like that with
16 direct access, with what was then called "the PX
17 credit," where, during the crisis, the utilities were
18 actually paying customers to be on direct access. And
19 what ended up happening is the utilities went bankrupt.
20 So I think from that perspective, there would probably
21 be some reluctance among policy makers to re-create that
22 same -- the potential for that same scenario to happen
23 again.

24 I guess I would say if there was a temporary
25 blip, where the price was lower and -- and before and
26 after that, there was a positive charge, it might make
27 sense to have, you know, a credit against the positive
28 charge for the time that was negative. I think if it

1 were -- I'm not sure you'd want to go beyond the point
2 where it was net zero.

3 Q Thank you. Were you -- you may not have been
4 here this morning. Mr. Ross was -- were Office of
5 Ratepayer Advocates was describing a proposal in 2013
6 where essentially the cost responsibility surcharges --
7 or at least those that make up the indifference fee --
8 would no longer be applicable. Are you familiar in
9 general with this proposal?

10 A I recall that concept being introduced. I
11 don't agree with it.

12 Q Would you explain why you don't agree with it?

13 A Well, some of the obligations that the
14 utilities have entered into extend beyond 2013. That's
15 currently beyond the date when all of the DWR contracts
16 expire, but I think it's conceivable that in the course
17 of renegotiation, some of those might be extended. And,
18 you know, you have things like nuclear plants that may
19 be above market that -- or maybe not, but assuming there
20 are -- or QF contracts, those kinds of legacy resources
21 could have above-market costs beyond 2013. And
22 utilities are -- or at least some of the utilities are
23 making new commitments.

24 I think the Commission just yesterday approved
25 some contracts and some investments for SDG&E which I
26 didn't happen to agree with, but the Commission approved
27 them. And those are now commitments that any customer
28 leaving SDG&E in the future would have to cover a part

1 of. And that could be for a very long time.

2 Q Mr. Florio, specifically on those contracts
3 that were approved yesterday, it's my understanding that
4 there's a provision in there that obligates customers
5 that take either direct access service or community
6 choice aggregation or other forms to those costs for a
7 ten-year period. Is that your understanding?

8 A I have not seen the final decision yet. I
9 believe that was in one of the draft decisions. And
10 TURN commented that that was inadequate, but I don't
11 know what the Commission did on that.

12 Q Would it be accurate to say that -- well, let
13 me ask it this way.

14 In your view, is it reasonable to set some
15 point in the future at which there would not be any cost
16 responsibility surcharges?

17 A Well, I think the statute actually addresses
18 that. Section 366.2(F)(2) refers to the electrical
19 corporation's estimated net unavoidable electricity
20 purchase contract costs -- I'm skipping a little bit --
21 for the period commencing with the customers' purchases
22 of electricity from the community choice aggregator
23 through the expiration of all then-existing electricity
24 purchase contracts entered into by the electrical
25 corporation.

26 So it looks to me as if the statute
27 contemplates it going for the life of those contracts,
28 which, I think, with some of the QF contracts, is

1 possibly into the 2020s. I'm not certain of that.

2 MR. BLAISING: Very good. Thank you.

3 That's all, your Honor.

4 ALJ MALCOLM: Thank you, Mr. Blaising.

5 Mr. Buchsbaum.

6 CROSS-EXAMINATION

7 BY MR. BUCHSBAUM:

8 Q Mr. Blaising asked you some questions about
9 the potential of there being a negative CRS. And I was
10 just wondering whether your recommendation at this time
11 is that the Commission take sort of a wait-and-see
12 attitude based on the -- because the circumstances could
13 be so unknowable and unforeseeable at this point to try
14 to take an affirmative position at this time. Is that
15 something you think would be a wise public policy?

16 A In general, I think it would be wise to wait.

17 I mean, I think the one exception I would make
18 to that is -- now, I'm recommending that there be a
19 true-up, and -- as I think a number of parties are.

20 And let's say in doing the true-up, 11 months
21 out of the year there were positive costs, but in one
22 month there were negative costs. I think those should
23 be netted out; but in terms of a general policy of
24 paying credits to people who leave, I would not
25 recommend that.

