

1 SAN FRANCISCO, CALIFORNIA - JUNE 2, 2004 - 10:00 A.M.

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

5 This is an evidentiary hearing of  
6 the California Public Utilities Commission in  
7 Rulemaking 03-10-003, which is the Commission's  
8 rulemaking to implement the provisions of AB 117 with  
9 regard to community choice aggregators.

10 My name is Kim Malcolm. I'm the assigned  
11 administrative law judge.

12 We've had comments filed by the parties in  
13 this proceeding and lots of testimony served consistent  
14 with the Scoping Memo.

15 Before we do some outstanding procedural  
16 matters, I first want to say "Thank you" to all of you  
17 for the work you've done so far in this proceeding. We  
18 have a lot of very complicated and contentious issues.  
19 The Commission staff and DWR and Navigant staff have  
20 done a great job I think of leading some workshops. And  
21 I appreciate the utilities presenting the straw man  
22 proposal and the information report. I think we've come  
23 a long way. I don't know what you think so far, but  
24 from my standpoint, it looks pretty good.

25 Yesterday we had a brief telephone conference  
26 call addressing the order of witnesses. There was a  
27 controversy about the order of San Diego's witnesses,  
28 mainly. I subsequently issued an electronic order of

1 witnesses which resolves that dispute. And I also got  
2 some estimates of cross-examination time for the first  
3 two witnesses, the DWR witness, and Ms. Keilani from San  
4 Diego Gas & Electric.

5 Before we begin, I wanted to just say a little  
6 bit about the conduct of the hearing.

7 First of all, most days we'll begin at 9:00  
8 and end at 3:30. On Fridays, the Commission normally  
9 starts at 9:00 and goes straight through to 1:30.

10 I understand that there's a request to start  
11 at 10:00 this Friday. So this Friday, we'll start at  
12 10:00.

13 We'll probably go until 1:30 to 2:00. We will  
14 take a break for lunch from noon until 1:30 and take  
15 breaks in the morning and the afternoon.

16 What I'd like to do to keep things moving,  
17 because we have so many witnesses in this proceeding, is  
18 to address motions at the end of the day after  
19 the reporters have left. If they rise to a level of  
20 needing oral argument or some kind of paper trail, we  
21 could discuss that and then conduct the proceeding on  
22 the record.

23 On cross-examination, I know that a lot of  
24 the testimony addresses policy or interpretations of  
25 law. I want to keep the hearings moving, so I just want  
26 to remind you that I'd rather not have cross-examination  
27 conducted on sort of the "shoulds" of policy or  
28 interpretations of law. I prefer that those arguments

1 come in on brief.

2 I know there's a lot of gray area and that you  
3 will need to cross-examine witnesses about the facts  
4 underlying policy proposals, but try and keep it to that  
5 when you can.

6 I don't particularly like friendly cross  
7 because it bogs things down. Your witnesses should have  
8 already presented their views in testimony.

9 And I'll mark the exhibits as we go along.

10 I have a few procedural matters. Are there  
11 any that I might not be aware of or that parties might  
12 not be aware that we need to address this morning?

13 Ms. Shigekawa.

14 MS. SHIGEKAWA: Your Honor, we were hoping to get  
15 some estimates for the cross-examination of SCE's  
16 witnesses. And then also wanted to ask if we reordered  
17 the SCE witnesses, whether you'd have a problem with  
18 that.

19 ALJ MALCOLM: Sure. No problem.

20 Anything else?

21 MR. COMO: Your Honor, Joe Como for the City  
22 of San Francisco.

23 I notice that Mark Fulmer, one of our  
24 witnesses, is not on your e-mail list from yesterday.

25 ALJ MALCOLM: Okay. And actually I saw that this  
26 morning as well. We can include him.

27 That's for the City of San Francisco?

28 MR. COMO: Yes.

1 ALJ MALCOLM: Okay. Anything else?

2 (No response)

3 ALJ MALCOLM: All right. First of all, there's a  
4 motion to intervene that I believe is still outstanding  
5 by the Local Government Commission, which I'm hereby  
6 granting.

7 There's also a motion to intervene by Kings  
8 River Conservation District, which I'm granting.

9 There is a motion from the Inland Valley  
10 Development Agency to intervene and to also late-serve  
11 testimony on the subject of an exemption from the CRS  
12 for a certain kind of government facility.

13 I received last night a response from Edison.  
14 And I want to see if any other parties had any views on  
15 that motion and the scope of the testimony before  
16 I rule.

17 MR. REIGER: Your Honor?

18 ALJ MALCOLM: Yes.

19 MR. REIGER: Jason Reiger for ORA.

20 We'd just like to go on record in support of  
21 the motion to intervene. We feel that with a  
22 quasi-legislative proceeding as this, it's best to get  
23 all the stakeholders' voice. It makes for good rules  
24 and regulations in the outcome.

25 ALJ MALCOLM: All right. Yes, sir.

26 MR. BUCHSBAUM: Your Honor, Craig Buchsbaum for  
27 Pacific.

28 I guess we wish to support Edison to exclude

1 the materials. We feel basically two points should be  
2 made on burden of proof. First, the burden should be on  
3 the party seeking to bend the rules, if you will, and  
4 file late to justify their actions. And then secondly,  
5 your Honor, when the delay is flagrant, as in this case  
6 where we had proceedings that went on for nearly --  
7 proceedings, workshops, for nearly six months, we have  
8 filed opening testimony, reply testimony and rebuttal  
9 testimony, and then someone comes in very late --  
10 I think the burden of proof should shift even greater in  
11 terms of weight on the moving party.

12 So we'd like to support Edison's position.

13 Now, that's not to say that Inland Valley  
14 doesn't have a full opportunity to participate in this  
15 hearing through cross-examination, through filing briefs  
16 and, of course, in participating in Phase 2. But as for  
17 being entitled to file late, we feel that should be  
18 rejected.

19 ALJ MALCOLM: Okay. And first, I'll grant  
20 the motion to intervene. And secondly, I am going to  
21 grant the motion to late-serve the testimony. And the  
22 reason is that this is a rulemaking, and I feel a  
23 responsibility to create a record for the Commission's  
24 consideration.

25 You may be right, Mr. Buchsbaum, that  
26 the burden of proof should be a little heavier for a  
27 party that comes in so late after so much work has been  
28 done, but I believe the Commission would want to hear

1 from this witness and hear this proposal just to have a  
2 breadth of issues addressed and issues to resolve.

3 So, let's see: Is Mr. Blaising here?

4 MR. BLAISING: Yes.

5 ALJ MALCOLM: Okay.

6 MR. BLAISING: Your Honor, if I could just say one  
7 thing in response.

8 First of all, I appreciate that --

9 Scott Blaising for Inland Valley Development  
10 Agency.

11 I do want to say we understand and appreciate  
12 the comments by Edison and PG&E. I did want to explain  
13 one aspect of it, is that following the hearing, we  
14 sought to get counsel from the assigned commissioners in  
15 two proceedings: R.02-01-011, which is the cost  
16 responsibility surcharge proceeding; and also this  
17 proceeding. Frankly, we thought the issue of the cost  
18 responsibility surcharge may have been most  
19 appropriately addressed in R.02-01-011.

20 When we actually did get the meetings with  
21 the assigned commissioners' meetings offices on  
22 May 10th, it was the unanimous recommendations of  
23 the advisors that we bring the issue in this proceeding.  
24 So that is largely the cause of the delay.

25 We understand the consequences of that and  
26 would propose mitigation measures as we have.

27 ALJ MALCOLM: Sure.

28 MR. BLAISING: But definitely appreciate their

1 view. It wasn't a desire to simply come in at the last  
2 minute.

3 ALJ MALCOLM: Sure.

4 And I also appreciate that our proceedings on  
5 these topics are very complicated and sometimes we  
6 ourselves have to kibitz about where various issues  
7 should be raised. So I understand that.

8 For those of you who objected to allowing this  
9 testimony in, I will make sure that you have plenty of  
10 time to prepare and -- I mean, if we have to recess the  
11 hearings for a couple of days or whatever, that's fine.  
12 I don't want to prejudice you in that way at all. All  
13 right?

14 MR. BUCHSBAUM: Thank you, your Honor.

15 ALJ MALCOLM: So for right now, we will put Inland  
16 Valley Development Agency's testimony last and we'll  
17 choose a day as time goes on and as parties get some  
18 idea of their need for preparation time.

19 Let's go off the record.

20 (Off the record)

21 ALJ MALCOLM: We'll be back on the record.

22 If there's nothing further, Mr. Ulmer may  
23 present his witness.

24 MR. ULMER: Thank you, your Honor.

25 Good morning. Andrew Ulmer on behalf of  
26 the California Department of Water Resources.

27 Your Honor, the Department of Water Resources  
28 would like to call its witness, Mr. C. James McMahon.

1 ALJ MALCOLM: All right. Mr. McMahon, will you  
2 please raise your right hand.

3 C. JAMES MC MAHON, called as a  
4 witness by California Department of Water  
5 Resources, having been sworn, testified  
6 as follows:

6 ALJ MALCOLM: Thank you.

7 Go ahead, Mr. Ulmer.

8 MR. ULMER: Your Honor, the Department has  
9 previously distributed via electronic mail as well as  
10 hard copies to the commission two documents. The first  
11 is entitled "Prepared Testimony of C. James McMahon" and  
12 is dated April 15th, 2004. The second document is  
13 entitled "Prepared Reply Testimony of C. James McMahon"  
14 and is dated May 7th, 2004. The Department would  
15 request that these documents be marked for  
16 identification as first in order.

17 ALJ MALCOLM: All right. We'll mark Mr. McMahon's  
18 prepared testimony as Exhibit 1 and his reply testimony  
19 as Exhibit 2.

20 (Exhibit Nos. 1 and 2 were marked  
21 for identification.)

22 MR. ULMER: Thank you, your Honor.

23 DIRECT EXAMINATION

24 BY MR. ULMER:

25 Q Mr. McMahon, good morning.

26 Do you have the materials marked as Exhibits 1  
27 and 2 before you?

28 A Yes, I do.





1 ALJ MALCOLM: It's only because you're on that end  
2 of the table.

3 CROSS-EXAMINATION

4 BY MR. SZYMANSKI:

5 Q Good morning, Mr. McMahon.

6 A Good morning.

7 Q I have a couple of questions about the  
8 document marked as Exhibit 2, and on page 4 of that  
9 document are my questions. I'm sorry, page 3, please.

10 At the end the first full paragraph on that  
11 page, your testimony indicates that:

12 ...the Department indicated that  
13 it did not include community  
14 aggregation in its 2001 forecasts  
15 when it negotiated its long-term  
16 power contracts.

17 That's your testimony?

18 A Yes.

19 Q Mr. McMahon, did the DWR include community  
20 aggregation in any forecasts when it negotiated its  
21 long-term power contracts?

22 A No.

23 Q Now with respect to SDG&E, did the department  
24 forecast any community aggregation for SDG&E then in any  
25 of its forecasts?

26 A No.

27 MR. SZYMANSKI: Thank you.

28 That concludes my questions.

1 ALJ MALCOLM: Thank you, Mr. Szymanski.

2 Mr. Buchsbaum.

3 MR. BUCHSBAUM: Yes.

4 CROSS-EXAMINATION

5 BY MR. BUCHSBAUM:

6 Q Good morning --

7 A Good morning.

8 Q -- Mr. McMahon. I'm Craig Buchsbaum with  
9 PG&E.

10 I'd like to just follow up a bit on those  
11 questions, if I might.

12 What I understand that sentence to be saying  
13 is basically you made no reduction in your load forecast  
14 to reflect CCA; is that -- is that a fair --

15 A That's correct.

16 Q -- statement.

17 And do you recall whether those -- I take it  
18 those load forecasts spanned a number of years; is that  
19 correct?

20 A I believe, originally, we were using forecasts  
21 provided by the IOUs or public information from the IOUs  
22 from the year 2000. And at that point we modified those  
23 forecasts going forward for specific provisions for  
24 conservation, price elasticity, for instance, and then  
25 any changes in load growth that we forecast differently  
26 from the IOUs.

27 Q So I'm assuming that there was some escalation  
28 factor to reflect load growth; is that correct?

1           A    That's right.  I believe we used a 2 percent  
2 growth rate.

3           Q    Okay.  Can you please turn to Exhibit 1,  
4 page 4, of your testimony.

5                    I would just like to ask you some questions  
6 about what I think is an evident implication but not  
7 explicitly stated.

8                    In the middle of page 4, immediately preceding  
9 footnote 2, you have a sentence which reads:

10                   Any CRS paid by CCA to the  
11                   Department will offset revenues  
12                   from bundled customers.

13                   Do you see that sentence?

14           A    Yes.

15           Q    Now my understanding is that given then a  
16 specific revenue requirement to the extent of DWR, that  
17 to the extent the CCAs would pay less, the remaining  
18 customers would have to pay more; is that correct?

19           A    That's correct.  The department calculates one  
20 revenue requirement.

21           Q    And to the extent the -- conversely, to the  
22 extent the CCAs paid more, the bundled customers and the  
23 remaining customer would pay less?

24           A    That's correct.

25           Q    Thank you.

26                    Can you turn to page 17 of Exhibit 1, please.  
27 In the middle paragraph, the last sentence says:

28                    It is important to note that even

1           relatively small changes in  
2           certain variables could  
3           significantly affect the  
4           indifferent rate.

5           Do you see that sentence?

6           A    Yes.

7           Q    Now I would believe there would be a fair  
8           implication from that that that sentence indicates that  
9           it would be difficult to predict with any accuracy a CRS  
10          in advance with any degree of certitude; is that  
11          correct?

12          A    I think given that the variables -- one of the  
13          variables that significantly impacts the CRS is gas  
14          prices, and at least in the recent history they have  
15          been quite difficult to forecast, that would be a  
16          correct statement.

17          Q    And would it also be correct to say that the  
18          CRS is -- given -- given the way that it can fluctuate  
19          in terms of gas prices and other variables that it has a  
20          fair degree of volatility associated with it?

21          A    We haven't determined exactly the volatility,  
22          but I would assume there is a high degree of volatility.

23          Q    And you are at least somewhat familiar with  
24          option theory?

25          A    Sure.

26          Q    And I take it that the higher the volatility,  
27          the more valuable the option --

28          A    Yes.

1 Q -- if one is granted?

2 Thank you.

3 Now, finally, I'd like to turn to your  
4 equations, which I found quite interesting, on page 9 of  
5 your prepared testimony, Exhibit 1. And I notice that  
6 the Equation No. 2 reflects spot -- reflects reductions  
7 in terms of trying to calculate the difference. It  
8 reflects a savings to bundled customers, if you will,  
9 equal to the spot price of power.

10 Now maybe you could explain that a little bit  
11 better than I just did, but looking at the equation,  
12 PCCA-in minus MCP times -- times the migrating load,  
13 what you're referring to there is that you're comparing  
14 the average price with CCA-in to a savings that takes  
15 place equal to the marginal cost; is that -- is that a  
16 fair statement, or maybe you can help me with that.

17 A I wouldn't use the term "savings."

18 I think this equation captures the uneconomic  
19 costs associated with the bundled customer portfolio if  
20 you use the spot price as the measurement of a market  
21 price benchmark. So this is capturing the difference in  
22 the average portfolio price, average bundled portfolio  
23 price, minus the average spot price times the amount of  
24 migrating load.

25 Q So the idea in looking to the first equation,  
26 you are comparing the average price with CCA-in to the  
27 average price with CCA-out, and you're saying that that  
28 basically through the CRS has to say the same; is

1 that -- is that a fair statement on Equation 1?

2 A In Equation 1, we are comparing the average  
3 price that bundled customer pay with CCA-out versus the  
4 average price they pay with CCA-in. The average price  
5 they pay with CCA-out is typically higher than the  
6 CCA-in.

7 Q Right.

8 A To offset that difference in price, that price  
9 differential is multiplied by the bundled load, the  
10 total bundled load for CCA-out.

11 So, for instance, if you had -- if CCA-out --  
12 the price of CCA-out was \$15 a megawatt-hour and the  
13 price of CCA-in was \$10 a megawatt-hour, it would be a  
14 \$5 differential.

15 To get CCA-in -- to get the CCA-out price down  
16 to the \$10 from \$15 a megawatt-hour down to the  
17 \$10-megawatt-hour price would require a payment of \$5 a  
18 megawatt-hour, the difference, times the bundled load.

19 Q Well, one way I think about the equations is  
20 to think of the term "contribution to margin." Are you  
21 familiar with that term at all?

22 A I'm familiar with the term, but --

23 Q Well, the way I would look at it -- and I  
24 don't know if this is a fair representation -- is that  
25 if you look at a customer, the cost of serving a  
26 customer as being an avoided cost, current spot cost,  
27 and that customer has to pay some margin above that to  
28 cover the utility's remaining average cost, that margin

1 has to stay the same whether the customer is -- whether  
2 the customer is CCA-out or the customer is CCA-in.  
3 That's another way of --

4 MR. ULMER: I'll object. I think it calls for  
5 speculation.

6 MR. BUCHSBAUM: I don't think it calls for  
7 speculation. It's trying to explain the theory behind  
8 the equation.

9 ALJ MALCOLM: Well, he could say that it's a  
10 hypothetical.

11 MR. ULMER: Absolutely.

12 ALJ MALCOLM: One thing I'm not clear on, though,  
13 is when you say CCA-out versus CCA-in, do you mean for  
14 the entire equation or just with regard to the one  
15 customer?

16 MR. BUCHSBAUM: The equation, as I understand it,  
17 works in totality, that CCA-in is a hypothetical  
18 assuming there was no CCA. And then you look at  
19 CCA-out, which is reality, which is what happens after  
20 there's migrating load to CCA. So you're comparing the  
21 average cost under the hypothetical of CCA-in with the  
22 reality of CCA-out; is that --

23 A That's correct.

24 ALJ MALCOLM: And do you understand how that  
25 relates to the question?

26 THE WITNESS: I would need him to repeat the  
27 question.

28 MR. BUCHSBAUM: Q Okay. The question that I'm



1 asking is that Equation 2, as I look at it in trying to  
2 articulate what it means, is that when CCA is out, the  
3 contribution that each CCA customer needs to make to the  
4 remaining average cost of the utility should stay the  
5 same because basically the spot price is -- in the  
6 CCA-out the utility would be saving the spot price of  
7 power; isn't that -- let's assume that there's only  
8 sales that are going on.

9 A There's only surplus sales?

10 Q I'm sorry, purchases that are being avoided.  
11 So, basically, the avoided cost that is being saved when  
12 CCA leaves is the utility is saving the spot price of  
13 power. That represents the savings that the utility is  
14 not incurring by the fact that CCA is departing.

