

1 SAN FRANCISCO, CALIFORNIA, JUNE 24, 2004 - 10:00 A.M.

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3 ADMINISTRATIVE LAW JUDGE MALCOLM: We'll please  
4 come to order. We're readjourning for this evidentiary  
5 hearing in Rulemaking 03-10-003. We have several  
6 witnesses today. And before we begin, I understand that  
7 Edison has a motion to strike.

8 Ms. Shigekawa, do you want to describe that?

9 MS. SHIGEKAWA: Yes, your Honor.

10 Edison, on behalf of itself and PG&E and  
11 SDG&E, filed a motion to strike certain portions of  
12 Local Power's additional reply testimony.  
13 The additional reply testimony that your Honor had  
14 allowed parties to file in response to IVDA's  
15 late-served testimony was, as we understood, to be on  
16 the limited issue of the exemption that IVA sought from  
17 CRS for load from Norton.

18 Local Power's testimony went well beyond that.  
19 He referred to -- Local Power referred to statements of  
20 witnesses on the stand during the June hearing,  
21 supplemented opening testimony, and touched upon matters  
22 that were beyond the scope of IVA's late-served  
23 testimony.

24 So to the extent that the testimony is  
25 irrelevant to the issues raised by IVDA, we would ask  
26 that your Honor strike those portions of Local Power's  
27 testimony.

28 ALJ MALCOLM: Okay. Let's go off the record.

1 (Off the record)

2 ALJ MALCOLM: Back on the record.

3 Mr. Fenn, are you prepared to reply to  
4 the motion?

5 MR. FENN: Yes, I am.

6 ALJ MALCOLM: Okay.

7 MR. FENN: All the reply testimony given in this  
8 document are direct replies to IVDA -- points raised in  
9 IVDA's testimony. The utilities have opined that  
10 the reply goes beyond the points raised in IVDA's  
11 testimony. I disagree. I believe that all the answers  
12 are pertinent to the questions raised in the testimony.  
13 I believe that an overly technical interpretation of  
14 the rules governing reply testimony would relieve --  
15 would overrestrict the evidentiary hearing process, and  
16 in fact would exclude public participation.

17 ALJ MALCOLM: And without going into detail about  
18 each section of your testimony that's the subject of  
19 the motion, can you state generally whether -- if these  
20 portions of your testimony are stricken, whether you  
21 could raise them in briefs using the testimony that's  
22 already been presented?

23 MR. FENN: Umm --

24 ALJ MALCOLM: Or legal or policy argument?

25 MR. FENN: Well, I'm not sure, never having  
26 prepared briefs. But I do believe that the reply  
27 testimony that I've submitted is no more excessive than  
28 the utilities' reply to your -- to the questions you

1 gave them.

2 And I would move that if this is stricken,  
3 then their replies should also be stricken.

4 ALJ MALCOLM: Okay. Would you like an opportunity  
5 to write a written reply or a written motion seeking to  
6 strike portions of utility testimony?

7 MR. FENN: You mean before you decide how to --

8 ALJ MALCOLM: Mm-hmm. Because if you don't, I  
9 will go back and review this matter more carefully and  
10 then issue a written ruling soon. If you want a chance  
11 to be respond in writing, I'll wait.

12 MR. FENN: Yeah. Then in that case, I would like  
13 a chance to respond in writing.

14 ALJ MALCOLM: Okay. What would be a reasonable  
15 date for you to submit something in writing?

16 MR. FENN: Perhaps Monday morning or Monday by  
17 5:00 p.m.

18 ALJ MALCOLM: That's fine.

19 So Local Power will reply to the motion in  
20 writing by Monday, which is the 27th of June.

21 MR. FENN: Thank you.

22 MR. SZYMANSKI: Your Honor?

23 ALJ MALCOLM: Yes, sir.

24 MR. SZYMANSKI: As Ms. Shigekawa represented,  
25 Edison filed this motion on behalf of itself and PG&E  
26 and SDG&E. I'd at least like to make the comment on  
27 behalf of SDG&E. That to the extent there is additional  
28 testimony admitted beyond what is currently within

1 the scope of the IVDA testimony, that utilities indeed  
2 be given and other parties be given an opportunity to  
3 file additional testimony on that newly admitted  
4 evidence.

5 And I can understand that that would cause  
6 additional concern for this proceeding, given that there  
7 had already been delays and other circumstances that  
8 were brought to bear. And SDG&E doesn't look forward to  
9 that, but we feel that we would like the opportunity to  
10 have the chance to respond to that newly admitted  
11 evidence if it should be admitted.

12 ALJ MALCOLM: All right. I understand. And why  
13 don't you wait until I resolve the motion. And then if  
14 you take issue with the ruling in that regard, you can  
15 file a motion to reopen.

16 MR. SZYMANSKI: Okay.

17 ALJ MALCOLM: All right.

18 MR. SZYMANSKI: Thank you.

19 ALJ MALCOLM: Anything else preliminarily?

20 Mr. Golub.

21 MR. GOLUB: Your Honor, point of order. Given  
22 your ruling, there is one issue that remains.

23 As to the testimony that Edison proposes to  
24 strike, I would encourage the parties to cross-examine  
25 on it today. Because Mr. Fenn is here, we might as well  
26 get it out of the way. Otherwise we run the whole issue  
27 of if you sustain Mr. Fenn's position, which I suspect  
28 you will at the end of the day, then there's going to be

1 an issue that they didn't cross-examine on that  
2 testimony. They should be put on notice to  
3 cross-examine today, reserving their rights on  
4 the motion and how you rule on it. Get this done is  
5 what I'm really saying.

6 MR. BUCHSBAUM: Your Honor, I'd like to respond to  
7 that.

8 It seems to me that you have mentioned that  
9 you would like policy and legal arguments placed in  
10 the briefs and try to limit the hearing time. And  
11 particularly in light of the fact that we're trying to  
12 get through the hearings today, I would propose that in  
13 the interest of expeditious -- an expeditious way of  
14 handling this proceeding, that Mr. Fenn place most of  
15 his -- almost all of his arguments are legal and policy  
16 in nature and really belong in the briefs in accordance  
17 with your direction earlier in this proceeding.

18 ALJ MALCOLM: Well, to the extent that's true, you  
19 probably don't need to cross-examine him on these issues  
20 anyway since you'll have opportunities in the brief  
21 anyway to rebut his argument if you like.

22 So I'd suggest you get through as much  
23 cross-examination as you can here today. And if there's  
24 a problem, if you think you've missed an opportunity or  
25 whatever because this is all on very short notice, I  
26 understand that, we'll figure out a way to deal with  
27 that procedurally later.

28 MR. SZYMANSKI: Just briefly, your Honor. I can

1 understand the need to conclude this, and SDG&E  
2 certainly does not want to have things prolonged.  
3 However, we're concerned about cross-examining on this  
4 additional -- the additional testimony that would be  
5 beyond the scope of IVDA's testimony because that would  
6 pose the classic issue of trying to unring the bell.

7 To the extent we engage in further fact  
8 finding or discussion of briefs which could -- legal or  
9 policy issues that could be relegated to briefs, there  
10 is an issue of what could then be said about the record  
11 given that it will be in the transcript.

12 ALJ MALCOLM: Okay. Let's go off the record.

13 (Off the record)

14 ALJ MALCOLM: Back on the record.

15 Mr. Orth is here for Kings River.

16 Let's go off the record.

17 (Off the record)

18 ALJ MALCOLM: Back on the record.

19 Raise your right hand.

20 DAVID ORTH, called as a witness by  
21 Kings River Conservation District, having  
22 been sworn, testified as follows:

23 ALJ MALCOLM: Thank you.

24 Mr. Tiedemann.

25 MR. TIEDEMANN: Yes, your Honor. I would like  
26 Mr. Orth's reply testimony marked for identification.

27 ALJ MALCOLM: All right. We will mark the reply  
28 testimony of David Orth on behalf of the Kings River

1 Conservation District as Exhibit 39.

2 (Exhibit No. 39 was marked for  
3 identification.)

4 DIRECT EXAMINATION

5 BY MR. TIEDEMANN:

6 Q Mr. Orth, this Exhibit No. 39, your reply  
7 testimony, did you prepare that?

8 A I did.

9 Q Do you have any corrections or changes to  
10 make?

11 A I do not.

12 MR. TIEDEMANN: All right. That's all  
13 the questions I have, your Honor.

14 ALJ MALCOLM: Thank you Mr. Tiedemann.

15 Mr. Buchsbaum, do you have questions?

16 MR. BUCHSBAUM: Yes, I do, your Honor.

17 CROSS-EXAMINATION

18 BY MR. BUCHSBAUM:

19 Q Good morning, Mr. Orth.

20 A Good morning.

21 Q Can you turn to page 8 of your testimony,  
22 please. There you state, and I'm going to paraphrase,  
23 you say in order for KRCD to expend the resources needed  
24 for regional generation investments, long-term contracts  
25 with load-serving entities such as community choice  
26 aggregators are necessary.

27 Now, my question is, how long do you believe  
28 the contracts have to be in order for you to invest in

1 new generation?

2 A It's going to be dependent upon the overall  
3 credit market's view. But in our planning, these are  
4 going to have to be long-term, 10 to 20 years and  
5 perhaps longer, sources of revenue to secure the revenue  
6 bonds that we would use to finance those investments.

7 Q Now, you don't have any contracts with  
8 communities at this point; do you?

9 A We do not.

10 Q And have you had any discussions with  
11 communities that would indicate whether they are willing  
12 to sign such long-term contracts?

13 A KRCD has been involved in communicating with  
14 all 14 of the incorporated cities that our service area  
15 surrounds. And to date, have 13 letters of interest  
16 from all but one of those cities choosing to explore  
17 with us the economic viability of community choice  
18 aggregation as it proceeds through this rulemaking.