26 Q Turning very quickly to your -- what I call
27 "distributed generation proposal" --

28 A Yes.

1 Q Is your -- rather than questioning about the
2 legal aspects, which I'm going to defer to the briefs,
3 I'm just trying to understand your proposal. If a power
4 plant was located outside the service territory of the
5 CCA, under your proposal, would that be eligible?

6 A No. What I'm envisioning is treating a CCA
7 just like a single customer, so that if that entity
8 develops a power plant within its boundaries, just like
9 if an individual customer develops a power plant on
10 their location, that that would be eligible for
11 treatment as customer generation --

12 Q Now --

13 A -- but not a remote location.

14 Q Okay. As a former tax lawyer, I'm a little
15 bit concerned about how that would work. Let's say we
16 have the City of San Francisco.

17 A Mm-hm.

18 Q And it decides that it wants to enter into a
19 CCA relationship with the town of Buttonwillow. Do you
20 know where that is?

21 A Vaguely, yes.

22 Q It's near Fresno.

23 A Mm-hm.

24 Q And so you have a CCA that's CCSF and
25 Buttonwillow. And the plant, lo and behold, is put in
26 Buttonwillow. I'm not trying to be difficult, but does
27 that qualify?

28 A What you're envisioning is a joint power

1 authority; that Buttonwillow and San Francisco jointly
2 were a CCA, or --

3 A Exactly.

4 Q Yeah.

5 A I mean, I -- it's hard for me to see that
6 being considered, you know.

7 To the extent that it was meeting load in
8 Buttonwillow, I think it would -- you could call it
9 "customer generation," but to envision that power
10 serving San Francisco, I think it's not distributed
11 generation anymore. It's remote generation.

12 Now, if you had San Francisco and
13 South San Francisco, that are contiguous, I think my
14 answer might be different, but to say it's remote
15 generation that's going to have to require transmission
16 to get it from one location to the other, it's hard for
17 me to see that being customer generation or distributed
18 generation.

19 MR. BUCHSBAUM: Okay. I have no further
20 questions.

21 ALJ MALCOLM: Ms. Shigekawa.

22 MS. SHIGEKAWA: Thank you.

23 CROSS-EXAMINATION

24 BY MS. SHIGEKAWA:

25 Q Good afternoon, Mr. Florio. I'm
26 Jenny Shigekawa, from Southern California Edison.

27 A Good afternoon.

28 Q If you could, turn to page 8 of your

1 testimony.

2 A Okay.

3 Q Lines 13 and 14.

4 A Mm-hm.

5 Q And you state that the vintage indifference
6 rate paid by each of CCA's customers would be based on
7 the date that the utility was notified of the CCA's plan
8 to depart. Should the indifference rate that you're
9 talking about be vintage by year or some smaller
10 increment of time?

11 A I think just for practicality purposes, it
12 probably should be a rate for each year.

13 If you got down to, you know, parsing days and
14 months, you could have -- you would probably have a
15 different rate for every single CCA. And, you know, I
16 could imagine, you know, if there were some unusual
17 circumstance where, you know, a CCA was leaving and, you
18 know, two weeks later, the utility entered into some
19 major commitment, knowing that that CCA was gone, you
20 might want to make an exception, but I think the general
21 rule should be once a year.

22 Q Thank you. If you could, turn to the next
23 page, page 9.

24 A Yes.

25 Q At the top of the page, you talk about what
26 might happen if the CCA declares an intent to form, but
27 then does not do so. And you talk about a penalty that
28 should be assessed against the governmental entity that

1 declares its intention to form and doesn't do so. Do
2 you think the Commission would have sufficient
3 jurisdiction to impose such a penalty on a CCA?

4 A I think as part of whatever you would call the
5 coming and going rules or the exit and entry rules, the
6 Commission could create those kinds of terms and
7 conditions.

8 I mean, perhaps they would need to be, you
9 know, expressed contractually as part of the arrangement
10 between the CCA and the utility, but I mean what -- in
11 talking about a notice of intent to form a CCA, I was
12 intending that to be a binding legal obligation. So I
13 think in that context, you know, consequences can attach
14 to that.

15 Q Thank you. If you could, turn to the next
16 page, page 10, lines 19 and 20. You discuss the AB 1X
17 restriction on 130 percent baseline?