15 ALJ MALCOLM: Is that your question?

16 MR. BUCHSBAUM: Yes.

17 Q Isn't that correct?

18 A I think in aggregate that's correct, that the  
19 utility is saving spot purchase costs. But that has an  
20 impact on the rate to bundled customers.

21 Q Yes. And what I'm trying to drive at is that  
22 the -- the excess, if you will, that --

23 ALJ MALCOLM: The margin.

24 MR. BUCHSBAUM: Q -- the contribution to margin  
25 that I'm referring to that those customers had to make  
26 whether they remained as bundled customers or whether  
27 they went to CCA customers, namely, the amount that they  
28 pay in excess of the spot price has to stay the same

1 whether they are in or whether they are out.

2 A I would agree with that.

3 Q Okay.

4 ALJ MALCOLM: I want a clarification, though.

5 Is an implication of your question that the  
6 utilities' overheads don't change when they lose load if  
7 a CCA migrates?

8 MR. BUCHSBAUM: Yes. Yes, the average -- the  
9 utilities' overheads stay the same, but the utilities'  
10 marginal costs diminish. In other words, the spot  
11 prices.

12 ALJ MALCOLM: Does this witness understand that?

13 MR. ULMER: Can I take a stab at this? I'm  
14 probably making a big mistake, but is the question the  
15 hypothetical CCA load has some contribution to make to  
16 the utility's margin, cost of the margin?

17 MR. BUCHSBAUM: It's the contribution to the  
18 average cost is the -- is the excess over the marginal  
19 cost of providing those customers with power.

20 ALJ MALCOLM: And your question is, is that true  
21 in fact or is that --

22 MR. BUCHSBAUM: That is my understanding of what  
23 Equation 2 is saying. And that's what I'm -- I'm trying  
24 to articulate it rather than just putting it -- putting  
25 a formula down on paper, I'm trying to explain -- not  
26 well, I'm afraid, because it is a difficult concept --

27 ALJ MALCOLM: It is.

28 MR. BUCHSBAUM: -- but that the contribution that

1 the customers that are departing are asking to make  
2 above the marginal cost of serving them stays the same  
3 whether they were with the utility or whether they were  
4 with the CCA. That's what this formula says. ]  
5 That is what this says.

6 THE WITNESS: I agree with that. Let me expand  
7 upon it a little bit because I think that the idea  
8 behind Equation 2 is that we are looking at the  
9 uneconomic costs that all customers, whether they are  
10 bundled or CCA, they are sharing in the uneconomic costs  
11 of the portfolio. So whether they are on bundled  
12 service, they are sharing in those costs, or whether  
13 they move to community choice, they are sharing in those  
14 uneconomic costs as defined by the bundled price minus  
15 the MCP.

16 So to that extent I would agree with your  
17 statement. And one of our simplifying assumptions  
18 perhaps, and this gets to your question, is that URG  
19 costs stay the same between CCA-in and CCA-out. So to  
20 that extent there is no changes in fixed overhead.

21 MR. BUCHSBAUM: Q Right. That really gets to the  
22 whole line of questioning I was trying to get at in the  
23 final question, which is you have used spot price as the  
24 marginal cost essentially in this Equation 2, but over  
25 time as CCA develops and takes load, if you will, away  
26 from -- enters into its own long-term procurement, isn't  
27 it fair to say that the savings that the utility  
28 generates, in other words, the MCP, would change from

1 being a spot price concept to some other perhaps longer  
2 term type of concept?

3 MR. ULMER: Objection. Calls for speculation.  
4 But if the witness has an opinion --

5 ALJ MALCOLM: So your question isn't with  
6 reference to the model, but --

7 MR. BUCHSBAUM: It is with reference to various  
8 statements that are made throughout the testimony about  
9 New World power being excluded. I am merely asking how  
10 the model would work if we started to consider New World  
11 procurement, which is in the testimony.

12 ALJ MALCOLM: Mr. Ulmer.

13 MR. ULMER: That's fine.

14 THE WITNESS: I think at this point in time we  
15 made an assumption that the URG is fixed because we  
16 don't have a good assessment of how utilities would sign  
17 new contracts. And really the point of this exercise  
18 was only to illustrate potential range of charges.

19 I do agree, however, that the CCA-in run would  
20 be longer term, would be different from the CCA-out run  
21 in terms of URG volumes potentially because obviously if  
22 the utility is having to procure for CCA load, would  
23 probably enter into new contracts or build for that  
24 purpose.

25 With the CCA being out, that wouldn't be the  
26 case. But, of course, on the other side of the equation  
27 is the CCAs could be building in their own right.

28 MR. BUCHSBAUM: Q The point is that CCA-in is

1 going to have to build into it a hypothetical  
2 circumstance for what would have been done if CCA had  
3 remained, quote, in?

4 A That's correct.

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

6 ALJ MALCOLM: Thank you, Mr. Buchsbaum.

7 Ms. Shigekawa.

8 CROSS-EXAMINATION

9 BY MS. SHIGEKAWA:

10 Q Good morning, Mr. McMahon.

11 On page 4 of your opening testimony, you refer  
12 to some of IOU information that most of the parties to  
13 this proceeding aren't able to review.

14 Do you see that?

15 A Yes.

16 Q In the middle of the page there.

17 Can you describe the nature of that  
18 information and what it pertains to.

19 A To forecast our retail revenue requirements  
20 each year requires we run Prosym to understand the  
21 estimated impact on market clearing prices, the contract  
22 dispatch and the URG dispatch so that we have a  
23 reasonable forecast of our own contract deliveries and  
24 our ultimate costs.

25 To do that accurately requires that we have  
26 updated information from the IOUs about the QF  
27 contracts, their own URG, in addition to their sales  
28 forecasts that are all, in some cases, kept

1 confidential.

2 I think we attempt to use public information  
3 for sales forecasts, but at least the URG information in  
4 a detailed level is confidential.

5 Q So that was the utility-retained generation  
6 information?

7 A Right.

8 Q On page 11 of your testimony, under Case 1,  
9 Prosym Run 44, you refer to a number of assumptions that  
10 affect the CRS calculation.

11 Can you please explain which of those are  
12 based on data provided by the IOUs and which are made by  
13 DWR independent of IOU-provided data?

14 A Are you referring to the second sentence?

15 Q Correct.

16 A The load forecast is as provided by each of  
17 the IOUs. The QF hydro, nuclear, coal and power  
18 purchase agreements, I believe those are all provided by  
19 the IOUs, or we might make some adjustments to the  
20 forecasts, especially for hydro. Gas prices, DWR  
21 develops its own gas price forecast. Retirement  
22 schedules, I believe those are provided by the IOUs.  
23 Nuclear outages is by the IOUs. Of course, DWR updated  
24 contract terms, those are from DWR.

25 Q Okay. Thank you.

26 On the same page you describe a number of  
27 other cases, and then on page 16 you provide an  
28 interpretation of the results under various cases.

1           Do you see that on page 16, middle of the  
2 page?

3           A    Yes.

4           Q    Do you agree that the forecast of gas prices  
5 and capacity additions seem to have the most impact on  
6 the level of the CRS?

7           A    Yes.

8           Q    And on page 16 of your testimony in the last  
9 sentence, it says: Similarly, when capacity additions  
10 are constrained, market prices rise, leading to a higher  
11 indifference shortfall.

12                   Should that word "higher" in the sentence be  
13 changed to "lower"?

14           A    Yes. Thank you.

15           Q    And going back to page 6 of your opening  
16 testimony, you refer to utility-retained generation cost  
17 information received from the IOUs.

18                   Do you see that?

19           A    Received in consultation with the IOUs?

20           Q    Right.

21           A    Yes.

22           Q    Do you have a general understanding based on  
23 your communication with the IOUs as to the source of the  
24 URG cost data provided by the IOUs for the purpose of  
25 the CRS modeling?

26           MR. ULMER: I will object. The question is vague  
27 and ambiguous. Maybe counsel can restate it.

28           MS. SHIGEKAWA: Q When the IOUs provided you that

1 URG data, did they explain to you where they had gotten  
2 that data?

3 A I believe they did, but I can't recall.

4 Q Do you know whether it is based on either  
5 recorded data or forecast data based on an adopted  
6 revenue requirement for the following year?

7 A Again, I believe it was based on an adopted  
8 revenue requirement, but I'm not certain.

9 Q In any Case, if the Commission adopts an  
10 annual true-up of the CCA CRS, then the IOUs could  
11 provide recorded URG data to DWR for the CCA CRS to be  
12 trued up; is that your understanding?

13 A Yes.

14 Q And as part of the CRS modeling that you have  
15 done, you have provided illustrative calculations to  
16 show the amount of the undercollection in any year if  
17 the CCA CRS is capped. Does DWR advocate a cap on the  
18 CCA CRS?

19 A DWR is indifferent to whether there is a cap  
20 or not.

21 Q On page 9 of your opening testimony, you show  
22 Equation 1 at the top of the page and Equation 2 in the  
23 middle of the page and state that under the assumption  
24 that migrating load affects only bundled spot purchases  
25 and surplus sales volumes, that these two equations are  
26 mathematically the same.

27 Do you see that?

28 A Yes.



1           Q    Is there another assumption; namely, that spot  
2 purchases and surplus sales are both transacted at the  
3 market clearing price that is necessary for Equation 1  
4 to be, as you say, distilled into Equation 2?

5           A    Yes, I agree with that.

6           Q    Do you agree that Equation 2 simply means that  
7 the indifference rate to be paid by migrating load is  
8 the same as the total of the stranded costs of URG and  
9 DWR contracts?

10          MS. GRUENEICH:  Objection, without clarification  
11 of what is meant by stranded costs.  I am not sure it is  
12 a term used in this testimony.

13          MS. SHIGEKAWA:  Q   The term stranded costs refers  
14 to above-market costs.

15          A    I think the question was do these represent  
16 the total above-market costs.  And in this expression it  
17 is not the total above-market cost.  It is only the  
18 above-market costs allocated to the migrating load.

19          Q    On page 21, in the second section, you state  
20 that to treat the recovery of forecasted above-market  
21 costs like stranded costs may not strictly maintain  
22 bundled ratepayer indifference.

23                   Is the reason for your opinion that forecast  
24 costs may be different from actual costs?

25          A    That's correct.

26          Q    Some parties have proposed in their testimony  
27 a pro rata allocation of DWR contracts to CCAs in lieu  
28 of a CCA CRS related to those contracts.  Does DWR have

1 a position on this proposal?

2 MR. ULMER: I will object. Just if you could  
3 clarify maybe which parties made a proposal and what  
4 exactly you mean by pro rata allocation contracts? ]

5 MS. SHIGEKAWA: What I mean by pro rata allocation  
6 is instead of calculating a CRS, the CCAs would take a  
7 portion of the long-term contracts that DWR entered into  
8 in 2001.

9 MS. GRUENEICH: Objection. Without further  
10 clarification as to which specific parties are being  
11 referred to in stating this is the position of  
12 the parties in the case and establishing a foundation  
13 that the witness is familiar with that testimony;  
14 further, that it is relevant to the testimony being  
15 presented today by the witness.

16 MR. ULMER: Your Honor, if I may, Ms. Grueneich's  
17 points are well taken. The Department has submitted  
18 I think in this proceeding -- in the context of this  
19 proceeding earlier communication to the Commission  
20 I think at the same time the parties submitted comments  
21 to the Commission; I think it was last fall. That issue  
22 was raised in that communication, it was a memorandum  
23 from the Department. It isn't a memorandum or  
24 information that this witness is sponsoring; however, to  
25 the extent the witness has an opinion about it, I don't  
26 object to him answering.

27 ALJ MALCOLM: All right. And then you were also  
28 concerned with --

1 MS. GRUENEICH: Which parties are being referred  
2 to, and has the witness reviewed the testimony of those  
3 parties in reaching a conclusion as to whether their --  
4 how they proposal fits in -- his opinion on the  
5 proposal, I guess, is what would be next.

6 MS. SHIGEKAWA: Q I believe it was Cal-CLERA that  
7 raised this proposal of allocating the DWR contracts to  
8 CCAs. Did you read that testimony, and do you recall  
9 that?

10 A I recall that.

11 Q Does DWR have a position on that proposal?

12 A I would simply restate what our memo of  
13 October 22nd of 2003 provided is that we have some  
14 concerns, especially logistically, with how this would  
15 work.

16 There's been, obviously, a lot of work going  
17 on in a separate proceeding in terms of allocating  
18 the contracts to the IOUs and market-to-market  
19 evaluation issues. So that's one major problem I would  
20 see, is how do you value these contracts and how do you  
21 split them if it's not a physical allocation,  
22 the financial allocation.

23 A second issue would be any servicing  
24 agreements that potentially the Department would have to  
25 sign with each community choice aggregator to provide  
26 for remittance of the DWR power charge because no longer  
27 would they be paying a CRS potentially, but they'd also  
28 be paying -- or they could be paying instead the actual

1 DWR contract rate, the rate that comes out of the  
2 revenue requirement proceeding.

3 Another issue would be contract  
4 renegotiations. Right now, at least in the settlement  
5 agreement, in a separate proceeding between I think  
6 Edison and PG&E, there's some discussion about if  
7 there's renegotiation, that there be some reconstruction  
8 of the allocation; how would that work for CCAs.

9 So there's a number of issues that come up in  
10 this context. And I don't think the Department has a  
11 position either way definitively.

12 MS. SHIGEKAWA: Thank you.

13 I have no further questions.

14 ALJ MALCOLM: Thank you.

15 Does ORA have any questions?

16 MR. REIGER: Yes.

17 CROSS-EXAMINATION

18 BY MR. REIGER:

19 Q Good morning. My name is Jason Reiger  
20 representing ORA here.

21 Have you seen ORA's suggestions on vintaging  
22 the CRS in its testimony?

23 A Yes.

24 Q And would you be able to implement such  
25 vintaging in your models?

26 A Yes. I would believe we would be able to,  
27 though at this point we haven't attempted that.

28 Q Would you know how it would be done?

1           A    I think on a general basis, we'd have to use  
2 separate PROSYM runs for each set of customers.  But in  
3 any more detail, no.

4           Q    So you would have to have several batches of  
5 data that you would remove or apply for vintage;  
6 correct?

7           A    Several.  If you use the term "batches" to  
8 mean sets of assumptions --

9           Q    Yes.

10          A    -- correct.

11          Q    And do you have any idea about how much effort  
12 this would take compared to just having one set CRS?

13          A    No, I don't.

14          Q    In your testimony Exhibit 1, page 11, you have  
15 five model cases, and I was just wondering if you could  
16 give me a general statement about the intent of these  
17 cases.

18                   Was the intent to demonstrate the impact of  
19 various different variables on the CRS?

20          A    I think one of the attempts was to illustrate  
21 the impact of specific variables on the range of  
22 the CRS, sort of an elasticity effect on some of these  
23 variables.

24                   Another reason was to show the impact,  
25 potentially, of a cap within the model itself.

26          Q    Thank you.

27                   Would you be able to estimate a maximum bound  
28 for the upper and lower CRS?

1           A    Not definitively.

2                    I would say that this was an attempt to  
3 isolate the upper and lower bound Case 2 and Case 3  
4 where we say a stress low CRS, stress high CRS. We  
5 identified the key variables that impact the CRS such as  
6 the generation additions, gas prices, and load growth.  
7 And we stress them after consultation with all of  
8 the parties to ranges that we thought were fairly  
9 extreme.

10                   So I think it gives a reasonable expectation  
11 as to the range of values, but I -- there's a lot of  
12 different factors. And obviously, just the whole issue  
13 of if there's different new world assumptions built in,  
14 how new world factors could change the range of the CRS.

15           Q    In the same line of questioning: Could you  
16 also give an estimate about what the CRS would be  
17 regardless of upper and lower bounds? And would that be  
18 Case 1 of your modeling scenarios?

19           A    Case 1 presents our most -- at least in  
20 February, the February time frame, our most updated data  
21 with respect to gas prices and URG forecasts and  
22 the forecasts of loads. So at that point in time, that  
23 would be our best guess, though I have to say I don't  
24 think at that point we consulted greatly with the IOUs  
25 about their own procurement forecasts. And if we were  
26 to be doing this for real and actually setting a rate at  
27 this point, I think we'd go through a more extensive  
28 effort in terms of obtaining IOU forecast information --

1 procurement information.

2 Q Okay. Thank you.

3 A couple of final questions.

4 Would you expect generation additions to move  
5 in the opposite direction from gas prices and load  
6 growth?

7 MR. ULMER: I'll just object and ask maybe that  
8 you clarify by "move in the opposite direction."

9 MR. REIGER: Q A different scenario. If load  
10 growth increases and gas prices increase, would you also  
11 expect generation additions to increase?

12 A I'm not sure.

13 MR. REIGER: No further questions. Thank you very  
14 much.

15 ALJ MALCOLM: Thank you, Mr. Reiger.

16 Ms. Grueneich, did you have questions?

17 MS. GRUENEICH: I believe actually, if it's all  
18 right, Mr. Como can go before me.

19 ALJ MALCOLM: Sure.

20 MR. COMO: I didn't have any questions.

21 MS. GRUENEICH: I'll proceed. We'll move right  
22 away.

23 CROSS-EXAMINATION

24 BY MS. GRUENEICH:

25 Q Good morning. I'm Dian Grueneich. I'm  
26 representing the Local Government Commission Coalition,  
27 LGCC, in this case.

28 Turning to your opening testimony, Exhibit 1,

1 on page 12, in the first paragraph you state that the  
2 results presented in Section 4 below assume that  
3 10 percent of total retail load is CCA in 2005 and  
4 beyond -- that 10 percent of the total retail load is  
5 CCA in 2005 and beyond.

6 Just to clarify: Are you assuming -- when you  
7 refer to the total retail load, is that total bundled  
8 retail load?

9 A No. That's total bundled plus direct access  
10 plus potential CCA load. It's the entire retail base.

11 Q So in other words, if we took what is  
12 the bundled and DA load, add them up, then 10 percent of  
13 that is what you are assuming is CCA?

14 A That's correct.

15 Q And am I -- let me rephrase that.

16 Do you know what approximately is the current  
17 percentage of total retail load that is DA today?

18 A I don't -- I haven't looked at the recent CPUC  
19 estimates. I would assume it's in the 12 to 13 percent  
20 range.

21 Q Is there a reason why you did not take  
22 the total bundled retail load in making your assumption  
23 as to what was CCA?

24 A I believe the reason we used total retail load  
25 is that simply is how our forecasts work.

26 We have a total retail load forecast and from  
27 that we extract direct access using a percentage of  
28 total retail load. So we use the same methodology to



1 extract what would be potentially CCA load.