19 The cities are full aware that in order to  
20 secure the long-term investments that KRCD seeks to make  
21 in generation, that it will take long-term commitments  
22 from those cities, but they have not committed to do so  
23 at this point.

24 Q Now, what kind of security would you be  
25 looking for from the cities? Would you expect bonds to  
26 be posted or some sort of credit rating?

27 A At this point, we haven't done a lot of  
28 evaluation as to how we would secure the financing other



1 than to believe that a properly structured long-term  
2 power purchase agreement could be used to create a  
3 revenue stream that the financial markets would be  
4 willing to loan on.

5 Q Okay. Let's turn to page 5 of your testimony.  
6 And you're referring there to peaking power facility  
7 that will include two 6,000 LM generators. You're also  
8 referring to some baseload facilities I see.

9 And my question is the peaking facility that  
10 you have, that's under contract with DWR; isn't that  
11 correct?

12 A That is correct.

13 Q Now, that power, if it was sold to DWR, would  
14 not be available to CCA customers; would it?

15 A The terms of the existing power purchase  
16 agreement that we have with DWR allows KRCD to exercise  
17 a right to buy -- essentially buy DWR out of  
18 the contract after five years of operation and each  
19 subsequent year thereafter to the termination of  
20 the 10-year agreement. So our position is that if  
21 economically viable, the district would exercise that  
22 right and make that power available to the community  
23 choice aggregation customers that we would seek to  
24 serve.

25 Q Now, you have an option to terminate that  
26 contract; right?

27 A We do, yes.

28 Q Under what conditions would you exercise that

1 option?

2 A The option to terminate is actually available  
3 to both parties, both KRCD and the department, for two  
4 separate reasons: one is it possesses unacceptable  
5 risks, the project itself presents unacceptable risks to  
6 KRCD; and our termination right would expire at the date  
7 the revenue bonds are issued to finance the project.

8 Q You said the DWR also had a right to  
9 terminate?

10 A Correct.

11 Q Do they have to make any payments in  
12 connection with such a termination?

13 A The agreement with DWR provides for payment to  
14 KRCD a sum of \$5 million if they choose to terminate and  
15 proceed with a project independent of our district.

16 Q At what time can they terminate?

17 A They can terminate all the way up to ten days  
18 prior to the issuance of the bonds.

19 Q Now, you refer to certain facilities that  
20 under consideration to serve CCA customers. Are those  
21 the baseload facilities?

22 A That's correct, yes.

23 Q In your testimony, you refer to financing  
24 advantages under the tax laws -- or financing  
25 advantages, I should say, that you enjoy. And you  
26 mention that your cost of capital is in the range of  
27 5 percent to 6 percent; is that correct?

28 A Based on the current market conditions, yes.

1           Q    You contrasted that to the utility's cost of  
2 capital of 13 percent, is that -- page 6; is that  
3 correct?

4           A    I don't believe it's on page 6, the 13 percent  
5 number, and this is why I hesitated, was not our  
6 estimate of PG&E's cost of capital. It's the rate of  
7 return number that we are aware of that supports PG&E  
8 investment.

9           Q    In any event, it's more expensive than your  
10 cost of capital?

11          A    Correct.

12          Q    Now, does the district -- will the district  
13 pay any federal or state income taxes?

14          A    I do not believe so, no.

15          Q    And how about property taxes on the facility?

16          A    If the district is the owner of  
17 the facilities, there will not be property taxes levied  
18 against that parcel due to our tax-exempt status.

19          Q    Now, one reason for you recommending a CRS  
20 exemption that I saw in your testimony was relating to  
21 improved reliability for your particular service  
22 territory; is that correct?

23          A    That is correct.

24          Q    Now, have you or do you plan to seek an RMR,  
25 reliability must-run, contract from the ISO?

26          A    We have not explored that option. We are  
27 aware, however, that RMR contracts are not going to  
28 provide the long-term revenue source needed to secure

1 the revenue bond investment in the facilities. Whether  
2 or not that's part of an overall financing package, we  
3 have not pursued that yet.

4 Q But that would be one way certainly to reflect  
5 the benefits; isn't that correct?

6 A It would be one way, yes.

7 Q And that could be used in lieu of the CRS;  
8 could it not?

9 A It doesn't -- as I understand it, it doesn't  
10 have the same long-term reliability, if you will, to  
11 the credit market that a CRS exemption would have or a  
12 CRS credit would have.

13 Q But isn't the purpose of the RMR contract to  
14 essentially compensate the district for the reliability  
15 benefits that it would be provided?

16 A I believe that's what the purpose of an RMR  
17 contract is generally, is to provide compensation,  
18 the benefits that generation brings in areas where that  
19 generation is critical.

20 Q Okay. Let's move on. I'd just like to ask a  
21 few questions about the resource mix for the district.  
22 And I think these questions are fairly obvious,  
23 actually.

24 You don't expect the resource mix of  
25 the district to be similar to that of the utilities or  
26 investor-owned utilities, do you?

27 A I would expect not. I doubt that we're going  
28 to have as much hydro or nuclear investments as

1 the utility does.

2 Q So you would expect your average costs of your  
3 portfolio to not move in tandem with that of  
4 the utility, isn't that correct, given the different  
5 resources mix?

6 A At this point, our long-term modeling would  
7 suggest that they do not move in tandem.

8 Q Can we turn to page 11 of your testimony where  
9 you talk about capping. And you in your testimony state  
10 the KRCD supports a CRS cap only under the condition  
11 that the CRS be calculated based on the year the CCA  
12 program becomes operational so that costs are not  
13 shifted as a result of the revenue shortfalls caused by  
14 the cap.

15 And I take it from your testimony that your  
16 position is that if there is a shortfall for a  
17 particular vintage of CCA, that you wanted to make sure  
18 that that shortfall was not picked up by later vintages.  
19 Is that a fair characterization of your testimony?

20 A That's a fair characterization of that  
21 testimony, yes.

22 Q Now, the question I have for you: If a  
23 shortfall is incurred relating to a particular year's  
24 vintage and it can't be collected by that vintage for  
25 whatever reason, who should pay for it?

26 A I don't have an answer for that. I don't  
27 know.

28 Q Are you proposing a particular cap?

1           A    We are not.

2           MR. BUCHSBAUM:   Your Honor, can I go off  
3 the record for one minute?

4           ALJ MALCOLM:   Off the record.

5                   (Off the record)

6           MR. BUCHSBAUM:   Your Honor, I have no other  
7 questions.

8           ALJ MALCOLM:   Thank you, Mr. Buchsbaum.

9                   Are there any other questions for this  
10 witness?

11          MR. GOLUB:    Yes, there are.

12          ALJ MALCOLM:   You have some redirect?

13          MR. GOLUB:    Yes.

14                           CROSS-EXAMINATION

15 BY MR. GOLUB:

16          Q    Mr. Orth, my name is Howard Golub.

17 I represent the California Clean Energy Resources  
18 Authority.

19                   And Mr. Buchsbaum asked you a question about  
20 paying for shortfall. Are you necessarily stipulating  
21 that a shortfall would occur?

22          A    No, we are not.

23          Q    In fact, in your testimony at page 11, at  
24 about lines 11 and 12, don't you point out that there  
25 are compensating benefits that would perhaps equal or  
26 exceed any alleged shortfall?

27          A    We do make that point.

28          Q    Also, do you have any objection to the

1     shortfall, if there was a shortfall, being absorbed by  
2     the utility shareholders?

3             A     I would not object to that.

4             MR. GOLUB:   Thank you.

5             MR. BUCHSBAUM:  Your Honor, I didn't object as it  
6     being friendly cross, but I felt that it was in that  
7     vein, and Mr. Golub is not representing Mr. Orth for  
8     purposes of redirect.  So I just wanted to make that  
9     point.

10            ALJ MALCOLM:  Okay.  And I guess I didn't  
11     understand that, but --

12            MR. GOLUB:  Your Honor, I didn't mean to have  
13     friendly cross.  Mr. Buchsbaum put points into the  
14     record on cross-examination with which we disagree, and  
15     we clarified where it was wrong.  That's not --

16            ALJ MALCOLM:  That's fine.  It's a little  
17     unconventional, but I don't think Mr. Buchsbaum is  
18     moving to strike.

19                     Is that correct, Mr. Buchsbaum?

20            MR. BUCHSBAUM:  That's right.

21            ALJ MALCOLM:  Thank you.

22                     Thank you, Mr. Orth.  You are excused.

23                     Oh, I'm sorry.

24            MR. TIEDEMANN:  Your Honor, I would ask that  
25     Exhibit No. 39 be accepted into evidence.

26            ALJ MALCOLM:  All right.  Is there objection?

27                     (No response)

28            ALJ MALCOLM:  No.  We'll move Exhibit 39 into

1 evidence.

2 (Exhibit No. 39 was received into  
3 evidence.)

4 ALJ MALCOLM: Thank you, Mr. Tiedemann.

5 Thank you, Mr. Orth.

6 We have Mr. Cicchetti next.

7 Mr. Golub, you may present your witness.

8 MR. GOLUB: Thank you, your Honor.

9 ALJ MALCOLM: Off the record.

10 (Off the record)

11 ALJ MALCOLM: Back on the record.

12 We'll mark Mr. Cicchetti's prepared testimony  
13 dated April 15, 2004, as Exhibit 40, and his reply  
14 testimony dated May 7, 2004, as Exhibit 41.

15 (Exhibit Nos. 40 and 41 were  
16 marked for identification.)