18 A Yes.

19 Q And you state that over time, it may be
20 possible to reflect any remaining AB 1X benefits in
21 distribution rates. Do you see that?

22 A Yes.

23 Q Are you aware that the rate-design phase of
24 SCE's 2003 GRC is currently in progress?

25 A Yes. And I understand that Edison would like
26 to do this in the context of that proceeding.

27 Q Do you think that's an appropriate place?

28 A I am not a witness in that proceeding, but you

1 know, I guess I would say this. If -- if it's done in
2 that proceeding, it resolves the issue, but I'm not sure
3 what other considerations there may be in that case that
4 might lead the Commission not to, you know, reflect the
5 differential entirely in distribution rates.]

6 Q Thank you.

7 One last question. I don't know if you have
8 had the opportunity to read the transcript, but
9 yesterday Dr. Barkovich was on the stand and indicated
10 that she had proposed a CRS for 2005 when no other party
11 did so.

12 Has TURN proposed a CRS to be applicable in
13 2005 in this proceeding?

14 A No. I did read that part of the transcript,
15 and it is apparent that Dr. Barkovich and I did have
16 different expectations about what the purpose of this
17 proceeding was. I thought that this was a policy
18 proceeding where we were establishing the principles
19 that would govern. But just as with the direct access
20 CRS, I had assumed that the actual charge or the
21 forecasted charge would be set in the same proceeding
22 where the DWR revenue requirement is allocated.

23 We have numbers in Mr. McMahon's testimony,
24 Exhibit 1, but he expressly stated that those were
25 illustrative.

26 So I wasn't anticipating an actual charge but
27 sort of the recipe or the cookbook would be established
28 here and that it would be a fairly mechanical process

1 once DWR submits its 2005 revenue requirement to
2 calculate what a CCA CRS would be for anybody that left
3 during 2005.

4 MS. SHIGEKAWA: Thank you, Mr. Florio. I have no
5 further questions.

6 ALJ MALCOLM: Mr. Szymanski.

7 MR. SZYMANSKI: Thank you, your Honor.

8 CROSS-EXAMINATION

9 BY MR. SZYMANSKI:

10 Q Good afternoon, Mr. Florio.

11 A Good afternoon.

12 Q I have just one or two questions for you.

13 A moment ago you mentioned guiding principles
14 for this proceeding. And my question kind of goes to
15 what I believe -- what SDG&E believes, anyway -- is a
16 guiding principle.

17 Can the Commission make any findings or
18 directives or adopt the proposals of any party in this
19 proceeding that would cause any cost shifting to bundled
20 customers?

21 A Can they? I don't think they should, but the
22 Commission has done a lot of things over the years that
23 I didn't think they could or should do.

24 I'm not recommending that. I think that no
25 cost shifting is sort of one of those fundamental
26 principles that should be adhered to.

27 Q And indeed, you are a lawyer by training as
28 well, is that true?

1 A Yes.

2 Q And the express prohibition in the statute
3 against cost shifting would have a direct bearing on the
4 policy and other findings that the Commission would make
5 in this case; isn't that true as well?

6 A To the extent that one can get those enforced
7 in court, yes. But some of us have not been all that
8 successful at that in the past.

9 Q I think that answers the question that, no,
10 the Commission should not do it and it cannot do that,
11 but --

12 A In a practical sense, the Commission is
13 legally bound only to the extent that the courts in fact
14 bind it. That has been a fairly loose standard over the
15 last couple of decades.

16 MR. SZYMANSKI: Good enough.

17 Thank you, your Honor. That's all I have for
18 Mr. Florio.

19 ALJ MALCOLM: I thought Appellate review was going
20 to fix that.

21 THE WITNESS: Well, we hope.

22 ALJ MALCOLM: Is there any redirect, Mr. Florio?

23 THE WITNESS: No, your Honor.

24 ALJ MALCOLM: Thank you. You are excused.

25 Let's go off the record.

26 (Off the record)

27 ALJ MALCOLM: Back on the record.

28 Off the record we discussed the organization

1 of the briefs which will be due July 9th; closing briefs
2 due July 23rd.

3 We are going to use the opening testimony of
4 Edison's witnesses as an outline, the outline in the
5 table of contents as an outline for the briefs.

6 Parties may need to add items, but I just ask
7 that you use something that is akin to that so that we
8 are all sort of speaking the same language.