2 Q So embedded in this is the assumption, am I  
3 correct, that 10 percent of DA load would migrate to CCA  
4 and 10 percent of bundled load would migrate to CCA?

5 A No. I don't think that's an explicit  
6 assumption. I guess you could potentially draw that as  
7 one possible conclusion, but I don't think that's a  
8 necessary conclusion.

9 Q So in other words, it could equally be zero  
10 percent of DA migrates to CCA. But if that were the  
11 case, then you would have a higher percentage of bundled  
12 load, would be the assumption, migrating to CCA?

13 A That's correct.

14 Q Is there any difference in the results that  
15 are derived in Section 4 in terms of whether it is DA or  
16 bundled customers that are migrating to CCA? In other  
17 words, is your model indifferent as to which customer,  
18 whether it's a CCA customer or a bundled customer, that  
19 migrates to CCA?

20 A Yes. That would have some relevance on  
21 the final calculation.

22 Q On page 22 --

23 A Can I clarify that statement, though?

24 Q Certainly.

25 A Because we do, in fact, forecast direct access  
26 within the model as well. And so we would not -- we do  
27 not make any adjustment to the direct access load when  
28 we assume this 10 percent or 20 percent or whatever

1 load's assumed in the model. It's something the user  
2 can toggle, but we don't make an adjustment to the  
3 direct access load based on that user-defined adjustment  
4 to the CCA load.

5 So my answer would be that we do, in fact,  
6 indicate that it's bundled load that's migrating.

7 Q Thank you.

8 On page 22 of your testimony under the  
9 correction to Case 4 results -- I apologize if everybody  
10 else in this room has this -- but did in fact DWR  
11 provide an update to Case 4 --

12 A No --

13 Q -- prior to the hearings?

14 A No. We have not provided that to the parties.  
15 So we can provide that subsequent or even during  
16 the hearings. We have the data available.

17 MS. GRUENEICH: I would request that it be  
18 provided, but I don't think that we'll need an  
19 opportunity to bring the witness back for  
20 cross-examination. But I believe that to the extent  
21 there is updated information, if it could be provided to  
22 the parties.

23 ALJ MALCOLM: Mr. Ulmer?

24 MR. ULMER: Your Honor, that's no problem. We'd  
25 be happy to provide it.

26 I think Mr. McMahon's testimony already  
27 estimates the impact that the update would provide, but  
28 we'd certainly be willing to provide a late-filed

1 exhibit or an exhibit after Mr. McMahon leaves  
2 the witness stand. That shouldn't be a problem.

3 If there's a need to bring him back, we can do  
4 so and/or answer questions through an interrogatory  
5 process.

6 ALJ MALCOLM: All right. Thank you.

7 MS. GRUENEICH: Q In the indifference rates that  
8 you show in your opening testimony on page 14, you note  
9 that this includes, in your Footnote 7, just the CTC and  
10 the DWR power charge components.

11 Is the CTC component provided to DWR as an  
12 input to the modeling process or is the CTC component an  
13 output from the modeling process?

14 A It's provided by the IOUs to DWR as an input.

15 Q And is the CTC input that was provided part of  
16 the information that is designated as confidential?

17 A I can't recall whether in this proceeding we  
18 provided the CTC within the model -- if the CTC rate is  
19 within the model or not. I don't believe it is  
20 confidential information. It has not been in the past.  
21 I thought we had provided it within the model, but  
22 perhaps not.

23 Q And do you know whether the CTC information  
24 that the IOUs provide DWR as an input to the model is a  
25 CTC number that the Commission has adopted and approved  
26 or alternatively it is a CTC forecast from the IOUs?

27 A I think for the years we're concerned with  
28 here, it's a forecast provided by the IOUs.

1           Q    And in terms of the discussion that's been had  
2 of the annual true-up, does the annual true-up then  
3 include a true-up of the actual Commission approved CTC  
4 versus the forecast CTC number?

5           A    Are you asking would a true-up include --

6           Q    Yes.

7           A    -- potentially?

8                    I'm not exactly certain how that would work.  
9 I think -- I believe the IOU CTC rates are set -- well,  
10 they're going to be set in the ERRRA proceeding. So in  
11 some way, that number would have to be adopted in this  
12 proceeding or in a proceeding to true-up these figures.

13           Q    Would you -- I'm sorry. Would you consider  
14 reasonable that there be a true-up in terms of what was  
15 the forecast versus what is the actual  
16 Commission-approved CTC charge?

17           A    I don't think we have an opinion specifically  
18 on the CTC.

19                    True-up: Certainly on the DWR costs, we think  
20 those should be trued up.

21           Q    On page 20 of your opening testimony, your  
22 last sentence states that,

23                    The Department believes therefore  
24 that communities considering CCA  
25 should be less focused on  
26 the forecasted CRS rate itself, as  
27 this rate will fluctuate inversely  
28 to market prices, the likely

1 driver of the CCA's own  
2 procurement costs, and more  
3 focused on the variables that  
4 drive rate differences between  
5 themselves and bundled customers.

6 Am I correct in understanding that  
7 the reference there to rate differences between  
8 themselves and bundled customers would be referring to  
9 the two components in the CRS indifference rates; that  
10 is, the CTC and the DWR power charge components?

11 A I think what I was referring to here are  
12 the costs for the CCA's own procurement, their own  
13 procurement costs. That basically the IOU costs --

14 Let me step back.

15 Could we come back to that question after I've  
16 had time to review some notes in my computer? Is that  
17 possible?

18 MR. ULMER: Do you have the question in mind  
19 specifically --

20 THE WITNESS: Yeah.

21 MR. ULMER: -- about what's being referred to as  
22 rate differences?

23 THE WITNESS: Yeah, I -- I understand --

24 MR. ULMER: That was the question; right?

25 MS. GRUENEICH: Yes. As I read it, that it was  
26 saying that you shouldn't focus on forecasts but --

27 MR. ULMER: Focus on the variables.

28 MS. GRUENEICH: Right. And my --

1 ALJ MALCOLM: Is this a good place for a break?

2 MS. GRUENEICH: Yes.

3 ALJ MALCOLM: We'll be in recess until 11:15.

4 (Recess taken)

5 ALJ MALCOLM: Please come to order.

6 Ms. Grueneich.

7 MS. GRUENEICH: Thank you.

8 Q I believe that over the break you were going  
9 to clarify an answer that you had to the question that I  
10 had pending. So if you have the question in mind, do  
11 you have an answer?

12 A Yes, I do.

13 The point of the statement on page 20 was that  
14 both bundled customers and potential CCA customers would  
15 be sharing in the -- would all be responsible for  
16 the above-market costs of the bundled portfolio. So  
17 what's left over is the generation rate or  
18 the below-market generation rate of the IOU's portfolio  
19 and what it costs the CCAs to procure load themselves.  
20 And to the extent that they can procure load at a --  
21 procure resources at a lower price, that's where  
22 the rate difference is. But those would be  
23 the variables that drive rate differences between  
24 themselves and the IOUs.

25 Q Okay. And to follow up with your answer then,  
26 again turning back to page 14, taking the indifference  
27 rates which have the two components -- the CTC and the  
28 DWR power charge components -- is it true then that

1 a CCA --

2 Let me back up.

3 In the answer that you just gave, was it based  
4 upon the assumption that a bundled customer and a CCA  
5 customer would pay the same CTC charge?

6 A Yes.

7 Q And was it also bundled [sic] upon the  
8 assumption that a CCA and a bundled customer would pay  
9 the same DWR power charge components?

10 A No.

11 Q Could you please explain that answer.

12 A The bundled customers pay the DWR power charge  
13 based on contract deliveries of DWR power. CCA  
14 customers would not be receiving DWR power, at least  
15 under the scenarios that we have provided. So CCA  
16 customers would be paying only the above-market portion  
17 of the DWR contract portfolio their pro rata portion.

18 Q And in --

19 Strike that.

20 In order to determine what is the differential  
21 then between the bundled customer paying the total DWR  
22 power charge and the CCA customer paying  
23 the above-market portion of the DWR power charge, where  
24 does one go to find that information?

25 A The bundled power charge or the bundled rates  
26 aren't presented here or the bundled -- the DWR power  
27 charge to the bundled customers is not presented in our  
28 results tables.

1 Q So one would look to the Commission --

2 A One --

3 Q -- tariffs that set the DWR bundled power  
4 charge?

5 MR. ULMER: I'll just object on the grounds that  
6 the use of the word "tariffs," what you mean by that.

7 MS. GRUENEICH: Q Do you know where one would go  
8 to look to find --

9 Let me back up.

10 Let's take a hypothetical that the Commission  
11 does adopt for year 2005 a PG&E indifference rate --  
12 I mean, a CCA CRS, and it uses the approach of having it  
13 as an indifference rate. It has a component of the CTC  
14 and the DWR power charge. It is my understanding that  
15 you have testified that the CTC component of that is  
16 known because it is an assumption provided by  
17 the utilities; is that correct?

18 A Yes.

19 Q Therefore, in order to determine the CCA DWR  
20 power charge, it would be the indifference rate less  
21 the CTC; am I correct?

22 A Yes.

23 Q Do you know then if a CT -- if a CCA customer  
24 wished to compare their above-market DWR power charge to  
25 the bundled customer DWR power charge, what source of  
26 information they would use to get that knowledge?

27 A My understanding of the process with the DWR  
28 revenue requirements, revenue requirements filed,



1 there's a Final Decision on that actual dollar amount  
2 that DWR requires to be made whole, and then the IOUs  
3 implement that revenue requirement specific to their  
4 utility service area through advice filings and  
5 developing a rate for DWR power based on the load  
6 forecasts that DWR used in determining revenue  
7 requirement and on costs that are allocated to those  
8 IOUs.

9 So, to me, that would be the source of  
10 the information for the DWR rate to bundled customers --  
11 for the DWR rate to bundled customers for DWR contracted  
12 power.

13 Q Thank you.

14 On page 22 of Exhibit 1, Footnote 11 states  
15 that "The Department does, however, include within  
16 the Prosym simulation power plant projects in California  
17 and the WSCC" -- "does...include within the Prosym  
18 simulation power plant projects in California and  
19 the WSCC that are likely to be completed."

20 Who made the determination as to which  
21 projects are likely to be completed?

22 A Staff within Navigant.

23 Q Are you aware that one of the issues that is  
24 in debate in this proceeding is what would be the CCA  
25 customer liability with regard to new world procurement?

26 A Yes.

27 Q As a hypothetical, if the Commission then  
28 makes a decision on how to treat new world procurement,

1 do you believe that --

2 (Cell phone rings)

3 MR. CASEY: Sorry.

4 MS. GRUENEICH: Q -- that DWR will then be able  
5 to take that as an input from the Commission and re-run  
6 the Powersym with a new world procurement assumption  
7 that is consistent with the direction given by  
8 the Commission?

9 A Yes. I think if the Commission gave us  
10 direction as to how to model new world, I think we could  
11 model accurately.

12 Q Are you familiar with the term "vintaging" as  
13 it's been used in this proceeding?

14 A Yes.

15 Q Could you explain your understanding of that  
16 term?

17 A My understanding is that potentially,  
18 different bunches of CCA load will migrate from  
19 the system in different years potentially, and that the  
20 whole idea of the vintaging would be that a separate fee  
21 or separate fee structure would apply to different  
22 groupings of CCA depending upon the year that they left  
23 and based upon the conditions at that time, especially  
24 with respect to new world power purchases made by  
25 the IOU during that time period.

26 Q I'd like to ask you as a hypothetical in which  
27 we are assuming vintaging is occurring.

28 And again, for clarification, I'm looking at

1 page 14, your table 1, the indifference rates.

2 MR. ULMER: So the hypothetical is that --

3 MS. GRUENEICH: I haven't given him the  
4 hypothetical yet. I'm sorry.

5 Q Could you please turn to page 14?

6 MR. ULMER: The premise of the hypothetical you're  
7 going to give is that the Commission has adopted a  
8 vintaging approach for the CRS.

9 MS. GRUENEICH: Yes. Thank you.

10 Q And then just as a hypothetical, let us  
11 assume that there is a Commission decision that says CCA  
12 is ready to go; therefore, any CCA customer that uses  
13 CCA in the year 2005, their CCA CRS is an average of  
14 Cases 1 through 5 and out of that comes some number.

15 It is my understanding that under vintaging,  
16 the Commission would then make a subsequent  
17 determination that, at some later point, probably in  
18 the year 2005, that said and now for any customer who  
19 joins in CCA in the year 2006, it would pay a CRS of  
20 again as a hypothetical, the average of Cases 1 through  
21 5. Is that your understanding, on a very simplistic  
22 basis, of how vintaging might work?

23 A That again they would pay the average of cases  
24 1 through 5, or it would be a new set of cases 1 through  
25 5 potentially.

26 Q Actually, I think you're correct.

27 Could you let -- instead of my putting words  
28 in your mouth, if we start off with the assumption

1 that --

2 I'd like to restate the hypothetical.

3 Let's start off with an assumption that the  
4 Commission makes a decision on all sorts of factors, one  
5 of which is the new world procurement rules that we  
6 decided upon. That DWR then ran different case  
7 scenarios, presented them to the Commission, and out of  
8 that the Commission then said for the year 2005, here is  
9 the CCA CRS.

10 In your understanding of vintaging, how would  
11 the CCA CRS for the next year then be derived?

12 A My --

13 Q Hypothetically be derived?

14 A Hypothetically, my understanding is that under  
15 a similar set of conditions -- meaning, a similar set of  
16 URG conditions -- a 2006 rate would be calculated for  
17 those customers who had moved as of 2005. They're a  
18 similar set of condition as of 2005, but perhaps updates  
19 to market price variables. ]

20 But for a set of customers who are migrating  
21 in 2006, perhaps there would be a new set of assumptions  
22 regarding what the IOUs had procured in that previous  
23 year or it scheduled to procure going forward in that  
24 prior year.

25 Q So that, essentially, one way to think about  
26 it is that for the customers who are in CCA, you are  
27 looking at inputs that may change the assumption with  
28 regard to their contribution to the CCA. And you are

1 also looking at assumptions with regard to the class of  
2 customers that would migrate in the year under  
3 consideration particularly with regard to New World  
4 procurement?

5 A Yes.

6 Q Do you believe that there would be any changes  
7 in CRS calculations -- or strike that.

8 In the scenario that we've just talked about,  
9 is there -- would there be an assumption of what is the  
10 projected CCA load in a particular year?

11 A I don't exactly understand the question.

12 Q In your testimonies we discussed at the  
13 beginning that there was an assumption that 10 percent  
14 of the retail load migrated to CCA.

15 A Right.

16 Q So I'm assuming that embedded within the  
17 modeling this assumption has carried through; is that  
18 correct?

19 A Embedded within the modeling the assumption  
20 has carried through?

21 Q I'm sorry. Let me strike that.

22 I'm assuming that the results shown on page 14  
23 reflect that assumption of 10 percent?

24 A Yes.

25 Q If in reality the actual migration were  
26 different from the 10 percent, would that be a factor  
27 that DWR would want to know in forecasting the CRS in  
28 subsequent years?

1           A    In forecasting the amount of CRS revenue, it's  
2 certainly important to know the amount of CCA load. But  
3 in terms of the actual indifference fee that's  
4 calculated here in the five cases, that fee is linear  
5 with respect to the amount of load that migrates simply  
6 because of the assumptions we use in the modeling, which  
7 is that only sport purchasing and surplus sales change  
8 between the in and the out scenario.

9           So with respect to the actual fee itself, or  
10 the rate itself, the load is not necessarily relevant.  
11 We use 10 percent just as -- just as an indication of a  
12 potential volume that could migrate. But in terms of  
13 revenues, it's certainly important to know the amount  
14 of -- the amount of load migrating.

15           Q    Finally, on page 23 of your opening testimony,  
16 you have a paragraph in the middle that discusses the  
17 impacts of increased conservation associated with CCA  
18 load and the last sentence of that paragraph states  
19 that:

20                   The Department agrees that, if  
21                   conservation increased for load  
22                   migrating to CCA, the CRS would be  
23                   lower for such load, all else  
24                   being equal.

25           By "increased conservation," are you referring to a  
26 scenario in which the CCA load increases beyond the  
27 conservation done by the bundled load?

28           A    By using the term "increased conservation"?

1 Q Yes.

2 A Conservation greater than what we forecast for  
3 bundled load, yes.

4 Q And could you explain how such an increase in  
5 conservation load then leads to the lower CRS?

6 A I believe we were referring to the CRS -- the  
7 total CRS shortfall associated with that load as opposed  
8 to the rate itself. Going back to what I just  
9 previously said, that the rate stays the same; but based  
10 on the volume, of course, the revenues change.

11 Q So the overall shortfall would decrease?

12 A That's right.

13 MS. GRUENEICH: Thank you.

14 Those are all the questions I had.

15 ALJ MALCOLM: Thank you, Ms. Grueneich.

16 Mr. Blaising, you had a couple of questions?

17 MR. BLAISING: Yes. Thank you.

18 CROSS-EXAMINATION

19 BY MR. BLAISING:

20 Q My name is Scott Blaising. I represent the  
21 Inland Valley Development Agency in San Bernardino  
22 County.

23 Mr. McMahon, if you would turn to page 3 of  
24 Exhibit 2, which I believe is your replay testimony. In  
25 response to a question from Mr. Szymanski, you stated  
26 that it is DWR's view that it, that is, DWR, did not  
27 modify its forecast to include community aggregation; is  
28 that accurate?

1           A    Yes.

2           Q    In your view, Mr. McMahon, is it possible  
3 however, that the individual utilities, that is, not  
4 DWR, could have assumed factors in their own respective  
5 load forecasts that resulted in a reduction of  
6 forecasted load for a particular customer group?

7           A    Yes.

8           Q    Are you aware of any customer groups for which  
9 this assumption of reduced load was made?

10          A    Not specifically within the IOU forecasts  
11 except for, obviously, direct access -- direct access  
12 load. But if we're speaking about the total retail  
13 requirement forecast that the IOUs provided us, no, I'm  
14 not knowledgeable about specific groups that the load  
15 was reduced for.

16          MR. BLAISING: Thank you, your Honor.

17          ALJ MALCOLM: Thank you, Mr. Blaising.

18                    Any other party have questions?

19          MR. HUARD: Your Honor, I have very few, if I  
20 could.

21                                    CROSS-EXAMINATION

22          BY MR. HUARD:

23           Q    Good morning, Mr. McMahon. My name is David  
24 Huard. I represent the County of Los Angeles and the  
25 City of Chula Vista.