17 ALJ MALCOLM: Raise your right hand.

18 CHARLES J. CICCETTI, called as a  
19 witness by The California Clean Energy  
20 Resources Authority, having been sworn,  
21 testified as follows:

22 ALJ MALCOLM: Thank you.

23 DIRECT EXAMINATION

24 BY MR. GOLUB:

25 Q Dr. Cicchetti, do you have before you Exhibits  
26 40 and 41 for identification?

27 A I do.

28 Q Are you sponsoring those exhibits marked 40  
and 41 for identification?



1           A    I am.

2           Q    Do you have any changes or corrections to make  
3 to either of those exhibits?

4           A    I do.

5           Q    Would you please tell us what that would be.

6           A    Thanks to an observation from Southern  
7 California Edison, there's mathematical assumption that  
8 had an error on page 9, line 22. And I use \$2.70 per  
9 megawatt-hour as the approximate CRS charge.           ]

10                   And it should have been \$27 a megawatt-hour,  
11 as opposed to \$2.70.

12                   That change carries over to page 10, where, on  
13 line 3, again I have \$2.70 per megawatt-hours. It  
14 should be \$27.

15                   And then it carries over to line 4, where I  
16 multiplied the lower number that I had inadvertently put  
17 into my testimony by the output of a 500-megawatt plant.  
18 And that would maybe make the annual CRS payments on  
19 line 4, the 1,521,000, versus \$10 -- I'm sorry -- versus  
20 10,052,100.

21                   I take that in half on line 7. So carrying  
22 that error over to line 7, the approximation of  
23 5 million should be 50 million.

24                   The error continues to plague line 13 -- on  
25 line 10, where the number 5 million is repeated once  
26 again. It should be 50 million.

27                   And then finally -- I'm sorry. Not finally --  
28 but the last two errors, fortunately, are on line 15,

1 where I have 2 cents per megawatt-hour. That should be  
2 20 cents per megawatt-hour.

3 And where I have, on line 16, the number .002  
4 cents per kilowatt-hour, that should be 2 tenths of a  
5 mil, or .02 cents per kilowatt-hour.

6 With that, I've exhausted the errors, at  
7 least, I have found in my testimony -- or in this case  
8 that Edison found.

9 Q With that correction, do you have any other  
10 corrections to make to either exhibit, Exhibits 40 or 41  
11 for identification?

12 A I do not.

13 Q Are the facts contained in Exhibits 40 and 41  
14 for identification true and correct, to the best of your  
15 knowledge?

16 A They are.

17 Q And do the opinions expressed in Exhibits 40  
18 and 41 for identification represent your best  
19 professional opinion?

20 A Yes.

21 MR. GOLUB: Your Honor, we'll at this time move  
22 the admission of Exhibits 40 and 41, and tender  
23 Dr. Cicchetti for cross-examination.

24 ALJ MALCOLM: All right. Is there any objection  
25 to moving these exhibits into the record now?

26 All right. We'll move Exhibits 40 and 41 into  
27 the record.

28 (Exhibit Nos. 40 and 41 were  
received into evidence.)

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ALJ MALCOLM: Mr. Buchsbaum.

MR. BUCHSBAUM: Well, I would ask first if any of the CCAs have any questions. No?

ALJ MALCOLM: I have nothing from them.

MR. BUCHSBAUM: Okay. Thank you.

CROSS-EXAMINATION

BY MR. BUCHSBAUM:

Q Good morning, Mr. Cicchetti.

MR. GOLUB: I'm sorry. It's Dr. Cicchetti.

MR. BUCHSBAUM: Oh. Sorry.

Q Now, you state that your comments are submitted on -- or your testimony has been submitted on behalf of Cal-CLERA and the City of Victorville. Is that correct?

A That's correct.

Q And are you aware of any private sources of funding or private partners that are contributing money to those entities relating to their efforts to look at community aggregation?

MR. GOLUB: I'll object. Strikes me as irrelevant, your Honor. Why does it matter where they get their funding?

MR. BUCHSBAUM: I'm not going to respond, except to say that under the Sunshine principles of the Commission, I think that the Commission should know what direction -- who -- what organizations, if any, and what private parties, if any, are supporting these efforts.

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

2 (Off the record)

3 ALJ MALCOLM: Mr. Golub.

4 MR. GOLUB: Your Honor, just to clarify our  
5 objection, it's both irrelevant, and I think it's an  
6 invasion of the Constitutional rights of my client in  
7 its dealings. And I would cite the NAACP case before  
8 the Supreme Court some years ago; I don't have the full  
9 citation. On that basis, we object to this as  
10 inappropriate and irrelevant.

11 ALJ MALCOLM: All right. I'm going to sustain the  
12 objection, but Mr. Golub [sic] is within his right to  
13 file a motion seeking information and --

14 MR. SZYMANSKI: Your Honor, since the -- given  
15 your ruling, I'd like to also indicate that I would -- I  
16 support PG&E's request for this information. I think  
17 it's highly relevant. There is -- the objection  
18 contains no indication what prejudice there is to this  
19 party by disclosing this information. And, as  
20 Mr. Buchsbaum indicated, it's highly probative of the  
21 issues in this case.

22 ALJ MALCOLM: Then I encourage you to make a  
23 motion. And, in fact, you may just do that  
24 electronically. You don't have to file it.

25 MR. SZYMANSKI: Fine.

26 ALJ MALCOLM: But if you'd like to give me some  
27 cites -- either Commission precedent or other legal  
28 argument -- that's fine.

1 MR. SZYMANSKI: Thank you.

2 ALJ MALCOLM: Mr. Buchsbaum.

3 MR. BUCHSBAUM: Q Mr. Cicchetti, can you turn to  
4 page --

5 MR. GOLUB: Excuse me. It's Dr. Cicchetti.

6 MR. BUCHSBAUM: I'll try to remember.

7 MR. GOLUB: Thank you.

8 MR. BUCHSBAUM: Q Dr. Cicchetti, can you please  
9 turn to page 17 of your opening testimony? And there,  
10 you state, am I correct, that the IOUs contemplate a  
11 continuing role in meter reading and billing? Do you  
12 see that sentence on lines --

13 A I do.

14 Q -- 5 through 7?

15 A I do.

16 Q And then you conclude that this assumption is  
17 not or need not be necessarily applicable to all CCAs.  
18 Is that your testimony today?

19 A Yes.

20 Q Now, can I -- do you have in front of you a  
21 copy of the statute?

22 A I do. I think I do.

23 Q Can I ask you to read into the record  
24 Section 366.2(C)(9) -- the third sentence of that  
25 Section of the Public Utilities Code?

26 MR. GOLUB: I'm sorry, Mr. Buchsbaum. I didn't  
27 quite hear. What was the citation?

28 MR. BUCHSBAUM: 366.2(C)(9).

1 MR. GOLUB: (C)(9). Thank you.

2 MR. BUCHSBAUM: It's a very confusing statute.

3 MR. GOLUB: I simply didn't quite catch what you  
4 said. Thank you.

5 MR. BUCHSBAUM: Q Third sentence, please. And  
6 I'd just ask that you read that into the record.

7 A I am not sure what the third sentence is. Is  
8 it the sentence that begins with the words, "Cooperation  
9 shall include," or is it the sentence immediately  
10 following that?

11 Q Immediately following.

12 A Electrical corporations shall  
13 continue to provide all metering,  
14 billing, collection, and customer  
15 service to retail customers that  
16 participate in community choice  
17 aggregation programs.

18 Q Would you like to correct your testimony, in  
19 light of that sentence?

20 A No.

21 Q Okay. Please refer to page 16, line 10. In  
22 there, you state, if I understand your testimony  
23 correctly, that imposing the CRS on sales -- that  
24 instead of imposing the CRS on sales to customers, that  
25 there should be a cost allocation of CCAs based on  
26 historic use.

27 Is that a fair characterization of your  
28 proposal?

1           A    I think I say the solution to this problem is  
2 to use -- I'm not so certain that I'm using the word  
3 "should" do this. I'm just saying this could be fixed  
4 if we use the cost allocation CCAs based upon historic  
5 use with Lifeline Baseline use limits.

6           Q    Well, are you or are you not proposing that  
7 the Commission consider this?

8           A    I think they should consider it, and I think  
9 they should do it.

10          Q    Now, you add that this would fix the CRS, and  
11 permit CCAs to grow without incurring greater CRS or  
12 cost responsibility. Do you see that?

13          A    I do.

14          Q    Now, would this apply to the bond charge in  
15 historic procurement costs as well, or just simply to  
16 the DWR power charge?

17          A    It would be to the whole allocation or the  
18 determination of what the costs would be.

19          Q    Well, there's a bond charge that is associated  
20 with DWR costs. Are you saying that that would be part  
21 of your proposal; in other words, that that would be  
22 fixed as well?

23          A    Yes.

24          Q    And the historic procurement, the same?

25          A    Correct.

26          Q    So you're basically saying that the CC -- that  
27 the CRS, from what I can tell, should be fixed based on  
28 the characteristics of the CCA, not on the customers

1 that are moving into the CCA service territory. Is that  
2 correct?

3 A Do you mean -- when you say "moving in," if  
4 you're talking about new customers --

5 Q Right, right.

6 A -- I'm suggesting that a CCA should be  
7 encouraged to grow, help the state get jobs, help the  
8 state have economic benefits.

9 Q I understand. I understand.

10 A And as a --

11 Let me finish.

12 MR. GOLUB: Well --

13 THE WITNESS: And therefore, I believe that when  
14 the CCA goes out and does those things, it should be  
15 able to spread the cost of its allocation of the -- a  
16 fixed amount or a preset amount across all of the  
17 growth. And that way, we will fulfill the commitment  
18 that this governor has made to economic growth in the  
19 state.