9 I would like to make sure that those of you
10 who care address Commission procedures and proceedings
11 and formats, whether that is tariffs or hearings or
12 whatever, for different kinds of calculations, rate
13 implementation, service implementation, whatever. And
14 that may need to be in a section at the end, or you can
15 incorporate it in your discussion. I don't care.

16 I mentioned the other day off the record that
17 I am curious to know whether we could start Phase 2
18 before we have a Phase 1 Commission order. I'm not sure
19 at this time how interrelated the issues are. You may
20 need a Commission order in order to form the basis of
21 your testimony in Phase 2. But if we don't, then I am
22 going to move it along. Either way I will probably
23 schedule a prehearing conference maybe just right after
24 your briefs come in so that we can get things organized
25 for Phase 2.

26 MR. HUARD: Your Honor, in that regard, I think
27 that this phase has addressed cost, basically,
28 information. What we haven't gotten into is

1 implementation of rules. And possibly the approach that
2 you have used to begin with, which was a workshop that
3 developed a straw man, I think that was fairly useful.
4 There is no reason that process couldn't be used again.
5 At least that is my suggestion.

6 ALJ MALCOLM: You think that was helpful?

7 MR. HUARD: Yes.

8 ALJ MALCOLM: You had one workshop on the straw
9 man proposal?

10 MR. HUARD: I think we had two.

11 ALJ MALCOLM: And I will work with Amy on how to
12 organize that and structure it.

13 MR. COMO: We had a conversation with Mr. Ouborg.
14 I don't know if you were there. But it was the general
15 feeling that that was useful in working out issues
16 within the direct access proceeding, at least for most
17 of the issues that were not contentious.

18 ALJ MALCOLM: Right. A lot of those provide some
19 common understanding. And maybe there is some
20 negotiation possible so that we won't have to spend a
21 lot of time in hearings on Phase 2.

22 MR. SZYMANSKI: Your Honor, just one brief point.
23 I agree with the comments of Mr. Huard and Mr. Como.
24 But there is one aspect of the linearity of this
25 proceeding that I think we all may want to acknowledge,
26 and that is that I think what we're doing, to the extent
27 there are costs provided, there are estimates of various
28 costs and those costs are supposed to be finalized as an

1 outcome of Phase 2, as I understood the general
2 objective. And so before we can go to the process of
3 finalizing those costs at the culmination of Phase 2, I
4 think that the objective was, as a result of Phase 1, to
5 have the Commission's determinations as to types of
6 costs and rules to the extent they are considered now,
7 for example, the components of the CRS and some of the
8 issues that have clearly been an issue already.

9 Once those issues are finalized, then it is
10 sort of drilling down to another layer of detail. I
11 think to some extent that needs to happen.

12 ALJ MALCOLM: I agree with you sort of. I intend
13 to go as far as I can in the Phase 1 order with the
14 record that we have. I know that some of the estimates
15 for costs rely on a Commission determination of what the
16 service is going to look like or something like that.
17 And in those cases there wouldn't be final costs. But
18 if I can propose final costs or final cost elements, I
19 will if we have enough in the record.

20 I think that's all I had.

21 Our June 24th hearing will be for testimony
22 from Mr. Fenn, Mr. Chicchetti, Mr. Clarke, Mr. Orth and
23 then utility witnesses who submit reply testimony to the
24 IVDA testimony.

25 MR. SZYMANSKI: I believe Mr. Chicchetti is among
26 the witnesses on the 24th.

27 ALJ MALCOLM: I mentioned him.

28 MR. SZYMANSKI: I'm sorry. I didn't hear that.

1 ALJ MALCOLM: Are there other --

2 MR. BLAISING: Do we anticipate if there is a need
3 for another date, would that be the 25th?

4 ALJ MALCOLM: We won't have another day in
5 Phase 1.

6 MR. ULMER: Judge, I just wanted to ask for your
7 consideration. The Department circulated a document
8 today by electronic mail. I brought copies and handed
9 them out to the hearing room as well as your office. It
10 is a document entitled Prepared Response to Request For
11 Information. It is dated June 10th, 2004.