26                    I have two questions. If you can turn to  
27 page 12 of your testimony, there were questions about  
28 the assumption of a 10 percent retail load in CCA in



1 2005.

2 Do I take it from your answers that basically  
3 that was just a placeholder so that if you change the  
4 year to 2006, you know, that that would not necessarily  
5 be of particular significance within your calculation?

6 A If we'd begun the calculation in 2006?

7 Q Correct.

8 A Well, we have different results for each year,  
9 of course. So no longer would you have the results for  
10 2005, the indifference calculation for 2005.

11 The indifference rate changes each year, but  
12 the level of migrating load doesn't affect the  
13 indifference rate in a particular year.

14 Q But you've just assumed the 10 percent at a  
15 flat rate then for your entire study?

16 A That's correct.

17 Q On the New World procurement, there were a  
18 number of questions on that, if I could. You indicate  
19 that the New World procurement was from information  
20 provided by the utilities primarily updated through  
21 December 2003; is that correct?

22 A Are you referring to a specific page?

23 Q Page 22. Your pages are not lined, so I can't  
24 tell you a line, but it's under New World procurement in  
25 the first full sentence.

26 A Yes, that's correct.

27 Q And that information is not available to the  
28 parties here other than the utilities themselves?

1           A    Correct.

2           Q    In that information, without getting any  
3 specific information on any contracts or any utilities,  
4 were any of the presumed New World procurements for  
5 extended periods of time, that is, long-term procurement  
6 plans in the future beyond, let's say, 2004?

7           A    I'm not certain.

8           Q    So you don't know if there's any contracts,  
9 for instance, that utilities may have provided for you  
10 that would assume purchases in the New World that extend  
11 for a number of years?

12          A    I don't believe so, but that's subject to  
13 check.

14          Q    Could you check?

15          A    Yes.

16          MR. HUARD:   Thank you.

17                Your Honor, that's all the questions I have.

18          ALJ MALCOLM:   Thank you, Mr. Huard.

19                Anybody else?

20                Mr. Florio.

21          MR. FLORIO:   Yes, just a couple of questions for  
22 clarification, your Honor.

23                           CROSS-EXAMINATION

24          BY MR. FLORIO:

25                Q    Good morning, Mr. McMahon.

26                A    Good morning.

27                Q    If you could look at page 14 of your Exhibit 1  
28 where you show CRS indifference rates. Is it correct

1 that these indifference rates come -- are the output of  
2 the model that you ran for this purpose?

3 A Yes.

4 Q And in terms of splitting the indifference  
5 rate into a DWR power charge component and a CTC  
6 component, that is a subsequent task that is performed.  
7 That's not an input; that's something that's done to the  
8 output?

9 A That's correct. The CTC rate is an input into  
10 the model but only for purposes of extracting out the  
11 DWR power rate portion and the CTC rate portion from  
12 this indifference rate calculation.

13 Q What difference, if any, does it make to split  
14 the indifference rate into DWR and CTC components?

15 A It makes a difference in terms of how the  
16 revenues are calculated to the IOU or to DWR.

17 Q Does it make any difference to the customer?

18 A I would expect not, because it reduces the  
19 total customer requirement.

20 Q Okay. I believe you indicated that these  
21 projections of indifference out into future years do not  
22 include New World URG to the best of your knowledge; is  
23 that correct?

24 A Only any New World URG up to the point of  
25 December 2003.

26 Q Okay. Now if the Commission decided that New  
27 World URG that was committed prior to a customer  
28 switching to CCA should be counted in the CRS, and let's

1 say if in 2005 one of the utilities -- let's just take  
2 PG&E since they are first on the list -- went out and  
3 entered into some new commitment to serve its bundled  
4 customers, and then in 2006 or -7 some of those  
5 customers became CCA, if that commitment that was  
6 entered into was above market, that would tend to  
7 increase the numbers for the indifference rate for the  
8 duration of that commitment; is that correct?

9 A Right. Everything else being equal, yes.

10 Q Okay. So, in essence, in looking at this  
11 generally declining profile of indifference rates for  
12 the various utilities, to the extent that those  
13 utilities were making New World commitments that were  
14 above market, those would tend to increase these numbers  
15 in the out years?

16 A That's correct.

17 MR. FLORIO: Thank you. That's all I have, your  
18 Honor.

19 ALJ MALCOLM: Thank you, Mr. Florio.

20 Anybody else?

21 Mr. Ulmer, do you have redirect?

22 MR. ULMER: Thank you, your Honor. I just want to  
23 check my notes for a second, if possible.

24 Your Honor, I don't think I do have any  
25 redirect.

26 We will undertake to provide a correction to  
27 Case 4 as well as check on Mr. Huard's question as well.

28 ALJ MALCOLM: All right.

1                   Thank you, Mr. McMahon. You are excused.

2                   THE WITNESS: Thank you.

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

4                   (Whereupon, at the hour of  
5                   11:45 a.m., a recess was taken until                   ]  
6                   1:30 p.m.)

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1                                   AFTERNOON SESSION - 1:30 P.M.

2   \* \* \* \* \*

3                   ALJ MALCOLM:   We will be back in session.

4                   Mr. Ulmer, would you like to enter your  
5 exhibits?

6                   MR. ULMER:   Your Honor, yes.  If it's appropriate,  
7 the department would request the Commission consider  
8 accepting the prepared testimony and the prepared reply  
9 testimony of Mr. McMahon into the record.

10                  ALJ MALCOLM:   Any objections?

11                                   (No response)

12                  ALJ MALCOLM:   Hearing none, we will enter those as  
13 Exhibit 1 and 2.

14                                   (Exhibits No. 1 and 2 were  
15 received into evidence.)

16                  MR. ULMER:   Thank you, your Honor.

17                  ALJ MALCOLM:   Thank you.

18                  And, Mr. Szymanski, you may present your first  
19 witness.

20                  MR. HUARD:   Your Honor, before that, there was a  
21 couple of items left over from Mr. McMahon.  One was  
22 they were going to give a response at least to a  
23 question I raised.  If we could have a status report on  
24 their efforts to get those answers, I'd appreciate it.

25                  ALJ MALCOLM:   Sure.

26                  MR. ULMER:   Your Honor, I think our efforts --  
27 we're going to undertake those efforts after today's  
28 hearing.

1           And again, just to recap, we are going to  
2 gather up a correction to the Case 4 -- the Case 4 run  
3 as well as a response to Mr. Huard's question regarding  
4 New World procurement assumptions.

5           What I'm planning on doing is writing out  
6 answers and then submitting them as an exhibit under  
7 Mr. McMahon's name. And then if there are questions, we  
8 can deal with them at the time.

9           ALJ MALCOLM: All right. Is that all right with  
10 you, Mr. Huard?

11          MR. HUARD: That's fine, your Honor. Thank you.

12          ALJ MALCOLM: Thank you, Mr. Ulmer.

13          Mr. Szymanski.

14          MR. SZYMANSKI: Thank you, your Honor.

15          SDG&E would like to call Wendy Keilani to the  
16 stand.

17          ALJ MALCOLM: Stand and raise your right hand.

18                 WENDY KEILANI, called as a witness by  
19 San Diego Gas & Electric Company, having  
20 been sworn, testified as follows:

21          ALJ MALCOLM: Thank you.

22                 Go ahead, Mr. Szymanski.

23          MR. SZYMANSKI: Thank you.

24                                 DIRECT EXAMINATION

25          BY MR. SZYMANSKI:

26                 Q   Ms. Keilani, you have three exhibits that you  
27 would like to have marked for your testimony?

28                 A   Yes, I do.

1 MR. SZYMANSKI: Your Honor, SDG&E would like to  
2 mark the prepared direct testimony of Wendy Keilani as  
3 the next numbered exhibit in this proceeding, which I  
4 believe would be Exhibit 3?

5 ALJ MALCOLM: That's correct.

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

8 MR. SZYMANSKI: Next we would like to mark  
9 Ms. Keilani's reply testimony as Exhibit 4.

10 ALJ MALCOLM: All right.

11 (Exhibit No. 4 was marked for  
12 identification.)

13 MR. SZYMANSKI: And next we would like to mark  
14 Ms. Keilani's rebuttal testimony as Exhibit 5.

15 ALJ MALCOLM: Very well.

16 (Exhibit No. 5 was marked for  
17 identification.)

18 MR. SZYMANSKI: Q Now, Ms. Keilani, were these  
19 three exhibits prepared by you or under your  
20 supervision?

21 A Yes.

22 Q Do you have any changes or corrections you  
23 would like to make to any of these exhibits?

24 A Yes, I do.

25 Q Please proceed.

26 A Okay. I would like to change in my direct  
27 testimony, Exhibit No. 3, on page WK-7, I would like to  
28 remove in its entirety Section B, which starts on



1 line 15 and ends on line 6 of page WK-8.

2 Q And, Ms. Keilani, would you briefly state why  
3 you are removing that text from your testimony?

4 A Yes, I will.

5 That section of my testimony, upon further  
6 reflection, is -- it's not necessary for the  
7 implementation of CCA to make those changes to our  
8 system. And if it does become necessary in the future,  
9 then we would deal with it at that time.

10 Q Thank you, Ms. Keilani.

11 Do you have any other changes or corrections  
12 you would like to make to either of -- to any of these  
13 three exhibits?

14 A Yes. On -- I'm sorry -- opening testimony,  
15 Exhibit 3, page WK-1, line 7, to remove the word "the,"  
16 t-h-e. So it reads, "...and estimating the costs."

17 Secondly, I'd like to --

18 MR. HUARD: Your Honor -- if you could, please,  
19 can you read that sentence? I understood the removal of  
20 the word "the," and then what else?

21 ALJ MALCOLM: No other change to that sentence.

22 MR. HUARD: Okay.

23 THE WITNESS: Next, in reply testimony, Exhibit 4,  
24 on line 8 and line 13, change the cite from Jazayeri to  
25 Garwacki.

26 ALJ MALCOLM: What's the page?

27 THE WITNESS: I'm sorry, I'm sorry. Page WK-4.

28 MR. COMO: Could the witness repeat that?

1 THE WITNESS: Yes. On page WK- 4, line 8 and  
2 line 13, the correct cite should be for Garwacki rather  
3 than Jazayeri. And that -- that's all.

4 MR. SZYMANSKI: Q And with those changes,  
5 Ms. Keilani, does this testimony represent true and  
6 correct testimony to the best of your knowledge?

7 A Yes, it does.

8 Q And is this the testimony you adopt today as  
9 your sworn testimony?

10 A Yes.

11 MR. SZYMANSKI: Thank you.

12 SDG&E presents Ms. Keilani for  
13 cross-examination.

14 ALJ MALCOLM: Thank you, Mr. Szymanski.

15 Mr. Reiger.

16 MR. REIGER: Thank you, your Honor.

17 CROSS-EXAMINATION

18 BY MR. REIGER:

19 Q Good afternoon. My name is Jason Reiger,  
20 representing ORA.

21 A Good afternoon.

22 Q I'd like to start off asking you some  
23 questions from your opening prepared testimony,  
24 Exhibit 3. And I'd like to ask you a few things about  
25 customer information and privacy.

26 On page 4 of that exhibit, around line 17, you  
27 invoke the 15/15 Rule. And my question is: Would  
28 implementing that point, the 15/15 Rule, protect the

1 customer's data but not the customer's status as a  
2 member of the 1515 Club?

3 A I don't understand what you mean by status of  
4 the 15/15 Club.

5 Q Would invoking the 15/15 Rule protect who that  
6 customer is or just the -- their specific usage?

7 A Invoking the 15/15 Rule protects the  
8 identification of customers. So when you're providing  
9 data under the 15/15 Rule, you exclude the information  
10 of any customer that violates the 15/15 Rule. So their  
11 usage is excluded, and therefore that entire line of  
12 information is excluded.

13 Q Okay. On page 5 of your testimony, lines 15  
14 through 17, do you propose to release specific customer  
15 data to the CCAs after they are established?

16 A We -- at SDG&E, we believe that we are  
17 prohibited from releasing customer-specific information  
18 without written release from the customer or judicial  
19 subpoena.

20 Q And that does not hinge on whether or not a  
21 CCA has been established; is that correct?

22 A At this time, there is nothing that -- that we  
23 know of in Commission policy that allows us to release  
24 customer-specific information without written release  
25 from the customer.

26 Q Okay. Thank you.

27 If you did get specific written release from a  
28 customer to release that data even after the CCA was

1 established, do you think that would equate the opt-in  
2 requirement into a -- excuse me -- the opt-out  
3 requirement into an opt-in requirement?

4 A Not necessarily.

5 Q Could you explain?

6 A A customer should be able to participate as a  
7 CCA -- as a member of a CCA regardless of whether its  
8 specific information has been released. It's not  
9 necessarily contingent upon that. The release from the  
10 customer is specific to allowing its private information  
11 released to a third party.

12 Q Okay. Thank you.

13 Regarding forming load profiles and statistics  
14 you need to form a load profile, do you have any opinion  
15 about how many meters on a per capita basis, or other  
16 basis that you choose, that you would need to find a  
17 statistical significant sample?

18 A It's my understanding that it's not -- that  
19 you don't set the number of meters solely on a per  
20 capita basis.

21 To have statistical representation be valid,  
22 it depends on the differences between customers. So it  
23 could be -- if you have a fairly homogenous population,  
24 you may need fewer meters than if you have a very  
25 different population, so it's like --

26 Q Okay. Thank you.

27 Can you tell us how many load research meters  
28 San Diego Gas & Electric has?

1           A    I can't tell you off the top of my head, no.  
2 I'm sorry.

3           Q    Would you be able to proffer a range?

4           A    I could get it to you after the break.

5           Q    Okay. Thank you.

6                    I'm wondering if you have an opinion on this  
7 matter. If the Commission were to order an advanced  
8 meter roll-out such that they put smart meters as  
9 opposed to dumb meters in either new construction or  
10 existing construction, and they did this after a CCA was  
11 established, do you have an opinion about whether or not  
12 the CCA should pay for that meter roll-out for the  
13 customers within the CCA boundary?

14          A    No, I don't have an opinion on that.

15          Q    I have a couple more questions about load  
16 profiles and how you might be able to calculate one.

17                    If you couldn't calculate a given CCA load  
18 profile, could you figure out the CCA's load profile by  
19 taking your company's systemwide load profile before and  
20 after the CCA left; would that give you a snapshot of  
21 the CCA load profile?

22          A    I suppose it would give you a snapshot of it.  
23 It wouldn't be valid for -- I don't think it would be  
24 valid for extrapolating into the future without having a  
25 valid sample that continually monitored that.

26          Q    And if you had that snapshot and there was  
27 more than one CCA involved, you'd have no way of saying  
28 which percentage of that snapshot went to which CCA; is

1 that correct?

2 A I'm sorry, I lost the train of your question.  
3 Could you repeat it?

4 Q Okay. We have a snapshot of what a CCA load  
5 profile may be given a bond -- given -- based upon the  
6 difference of your systemwide average before and after  
7 the CCA left, but if more than one CCA left, you  
8 wouldn't be able to tell what percentage of that  
9 difference belongs to which CCA; is that correct?

10 A That's correct. That's absolutely correct.

11 Q Thank you.

12 If you didn't want to refigure your load  
13 profile each and every time --

14 A I'm sorry, each and every time?

15 Q -- each and every time a CCA left -- thank  
16 you -- could you not also calculate the utility's load  
17 profile post-CCA leaving by combining its pre-CCA  
18 leaving load profile with the CCA load profile that has  
19 left?

20 Are you --

21 A I'm not following. We wouldn't have a CCA  
22 load profile.

23 Q Yes, I understand that you would not have one.  
24 But assuming that the CCA got a load profile on its own  
25 account, they did whatever they needed to do to get to  
26 one, and you wanted to know your new load profile after  
27 that CCA has left, could you not figure that out by  
28 taking the CCA load profile which they gathered and

1 comparing it to your pre-CCA leaving load profile?

2 A Load -- I'm not sure -- the load profiles have  
3 to sum up to the system average load profile --

4 Q Correct.

5 A -- as a sum of one. And they have to equal  
6 to -- to that at all times.

7 If the CCA figure -- what your hypothetical is  
8 is the CCA figures its own load profile?

9 Q Correct.

10 A Statistically valid?

11 Q Yes.

12 A And --

13 Q And you would like to figure out your load  
14 profile after that CCA has left, but you don't want to  
15 go about reanalyzing it. ]

16 A We have to.

17 Q Okay.

18 A There is no -- it has to be statistically  
19 valid and you would have to remove the load that's been  
20 statistically represented on its own. You have to then  
21 be calculating it for the remaining loads. There is no  
22 other way.

23 Q You just would not be able to take the  
24 difference between the preload --

25 A No.

26 Q If I can go back to customer information for a  
27 moment. Regarding the release of customer information,  
28 is the harm of that release in the act of releasing it,

1 or is the harm of what people do with that information  
2 after they have had it?

3 A I believe both. There's harm because we are  
4 under law, rules, that govern how we can release  
5 information, and there's harm or liability to our  
6 company for releasing it against those rules.

7 Q Okay.

8 A And there's customer expectations of having  
9 their information kept private. And so therefore on the  
10 part of the customer, there could be harm if that  
11 information is used in a manner that it wasn't intended.

12 Q If I could draw your attention to your reply  
13 testimony, Exhibit 4. Regarding our conversation on  
14 page 4, line 4 through 14, you are talking again about  
15 load factors, I believe. I would like to know if you  
16 think that CCA specific load factors and load profiles  
17 will need to be created eventually?

18 A No, I don't believe so.

19 Q Do you believe that the ISO settlement process  
20 will require either IOU load profiles and CCA load  
21 profiles to be created?

22 A No. Actually, we had a meeting with the ISO,  
23 and the ISO made it very clear that they don't  
24 require -- their requirement is a Commission approved  
25 set of load profiles for each utility service territory.  
26 So whatever the Commission approves the ISO will accept.

27 Q Okay. And lastly, I would like to go to your  
28 rebuttal testimony, Exhibit 5.



1           Toward the bottom of that page you talk about  
2 safeguards -- excuse me, page 5, line 15 through the  
3 bottom of the page. You talk about safeguards. And  
4 once again, I'm wondering if you think these safeguards  
5 should also be in place after the CCA has been formed?

6           A As I state in my testimony, if the Commission  
7 finds no reasonable alternative and decides that it must  
8 release this information, these safeguards should be in  
9 place before or after the CCA.

10          Q Thank you.

11           And page 9 of that same exhibit, line 16 to  
12 17, you talk about the scenario never occurring, would  
13 never occur. And that scenario is that the CCAs  
14 generate their own load profile; is that correct?