20 MR. BUCHSBAUM: Q Can you turn to Public  
21 Utilities Code Section 366(E)(2)? 366.2(E)(2). Now,  
22 that Section --

23 A I'm sorry. I'm not as quick at finding legal  
24 cites. 366.2 I found, but what was the subheading?

25 Q (E).

26 A (E)? Thank you. I don't think I'm finding  
27 the Section. Did you say 366.2(E)?

28 Q (E), correct, beginning with the words,



1           A retail end-use customer that  
2           purchases electricity from a  
3           community choice aggregator shall  
4           pay both the following.

5           Do you remember that provision?

6           A   Well, I'd like to read it, but I'm not finding  
7           it.

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

9                   (Off the record)

10          ALJ MALCOLM:   Back on the record.

11          MR. BUCHSBAUM:   Q   Now, that Section,  
12          Dr. Cicchetti --

13                   I think I got that right that time --

14          MR. GOLUB:   Thank you.

15          MR. BUCHSBAUM:   -- Mr. Golub.

16          Q   That Section refers to a retail end-use  
17          customer -- and then I skip to Subsection (2) -- paying  
18          additional costs of Department of Water Resources equal  
19          to the customers' proportionate share of the Department  
20          of Water Resources estimated net unavoidable purchases.

21                   Isn't that correct?

22          A   I think you've characterized what it says here  
23          generally correctly, although not precisely.

24          Q   It doesn't refer, does it, Dr. Cicchetti, to  
25          paying a proportionate share of the CCA's share?

26          A   I don't think it has to, because this is a --  
27          this is all a bill about aggregation.   And the idea is  
28          aggregating retail customers.

1           Now, if you aggregate retail customers, you  
2 can determine what the cost responsibility will be for  
3 those customers on an estimated prospective forecasted  
4 basis, just like utilities do for all the other things  
5 they're about.

6           And therefore, I think it would be consistent  
7 with both logic and the overall intent of this bill to  
8 imagine that the Commission could read these words and  
9 not feel -- to be trapped into the notion that they have  
10 to do the CCA on a customer basis or a kilowatt-hour  
11 basis, but it could do it on an aggregate basis, because  
12 this is, after all, about having cities create municipal  
13 aggregation.

14           And therefore, the responsibility to collect  
15 those numbers and to avoid any cost shifting for those  
16 determined amounts could easily be done under, at least,  
17 I think, a broad interpretation of what's in this  
18 language -- of what's in this legislation.

19           Q   So your proposal stands that basically, you  
20 believe the CRS should be allocated based on the CCA?  
21 Is that correct?

22           A   Well, the way I would put it is I believe the  
23 aggregation idea should be used to aggregate a fixed  
24 dollar amount. Quantification of that dollar amount  
25 should be done either for the whole period that it might  
26 be necessary, or perhaps annually. And then the CCA  
27 would know *ex ante*, or before the fact, exactly what it  
28 would have to collect.

1           If it went out and had its community grow and  
2 could reduce that cost, then they would benefit.

3           If, on the other hand, they couldn't grow or  
4 didn't grow or didn't hit their target, they would be  
5 potentially penalized.

6           Q   Well, there's step one of this process.

7           Are you saying that step one of the process is  
8 to allocate the CRS based on the characteristics of the  
9 CCA?

10          A   No. I think step one is for the State to  
11 fulfill the obligation.

12          ALJ MALCOLM: Dr. Cicchetti, I want you to assume  
13 the hypothetical in his question.

14          THE WITNESS: But I don't agree with -- I still  
15 say no. I mean, I'm not --

16          ALJ MALCOLM: You don't have to agree with his  
17 hypothetical.

18          MR. BUCHSBAUM: Yeah.

19          THE WITNESS: Okay. Then the answer is: no,  
20 that's not step one.

21          ALJ MALCOLM: He didn't ask you that question.

22          THE WITNESS: He said: do you think step one in  
23 this process is --

24                 And I was about to say: no, that's not step  
25 one in the process.

26          MR. BUCHSBAUM: Q   What is step one?

27          A   Step one in the process would be for the State  
28 to encourage communities to aggregate. And to do that,

1 it should define the obligation that those community  
2 aggregators will have if they go out and get their own  
3 generation or sign long-term contracts to supply the  
4 citizens that they're aggregating for.

5 Q My problem is we're sitting here today, and we  
6 need to go through a calculation methodology.

7 And I'm asking the question again.

8 Does the amount of the CRS depend on the CCAs,  
9 as the first step in that process of doing the  
10 computation?

11 A I think the first step in the process is, if  
12 you move beyond mine -- let's call it "my second step"  
13 -- would be to determine the amount of total dollars  
14 that need to be collected to meet the requirement that  
15 the utilities are made whole, and the Department of  
16 Water Resources is able to recover its costs for the  
17 amounts incurred during the California energy crisis.

18 So I'd say determining the aggregate number  
19 is, to me, my second step.

20 Q You know, I was -- I was reading through your  
21 testimony. And can you point to where your methodology  
22 for computing the CRS is laid out in your testimony?

23 A I didn't address that. I'm just answering  
24 your question.

25 Q So your testimony didn't address how to  
26 calculate the CRS?

27 A It did not. It did not.

28 ALJ MALCOLM: May I ask a follow-up question here?

1           Dr. Cicchetti, getting back to Mr. Buchsbaum's  
2 question, if you're proposing that this should be an  
3 exemption for your client, how are its customers  
4 different from other CCA customers?

5           THE WITNESS: I am not proposing an exemption.

6           ALJ MALCOLM: You're proposing different  
7 treatment?

8           THE WITNESS: I don't think so.

9           MR. GOLUB: Your Honor --

10          THE WITNESS: I'm proposing that all CCAs get an  
11 allocated amount of dollars, either up front or  
12 annually, so that they can perform the normal kind of  
13 business things they have to perform, and so they can  
14 tell their customers whether they can expect to pay less  
15 if they go with the CCA than if they stay with the  
16 utility.

17                   It's the certainty argument I'm making; not  
18 the elimination argument.

19          ALJ MALCOLM: Okay. Thank you.

20          THE WITNESS: I am, however, your Honor,  
21 suggesting that there be a crediting of benefits  
22 created, to reduce whatever that up-front obligation is.

23                   And again, I think that before we could  
24 calculate the effect of any crediting of benefits, we  
25 have to know what the number is; but my main idea is to  
26 propose what I call a "quantification," not elimination.

27          ALJ MALCOLM: Okay. Thank you.

28          MR. BUCHSBAUM: Q To follow up on the Judge's

1 inquiry, can you turn to page 21, line 20, of your  
2 testimony? And there, you have -- as your second  
3 bullet, you say that CCA customers that cause new  
4 supplies for California should pay a CRS that is  
5 50 percent less than the base DA CRS established by the  
6 CPUC.

7 Do you see that?

8 A I do.

9 Q Now, are you referring there to the CCA or to  
10 the customer? I was trying to understand exactly what  
11 your proposal was.

12 A Well, my proposal is that the Commission  
13 should -- should consider distinguishing between CCAs  
14 that build power plants, and CCAs that simply go into  
15 the same pool of resources in the Western market to  
16 purchase power.

17 And that -- my rationale for that distinction  
18 that I'm urging is that if you build efficient power  
19 plants, that you will be able to help the state reduce  
20 its dependence upon the 30 to 40 percent of the  
21 natural-gas-fired generation that has heat rates north  
22 of 11,000; and therefore, in today's world, where gas is  
23 priced in the \$6 range, you help reduce the costs for  
24 the entire state, all the consumers in the state,  
25 because we're not going to be dependent as often upon  
26 that very expensive, inefficient plant.

27 And there should be some crediting against the  
28 total obligation of the CCA if a CCA, in addition to

1 community choice aggregation, is also a joint power  
2 authority or otherwise brings generation incremental to  
3 the state that allows the state to get on with achieving  
4 efficiency and lower-cost operations to -- again, to  
5 provide benefits for all customers in the state.

6 Q So this would apply, regardless of the amount  
7 of new supply? It would be 50 percent?

8 A No. I think that the logic would be to do it  
9 on some kind of basis that would be sensible and  
10 reasonable and in proportion to the benefits likely to  
11 be created.

12 Q So there would need to be further hearings to  
13 address that -- how that would be implemented? Isn't  
14 that correct?

15 A Or a collaborative process or some other  
16 device that would make sense to people.

17 MR. BUCHSBAUM: Your Honor, I have a  
18 cross-examination exhibit that I have received that  
19 relates to a data request that we made to Dr. Cicchetti.

20 ALJ MALCOLM: Mm-hm.

21 MR. BUCHSBAUM: And I would ask that it be marked  
22 as the next exhibit. I believe that would be --

23 MR. GOLUB: 42.

24 MR. BUCHSBAUM: -- Exhibit 42.

25 Thank you.

26 ALJ MALCOLM: Right. We'll mark that as  
27 Exhibit 42.

28 (Exhibit No. 42 was marked for  
identification.)

1

2 MR. GOLUB: I think I know what you're talking  
3 about. For the record, could I have a copy, to make  
4 sure we're on the same page?

5 MR. BUCHSBAUM: Sure. If we could hand that  
6 out --

7 MR. GOLUB: I'll give one to Dr. Cicchetti, too.

8 MR. HUARD: Could I get copies?

9 MR. BUCHSBAUM: Yeah.

10 MR. GOLUB: Do I get some sort of payment from  
11 PG&E for being your assistant?

12 ALJ MALCOLM: So, just to clarify, this is a  
13 response to a data request proffered by PG&E. And it  
14 was drafted by Dr. Cicchetti. Is that correct?

15 MR. BUCHSBAUM: That's what I'd like to establish.

16 ALJ MALCOLM: Okay.

17 MR. BUCHSBAUM: Q Dr. Cicchetti, do you have  
18 before you a data request marked as Exhibit No. 42 for  
19 identification purposes?

20 A I do.

21 Q And was this data request response prepared by  
22 you, or under your direction?

23 A It was.

24 Q And I would ask, Dr. Cicchetti, that you read  
25 into the record the answer that you gave regarding how  
26 you developed the 50 percent.