12 The document contains responses to information
13 requested from counsel, the county of L.A. and the City
14 of Chula Vista as well as counsel for the Local
15 Government Commission Coalition. And I would ask that
16 the Commission consider accepting it into the record in
17 this proceeding.

18 ALJ MALCOLM: I will mark it as Exhibit 38.

19 (Exhibit No. 38 was marked for
20 identification.)

21 ALJ MALCOLM: Is there any objection to entering
22 it into the record?

23 MR. HUARD: Your Honor, just to note, the answer
24 to my question is relatively ambiguous. It isn't
25 anywhere near the detail that I had hoped or specificity
26 that I had hoped. I am not sure what I can do about
27 that.

28 ALJ MALCOLM: You can talk to Mr. Ulmer about it,

1 and we still have another day of hearing. If it is
2 something you want supplemented, why don't you negotiate
3 that with Mr. Ulmer.

4 MR. HUARD: I would like to. Thank you your
5 Honor.

6 MR. ULMER: Thank you, your Honor. I understand
7 Mr. Huard's concern. I am not sure it is ambiguous at
8 all, but there may be limitations on what we can do in
9 providing detailed information given that it is
10 protected by a nondisclosure agreement.

11 ALJ MALCOLM: Right. So we will enter into 38
12 into the record with the understanding that it may be
13 supplemented.

14 (Exhibit No. 38 was received into
15 evidence.)

16 MR. FLORIO: Your Honor, could I move Exhibit 37
17 also?

18 ALJ MALCOLM: Any objection?

19 (No response)

20 ALJ MALCOLM: All right, we will move Exhibit 37
21 into the record. That is Mr. Florio's testimony.

22 (Exhibit No. 37 was received into
23 evidence.)

24 MR. COMO: I would ask that the exhibits that are
25 Dr. Barkovich's testimony and Mr. Fulmer's testimony be
26 moved into the record.

27 ALJ MALCOLM: All right. We will move -- those
28 are Exhibits 25, 26 and 27. We will move those into the

1 record.

2 (Exhibits Nos. Exhibits 25, 26 and
3 27 were received into evidence.)

4 MR. REIGER: Your Honor --

5 MR. COMO: I think that is Dr. Barkovich's, and
6 Mr. Fulmer's, too.

7 ALJ MALCOLM: Mr. Fulmer's are 30, 31 and 32. No
8 objection?

9 (No response)

10 ALJ MALCOLM: We will enter those into the record.

11 (Exhibits Nos. 30, 31 and 32 were
12 received into evidence.)

13 MR. BUCHSBAUM: Craig Buchsbaum for PG&E.

14 I am not sure that our exhibits have yet been
15 moved in. So I would ask that we just go ahead and do
16 that.

17 ALJ MALCOLM: I think I did that sort of without
18 your prompting yesterday.

19 MR. BUCHSBAUM: Okay.

20 ALJ MALCOLM: We do have Monson testimony exhibits
21 28 and 29. Is there any objection to entering those
22 into the record?

23 (No response)

24 ALJ MALCOLM: Okay. We will do that.

25 (Exhibits Nos. 28 and 29 were
26 received into evidence.)

27 ALJ MALCOLM: We have Exhibit 33 is Appendix B of
28 a PUC order. It is the ESP agreement. Is there any

1 objection to entering that in the record? I know it is
2 part of a Commission decision, but just for simplicity.

3 (No response)

4 ALJ MALCOLM: All right. We will enter Exhibit 33
5 into the record.

6 (Exhibit No. 33 was received into
7 evidence.)

8 ALJ MALCOLM: ORA.

9 MR. REIGER: I would move Exhibits 34, 35 and 36
10 into the record.

11 ALJ MALCOLM: Is there any objection?

12 (No response)

13 ALJ MALCOLM: Hearing none, we will enter Exhibits
14 34, 35 and 36.

15 (Exhibits Nos. 34, 35 and 36 were
16 received into evidence.)

17 MR. REIGER: Thank you, your Honor.

18 ALJ MALCOLM: Any other procedural matters?

19 (No response)

20 ALJ MALCOLM: We are in recess until June 24th at
21 10:00 a.m.

22 (Whereupon, at the hour of 3:40 p.m.,
23 this matter having been continued to
24 10:00 a.m., June 24, 2004 in
San Francisco, California, the Commission
then adjourned.)

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