15          A That is not what I meant there.

16          Q Could you --

17          A What I was referring to in that sentence is  
18 that a CCA that is in a hot climate, thereby their load  
19 profile is higher than the average, that that CCA would  
20 never request to have their own load profile perform for  
21 their territory because it would be less beneficial than  
22 the average.

23          Q You are not claiming that the Commission  
24 doesn't have the authority to require --

25          A Absolutely.

26          Q If a CCA is in an inland area or a hot area  
27 and thus had more of a peaky load, created its own  
28 profile -- excuse me -- did not create its own profile

1 and used your system average, do you think that the  
2 bundled ratepayers would be subsidizing the CCA in any  
3 way?

4 A I believe that the current ratemaking policy  
5 is for average rates and that many customers subsidize  
6 many other customers currently, and that's what  
7 averaging is about.

8 And, yes, if a CCA customer group were all in  
9 a hot inland climate, they are partially being  
10 subsidized to some extent by other customers. That is  
11 true today prior to CCA.

12 Q And you do not feel that AB 117 would change  
13 that?

14 A I believe that the method of ratemaking as a  
15 whole is beyond the scope of this proceeding in terms of  
16 changing -- deaveraging rates, for example. It is  
17 beyond the scope.

18 MR. REIGER: No further questions, your Honor.  
19 Thank you.

20 ALJ MALCOLM: Mr. Como, do you have questions?

21 MR. COMO: Thank you, your Honor.

22 CROSS-EXAMINATION

23 BY MR. COMO:

24 Q Ms. Keilani I am Joe Como from the City and  
25 County of San Francisco.

26 I would like to turn to your opening  
27 testimony, Exhibit 3, page WK-1. Part of this follows  
28 on something you told Mr. Reiger.

1           On line 17 you indicate that the  
2 customer-specific information would be released only  
3 with a customer's release or appropriate legal process.  
4 I believe you stated appropriately the process is  
5 subpoena; is that correct?

6           A     That's correct.

7           Q     And going to page WK-2, line 22, you underline  
8 "in accordance with procedures established by the  
9 Commission" with regard to CCAs receiving necessary  
10 customer data.

11                  Would you also agree, then, that appropriate  
12 legal process is also a Commission order in addition to  
13 a subpoena?

14           MR. SZYMANSKI: Your Honor, obviously Ms. Keilani  
15 is testifying as an expert in the release of customer  
16 information. So I think we are kind of getting very  
17 close, I think perhaps we have crossed the line in fact,  
18 of the type of legal determinations that are called for  
19 in answering Mr. Como.

20           MR. COMO: Ms. Keilani also testified as to what  
21 the process was, either a written release or subpoena.  
22 So it is going to the heart of her answer and to her  
23 testimony.

24           ALJ MALCOLM: I understand she opened the door to  
25 your cross-examination. I am just not sure how useful  
26 it would be to take it any further. She's not a legal  
27 expert. I am not going to rely on her for legal advice.

28           MR. COMO: I will move on, then, your Honor.

1 ALJ MALCOLM: Thank you.

2 MR. COMO: Q I would like to turn your attention  
3 to page WK-3 of your opening testimony, line 20. You  
4 are talking there about providing the CCA with a close  
5 approximation of electric commodity for which they would  
6 need to plan to serve.

7 Could you elaborate on what you mean by close  
8 approximation.

9 A I'm talking here that we will provide the CCA  
10 with the aggregate usage in their territory by rate  
11 class. That aggregate usage can be spread across  
12 average load profiles, class average load profiles. And  
13 by that, the CCA would be able to plan using -- that  
14 would be a close approximation of their load.

15 Q Is it your opinion that that approximation is  
16 good enough to purchase commodity power?

17 A Yes. That's what the direct access energy  
18 service providers use today.

19 Q Is that same level of approximation used by  
20 San Diego Gas and Electric for purchasing commodity?

21 A Yes, it is.

22 Q I would like to turn your attention to page  
23 WK-4. Under the discussion which takes up the bottom  
24 third of the page, including the footnote, about the  
25 15/15 Rule, my understanding is that if a single  
26 customer is greater than 15 percent of that load, that  
27 that customer is kicked out of that group in the first  
28 pass, and then if it is combined with the next bigger

1 group and is kicked out again, it is not included at all  
2 in the information provided?

3 A That's correct.

4 Q How is it that a potential CCA is to account  
5 for that future potential load in its planning for  
6 commodity purchase if it doesn't have that information  
7 about that particular customer?

8 A It receives that information in the aggregate.  
9 When you apply the 15/15 Rule, you are actually grouping  
10 data, but it is individually lined out. In other words,  
11 there's a line for each customer's data with the  
12 customer identification class. So the usage for each  
13 customer is listed separately, but it is grouped by rate  
14 class.

15 So in that case you want to have at least 15  
16 customers and you don't want to have any one customer  
17 greater than 15 percent of the load.

18 But when the utility provides aggregate data  
19 without individual lines of which customers are in that  
20 data, we provide all load for the CCA.

21 Q Ms. Keilani, in terms of the load profile,  
22 where would a large customer end up in terms of  
23 information provided to the potential CCA?

24 A It would be -- there are load profiles  
25 provided for eight different rate classes. So the large  
26 customer, whatever -- let's say we have A-6 is a large  
27 customer or large rate class, a rate class that includes  
28 large customers. So if a CCA gets the aggregate data

1 for the A-6 rate class, it would then be spread over the  
2 load profile for the A-6 rate class.

3 Does that answer your question?

4 Q It's an answer.

5 Turning to page WK-5 in your opening  
6 testimony, at lines 1 and 2 you state that the potential  
7 CCA would contact those customers directly, referring to  
8 those customers that make up more than 15 percent of the  
9 load assigned.

10 How would the CCA do that if we had no  
11 knowledge of the existence of the customer from the IOU?

12 A I believe that a CCA that has tax revenue  
13 information would know who their largest customers are.  
14 It is to me not conceivable that a city wouldn't know  
15 who its largest customers were and the largest customers  
16 would not be included.

17 Q Are the cities currently providing power in  
18 the case of the jurisdiction that wants to become a CCA?

19 A I'm sorry?

20 Q Are you suggesting that there is some way that  
21 the city will know who is consuming power based on a tax  
22 revenue base?

23 A Large customers that -- the kind of large  
24 customers that would fall out in a 15/15 Rule would be  
25 highly distinguishable from the other customers. That's  
26 the basis of the rule.

27 Q I would like to turn to your rebuttal  
28 testimony, Exhibit 5, page WK-3, line 14.

1           You express a concern of the proper  
2 safeguards. Have any of the parties to your knowledge  
3 advocated for private information to be without  
4 safeguards, to be used without safeguards?

5           A I don't believe any safeguards have been  
6 suggested.

7           Q Do you believe that the CPUC can determine the  
8 proper safeguards such as confidentiality agreement? Do  
9 you see any problem with -- from your standpoint that --  
10 that the CPUC could approve a confidentiality agreement  
11 with potential CCAs to use customer confidential  
12 information?

13          A If the CPUC -- obviously, we are governed by  
14 the rules and regulations from the CPUC. And if they  
15 determine that they are going to order us to provide  
16 information under confidentiality agreement, we will do  
17 so. That's obvious.

18          Q My question is do you see any issues from your  
19 perspective with that order?

20          A There could be.

21          Q Could you elaborate on that.

22          A If the confidentiality -- I am not an  
23 attorney, so this is from a lay person's opinion of  
24 confidentiality agreements and how they will work.  
25 Generally speaking, if you have a confidentiality  
26 agreement, say, between the utility and a CCA, which I  
27 assume is a city or a county, I would question whether  
28 that city or county is going to administer its program

1 by itself or whether it is going to be contracting out  
2 work to do with that program and would the third-party  
3 agreement -- I'm sorry -- the nonconfidentiality  
4 agreement between the city and the utility be  
5 enforceable to a third party? There could be other  
6 issues as well, sharing information within the city or  
7 county, different agencies. There are issues. I could  
8 see issues arising.

9 Q In terms of what you mean by confidential  
10 customer information, could you detail what that exactly  
11 is in terms of what part of the customer information  
12 that you consider to be confidential customer  
13 information?

14 A I think there's a part of my -- in general, I  
15 believe I refer to it in testimony at someplace. I am  
16 not sure where. Name, address, account number,  
17 consumption.

18 Q On page WK-4, line 13, you say that the CCA  
19 should have to contact the prospective customers. And I  
20 assume that -- let me strike that.

21 MR. SZYMANSKI: Pardon me. Are we in WK-5 still?

22 MR. COMO: Yes, rebuttal testimony, page WK-4,  
23 line 13. You state: It stands to reason that a  
24 prospective CCA should have to contact these large  
25 customers during their exploratory efforts. And you  
26 said earlier that you will suggest doing this from tax  
27 rolls and that that is the reason why you say it makes  
28 no sense the city doesn't know who their largest



1 customers are; is that correct?

2 A Yes.

3 Q What assumption are you making about the  
4 number of customers that could make up this large number  
5 of customer number that you are considering?

6 A I don't have a specific number in mind. The  
7 15/15 Rule will allow customer data to be included  
8 unless a single customer stands out by its very nature.  
9 It stands out because it is greater than 15 percent of  
10 the load or it is one of fewer than 15 customers in a  
11 grouping.

12 Q Thank you.

13 On WK-5, lines 18 to 23, you list a number of  
14 safeguard proposals during the CCA enrollment process.

15 Do you see this notice to be a script written  
16 by the IOU or collaboration with the CCA, or what did  
17 you envision there?

18 A The specific nature of the notification is  
19 dealt with specifically by Dawn Osborne with  
20 implementation rules. But I can get -- generically  
21 speaking, we are talking about notification that would  
22 clearly -- that would make clear to customers that their  
23 information was going to be shared, that this would be  
24 done without their affirmative permission. In other  
25 words, if they did nothing this would happen. And also  
26 describing what specific information would be disclosed  
27 so that the customers are aware of what's happening.

28 Q Who do you envision paying for that

1 notification? Would that be the IOU, or would that be  
2 the CCA?

3 A I believe that is in Dawn Osborne's testimony.

4 MR. SZYMANSKI: Your Honor, as a point of order, I  
5 should probably make clear what the scope of  
6 Ms. Keilani's testimony is.

7 Ms. Keilani is testifying as to all aspects of  
8 SDG&E's position regarding the release of customer  
9 information with one exception for a specific issue, and  
10 that is alternatives for implementing customer  
11 information in a manner that would allow a CCA to  
12 implement its program. And that discussion of  
13 alternatives would be covered by Dawn Osborne.

14 But other than that exception, Ms. Keilani is  
15 SDG&E's expert on customer information. And all  
16 questions regarding that should be addressed to  
17 Ms. Keilani. And then all cost-related issues should be  
18 addressed to Ms. Osborne as well.

19 MR. COMO: Q Ms. Keilani, I want to turn to load  
20 profiles for a second.

21 In your rebuttal testimony in WK-7, line 2,  
22 you state that the process will be expensive for CCAs  
23 who will have to bear those costs.

24 Would you agree that there may be a benefit to  
25 a CCA to have a CCA-specific profile?

26 A I would agree that there could be a benefit to  
27 having a CCA-specific load profile if that CCA were in a  
28 very different climate zone on the mild side at the

1 expense of other CCAs and other customers that are not  
2 in that same mild climate zone.

3 MR. COMO: Thank you, your Honor.

4 ALJ MALCOLM: Thank you, Mr. Como.

5 Ms. Grueneich.

6 MR. HUARD: Your Honor, if you don't mind,  
7 Ms. Grueneich and I are going to switch order for a  
8 second, if that's okay with you.

9 ALJ MALCOLM: Sure.

10 CROSS-EXAMINATION

11 BY MR. HUARD:

12 Q Ms. Keilani, my name is David Huard. I  
13 represent the County of Los Angeles and the City of  
14 Chula Vista. As you recognize, the City of Chula Vista  
15 is your second largest city in our service territory.

16 A Yes.

17 Q I am going to try to avoid duplication of  
18 questions from the previous two cross-examiners, but  
19 bear with me if I happen to repeat.

20 First, do you happen to have a copy of AB 117  
21 with you?

22 A Yes, I do.

23 Q It appears on the beginning of your testimony  
24 that you talk about approximately four topics: Customer  
25 privacy, types of information, cost of producing  
26 information, and the information workshop.

27 Do you have a copy of the workshop report with  
28 you so if I ask you questions you can refer to that?

1 A Yes, I do.

2 Q Thank you.

3 Let me go first to the infamous 15/15 Rule.

4 The 15/15 Rule is a creation of Commission  
5 regulation by way of order; is that correct?

6 A That's correct.

7 Q And I think you admitted earlier, conceded  
8 earlier, the Commission can change its rules if it  
9 wishes to; is that correct?

10 A Yes.

11 Q AB 117, however, is a statute; is that  
12 correct?

13 A That's correct.

14 Q And the Commission does not have an  
15 opportunity to amend or modify the requirements of the  
16 statute? It just has to comply with that, would that be  
17 a fair statement?

18 A That's correct.

19 Q So to the extent to which a statute was  
20 inconsistent with the Commission regulation, the  
21 Commission regulation would have to change?

22 MR. SZYMANSKI: Your Honor, objection. Again,  
23 this is a question that goes to the heart of Commission  
24 jurisdictions and application of statute to Commission  
25 decisions. This is beyond the scope of Ms. Keilani's  
26 testimony.

27 MR. HUARD: Your Honor, I recognize that  
28 Ms. Keilani is not a lawyer. However, she goes into

1 great detail citing from statute, citing from rules,  
2 exercising what is alleged to be an expertise within the  
3 Commission regulations and the statutes that they are  
4 implementing.

5 Therefore, not only has she put herself out as  
6 an expert in this area, she also used legal citation and  
7 has made legal conclusions in her testimony.

8 I think to the extent to which these questions  
9 are confined to the areas that she addresses within her  
10 testimony, she is ripe for cross-examination on those  
11 issues even if they do involve legal interpretation,  
12 because she is purporting to make legal interpretation.

13 MR. OUBORG: Your Honor, you yourself pointed out  
14 earlier that legal argumentation and policy  
15 argumentation would not be appropriate. And if  
16 Mr. Huard believes that Ms. Keilani's testimony is  
17 legally faulty, he can present that in his briefs.

18 ALJ MALCOLM: Mr. Huard, what was your question  
19 pending?

20 MR. HUARD: Your Honor, I believe the question was  
21 the extent to --

22 Actually, could you read back the question,  
23 please?

24 ALJ MALCOLM: I would prefer that you ask the  
25 question again.

26 MR. HUARD: Q Is it your understanding that the  
27 extent to which the Commission regulation is  
28 inconsistent with the statute, the statute would require

1 the Commission to change its approach?

2 MR. SZYMANSKI: Again, we object to that question.

3 ALJ MALCOLM: I understand.

4 Is this in general or with regard to something  
5 specific?

6 MR. HUARD: Well, I am going to get to something  
7 specific, but I was asking it in general. Again, it is  
8 a matter of finding out what her understanding is of  
9 these things. If she doesn't know --

10 ALJ MALCOLM: I am going to disallow the question.  
11 You are asking her whether the Commission should obey  
12 the law.

13 MR. HUARD: Okay. Your Honor. Thank you.

14 ALJ MALCOLM: You can move ahead with more  
15 specific questions and we will tackle each one if they  
16 come.

17 MR. SZYMANSKI: If I might just try to clarify  
18 this, because we understand the issues that Mr. Huard  
19 may want to get into. Ms. Keilani is discussing the  
20 application or the implementation of the customer  
21 information requirements that fall out of the statute.  
22 She is not testifying about the jurisdictional issues,  
23 about statutory construction issues.

24 ALJ MALCOLM: That's fine.

25 MR. SZYMANSKI: So to the extent the questions are  
26 dealing with our application of those statutes or  
27 Commission rules, I think that that would be an  
28 appropriate matter for testimony.

1 Thank you. ]

2 ALJ MALCOLM: It is a gray area, and that's why  
3 I suggested Mr. Huard just present his questions and  
4 we'll take each one as they came in.

5 MR. SZYMANSKI: Fine. Thank you.

6 MR. HUARD: Q Ms. Keilani, you've expressed an  
7 understanding of the 15/15 Rule?

8 A Yes.

9 Q In that regard, as I understand the statute,  
10 that once an ordinance is passed by a entity,  
11 governmental entity, it becomes a CCA; and at that  
12 point, the customers are effectively customers of  
13 the CCA for all intent and purposes. Is that your  
14 understanding?

15 A Could you repeat the question?

16 Q Once a municipality, let's say, adopts an  
17 ordinance pursuant to Section 10A of AB 117, it becomes  
18 a CCA; and once it becomes a CCA, the customers within  
19 its jurisdiction become its customers?

20 A If they don't choose to opt out.

21 Q Correct.

22 But initially, they are its customers,  
23 correct, once it passes the ordinance?

24 MR. SZYMANSKI: Objection. I don't really intend  
25 this whole -- the scope of examination to be subject to  
26 objection but, again, there might be other requirements  
27 that are in play here, but Ms. Keilani is testifying as  
28 to a narrow aspect of this statute which deals with

1 customer information.

2 There are statutory obligations in AB 117 that  
3 deal with customer information issues, but she's not  
4 testifying as to all aspects and all requirements. And  
5 it seems to me Mr. Huard's question goes to other  
6 requirements that may come into play in the formation of  
7 a CCA generally.

8 MR. HUARD: Your Honor, what I'm getting to,  
9 without effectively giving my line of cross-examination  
10 away by way of statement, is that once a CCA is created  
11 by way of ordinance, the ownership of the information  
12 associated with those customers effectively becomes  
13 partially the owner -- the property of the CCA.

14 ALJ MALCOLM: Is there someplace in her testimony  
15 where she suggests that directly or indirectly?

16 MR. HUARD: Your Honor, she talks about utilizing  
17 the 15/15 Rule to be a reason for not providing a CCA  
18 certain specific types of information.

19 What I'm getting at is that effectively, that  
20 type of information is already -- effectively when an  
21 ordinance is issued is owned by that municipality and  
22 therefore --

23 ALJ MALCOLM: Is there someplace in her testimony  
24 that addresses the ownership of that information by  
25 the municipality -- the CCA?

26 MR. HUARD: No, your Honor, which is why I'm  
27 getting to it in questions.

28 She is talking about the ability of a utility



1 to prevent the CCA from having information utilizing  
2 the Commission rule.

3 ALJ MALCOLM: I don't understand how she's  
4 qualified to address the ownership of the information  
5 and how it's within the scope of her testimony.