27 A The answer applies to the 50 percent and the  
28 subsequent 25 percent reduction as well.



1 Q Thank you.

2 A And with that said, it -- my answer is,  
3 The recommendations contained on  
4 pages 21 to 22 are intended as  
5 examples of actions that the  
6 Commission could take when  
7 considering a reduction in the CRS  
8 responsibility of the CCA based on  
9 actions taken that benefit those  
10 customers who remain with  
11 investor-owned utilities. No data  
12 analysis, empirical evidence, or  
13 other material has been developed  
14 for the recommendations contained  
15 in Dr. Cicchetti's testimony.  
16 Dr. Cicchetti has not yet  
17 considered any percentage load  
18 requirements as a threshold for  
19 the reduced CRS payments.

20 MR. BUCHSBAUM: Thank you.

21 Your Honor, if there are no objections, I  
22 would ask that that be moved into evidence.

23 ALJ MALCOLM: Is there any objection?

24 All right. We'll move Exhibit 42 into the  
25 record.

26 (Exhibit No. 42 was received into  
27 evidence.)

28 MR. BUCHSBAUM: Q Can you please turn to page 15

1 of your testimony, beginning on line 13, and then again  
2 on line 19, where you state that the aggregate liability  
3 should be fixed at the outset for a CCA?

4 Do you see that testimony?

5 A It was hard for me to simultaneously read and  
6 follow. So, just for clarification, are you saying page  
7 15, essentially lines 13 through 19?

8 Q Essentially those, yes.

9 A Yes, I have read that. I don't know what the  
10 question is. I've turned to it and read it. Please --

11 Q In this area of your testimony, you are  
12 suggesting -- and we're getting back to a point that was  
13 made earlier; that you're proposing that a CCA's CRS  
14 liability be fixed, so that new load would essentially  
15 not cause any increased CRS, if you will, for the  
16 totality of that community.

17 And I'm trying -- I didn't do a great job of  
18 explaining that. Maybe you could do a better job, since  
19 it's your testimony, but I think -- I think that was a  
20 fair characterization. ]

21 A I think you left out one thing. I'm also  
22 proposing that the 130 percent baseline exemption for  
23 residential customers should be used in setting the CCA  
24 aggregate amount so it should be fixed. You should  
25 also, as I'm saying in the preceding paragraph, include  
26 in that fixing the 130 percent of baseline.

27 I'm arguing that if you fix that amount, that  
28 will do two positive things. One, for CCAs that are not

1 planning to grow but want the opportunity to purchase  
2 their own generation, they'll know the difference  
3 between what they can purchase it at and what the  
4 additional charge would be on top of that if they are no  
5 longer served by the utility. So they will have  
6 transparency and make a decision.

7           The second thing I'm saying in these words is  
8 that, in addition, CCAs that want to grow attract jobs,  
9 help the state get out of economic crisis. Those CCAs  
10 will be encouraged to do so because they would have the  
11 opportunity to offer discounts to new growth, or maybe  
12 exemptions to new growth, knowing that they could do so  
13 without having to have an additional charge or a full  
14 CRS charge added to their bills. Because the cities  
15 would be making that decision at their level as  
16 responsible parties who could decide what they want to  
17 do about their own municipal economic growth strategies  
18 and policies.

19           Q    Now --

20           A    That is what it says on that paragraph.

21           Q    I would like to try to just bore in a bit on  
22 how this would actually operate in practice. Suppose  
23 you had a community with a fixed CRS that we discussed,  
24 that actually instead of trying to encourage growth  
25 tried to encourage energy conservation, so their load  
26 actually goes down. Would their CRS per kilowatt  
27 effectively go up in that instance?

28           A    Yes, but they would have transparency. They

1 could do the calculation and make the decision on their  
2 own, or they could combine it. There is no reason why a  
3 city couldn't be encouraging renewables, energy  
4 conservation and still try to grow the economy of the  
5 state and accommodate people that want to have houses  
6 and live in that community.

7 Q So your concept of new load would also include  
8 residential development?

9 A It would.

10 Q I'm trying to consider this situation: You  
11 have a resident, let's say a neighbor in a neighboring  
12 community --

13 A Uh-huh.

14 Q -- that was paying a high CRS. And he or she  
15 either hits the jackpot or becomes fabulously  
16 successful. So they go into one of these service  
17 territories of a CCA and they build a 6,000 square foot  
18 mansion, some call it a mansion. They would bear no CRS  
19 under your proposal?

20 A It would be up to the community. The CCA  
21 would make that determination.

22 Q But now the additional load that they produced  
23 would not bear in the CRS, that is your proposal? The  
24 additional load created by that home would not bear any  
25 additional CRS, isn't that your proposal?

26 A The CRS would be a fixed up front. You would  
27 estimate it. You can decide when estimating it whether  
28 you include some kind of basic growth, or not. I'm not

1 against including some kind of notion of a -- when you  
2 define the baseline, some kind of condition that might  
3 accomplish or accommodate some of that growth.

4 But the essential idea here is to fix the  
5 amount of dollars, total dollars, that the aggregator  
6 has to collect either annually or up front for a  
7 reasonable period so as to get the cost recovery, while  
8 still collecting those dollars and, therefore,  
9 encouraging two things, the formation of CCAs, or at  
10 least not discouraging the formation of CCAs. And,  
11 second, recovering the total dollars that you need to  
12 recover so as to hold harmless the customers who stay  
13 behind.

14 Q You didn't answer the question, but that is  
15 okay.

16 A Do you want to try again?

17 Q No.

18 Let's just go to one more example. You have a  
19 neighboring community, a bunch of ma and pa stores and  
20 now Wal-Mart comes in in a new development. No CRS,  
21 correct, no additional CRS for Wal-Mart development?

22 MR. GOLUB: Excuse me, Mr. Buchsbaum. Your Honor,  
23 I would ask for clarification. I really -- I simply  
24 didn't follow in that example where mom and pop are  
25 living and where Wal-Mart is going in terms of which  
26 communities, and so forth. I'm asking the question be  
27 clarified.

28 MR. BUCHSBAUM: Q You have Community A and B;

1 Community A is bundled, Community B is unbundled and is  
2 a CCA, under your proposal. Community B decides it  
3 wants to spur new investment and attract new shopping  
4 centers, and the like. As I understand it, under your  
5 proposal, that new development that would occur, a  
6 Wal-Mart moving in, any competitor of the neighboring  
7 community that those -- that economically from the  
8 standpoint of the CCA there would be no additional CCS  
9 for those folks either?

10 A That is not the way I would characterize my  
11 proposal. Maybe the best way to explain it is, first, I  
12 think it is the city that would decide that, the city  
13 council or the community choice aggregation governing  
14 board, or whatever it would happen to be. If they  
15 wanted to encourage Wal-Mart, they could go ahead and  
16 use a cost allocation of the cities or CCAs, aggregate  
17 CRS, so as to make that encouragement.

18 Q If they wanted to discourage Wal-Mart, they  
19 could do that as well?

20 A I think what the confusion that is coming from  
21 this whole thing is that you are not taking into account  
22 really the right thrust of what I'm suggesting.

23 Let's assume we have Wal-Mart come into PG&E  
24 area, or let's say Wal-Mart could go into a CCA area.  
25 If Wal-Mart comes in, it is going to reduce the total  
26 payment that would have to be made by all customers in  
27 the state because more kilowatt-hours will be sold.  
28 PG&E would spread that benefit across its entire

1 customer base. The city should be able to do the same  
2 thing. It should be able to capture those benefits and  
3 spread it across its customer base. That is my  
4 proposal.

5 Q You are assuming --

6 A Let me finish.

7 The difference is that I think that the  
8 language of the law allows the CPUC to let those  
9 additional benefits from growth coming from Wal-Mart to  
10 be captured at the aggregation level. Whereas, I think  
11 the utilities, or PG&E -- or your question thinks that  
12 the benefit of Wal-Mart coming in should be spread  
13 across all retail load in the utility service territory.  
14 That is the difference. It is not that you don't pay  
15 something towards reducing the CRS, it is that where  
16 does it go? Does it go at the aggregation level or the  
17 broader utility level?

18 ALJ MALCOLM: Is your testimony proposing that the  
19 CCA have discretion to decide who pays what share of the  
20 CRS?

21 THE WITNESS: Yes.

22 ALJ MALCOLM: And it would have complete  
23 discretion in that regard?

24 THE WITNESS: Well, I think cities should not come  
25 under Public Utilities Commission regulation.

26 ALJ MALCOLM: No, that is not my question. I want  
27 to know. I'm trying to understand your proposal. I  
28 don't need an argument.

1           THE WITNESS: No, it is not an argument. I was  
2 about to -- having said that, I was about to say the  
3 Commission has the authority, since this program is a  
4 cost allocation that begins with them, to put some  
5 restrictions on what the city can do. And within those  
6 restrictions the city should be allowed to make their  
7 decisions.

8           So the answer to your question is if the  
9 Commission chose to restrict what a city could do, the  
10 city, I think, would probably have to live with those  
11 restrictions if it decided to take advantage of the CCA.  
12 But I don't believe that the city should have to come to  
13 the Commission for approval if it has made its own  
14 decision within the conditions that the CPUC opposes at  
15 the outside.

16           ALJ MALCOLM: Okay.

17           MR. BUCHSBAUM: Q The question that I asked that  
18 I really would like answered is: The CRS does not  
19 increase as a result of Wal-Mart coming in and producing  
20 the load in a given CCA, is that correct, under your  
21 proposal?

22           ALJ MALCOLM: You mean the CCA's liability for the  
23 CRS?

24           MR. BUCHSBAUM: What I'm saying is the total.

25           Q If we have a certain amount of kilowatts in  
26 that community, hypothetically a thousand kilowatts, it  
27 bears a \$0.02 charge. That is -- you know, the math  
28 comes out, I don't know, \$20; clearly there should be a



1 lot of zeros.

2 If a new Wal-Mart moves into that community,  
3 as I understand your proposal, the total CRS is still  
4 \$20 if it gets spread over. Theoretically, it could be  
5 spread over the increased kilowatts. Or, alternatively,  
6 if the city so chose the CCA, they could say because the  
7 new growth is what doesn't trigger any new additional  
8 CRS, we are going to let them skate; is that fair?

9 A Well, I'm glad you said "is that fair"  
10 because --

11 Q Is that correct?

12 A No. I think I'll answer the first question  
13 first, which is is it fair. The reason why I'll do that  
14 is your question is an argument, therefore, it is  
15 difficult for me to just answer your question with a yes  
16 or no without giving you the counterpart of the story.  
17 But let me --

18 MR. BUCHSBAUM: Your Honor, can I strike the  
19 fairness question?

20 ALJ MALCOLM: Let's go off the record. I want to  
21 go off the record.

22 (Off the record)

23 ALJ MALCOLM: Back on the record.

24 Mr. Buchsbaum, what is your question?

25 MR. BUCHSBAUM: I'm going to strike the question  
26 about is it fair.

27 Q I want to know: Was my characterization of  
28 the way in which the computation works correct?

1 MR. GOLUB: I object. I would like the  
2 characterization clearly stated in this question at this  
3 time so the witness can address it directly, rather than  
4 a rambling characterization. I would like to know what  
5 the question is.

6 MR. BUCHSBAUM: Strike the original question,  
7 because I would assume the kilowatts is probably not the  
8 correct measure for a CCA load.

9 Q But let's just assume it is a megawatt, and it  
10 bears a CRS associated with the megawatt of, say,  
11 \$100,000 of CRS responsibility.

12 Now, Wal-Mart moves in, creates an additional  
13 half megawatt of load. My understanding is, under your  
14 proposal, that the extra half megawatt has no additional  
15 CRS associated with it.

16 Is that clear, Mr. Golub?

17 MR. GOLUB: Do you want me to answer it?

18 MR. BUCHSBAUM: Yes.

19 MR. GOLUB: I have reservations whether it was  
20 clear.

21 ALJ MALCOLM: It was clear enough. Unless you  
22 have an objection, the witness is going to reply.

23 MR. GOLUB: Your Honor, let me just say I wasn't  
24 objecting. I was sitting here and Mr. Buchsbaum  
25 initiated this colloquy.

26 ALJ MALCOLM: Okay. Mr. Cicchetti.

27 THE WITNESS: I think the unit would be  
28 megawatt-hours, not megawatts, because I don't think

1 that anybody is talking about a CRS on a megawatt basis.  
2 It would be kilowatt-hour or megawatt, some unit of  
3 energy basis.

4 The answer to your question is if we establish  
5 a baseline, without considering the growth from your  
6 hypothetical of a Wal-Mart coming in, that then the  
7 CRS's total obligation that the state has, or the  
8 utility has or the CCA's portion of that would go down,  
9 because we would have more megawatt-hours being sold as  
10 a result of Wal-Mart coming into the state.

11 The issue is where do you assign the benefit  
12 of attracting Wal-Mart to the state? And if we take my  
13 recommendation and assign it an up-front fixed amount to  
14 a CCA, then that benefit of growing load or sales would  
15 go -- stay within the CCA rather than be spread across  
16 the utility.

17 Now, you could, as I've been saying, make an  
18 annual determination of baseline. And you could,  
19 therefore, decide to incorporate some or all of that  
20 half megawatt over time, much like some of the utilities  
21 are proposing economic development rates where they  
22 would reduce the total bill, including the CRS, if they  
23 run the program to encourage customers like Wal-Mart to  
24 come into the state.

25 I think the issue is how are you going to do  
26 the economic development encouragement. That is a  
27 Commission decision. And so fundamentally it depends  
28 upon what the Commission decides. But my proposal to

1 the Commission would be that the dollars of benefit  
2 created by growth should be assigned, if not entirely,  
3 mostly to the CCAs and not captured broadly by the  
4 utilities, the remaining utility customers.

5 Q I'm going to try to wrap this up because this  
6 line is almost done.

7 Do you have any -- I saw nothing in your  
8 proposal that sought to account for a relocation of load  
9 from the bundled community to a CCA community, for  
10 example, a prison relocating.

11 A I'm trying to listen to the Judge and not  
12 involve in a discussion or debate with you. I don't  
13 know what your question is.

14 MR. GOLUB: Could we have the question reread?

15 MR. BUCHSBAUM: I can repeat it.

16 ALJ MALCOLM: Thank you.

17 MR. BUCHSBAUM: Q Are you proposing that all new  
18 load bear no additional CRS charge even new load that  
19 relocates from a bundled area?

20 A I think that goes to the baseline definition  
21 that we would have to establish. I will be very clear  
22 about this. My concern in the testimony is that a  
23 business that decides to move out of California can  
24 avoid the CRS charge. I'm not willy-nilly about the  
25 notion if you move from one part of town to a CCA part  
26 of town that you should be rewarded for being clever or  
27 gaming the system. I don't think that should be  
28 allowed. But I do think that as challenging as it is

1 for the CPUC, it should try to find a way to encourage  
2 the creation of CCAs so that legitimate new growth is  
3 accomplished.

4           Again, I'll turn back to the recent filing of  
5 Southern California Edison on business development  
6 rates. The key idea in that proposal, as I read it, is  
7 to try to be accurate and careful so as not to reward  
8 I'll call it business gaming, but to reward economic  
9 growth and business growth and job growth in the state.  
10 I think the CCAs should do the same thing, not to be a  
11 bucket to avoid responsibility, but to be a place that  
12 we encourage economic growth and development.

13           Q Now, you have mentioned in your -- on page 14  
14 of your testimony that all retail customers should pay a  
15 separately identified CRS on their bills whether they  
16 stay or not. Do you see that on page 17?

17           A I do.

18           Q Now, my question for you is: If you are going  
19 to make this proposal about new load not bearing a CRS,  
20 would you make the same recommendation in the bundled  
21 service territory?

22           A I think that to make clear my recommendation,  
23 once I make it clear I will say yes. So the answer is  
24 yes, I would make the same recommendation in both  
25 places. But to make clear what I'm saying, I believe  
26 just as we had a transparent competition transition  
27 charge that people could look at and see and know the  
28 number. We should have a transparent CRS charge where

1 people could look at it and see the number.

2 I don't know PG&E's billing, but I'm a  
3 customer of Southern California Edison. If you study it  
4 for literally a long time, I can deduce that there are  
5 utility-owned resources, then there are the charges that  
6 I pay for essentially the California Energy Crisis. But  
7 it is not transparent, it is not obvious, there is all  
8 sorts of components to it.

9 I believe that fundamentally if we want to  
10 encourage the formation of CCAs, we should have an  
11 identifiable charge that we call CRS and that should be  
12 in both the bundled service territory, as you called it,  
13 and the CCA territory.

14 Q And the incentive should apply similarly?

15 A I think the incentive -- I like the idea of  
16 Edison's economic development rate. I want to see it  
17 applied to community choice aggregators as well.

18 MR. BUCHSBAUM: Could I go off the record for  
19 about a minute?

20 ALJ MALCOLM: Off the record.

21 (Off the record)

22 ALJ MALCOLM: Back on the record.

23 Mr. Buchsbaum.

24 MR. BUCHSBAUM: I have no further questions.

25 ALJ MALCOLM: Ms. Shigekawa.

26 MS. SHIGEKAWA: May I have a few minutes off the  
27 record to see if my questions were answered?

28 ALJ MALCOLM: Yes.

1 (Off the record)

2 ALJ MALCOLM: Back on the record.

3 CROSS-EXAMINATION

4 BY MS. SHIGEKAWA:

5 Q Good morning, Dr. Cicchetti. My name is  
6 Jennifer Shigekawa from Southern California Edison.

7 A Good morning.

8 Q If you could turn to page 3 of your opening  
9 testimony. Mr. Buchsbaum just asked you some questions  
10 about unbundling the CRS component for both the bundled  
11 customer bills and the CCA customer bills; is that  
12 correct?

13 A Yes.

14 Q Would you agree that under your proposal to be  
15 able to show the CRS on a bundled customer bill that the  
16 CRS would still need to be calculated in some manner?

17 A Yes.

18 Q And I think you stated earlier in response to  
19 some of Mr. Buchsbaum's questions that your testimony  
20 doesn't include a specific proposal on how that CRS  
21 would be calculated; is that correct?

22 A That is correct.

23 Q If you look on page 3, lines 21 to 23, you  
24 propose that CCA and departing load customers that yield  
25 system benefits be credited by paying a lower CRS. Do  
26 you see that?

27 A I do.

28 Q Would these CCA customers pay a lower CRS than

1 the unbundled CRS you propose be shown on bundled  
2 customer bills?

3 A Yes.

4 Q If you can turn it page 8 of your testimony.

5 A Assuming that they verified, there was a  
6 verification of benefits and the Commission defined  
7 benefits, yes.

8 Q On lines 8 and 9 you refer to wholesale power  
9 markets utilized by IOUs to serve their customers.

10 A I see that.

11 Q I ask you to describe what you mean when you  
12 refer to "wholesale power markets."

13 A Yes. I mean to include both the organized  
14 Cal-ISO market as well as any term contracting that the  
15 utilities would engage in through purchase power  
16 agreements, or other means.

17 Q Okay. It wasn't clear to me what you were  
18 referring to there. Thank you for that clarification.

19 If you could turn to page 15 of your  
20 testimony, you refer to a cost allocation structure for  
21 CCAs. Do you see that on line 6 in cost allocation?