6 MR. HUARD: All right, your Honor. Let me move on  
7 for a second.

8 Q Ms. Keilani, Mr. Hansen -- have you read his  
9 testimony?

10 A Yes, I have.

11 Q I believe that Mr. Hansen, at page 12, talks  
12 about his criticism of phasing; that there's an  
13 opportunity?

14 MS. GRUENEICH: Excuse me. Are we in the opening  
15 testimony of Mr. Hansen?

16 MR. HUARD: Yes, I believe so. It's the direct at  
17 page 12.

18 It does not have an exhibit number yet, your  
19 Honor.

20 Q He talks about cherry picking.

21 If the utility has all of the information on  
22 individual customers that qualify for the 15/15 Rule,  
23 doesn't that allow you to contact them directly even  
24 after the utility -- even after the city has issued an  
25 ordinance, best to cherry-pick the city?

26 MR. SZYMANSKI: I'm sorry, your Honor, but  
27 I didn't understand Mr. Huard's question.

28 ALJ MALCOLM: I didn't either.

1           MR. SZYMANSKI: I wonder if it could possibly be  
2 restated in a way that doesn't require reliance on  
3 Mr. Hansen's testimony which has not been brought into  
4 this proceeding yesterday.

5           MR. HUARD: Q The utility currently has all the  
6 information as to who qualifies under the 15/15 Rule; is  
7 that correct?

8           A We have information on all of our customers,  
9 yes.

10          Q Right. So you are the sole recipient or sole  
11 controller of the information that -- of who is or who  
12 is not subject to the 15/15 Rule?

13          A That's correct.

14          Q That also gives you the information of who  
15 the contact person is and special information that no  
16 one else, including the CCA, has; is that correct?

17          A We have information on contacts that are --  
18 that we require to do our business and have required  
19 over the years, yes.

20          Q And no one else has that?

21          A I don't know what the CCAs have. They may  
22 have contacts with those customers. They may not.  
23 I don't know.

24          Q But they don't have any information --  
25 customer information from you in that regard?

26          A Not from us. We're not allowed to give it  
27 out.

28          Q But you have it and you can use it?

1           A    Yes.

2           Q    I think you may have deferred this to  
3 Ms. Osborne, but I'll try.

4                    In the opt-out process, you are now proposing  
5 as a fallback position that there be new notifications;  
6 is that correct? Or notifications by you to customers  
7 and a review of the utility notification?

8           A    Can you --

9           Q    The CCA notification?

10          A    Can you direct me to my testimony where you're  
11 referring to, please?

12          Q    Yes. In your rebuttal, I believe it's at page  
13 5. So that is Exhibit 5 at 5.

14          A    Okay. Your question?

15          Q    As I understand it then, your proposal that if  
16 the Commission wished to give customer information to a  
17 CCA once it's formed, that your proposed safeguard is  
18 that there first be a contact from the utility to those  
19 customers, and then subsequently there be a review of  
20 the CCA communication with that customer for whatever  
21 purpose?

22          A    I haven't testified about review -- anything  
23 in the latter part of your question.

24          Q    Okay. That's Ms. Osborne?

25          A    That's correct.

26          Q    First part, though, is correct?

27          A    I have testified, and I believe I answered  
28 a previous question on this, that if the Commission

1 finds no reasonable alternative -- and we believe that  
2 all reasonable alternatives should be sought out  
3 first -- and if it decides it must release private  
4 customer information, that those customers should be  
5 informed of that happening before it happens.

6 Q And the information of it is from you,  
7 I presume; "you" meaning SDG&E?

8 A How that happens is in Ms. Osborne's testimony  
9 exactly.

10 But, yes. The point is that the customer  
11 should be informed. That's -- the whole point is that  
12 customer information is private; and in order for us to  
13 release it, the customer should know.

14 Right now, customers need to sign written  
15 authorization before we can release that information.  
16 So if they're not going to be signing a written release,  
17 they should at least have the opportunity to know for  
18 sure what is happening before it happens, not after it  
19 happened.

20 Q Have you -- I take it then from your testimony  
21 you have not looked at the statute as to whether or not  
22 this has provided or not provided that; is that correct?

23 MR. SZYMANSKI: Your Honor, I don't understand  
24 the question. Mr. -- perhaps due to his use of the word  
25 "this," I'm not sure what he meant by "this is  
26 provided."

27 MR. HUARD: Q Form of notice. This notice that  
28 you're talking about, you haven't looked to see whether

1 or not the statute provide for this new form of notice  
2 that you are proposing as this additional safeguard;  
3 have you?

4 A I don't believe it's in the statute.

5 Q Do you know what the statute requires by way  
6 of the opt-out notice?

7 A I'm not an expert in that. Dawn Osborne  
8 testifies to that.

9 Q I don't want to beat a dead horse on load  
10 profiles, but is there something in between doing a full  
11 load profile and doing nothing?

12 As an example -- and if you could bear with  
13 me: The City of Chula Vista, for example, straddles  
14 both your moderate zone and your hotter zone; is that  
15 correct?

16 A We call them coastal and inland, but yes. The  
17 two-- yes. Okay.

18 Q Is there something that would effectively be  
19 able -- for the utility to confirm that use of  
20 the utility-wide load profile is appropriate for that  
21 particular CCA?

22 A I do believe there is a way that -- a very --  
23 a quick and dirty, simple way to kind of take a sanity  
24 check, which is taking your residential load, aggregate  
25 residential load for its particular city -- and you've  
26 used Chula Vista, so we'll take Chula Vista as an  
27 example -- and do a split of the residential load by  
28 climate zone, not -- it's not going to be an hourly load

1 shape. It's going to be a percent of the load how much  
2 of it is in the coastal zone versus how much of that  
3 load is in the inland zone.

4 And we know -- for example, I know on our  
5 system average basis, 56 percent of our residential load  
6 is in the coastal zone; 47 percent is -- I'm sorry.  
7 I got the wrong numbers there. It adds up to 98 percent  
8 in both; okay? And 56 is in the coastal.

9 Q And you could do that on a CCA basis?

10 A Yes, exactly.

11 And so for residential, if it were close to  
12 that, then you'd probably feel comfortable using the  
13 system average load profile.

14 Q In the workshop report, there were categories  
15 of information, I believe: easy, moderate, you know  
16 certain things you use, then the letters. What would  
17 that type of quick and dirty fall into?

18 A Easy.

19 Q Easy? So that's less than four hours?

20 A That's correct.

21 Q If I could, could you --

22 Were you aware that Chula Vista, as an  
23 example, asked for data from SDG&E?

24 A Yes, I am.

25 Q Do you have a copy of that data request with  
26 you?

27 A Yes, I do.

28 MR. HUARD: Your Honor, I'd like to have the data

1 response of Chula Vista marked as -- the data response  
2 of SDG&E marked as the next exhibit number, which  
3 I believe is Exhibit No. 6.

4 ALJ MALCOLM: That would be Exhibit No. 6.

5 (Exhibit No. 6 was marked for  
6 identification.)

7 ALJ MALCOLM: Let's go off the record for a  
8 minute.

9 (Off the record)

10 (Recess taken)

11 ALJ MALCOLM: Please come to order.

12 Mr. Huard.

13 MR. HUARD: Thank you, your Honor.

14 Q Ms. Keilani?

15 A I'm sorry.

16 Q Are you ready?

17 A Actually, I have an answer to a previous  
18 question that I said I would check on how many load  
19 research meters that we have. I forgot who it was that  
20 asked me that question.

21 MR. REIGER: It was I.

22 THE WITNESS: We have approximately 2100 load  
23 research sample meters divided between dynamic load  
24 profiling and standard load research. We have another  
25 probably 2000 to 2500 meters out there for samples of  
26 various kinds for specific programs such as smart  
27 thermostat. Okay.

28 ALJ MALCOLM: Okay.

1           MR. HUARD: Your Honor, before I launch into  
2 the next one, I'm going to go back just a little bit, if  
3 I could.

4           Q In answering questions from the City and  
5 County of San Francisco on how a city may know  
6 the existence of people who would otherwise -- or  
7 companies who qualify for 15/15, you use, I believe,  
8 the tax rolls as an example; is that correct?

9           A It what came to mind.

10          Q Isn't it a likely possibility that  
11 the taxpayer involved with a particular location may be  
12 different than the actual operator of the location of  
13 the one responsible for signing contracts for  
14 the utility service?

15          A I suppose it could be different.

16          Q So to use an example of your company, let's  
17 say Sempra is the taxpayer but SDG&E is the operator.

18          A That's possible.

19          Q And then also, I think --

20          A I'd like to clarify on that subject.

21                 I believe in my rebuttal testimony, I did  
22 suggest an alternative means if CCAs, for some reason,  
23 are not aware of these large customers or don't have  
24 that information. Without compromising customer  
25 privacy, the utility could certainly try to facilitate a  
26 means for those customers to notify them that you wish  
27 to have their information -- or the CCA wishes to have  
28 their information since we know who they are.



1           We're just -- the rules prohibit us from  
2 giving out their information, but it doesn't prohibit us  
3 from sending them a notification or some sort of  
4 facilitating procedure.

5           Q    Thank you.

6           I'd like -- first of all, just to make sure  
7 I have the scope of your testimony correct, the cost of  
8 providing data or the cost of providing various services  
9 is in Ms. Osborne's testimony; is that correct?

10          A    Yes, that's correct.

11          Q    But the types of testimony is in your  
12 testimony?

13          A    That's correct.

14          Q    The type of information --

15          A    Types of information, yes.

16          Q    I believe you've referenced familiarity with  
17 and have with you the utility report, the joint utility  
18 report on information?

19          A    Yes, I do.

20          Q    And I believe you also reference in your  
21 testimony familiarity with and reference Exhibit B to  
22 that?

23          A    Yes.

24          Q    Now in that, is it fair to say that basically  
25 all the types of information that were suggested at the  
26 workshop are listed in single lines?

27          A    Yes.

28          Q    That was at least the intent?

1           A    That's the intent, yes.

2           Q    And then information is broken down by  
3 utility.  And then a footnoting, it defines whether it's  
4 free, easy, moderate, difficult, extremely difficult, or  
5 not applicable; is that correct?

6           A    That's correct.

7           Q    Okay.  The City of Chula Vista served you with  
8 a -- served SDG&E with a data request.  And that's been  
9 marked for identification as Exhibit 6.

10          A    Yes.

11          Q    What I'd like to do is basically compare that  
12 information that was requested to how it fits within  
13 this chart.

14                But first, let me ask:  Easy means less than  
15 four hours' worth of effort?

16          A    That's correct.

17          Q    And moderate means less than eight hours'  
18 worth of effort?

19          A    That's correct.

20          Q    Are you proposing a charge for the provision  
21 of easy or moderate information?

22          A    In my testimony, we had not proposed it in  
23 that manner.  We're certainly willing to develop such  
24 standard costs for an easy or moderate request.

25          Q    So you are not suggesting that easy and  
26 moderate has become free; you just have not suggested a  
27 charge yet.  Is that correct?

28          A    In my testimony and the way we have it

1 proposed at this point is that the charges would be  
2 based on actual time. So if a particular request took  
3 two hours, it would be listed in this report as easy.  
4 And the way we've proposed it, it would be charged at  
5 two hours.

6 Q Now --

7 ALJ MALCOLM: Whether it's easy, moderate, or  
8 difficult?

9 THE WITNESS: That's true. Whether it's -- but an  
10 easy -- I mean, if it were moderate, it probably would  
11 not take two hours; it would probably take six hours.  
12 Generally, moderate is between four and eight hours.

13 ALJ MALCOLM: Right.

14 THE WITNESS: And those are estimates.

15 MR. HUARD: Q Yes. I understand.

16 A And they can differ, I do want to be clear.

17 For example, certain cities, Chula Vista, as  
18 an example is designated in our system with a city code  
19 and it's easily extractable. If a CCA were to form that  
20 was not easily identifiable and extractable, it would be  
21 more difficult even though it might be the same request  
22 in.

23 Q When you say less than four hours, is this in  
24 individual person time or is this --

25 A Total information request. Total to do  
26 the job.

27 Q Okay. So if we're saying four hours, let's  
28 say, it's four hours times whatever the hourly rate is

1 that you seek -- that Ms. Osborne has testified to?

2 A That's correct.

3 Q Now, if I could, is it fair to say that the --  
4 you're familiar with the response; is that correct?

5 A Yes.

6 Q Is it fair to say that to the extent to which  
7 the information is not listed on Appendix B as free,  
8 that SDG&E has not provided it within answers to the  
9 City of Chula Vista?

10 A I believe so.

11 Q And let me just use as an example Question  
12 No. 5. Do you have that in front of you?

13 A Yes, I do.

14 Q Can you read the question?

15 A Total number of accounts in each rate group,  
16 and specify which rate schedules are included in each  
17 rate group. ]

18 Q Does that almost nearly identical language  
19 appear within Appendix B, the third from the bottom at  
20 page 1?

21 A That's correct.

22 Q And can you read SDG&E's response to that  
23 question?

24 A

25 SDG&E objects to this data request  
26 as it elicits sits information  
27 discussed in the January 30, 2004  
28 - Joint Utility Report on

1           Community Choice Aggregation  
2           Information Issues, at Appendix B  
3           Information Item List. The  
4           Commission has not yet determined  
5           that SDG&E may provide the  
6           requested information.

7           Q    So SDG&E didn't offer to provide it at a  
8           charge. It just said until ordered it won't; is that a  
9           fair summary of that?

10          A    That's correct.

11          Q    And that similar response then appears in  
12          Question 6 as well?

13          A    Yes, that's correct.

14          Q    And that is also -- by the way, 5 and 6 are  
15          listed as being easy to respond to in the category under  
16          SDG&E on your Appendix B?

17          A    Yes, that's correct.

18          Q    And similarly, 7, Question 7?

19          A    That's correct.

20          Q    And without going through each one of them,  
21          that appears the case for the next several questions  
22          thereafter as well; is that correct?

23          MR. SZYMANSKI: Your Honor, whatever is in the  
24          exhibit is in the exhibit. I don't understand what  
25          Mr. Huard is asking of the witness.

26          MR. HUARD: What I was asking of the witness is  
27          whether SDG&E had responded to the question.

28                 She answered. They didn't.

1 Q Similarly, questions that -- let's say,  
2 Question 15 as an example.

3 A Yes.

4 Q Actually, that's a particularly bad example.  
5 How about -- oh, I'm sorry. 15 asks for customer-  
6 specific information, doesn't it?

7 A That's correct.

8 Q And you've objected to that question  
9 consistent with your testimony today?

10 A That's correct.

11 Q Of the questions that are asked here, is it  
12 fair to say that none of them fall into the category of  
13 difficult or hard to respond to, and that you did not  
14 object to any of them in that regard?

15 A We didn't object to any of the answers on the  
16 basis of them being difficult. I don't know for sure  
17 that none of them would be difficult. I -- if you want  
18 me to go through and look at each one, I could. But  
19 if -- if they were objected to on a different basis --

20 Q Well, let me make it maybe a little simpler.

21 On Appendix B, are any of the categories of  
22 information that are listed under SDG&E listed as being  
23 either difficult or extremely difficult to respond to?

24 A No.

25 Q Thank you.

26 Your Honor, if I could have a minute, I'm  
27 trying to avoid asking questions that were -- that  
28 preceded me.

1 ALJ MALCOLM: Sure.

2 MR. HUARD: Your Honor, I believe that completes  
3 my cross-examination.

4 ALJ MALCOLM: Thank you, Mr. Huard.

5 Ms. Grueneich, do you have questions?

6 MS. GRUENEICH: Yes.

7 CROSS-EXAMINATION

8 BY MS GRUENEICH:

9 Q Good afternoon, Ms. Keilani. I'm Dian  
10 Grueneich, and I'm representing the local government  
11 coalition -- Local Government Commission Coalition.

12 A Good afternoon.

13 Q If I could turn to your reply testimony, and  
14 on page 4, WK-4, I have a few questions.

15 But, first of all, could you just summarize  
16 briefly the 500 kW Rule? I know we've been talking  
17 about the 15/15 Rule, but could you summarize the 500 kW  
18 Rule?

19 A Yes. Any customer with load greater than  
20 500 kW is excluded.

21 Q So that absent a customer's specific  
22 permission, SDG&E's position is that it is not allowed  
23 to send any information about a customer who has usage  
24 over 500 kW to a CCA; is that correct?

25 A We're prohibited by Commission rules to send  
26 that kind of information to any third party.

27 Q Okay. And that information includes the  
28 customer's name as well as any usage information?

1           A    That's correct.

2           Q    About how many customers are there that are  
3 over 500 kW in SDG&E's service area?

4           A    I don't have an exact customer count, but I  
5 would say it's fewer than -- it's fewer than 300, I  
6 believe. Maybe a lot fewer.

7                    More?

8                    I could get you that after a break.

9           Q    I would ask --

10          A    I don't have specific counts.

11          Q    I would ask subject to check just that we have  
12 that number provided in the record, and it's fine if  
13 your counsel provides it.

14                   MR. SZYMANSKI: We will do so, your Honor.

15                   MS. GRUENEICH: Q And a related question is about  
16 what percentage of SDG&E's overall bundled load is that,  
17 the 500 kW customers; do you have any idea for that  
18 number?

19                   A    I'd like to -- after a break I can get that  
20 for you. There's people here that have those numbers.

21                   Q    Fine. Again, I'm not sure if we'll have a  
22 break today, but I'd be happy if it's just provided on  
23 the record by Mr. Szymanski.

24                   MR. SZYMANSKI: We'll do so. Thank you.

25                   MS. GRUENEICH: Okay.

26                   Q    Now you've testified today that your belief is  
27 that cities and counties should be able to determine who  
28 their customers are that are over 500 kW by looking at



1 the tax rolls within their jurisdiction?

2 A I gave that as an example, but they -- yes,  
3 they would be their largest customers.

4 Q And it's your belief that a city or county  
5 should be able to identify the names of their customers  
6 over 500 kW by looking at the tax rolls; is that your  
7 testimony?

8 A My testimony is that they should be able to  
9 identify them.

10 Q And how should they be able to identify them?

11 A Probably by various means of knowledge of your  
12 city, where you go to get possibly support for a city  
13 proposal that you want to do that affects customers.  
14 Large customers are generally known to their city, I  
15 would expect.

16 Q Have you ever worked for a city or county?

17 A No.

18 Q And your testimony is, I recall, that you said  
19 it makes no sense that they wouldn't know the identities  
20 of their customers -- of the businesses within their  
21 jurisdiction that have usage of over 500 kW, correct?

22 A Can you direct the page number where I said  
23 that?

24 Q Your rebuttal testimony, page 4.

25 A Line?

26 MR. HUARD: 12.

27 MS. GRUENEICH: Q On lines 12 through 13, you  
28 state:

1           It makes no sense that a city or  
2           county does not know who their  
3           largest customers are.