22 A Yes, I'm reading it. I do see it, but I'm  
23 looking at it. I'm sorry.

24 MR. GOLUB: What page are you on?

25 MS. SHIGEKAWA: Page 15, line 6 of the opening  
26 testimony.

27 Q What costs are you proposing be allocated  
28 under one of the three methodologies that you discuss on



1 line 7 through 12?

2 A I'm not testifying or putting evidence in on  
3 the details of the cost allocation. But I'm putting in  
4 testimony that is suggesting, particularly in my reply  
5 testimony, that certain costs that I think the utilities  
6 are claiming, they have an obligation to continue to  
7 provide for services that they think they should have a  
8 responsibility for.

9 I'm arguing that a CCA should be given the  
10 opportunity, by this Commission, the opportunity to take  
11 on that level of responsibility for things like  
12 reliability, for things like securing adequate resources  
13 for the future. That if a CCA as a duly-constituted  
14 entity of a municipality in California says we want to  
15 take on that responsibility, we no longer want the  
16 utility to provide those services, I think the  
17 Commission should allow those costs that the utility  
18 would otherwise be obligated, or maybe required, to  
19 assign to a CCA that didn't take on that responsibility.

20 I'm saying those costs -- my testimony is I  
21 think the Commission should distinguish, again, across  
22 CCAs, based upon whether they assume some burden of  
23 responsibility and, therefore, costs, or not. But for  
24 that, I'm not really dealing with the cost-allocation  
25 issue. Here I'm testifying that once you have  
26 determined the size of the buckets and what the  
27 components are, to get my main recommendation, which is  
28 to fix the amount, you could do it either by geography,

1 or you can do it by load estimation of the individual  
2 customers. I'm saying I'm not committed one way or the  
3 other to it.

4 Q What do you mean when you say "by geography"?

5 A There is this problem that exists. If you  
6 believe -- I don't think the utilities are in agreement  
7 on this -- but I think some of you think that what you  
8 need to do is if there were 100 customers in a  
9 particular area and 97 want to become part of the CCA,  
10 that the other three could opt out. I think some of you  
11 are saying no, it is 100 in or you can't have a CCA. I  
12 may be wrong in that, but I think there is that  
13 difference.

14 Of course the utilities -- what I'm saying is  
15 if the problem with those three in or out is about cost  
16 allocation and coming up with the fixed amount where you  
17 literally say we can't determine the number because we  
18 don't know exactly who is in or out, there may be  
19 opportunities for customers that change their mind  
20 through a period like an annual period.

21 When I'm asking the Commission to fix the CCA  
22 cost responsibility for a period of time, I'm saying,  
23 well, then just do it geographically, make it simple.  
24 Don't let perfect cost allocation or perfect certainty  
25 be the enemy of the good. Where I define the good as  
26 fixing the amount rather than having the complexity,  
27 keep us from ever getting this done saying we can't do  
28 it. ]

1           Here I'm just suggesting you could simplify it  
2 by going after the geography rather than after  
3 individual customers.

4           Q   Now, suppose that the CRS-related costs in  
5 SCE's service territory are a billion dollars in total.  
6 Do you have a specific proposal on how that amount  
7 should be allocated among CCAs and utility bundled  
8 service customers?

9           A   I think my proposal would be to do it in a  
10 hold-harmless basis for the customers who stay. I think  
11 that's the sacrosanct purpose of AB 117 that there won't  
12 be any undue negative effect on the customers who stay.

13                   The only thing that I would add is that  
14 I think your billion dollars is a gross amount; namely,  
15 it's the amount of cost responsibility.

16                   What I am proposing in my testimony is that if  
17 you have verify and achieve certain kinds of benefits  
18 for the people who remain, then you should be able to  
19 net those benefits against that gross cost assignment to  
20 the CCA so as to encourage formation of CCAs and  
21 the encouragement of CCAs that produce benefits for the  
22 entire state, including the customers who stay behind.

23           Q   Okay. But you do not have a specific proposal  
24 on --

25           A   I don't.

26           Q   If you could look at line 12 of the same page,  
27 15. You refer to --

28           A   Excuse me.

1 Q Same page. Line 12.

2 A Line 12, page 15?

3 Q Yes.

4 A Okay.

5 Q You refer to a CPUC retail rate order.

6 Can you be more specific about what order  
7 you're referring to, such as a decision number?

8 A Well, I'm referring to the 130 percent of  
9 baseline use that is used by individual utilities in  
10 their respective rate orders to comply with that  
11 exemption. So I'm not talking about a specific rate  
12 order, so I probably shouldn't use the word "the" but I  
13 would say in whatever CPUC retail rate order that would  
14 apply to the individual utilities.

15 Q Now, throughout your testimony you state that  
16 generation built by CCAs would reduce the wholesale  
17 market price that benefit all customers.

18 Would generation built by IOUs have the same  
19 effect on the wholesale market price?

20 A Yes.

21 I mean, the idea here is that we --  
22 particularly with high gas prices, I think  
23 the Commission has, as recently as approving the  
24 purchased power agreement for San Diego, has suggested  
25 that there are benefits from getting power plants built  
26 that reduce the dependence on high cost, that is, high  
27 heat rate, gas-fired units, particularly with gas prices  
28 being as high as they are. And so if you take out

1 11,000-plus heat rate and replace it with a 7,000 heat  
2 rate, whether it's done by a CCA or a utility, I think  
3 that's a good thing. Because even if we don't need  
4 the capacity, you save literally \$25 or so a  
5 megawatt-hour for every megawatt hour that would have  
6 been generated at 11,000 versus 7,000 when gas prices,  
7 as they are today, around \$6. And I think we need  
8 to encourage that.

9           And I think that the CCA idea that I'm most  
10 articulating is recognizing that CCAs like my client are  
11 JPAs who want to credit customers tied into the power  
12 plants that they want to build and not simply looking to  
13 be exclusively just a community choice aggregator buying  
14 from the same wholesale market as everybody else.

15           So I want to encourage both utilities and  
16 cities to build new power plants to get the efficiency,  
17 to get those benefits for the state. And it's only a  
18 question of where do you allocate those benefits: to  
19 the CCA or to all customers.

20           Q One final question on your reply testimony.  
21 I'm not referring to a specific line or page. You  
22 discuss the concept of IOUs not having any provider of  
23 last resort obligation for CCA customers.

24           Are you aware that SCE has proposed that CCA  
25 customers should not be responsible for any utility  
26 procurement or generation costs incurred after  
27 the formation of CCA if the utility does not have any  
28 obligation to serve those customers?

1           A    I think what I said in my testimony -- first,  
2 I'm not aware of the subtlety of Edison's proposal, so  
3 let me say that. But let me clarify what my proposal  
4 is.

5                   I'm not saying that CCAs should have no return  
6 rights or provider of last resort rights with the  
7 utility. What I'm saying is that if a CCA chooses to  
8 give up those rights, it shouldn't be assigned those  
9 costs. If a CCA wants those rights, then they should  
10 expect to pay a higher CRS charge for the option of  
11 returning or the option of having the utility worry  
12 about reliability in future needs.

13                   So if the utility is the backup or  
14 the provider of last resort option, CCAs that take some  
15 option should pay more than CCAs that don't. That's my  
16 proposal.

17           Q    It would be dependent on the choice the CCA  
18 makes?

19           A    Under the rules that the Commission would  
20 establish, yes.

21           MS. SHIGEKAWA:   Okay. Thank you, Dr. Cicchetti.  
22 I have no other questions.

23           THE WITNESS:   Thank you.

24           ALJ MALCOLM:   Thank you, Ms. Shigekawa.

25                   Mr. Szymanski.

26           MR. SZYMANSKI:   Thank you, your Honor. I have  
27 a few questions.

28

## 1 CROSS-EXAMINATION

2 BY MR. SZYMANSKI:

3 Q Good morning, Dr. Cicchetti. I'm Paul  
4 Szymanski, and I represent SDG&E in this proceeding.

5 A Good morning.

6 Q I wanted to follow-up first with a point that  
7 you made a few moments ago in response to a question  
8 from Ms. Shigekawa.9 I believe you said that AB 117 creates a  
10 sacrosanct principle, that there be no cost shifting,  
11 and that remaining bundled service customers not be  
12 harmed by the development of CCA.

13 Did I capture your principle correctly?

14 MR. GOLUB: I object to the form of the question.  
15 I think it mischaracterizes what had been said. And  
16 I think it would be best if the record were read back  
17 rather than have it --18 MR. SZYMANSKI: Your Honor, I'm asking  
19 Dr. Cicchetti to clarify what he said.20 ALJ MALCOLM: Your objection's overruled.  
21 The witness may answer.22 THE WITNESS: I did say that. And I think  
23 I qualified it when I said it to mean net effects on a  
24 customer as opposed to, I'll use the term I used in  
25 the answer, the gross cost. In other words, I'm talking  
26 about holding harmless the remaining utility customers  
27 on a net basis.

28 But with that qualification, that is what

1 I said and it is what I believe.

2 MR. SZYMANSKI: Q Does AB 117 allow any form of  
3 cost shifting?

4 A I don't think that I'm the right one  
5 to interpret the word "allow."

6 I think this Commission has broad,  
7 discretionary authority to -- under the Public Utility  
8 Act to look out for the public interest, and I don't  
9 think AB 117 took that away. I think AB 117 described a  
10 process for creating community choice aggregators and  
11 cost recovery and those kind of things. But I don't  
12 know about AB 117 allowing or disallowing anything.  
13 That's outside my area of expertise.

14 Q You have read AB 117, have you not?

15 A I have.

16 Q And you have said in your testimony and also  
17 this morning that AB 117 prohibit cost shifting; is that  
18 correct?