4           A    Yes.

5           Q    On what facts or information or belief have  
6           you reached that conclusion?

7           A    On a general belief that -- that cities know  
8           who their largest customers are because they are their  
9           most influential customers in the city, and also as  
10          testified by another party, LGCC, as a matter of fact,  
11          that these are their largest and most unique customers.

12          For example, in a city that has a customer --  
13          customers like large industrial customers, the city  
14          knows that they have that large industrial customer.

15          ALJ MALCOLM:   How would the city know how much  
16          energy that customer uses?

17          I mean even assuming we know Chevron is down  
18          the street, how does a city know what the usage of the  
19          customer would be?

20          THE WITNESS:   They might not know specifically  
21          that it's over 500 kW.  Well -- like, I think it would  
22          be very obvious that Chevron would be over 500 kW.

23          ALJ MALCOLM:   If it's a little Chevron plant.  I  
24          mean I wouldn't know.

25          THE WITNESS:   Okay.  And again, if it's -- if I  
26          have made an assumption that CCAs don't know as much  
27          about these large customers in terms of their energy  
28          usage, SDG&E has proposed that we facilitate a means

1 that these customers can be contacted by the utility in  
2 order to get them to contact the CCA or to facilitate a  
3 contact without releasing private information.

4 The whole -- this whole thing is about an  
5 inability of the utility to release customer information  
6 without the permission of that customer.

7 MS. GRUENEICH: Q Getting back to your statement  
8 here, the two grounds that you said you relied upon was  
9 that, one, large customers have the most influence  
10 within the city, and, two, your reading of the LGCC  
11 testimony.

12 Was there any other basis for your conclusion  
13 here that you can remember?

14 A Not that I can recall.

15 Q Can you help me on the same page. That's  
16 page 4 of Exhibit 5. You have the footnote 2 that SDG&E  
17 still has many large customers participating in direct  
18 access. And I wasn't clear how that footnote related to  
19 the sentence that it was modifying. Could you take a  
20 minute to help explain?

21 A That was just to clar- -- well, to describe  
22 the fact that many of our large customers are  
23 participating in direct access.

24 And my assumption was that those direct access  
25 customers already have a contract for their energy  
26 supply and therefore would not be part of the CCA load.

27 Q Then on the same page a few lines down on --  
28 starting on line 17 under the alternative that SDG&E has

1 presented in your testimony that states that SDG&E could  
2 facilitate a notice, is this an alternative that -- just  
3 so I understand -- is this an alternative that SDG&E is  
4 willing to do?

5 A Yes, it is.

6 Q On the bottom of page 4 and the top of page 5,  
7 you state that:

8 ...LGCC is incorrect in claiming  
9 that application of the 15/15 Rule  
10 prevents the utilities from  
11 providing comprehensive load data,  
12 even in aggregate form, for all  
13 customers in the CCAs area.

14 If we were to expand that to include the 15/15 Rule  
15 and the 500 kW Rule, would you agree that the omission  
16 of customers over 500 kW would prevent utilities from  
17 providing or could prevent utilities from providing  
18 comprehensive load data?

19 A No. In aggregate form.

20 Q But I thought that we've discussed and agreed,  
21 and I apologize if I didn't, that the 500 kW Rule  
22 prevents SDG&E from providing any information on  
23 customers over 500 kW.

24 For example --

25 A On an individual.

26 Q -- if there is a single customer in a CCA area  
27 over 500 kW, would the usage of that customer be  
28 provided?

1           A    Yes.

2           Q    One single customer?

3           A    Yes, it would.  But it wouldn't be identified  
4 as the usage of one single customer.

5                    In aggregate form, we can provide load data,  
6 comprehensive load data by rate class, but it wouldn't  
7 say there are six customers in this class or there's  
8 1500 customers in this class.  It would say there's this  
9 much usage in that class, and it would include all  
10 customer data.

11           Q    Could you turn back to your opening testimony,  
12 Exhibit 3, page 4.  On line 15 that states that the data  
13 provided by the 15/15 Rule is limited to providing  
14 information for customers with less than 500 kW demand?

15           A    Yes.

16           Q    So I am incorrect in assuming that there is  
17 some limitation on providing information over 500 kW?

18           A    There's -- there's two different kinds of  
19 providing -- two different ways of providing data.  And  
20 I think there's some misunderstanding when we use the  
21 word "aggregate," and I think it's been used  
22 differently.  So I understand the confusion that's  
23 arisen from this.

24                    When we provide aggregate data, meaning one  
25 number of consumption for a class, there is nothing  
26 excluded from that.  But when we provide data grouped by  
27 a rate class, but there's individual lines for each  
28 customer, that's where we exclude 500 kW and the

1 15/15 Rule. Does that --

2 Q Could you repeat the second part again?

3 A When we provide data, consumption or customer  
4 data grouped by rate class, in other words, there might  
5 be 15 lines, there might be 30 lines, but it's all in  
6 one rate class, but each line represents a single  
7 customer.

8 Q With the customer's name masked?

9 A Name masked, but no address, no identifying  
10 information, but what would you know is there is -- you  
11 would know how many customers, and you would know the  
12 usage of each customer. That's where we apply the  
13 15/15 Rule and the 500 kW Rule that was developed in the  
14 direct access proceeding for that purpose.

15 But when it's one number, 500,000 kWh in this  
16 rate class, and we don't say how many customers that  
17 applies to, all customers are included, including  
18 500 kW.

19 Q I see. So the operative word is essentially  
20 in "aggregate" form?

21 A In aggregate form.

22 But again, the aggregate word has been used in  
23 different ways, so I wanted to clarify that.

24 Q When does someone become a bundled utility  
25 customer?

26 A When do they become a bundled utility  
27 customer?

28 Q If you know. I mean is it when they get the

1 first bill? Is there some notification that they  
2 provide to the utility? Do you have --

3 A When a customer signs up for service, you  
4 mean?

5 I'm not an expert in signing up customers for  
6 service so --

7 Q As I understand it, there's a limitation on  
8 providing customer information. You've testified about  
9 limitations on providing utility customer information.

10 So my question was: When does somebody become  
11 a utility customer, if you know?

12 A I would assume when they sign up for service.

13 Q And do you know when somebody would become a  
14 CCA customer?

15 A I don't -- I don't know the specifics of that,  
16 but I believe it's when they get switched from utility  
17 service to CCA service. That's my understanding.

18 Q And by "switching" --

19 A Again, I'm not -- that's not -- you can direct  
20 those questions to Dawn Osborne on the specifics of the  
21 switching.

22 Q Okay. Am I correct from Exhibit 3 page 13,  
23 lines 7 and 8, that SDG&E's proposal is that information  
24 provided to CCAs would be provided on an actual cost  
25 basis, that is, time and materials?

26 A I'm sorry, I didn't get to my page in the  
27 testimony.

28 Q Sure. Page 13.

1 A Page 13. And your question was?

2 Q Am I correct that SDG&E's proposal is that  
3 information that -- for which there is a charge would be  
4 charged to the CCAs on an actual cost basis, that is,  
5 time and materials?

6 A Yes, that is our proposal.

7 Q And for bundled customers, is the same rule  
8 applied; in other words, it's always actual cost, time  
9 and materials?

10 Or, alternatively, is information ever  
11 provided on a fixed-fee basis?

12 A I believe that it's on a -- for -- like, for  
13 example, in the direct access, there's fixed fees.  
14 I'm -- actually, I'm not sure.

15 Q The example or the item you just referenced  
16 was to direct access. My question was: If there is a  
17 request from a bundled customer for information, is that  
18 information provided, I guess, free, and if not, if it's  
19 provided at charge, is it also done on an actual cost,  
20 time and materials, basis, or is it provided under fixed  
21 fee, if you know?

22 ALJ MALCOLM: This would be information about its  
23 own usage?

24 THE WITNESS: Its own usage?

25 MS. GRUENEICH: Yes.

26 THE WITNESS: By a single customer asking for its  
27 own usage?

28 MS. GRUENEICH: Q Yes.



1           A    I believe it's provided at no cost.  I mean  
2 it's a -- doesn't take much time to provide a single  
3 customer's usage.

4           Q    On your reply testimony, Exhibit 4, page 5 --

5           A    I'm sorry?

6           Q    I think I must be in -- one moment.     ]

7                     Your rebuttal testimony, on page 5.  At the  
8 bottom of the page you list several safeguards that  
9 SDG&E has recommend be in place.  The last one is ensure  
10 that customers are making an informed decision.

11                    What is the decision that you're referring to?

12          A    To allow the release of their information.

13          Q    Is this safeguard that -- let me back up.

14                    So under your proposal here for these  
15 safeguards, would a customer's consent be necessary  
16 prior to release of information to a CCA?

17          A    I'm sorry?  Prior to the safeguards?  I didn't  
18 understand that question.

19          Q    Let me back up.  Let's start again.

20                    What decision are you referring to here?

21          A    I'm referring to a decision of the customer to  
22 allow its information to be released or knowledge that  
23 it is going to be released.

24          Q    Those are two different things.  I'm asking  
25 about a decision.  It says an informed decision.  So are  
26 you saying that the customer --

27          A    Knowledge that the decision to opt in or to  
28 opt out has an implication on their release of customer

1 information. So that when they opt in or opt out, they  
2 know what the impact is on the release of their customer  
3 information.

4 Q Getting back to, on the same page, on line 19,  
5 it says provision of notice in advance of turning over  
6 any private information which ensures that the customers  
7 are making an informed decision.

8 Am I correct in understanding the safeguard  
9 that if the Commission so ordered it, SDG&E would comply  
10 with that order but is recommending that there be a  
11 safeguard in place in which there is a notice to the  
12 residents and businesses within the CCA's jurisdiction  
13 that the Commission has ordered the utility to turn over  
14 the information, here is a description of the  
15 information, and that that information will be used by  
16 the CCA?

17 And what I'm having problems with is none of  
18 that leads to a customer decision. So you are not -- I  
19 want to make sure that my understanding is from the  
20 safeguard that you are proposing, you are not proposing  
21 that there be a prohibition on turning over the  
22 information unless the customer agrees to it, are you?

23 MR. SZYMANSKI: Your Honor, I'm sorry. I just  
24 don't understand the question.

25 MS. GRUENEICH: I think I can start over and make  
26 it clear.

27 Q We are in a hypothetical. The Commission does  
28 order the information to be turned over. The Commission

1 further does agree that prior to it being turned over  
2 there is a notice given to the customer that explains  
3 that the information has been required by the Commission  
4 to be turned over from the utility to the CCA. And  
5 there's a description of the type of information that is  
6 going to be given over.

7 Is SDG&E proposing that if a customer objects  
8 to that information being turned over, it would not be  
9 turned over?

10 A I think that if the customer objected to  
11 having the information turned over, it would be faced  
12 with the decision of opting out of CCA or not opting out  
13 of CCA. In other words --

14 Q What if it didn't? What if it hadn't made a  
15 decision to opt in or opt out and it just said please  
16 don't turn our information over? Is SDG&E proposing  
17 that it would then not be required to turn the  
18 information over to the CCA?

19 A Yes.

20 ALJ MALCOLM: That would be as part of the  
21 Commission's rule, that if the customer objects? I  
22 didn't understand that.

23 MS. GRUENEICH: Q Conversely, if the customer  
24 were silent, if it got the notice and it was just  
25 silent, is SDG&E proposing that the rule would be that  
26 it needs to get an affirmative okay from the customer?  
27 Or if the customer is silent, is SDG&E proposing that it  
28 would then be allowed to turn the information over?



1 programs.

2 A Yes, I believe we do.

3 Q Are you familiar with Section 5 of AB 117  
4 which specifically authorizes CCAs to design local  
5 energy efficiency programs and administer energy  
6 efficiency public goods charge funds, Section 381.1?

7 A Generally.

8 Q Just a line of reasoning. Are you familiar  
9 with Section 4 of AB 117 which states that all electric  
10 corporations shall fully cooperate -- this has been gone  
11 over -- with any community choice aggregators that  
12 investigate, pursue or implement community choice  
13 aggregation programs and that cooperation shall include  
14 providing the entities with appropriate billing and  
15 electrical load data, including but not limited to data  
16 detailing electricity needs and patterns of usage?

17 MR. SZYMANSKI: Your Honor, I'm sorry. I don't  
18 understand the question. If Mr. Fenn is reading from a  
19 particular part of the statute and wants Ms. Keilani to  
20 agree that that is in the statute, that is one thing.  
21 But I am really not sure what question is pending of  
22 this witness at this time.

23 MR. FENN: I am getting at it. The next two are  
24 very direct and will build directly on those two facts.

25 ALJ MALCOLM: Did you ask whether she was aware of  
26 that portion of the statute?

27 MR. FENN: Yes.

28 ALJ MALCOLM: Okay.

1           MR. FENN:   Q   Would exclusive access to protected  
2 customer data not give SDG&E an unfair advantage in  
3 bidding against CCAs before the CPUC for energy  
4 efficiency public goods charge funds?  And if they have  
5 all the data on how to design programs in applying them  
6 to the best optimal loads and CCAs do not have similar  
7 data to design their programs, wouldn't that give them  
8 an unfair advantage?

9           A   I am not an expert in how energy efficiency  
10 programs are designed, so I can't tell you if they use  
11 that information or not.

12          Q   Well, if we are at an unfair advantage, would  
13 it not violate their requirements that utilities fully  
14 cooperate with CCAs --

15          MR. SZYMANSKI:  Objection.  It seems there is a  
16 presumption of were there an unfair advantage.  And I  
17 think this witness just indicated that she is not an  
18 expert in this area, and he is pursuing a question that  
19 presumes that there is an unfair advantage built into  
20 some sort of information that utilities may have that  
21 some other party doesn't have.

22                I don't see how this witness is qualified to  
23 answer that question based --

24          ALJ MALCOLM:  His last question didn't presume the  
25 unfair advantage provision of his previous question.  He  
26 just asked something about utilities cooperating with  
27 CCAs on the provision of information.

28          MR. SZYMANSKI:  Maybe it would help if Mr. Fenn

1 restated his question or reiterated it, and I will pay  
2 particular attention to the first several words of his  
3 question.

4 ALJ MALCOLM: Fine.

5 MR. FENN: Q Were this specific privileged  
6 knowledge of the data to give an advantage to SDG&E in  
7 its bids in competition with CCAs for those public goods  
8 charge funds, would that advantage, the protection of  
9 that advantage, not constitute a violation of the  
10 requirement that the utility fully cooperate with CCAs  
11 under Section 4 of AB 117?

12 MR. SZYMANSKI: Your Honor, again, I think he did  
13 do what I suspected that he did, which was he is just  
14 restating the first several words of his statement which  
15 is, if I understand the question, it is something he is  
16 asking whether SDG&E would be deemed to be fully  
17 cooperative if we presumed that there were an unfair  
18 advantage or some privileged information that the  
19 utility has that somebody else doesn't have.

20 But we established from Ms. Keilani's previous  
21 answer that she is not an expert in this area to begin  
22 with. And even more so, I object to the foundation of  
23 this question, which implies some unfair advantage,  
24 which I don't think Ms. Keilani can assume or is expert  
25 to testify regarding.

26 ALJ MALCOLM: Mr. Fenn, I am concerned that she is  
27 probably not qualified to tell you whether there would  
28 be a violation of the statute in your hypothetical

1 because it would be a judgment.

2 MR. FENN: I will strike that and move on to the  
3 next question.

4 ALJ MALCOLM: Sure.

5 MR. FENN: Q In your reply testimony, WK-3, line  
6 4, you say that SDG&E disagrees that the formation of  
7 CCAs is sufficient grounds for breaking the 15/15 Rule  
8 or the 500-kilowatt rule.

9 On line 2 of the same page you claim that Rule  
10 15/15 and the 500-kilowatt rule are designed to  
11 carefully protect --

12 ALJ MALCOLM: Mr. Fenn, slow down. It is very  
13 hard for the reporter.

14 MR. FENN: I apologize. I will start again.  
15 Should I restate the second citation?

16 ALJ MALCOLM: Sure.

17 MR. SZYMANSKI: I'm sorry. We are in --

18 MR. FENN: We are on WK-3, line 4 of the reply  
19 testimony.

20 MR. SZYMANSKI: Thank you.

21 MR. FENN: Q You say SDG&E disagrees with --

22 THE REPORTER: Mr. Fenn, I can't hear you.

23 MR. FENN: Sorry.

24 Q On line 2 of the same page you claim that Rule  
25 15/15 and the 500-kilowatt rule are designed to  
26 carefully protect customer confidentiality data.

27 I do want to reference AB 117 once and ask you  
28 whether you are familiar with the definition of a CCA



1 under AB 117, specifically Section 366.2-A 1, which  
2 provides that customers shall be entitled to aggregate  
3 their electric loads as members of their local community  
4 with community choice aggregators, and the following  
5 section, which provides that customers may aggregate  
6 their loads if each customer is given an opportunity to  
7 opt out of their community's aggregation program.

8           Given that CCAs are defined under AB 117 as  
9 customers repeatedly, do you believe that it is the  
10 responsibility of the utilities to protect customers  
11 against their own CCA, in effect protecting them against  
12 themselves?

13           MR. SZYMANSKI: Objection, your Honor. The  
14 question, as I understand it, seems to presuppose that  
15 the statute repeatedly defines CCAs as customers. And  
16 I'm struggling with that premise to what follows in the  
17 rest of his question.

18           I disagree with that reading of the statute.  
19 So perhaps Mr. Fenn would care to refer me to where in  
20 the statute the statute states what he is --

21           ALJ MALCOLM: I am more concerned that Mr. Fenn is  
22 asking the witness to engage in a pretty technical legal  
23 interpretation. I think you are leading into legal  
24 argument here. And you may have a good argument or not.  
25 I will encourage you to include it in the brief.

26           MR. FENN: Okay. I will move on, then.

27           Q In your reply testimony, KW-3, line 8, you say  
28 that the data protected by the 15/15 Rule and the

1 500-kilowatt rule from DA, from direct access, should  
2 not be released to a CCA without their written  
3 authorization of the customer.

4 Is it not true that direct access was an  
5 opt-in market under which customers could not be  
6 switched to a new supplier without written  
7 authorization?

8 A That's true.

9 Q Thus, under direct access the authorization to  
10 switch a customer to a new supplier was conducted in  
11 much the same manner that the 15/15 500 Kilowatt Rule  
12 data was released by a written authorization?

13 A I'm sorry. Could you read that maybe a little  
14 slower.

15 Q Sorry.

16 Thus, under the direct access, the  
17 authorization to switch a customer to a supplier was  
18 conducted in much the same manner that under the  
19 confidentiality rule data was released through a written  
20 authorization?

21 A That's correct.

22 Q You were switched through a written  
23 authorization and you authorized the data through a  
24 written authorization.

25 Are you familiar with PUC Section 366.2(a)2  
26 which provides that under community choice aggregation  
27 customer participation may not require a positive  
28 written declaration, but all customers shall be informed

1 of their right to opt out of the community choice  
2 aggregation program. If no declaration is made by a  
3 customer, that customer shall be served through the  
4 community choice aggregation program.

5 ALJ MALCOLM: Is the question is she aware of  
6 that?

7 MR. FENN: Q Are you familiar that under community  
8 choice you do not require a positive written declaration  
9 in order to be switched, unlike direct access in which  
10 you did?

11 MR. SZYMANSKI: If the question is simply does the  
12 statute require -- involve an opt-out program, if that's  
13 the question that is pending, in contrast to DA, which  
14 was an opt-in program --

15 MR. FENN: Yes.

16 MR. SZYMANSKI: Thank you. I have no objection to  
17 that question.

18 MR. FENN: Q So I guess my question is would  
19 SDG&E oppose releasing the 15/15 and 500-kilowatt  
20 protected data after the opt-out period has been  
21 completed?

22 A Our position is that that information is  
23 protected under current Commission precedent and the law  
24 as we know it. We are prohibited from releasing that  
25 information without customer authorization.

26 However, if the Commission were to decide that  
27 that information should be released, we strongly  
28 recommend the safeguards that are in my testimony to

1 ensure that the customer is aware that the information  
2 is going to be released.

3 Q If the opt-out notification included  
4 notification that the failure to opt out would indicate  
5 agreeing to the release of the information for purposes  
6 of designing energy efficiency programs and planning  
7 loads for the community, would SDG&E object to that,  
8 given the opt-out nature of community choice aggregation  
9 where the release of the data would be the follow of the  
10 opt-out period of that particular CCA?

11 MR. SZYMANSKI: Your Honor, I apologize, but I am  
12 confused by the question. I thought it had several  
13 subparts. Perhaps could you just simplify --

14 MR. FENN: I am trying to draw an analogy, which  
15 is direct access. You can't switch a customer without  
16 written consent. You can't release data without written  
17 consent.

18 Under community choice you have the primary  
19 change represented by community choice is an opt-out  
20 process. Under the statute this opt-out process is put  
21 forward as a form of consent.

22 Under statute the CCA formed is, for that  
23 reason, could ostensibly after the opt-out period  
24 receive the data under the same terms. There is no  
25 reason not to have an opt-out to the data release at the  
26 same time that you have an opt-out of the community  
27 choice aggregation. They are in a sense part and parcel  
28 of the same process.

1           That's what I am trying to suggest. Were this  
2 condition placed on the release, that the opt-out  
3 include notification and that no release occur until  
4 after the opt out process, would that not satisfy the  
5 customer protection requirements of SDG&E?

6           MR. SZYMANSKI: Your Honor, I think, if I am not  
7 mistaken, Mr. Fenn is raising some material that may be  
8 very appropriate for briefing and analogies of the  
9 opt-out process. If not, I don't really understand the  
10 nature of his question.

11          ALJ MALCOLM: Let me see if I can clarify.

12          MR. SZYMANSKI: What are the facts he is trying to  
13 adduce from this?

14          ALJ MALCOLM: If you could tell me if I am wrong,  
15 Mr. Fenn. Are you asking whether SDG&E objects to  
16 releasing the information after the opt out period if  
17 the customer hasn't opted out? Therefore, when the  
18 customer agrees to become a customer of the CCA, the  
19 customer agrees at the same time to the release of the  
20 information by San Diego?

21          MR. FENN: Provided they were notified the release  
22 would take place if they failed to opt out, right.

23          ALJ MALCOLM: Would San Diego object to that?

24          THE WITNESS: I would say we would not object if  
25 the notification included the safeguards as we proposed,  
26 which is that the notice provides clear and  
27 unequivocal -- clearly explains to customers that the  
28 Commission is requiring the utility to turn over their

1 private information to a CCA provider even if they do  
2 not give their affirmative permission and it describes  
3 the specific information that is disclosed. Then I  
4 would say that we would not object.

5 MR. FENN: Thank you. That's all I have.

6 ALJ MALCOLM: Thank you, Mr. Fenn.

7 Anybody else?

8 (No response)

9 ALJ MALCOLM: Any redirect?

10 MR. SZYMANSKI: Your Honor, I suspect there will  
11 be some redirect. If I can have a moment off the  
12 record, I can give you an estimate on whether it will be  
13 a minute-and-a-half worth or whether it will be five or  
14 ten minutes.

15 ALJ MALCOLM: Sure. Let's go off the record.

16 (Off the record)

17 ALJ MALCOLM: Back on the record.

18 MR. SZYMANSKI: Thank you, your Honor. I expect  
19 that SDG&E is going to have five or six questions, and I  
20 know that we are past 3:30. I am willing to begin, but  
21 I defer to you on how you want to proceed.

22 ALJ MALCOLM: We are okay with going a little  
23 later unless someone objects.

24 Why don't you go ahead and see if we can get  
25 through the witness today.

26 REDIRECT EXAMINATION

27 BY MR. SZYMANSKI:

28 Q Ms. Keilani, by the way, I believe you were

1 just provided with some information that is responsive  
2 to a request from Ms. Grueneich regarding the number of  
3 customers over 500 kW in SDG&E's service territory. Do  
4 you have that information now?

5 A Yes, I do.

6 Q Please proceed.

7 A SDG&E has, as of April 30th, 651 customers  
8 over 500 kW, which represents 22 percent of our load.]

9 ALJ MALCOLM: She'll find out tomorrow.

10 MR. SZYMANSKI: Q Okay. I'd like to revisit an  
11 issue that was discussed by Ms. Grueneich and Mr. Huard  
12 that relates to your rebuttal testimony, Exhibit 5, at  
13 page 5.

14 There were some questions regarding your  
15 comment on lines 12 and 13 that it makes no sense that a  
16 city or county does not know who their largest customers  
17 are. Do you recall some of those questions,  
18 Ms. Keilani?

19 A Yes.

20 Q Does SDG&E's positions on customer privacy and  
21 the release of customer information to CCAs hinge on  
22 whether or not a city or county is in fact able to  
23 obtain customer-specific information from their largest  
24 customers?

25 A No, it does not.

26 Q Thank you.

27 Do you recall that Mr. Huard asked you whether  
28 AB 117 provides a notice that -- or provides for

1 the utility issuing a notice that would inform potential  
2 CCA customers that their customer information is to be  
3 released. Do you recall that question from Mr. Huard?

4 A Yes, I do.

5 Q Have you had a chance to reconsider your  
6 response to that question?

7 A Yes, I have.

8 In AB 117, although it doesn't specifically  
9 speak of this in terms of notification, it does say in  
10 Section 366.2(c) -- I'm sorry, 3(E), that part of  
11 the implementation plan, one of the requirements of CCAs  
12 is that,

13 The rights and responsibilities of  
14 program participants, including,  
15 but not limited to, consumer  
16 protection procedures.

17 It implies -- AB 117 implies that maintaining  
18 customer -- I'm sorry, consumer protection's important.

19 MR. HUARD: Your Honor, I move to strike that  
20 answer as it's an interpretation of statute. You  
21 specifically ruled that this witness is incompetent in  
22 that regard. Calls for legal conclusions.

23 MR. SZYMANSKI: Well, your Honor, the question  
24 that Mr. Huard asked the witness -- which we're happy to  
25 revisit, I suppose -- is whether or not AB 117 allows  
26 the utility to issue a notice that would inform  
27 customers that their customer information is about to be  
28 released. That was Mr. Huard's question.



1           Now, Ms. Keilani didn't seem to recall a  
2 provision of AB 117 that in fact is responsive to  
3 Mr. Huard's question. So, to the extent that  
4 Mr. Huard's question is allowed, I believe that  
5 Ms. Keilani's response on redirect should also be  
6 allowed.

7           ALJ MALCOLM: I also think it's okay because if a  
8 San Diego witness is assuming that customer protection  
9 includes certain -- confidentiality of certain  
10 information, then she's just following the plain  
11 language of the statute in her application of it. So  
12 I think it's fine.

13           MR. HUARD: Your Honor, can I ask one question in  
14 that regard?

15           ALJ MALCOLM: You can ask it on recross.

16           MR. HUARD: Thank you.

17           MR. SZYMANSKI: Q Ms. Keilani, additionally,  
18 Mr. Huard asked you some questions that related to  
19 the reprised on community choice aggregation information  
20 issues, and specifically with respect to Appendix B --

21           A Mm-hmm.

22           Q -- and questions that related to  
23 the characterization of various types of information and  
24 the utility's ability to provide that information,  
25 whether it's easy, difficult, or some other way.

26                   And isn't it the case that the utility's  
27 ability to provide information also depends upon whether  
28 or not the utility has a legal authorization to provide

1 that information, independent of whether it can be  
2 provided easily or otherwise?

3 A That's correct.

4 MR. HUARD: Your Honor, I'm going to object on the  
5 grounds it calls for a legal conclusion by this witness.  
6 As the question is phrased, it specifically asks for a  
7 legal interpretation.

8 ALJ MALCOLM: I'm sorry; can you repeat  
9 the question?

10 MR. SZYMANSKI: Yes.

11 Q Isn't it the case that whether we can provide  
12 information easily or otherwise is a different question  
13 from the question of whether or not SDG&E is authorized  
14 to provide that type of information?

15 A Yes.

16 ALJ MALCOLM: Now that's not a legal  
17 interpretation.

18 MR. HUARD: Yeah. That was a revised question,  
19 your Honor. I didn't object to the restatement.

20 ALJ MALCOLM: Okay. Thanks.

21 MR. HUARD: Thank you.

22 MR. SZYMANSKI: Just a moment. I'll be wrapping  
23 up.

24 Q Ms. Keilani, do you recall some questions  
25 primarily from Ms. Grueneich, I believe, that dealt with  
26 the providing of information pursuant to certain  
27 safeguards?

28 A Yes.

1           Q    And SDG&E believes that the Commission does  
2 have authority to change its rules so that information  
3 can be provided under specific terms and with certain  
4 safeguards.  Is that SDG&E's view?

5           A    Yes.

6           Q    However, is it your testimony that those  
7 safeguards must be carefully followed in full if  
8 the current rules on customer information release are to  
9 be changed by the Commission?

10          A    Yes.

11          Q    And isn't it the case that the Commission's  
12 positions on the release of customer information must be  
13 fully reconciled not just with the procedural safeguards  
14 regarding the release of customer information, but any  
15 other legal requirements, whatever they may be, that  
16 apply to the release of customer information?  Is that  
17 the case?

18          A    Yes.

19          Q    So even if we have a few procedural safeguards  
20 that are part and parcel of our position on customer  
21 information release, still there may be other  
22 requirements of a legal nature perhaps, to which you are  
23 not testifying today, that would also be brought to bear  
24 on the Commission's evaluation?

25               MR. HUARD:  Again, that's not only asking for her  
26 to have a legal conclusion, but to have a law degree.  
27 It's asking her to presume or to explain that there may  
28 be other legal considerations of which she is unaware or

1 unexplained at this point. It's not only calling for  
2 her to make a legal conclusion; it's calling for her to  
3 explain what that other law is and that there are other  
4 law that may exist.

5 MR. SZYMANSKI: Well, your Honor, I'm not asking  
6 her to testify as to other law. I am just simply asking  
7 Ms. Keilani to state our position as to whether SDG&E  
8 believes there are other requirements other than those  
9 that are specified in her testimony that would be beyond  
10 the scope of her testimony because they are in fact  
11 legal in nature.

12 MR. HUARD: Your Honor, with the exception of that  
13 last phrase "which are legal in nature," I would not  
14 object to the question. But he keeps throwing in "which  
15 are legal in nature" and this witness, as you have ruled  
16 is not a lawyer and cannot opine on legal issues.

17 MR. SZYMANSKI: I'm not asking her to opine on  
18 legal issues. I'm just asking her to indicate whether  
19 the law must be brought to bear.

20 This is really --

21 ALJ MALCOLM: Well, fair for her to respond that  
22 there may be other legal considerations that aren't  
23 the subject of her testimony.

24 MR. HUARD: Which she's unaware of, your Honor.

25 ALJ MALCOLM: May be unaware of.

26 MR. SZYMANSKI: That's right.

27 THE WITNESS: Yes.

28 ALJ MALCOLM: All right. We can all agree to

1 that; right, Mr. Huard?

2 MR. SZYMANSKI: Just a moment. I think I'm almost  
3 done.

4 That's all I have, your Honor.

5 ALJ MALCOLM: Thank you, Mr. Szymanski.

6 Any recross, over here?

7 Mr. Huard.

8 MR. HUARD: Just one area, your Honor.

9 RE CROSS-EXAMINATION

10 BY MR. HUARD:

11 Q Ms. Keilani, in response to a redirect  
12 question by Mr. Szymanski, you indicated a reference to  
13 Section 366.2(E) of AB 117 as being a provision that  
14 would potentially provide for a notification from  
15 the utility rather than the CCA; is that correct?

16 A It's correct. And I would like to add --

17 Q Well, no. I do not want you to add. I just  
18 want to know whether that was your reference.

19 A It was my reference, and I actually believe  
20 I referenced the wrong paragraph.

21 Q Okay. Which one is it this time?

22 A 366.2(C)14.

23 Q (C)14?

24 A Reads:

25 The community choice aggregator  
26 shall register with the  
27 commission, which may require  
28 additional information to ensure

1 compliance with basic consumer  
2 protection rules and other  
3 procedural matters.

4 Q Doesn't that section apply to  
5 the implementation plan to be submitted by the CCA?

6 A Yes.

7 MR. HUARD: Thank you.

8 That's all the redirect -- recross.

9 ALJ MALCOLM: Thank you, Mr. Huard. ]

10 MR. COMO: Your Honor.

11 ALJ MALCOLM: Mr. Como.

12 RECROSS-EXAMINATION

13 BY MR. COMO:

14 Q Pardon me if I'm wrong. I think Mr. Szymanski  
15 asked you if the tax rolls were the only source of  
16 information for cities to find out whether their large  
17 customers exist.

18 And I believe you said that the tax -- you  
19 didn't mean to imply that the tax rolls were the only  
20 source of information?

21 A Actually, I believe what my answer was that  
22 our -- our position or not releasing customer  
23 information does not hinge upon the CCAs being able to  
24 access that information. That's the more correct -- if  
25 I recall correctly.

26 Q Would you repeat that again? I'm not sure I  
27 understand the answer.

28 A I don't believe the question was as you asked,

1 as you repeated it.

2 I believe the question was if our position on  
3 the release of customer information hinges on the  
4 ability of the CCA to access tax roll or other  
5 information.

6 And my answer was no, our position does not  
7 hinge upon that.

8 MR. COMO: That's fine, your Honor. I don't have  
9 a question then.

10 ALJ MALCOLM: Anybody else?

11 (No response)

12 ALJ MALCOLM: Then you're adjourned, Ms. Keilani.  
13 Thank you.

14 MR. HUARD: Your Honor, is this the time to move  
15 exhibits?

16 ALJ MALCOLM: We could.

17 Is it going to take more than a minute?

18 MR. HUARD: I just wanted to move into evidence  
19 Exhibit 6.

20 ALJ MALCOLM: All right.

21 And, Mr. Szymanski?

22 MR. SZYMANSKI: Yeah. Well, SDG&E would like to  
23 move into evidence Exhibits 3, 4 and 5.

24 ALJ MALCOLM: Okay. And we have 6.

25 Are there any objections to any of those?

26 MR. SZYMANSKI: Yes. SDG&E objects to the  
27 admission of Exhibit 6.

28 Your Honor, this is a rulemaking proceeding in

1 which we're trying to determine the general rules that  
2 are applicable to the implementation of AB 117.  
3 Information release rules are among those rules, and  
4 they are of general application to the proceeding as a  
5 whole.

6           What we have in Exhibit 6 is a request from a  
7 particular city about the release of particular data.  
8 And SDG&E responded to this information because it met  
9 the definition of discoverable information. It's  
10 information that could potentially lead to the admission  
11 of admissible information.

12           But what we have here is information that is  
13 specific as to Chula Vista, and it's not specific to the  
14 process of implementing CCA in this rulemaking.

15           The response of SDG&E to this information is  
16 nowhere in the scoping memo of this proceeding. And  
17 although information generally is, this is a specific  
18 matter; whereas right now we're dealing with the  
19 formulation of rules for this rulemaking. So I find  
20 that this information is not appropriate for this  
21 rulemaking and should be removed.

22           ALJ MALCOLM: Because it's not relevant.

23           MR. SZYMANSKI: Because it's not relevant to this  
24 work.

25           MR. HUARD: May I respond?

26           First, one of the issues within this  
27 proceeding is what information the utilities should  
28 provide and what charge they should have for it. In



1 that regard, there was a workshop.

2 The witness specifically testified as to  
3 knowledge about the workshop and the categories of  
4 information that SDG&E would provide.

5 The specific questions are specific sections  
6 from the workshop report related to whether SDG&E would  
7 be willing to provide them, at what cost, and what  
8 effort it would take for them to provide that  
9 information.

10 ALJ MALCOLM: That information isn't in here, as  
11 far as I can tell.

12 MR. HUARD: Your Honor, all the question to which  
13 SDG&E objected were related back to specific sections of  
14 Appendix B to the workshop report. As to types of  
15 information that the parties requested that information  
16 be provided, SDG&E's response, as you can see there, is  
17 to object to it.

18 ALJ MALCOLM: Okay. I'm going to allow it in. I  
19 don't think it's very relevant. I'm going to allow it  
20 in. If you can use it in your brief in a way to support  
21 your argument, fine.

22 It doesn't seem very relevant to me, but I  
23 don't think it's going to do any damage.

24 MR. SZYMANSKI: I don't think it'll facilitate the  
25 Commission's work this proceeding.

26 ALJ MALCOLM: Well, I'll give Mr. Huard A chance  
27 to show otherwise.

28 We will enter into the record Exhibits 3, 4, 5

1 and 6.

2 (Exhibits No. 3, 4, 5 and 6 were  
3 received into evidence.)

4 ALJ MALCOLM: And we are adjourned until tomorrow  
5 morning at 9:00 o'clock.

6 (Whereupon, at the hour of 3:50 p.m.,  
7 this matter having been continued to  
8 9:00 a.m., June 3, 2004, at  
9 San Francisco, California, the Commission  
10 then adjourned.)

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