19 MR. GOLUB: Your Honor, I'm going to object. It  
20 happened again. Mr. -- Dr. Cicchetti pointed out to  
21 Mr. Szymanski that there was a qualifier when he said  
22 that. Mr. Szymanski is again trying to ask the question  
23 without putting the full qualifier in it. It's the same  
24 thing we had a few minutes ago. It's not right.

25 ALJ MALCOLM: The witness is competent to clarify  
26 that.

27 MR. GOLUB: All right.

28 THE WITNESS: I can only repeat myself. I don't



1 know if we're going to make progress here.

2 If you define cost as net cost, then  
3 the answer is correct. That's my interpretation of what  
4 AB 117 would permit this Commission with its full  
5 legislative and constitutional authority to do. I don't  
6 believe AB 117 says it has to be on a gross basis. It  
7 could easily be on a net basis.

8 And the reason we're here is this Commission  
9 has to interpret AB 117 in the context of the other  
10 things that this Commission has to deal with to set a  
11 course of public policy for the state. So that's what  
12 I believe.

13 And I'm not a lawyer, I'm not an expert on  
14 the precise reading of this language, but I've  
15 interpreted the language of this law along with other  
16 constitutional and legal and economic and public policy  
17 concerns that I understand the Commission to have and  
18 the state to have, and I've formulated my testimony on  
19 those bases.

20 MR. SZYMANSKI: Q The question that was pending,  
21 Dr. Cicchetti, was whether or not AB 117 allows cost  
22 shifting. And you, I believe, said -- and that's  
23 the question I'm trying to obtain an answer to. It  
24 seems to me as if it's a yes or no answer. Or if it's a  
25 qualified answer, I need to understand that better. But  
26 your answer to me, as far as I can understand, is not  
27 responsive at this point.

28 A I'm having two difficulties in answering your

1 question: the word "allow" and the word "cost."

2 If you put net cost in front of the word  
3 "cost, that's one interpretation. If you don't put  
4 the word "net" in front of "costs," then I have a  
5 different potential response.

6 And as I've already said, I don't think that  
7 AB 117 is about allowing as much as it is about  
8 permitting or describing the intent of the legislature  
9 on these matters, and so I'm having a difficult time as  
10 a nonlawyer trying to interpret the word "allow."

11 But if you want to know what I believe, I  
12 don't know if that's helpful. I've already told you  
13 what I believe three times --

14 Q You don't need to repeat it again.

15 A -- but I don't know how to respond to your  
16 question other than to say I have difficulty with the  
17 word "allow" and difficulty with the word "cost" because  
18 I don't know whether you mean to mean to put "net" in it  
19 as I'm using that word or not.

20 Q Would the remaining customers -- using  
21 the term "remaining customers" as you used it a few  
22 moments ago -- be harmless if they were required to  
23 subsidize any costs to those who were not the remaining  
24 customers?

25 A The answer is I don't know because I don't  
26 know whether it's what I described in my testimony as a  
27 justified subsidy where you consider the benefits and  
28 the cost, and if all customers are otherwise better off,

1 the remaining customers let's say, than they otherwise  
2 would have been, then I'd say then it is an acceptable  
3 form of subsidy if the benefits for the people paying  
4 more exceed the cost of the additional amount they might  
5 otherwise pay. That's what I mean by considering  
6 netting or net cost or justify discrimination or justify  
7 subsidies.

8 So I think that we all know about these things  
9 where, after all, we've all been in the regulated  
10 utility business for some time. These are generally  
11 considered to be not easy issues, but issues that  
12 the Commission has to grapple with and has grappled with  
13 from time in memorial since we've had regulation.

14 Q I'd like to refer you to your reply testimony,  
15 Exhibit 41 at page 10. And from lines 11 through 18 on  
16 that page, you provide an example of how benefits might  
17 be conferred if a CCA were to add new generation rather  
18 than purchasing from the wholesale market. Do you see  
19 that text?

20 A I do.

21 Q Now, there you claim that if a CCA adds new  
22 generation rather than purchases it from the wholesale  
23 market, the prices in the wholesale market will likely  
24 be reduced due to the additional supply in the market.

25 Is that your testimony today?

26 A Yes, that's what I say. And I've explained  
27 this morning why. It has to do with the old gas-fired  
28 units being used to set the market price of

1 the wholesale price some of the time. And if you  
2 allow or you encourage --

3 MR. SZYMANSKI: Your Honor, there isn't a question  
4 pending right now.

5 THE WITNESS: Okay. You looked lost. I was  
6 trying to help you out.

7 MR. SZYMANSKI: Q No. I'm just making sure you  
8 have the text in mind that I'm going to ask a question  
9 about.

10 A Yeah, I have it.

11 Q Dr. Cicchetti, how would the Commission or any  
12 other party determine that the prices in the wholesale  
13 market will likely be reduced due to some additional  
14 source of supply?

15 A The Commission or other parties would do it  
16 exactly like they do anything associated with like  
17 approving a new PPA for an investor-owned utility or  
18 deciding whether it's a good idea to give a CPCN to a  
19 new utility-owned ratebase: We do it by estimation. We  
20 forecast the market. We forecast the load shape. And  
21 if we think that X percent of the time there will be  
22 15,000 heat rate units operating at a \$6 gas price  
23 costing at the margin \$90 a megawatts hour, if a city  
24 comes along and builds a gas-fired plant or a utility  
25 comes along and builds a gas-fired plant with a 7,000  
26 heat rate and therefore a marginal cost of close to \$42  
27 versus \$90, the Commission and other parties can  
28 understand that those hours when that would occur would

1 produce benefits of reducing the production costs in  
2 the state using production cost models of roughly \$50,  
3 and it could decide therefore that even if we don't need  
4 the capacity or we don't need a new PPA to be approved  
5 for reserve reasons, that there are benefits to  
6 the system, benefits to all customers, and authorize  
7 either the PPA or the CPCN. You have to do it by  
8 estimation. And that's no different here than it would  
9 be for a utility PPA or a utility power plant that might  
10 be constructed under a CPCN.

11 Q And so the benefits in this example would be  
12 calculated on a forecast basis, not on a retrospective  
13 basis; is that correct?

14 A You can't calculate benefits -- yes. You  
15 can't calculate benefits retrospectively for something  
16 that hasn't happened; like a new power plant being  
17 built.

18 Q And how will you determine that the reduced  
19 prices in the wholesale market, if they manifest  
20 themselves, would be likely reduced due to that  
21 additional source of supply?

22 A You run one --

23 Q How would you --

24 A -- of the utility production cost models, just  
25 like you would for utility investment or utility PPA.

26 As I keep saying, I'm not about recommending  
27 a generic notion of benefits. I'm saying prove up  
28 the benefits, satisfy the Commission that you've met

1 the criteria, and be allowed to capture those benefits  
2 as an offset knowing that you can still tell the  
3 Legislature or anybody who makes an inquiry that  
4 the other customers are better off than they would have  
5 been before you allowed that benefit to be captured  
6 mostly by the CCA but shared by other customers on  
7 the system because of what you do on the margin through  
8 the estimation procedures that would be in effect.

9 Q And if it were a utility that added this new  
10 generation rather than a CCA and there were benefits  
11 that were accrued systemwide, wouldn't those benefits  
12 caused by the utility's actions likewise be reflected in  
13 the system -- in the calculation of the CRS somehow?

14 A I don't think it would affect the CRS.  
15 I think what it would do is if the utility went out and  
16 helped, as they are doing, to replace those very  
17 expensive high heat rate, gas-fired units in  
18 California -- in fact, I mentioned that San Diego is  
19 about doing that. I know Edison's about doing that. So  
20 at least two of the three of you are about helping  
21 reduce that load. That benefit will show up on, first  
22 and foremost on reducing the cost component or  
23 the tariff component for the utility generation on a  
24 customer's bill. But it would also help reduce any  
25 market price in the wholesale market that might be  
26 triggered some of the time by those expensive gas-fired  
27 units which would now presumably be retired or at least  
28 used even less than they are now. And that part would

1 benefit a CCA or any other customer in the market if  
2 they were dependent upon the wholesale market as their  
3 source of supply. But it's not as certain that this  
4 will happen if a CCA is also building its own power  
5 plants and not going into the market. Then there would  
6 be no benefit for them. It would all stay over on  
7 the utility customer side.

8 So it's a matter of facts and assumptions  
9 about the future before I can say you clearly are right  
10 that there would be a CCA benefit.

11 But I don't think there would be any CRS  
12 effect or cost allocation of CRS effect. There might be  
13 some benefit for CCAs that buy in the market if  
14 the market price goes down --

15 Q And Dr. --

16 A -- only if they're buying some in the market.

17 Q And Dr. Cicchetti, if there is a benefit under  
18 AB 117, shouldn't CCAs pay for that benefit?

19 A I guess you could do that, but I don't think  
20 AB 117 would speak to it.

21 The Commission might determine that CCAs that  
22 don't build generation or don't sign long-term contracts  
23 and who are riding off of the currently suppressed  
24 wholesale spot market or shorter term market maybe  
25 should pay some benefit if the utility's going out and  
26 building power plants. That would be in  
27 the determination of the baseload number and maybe in  
28 the determination of the ongoing services that the

1 utilities would say they are still providing that should  
2 be added on to the CCA bills.

3 But again as I said earlier, if a CCA eschews  
4 those responsibilities being provided by the utility and  
5 assumes them themselves, then those CCAs, different kind  
6 of CCAs, shouldn't have to pay those costs. But a CCA  
7 that rides on the utility, just buys on the spot market,  
8 picks up a benefit when the utility's going out  
9 building, I believe it's probably sensible for  
10 the Commission to assign some cost responsibility to  
11 those CCAs, but not all CCAs, because I believe some of  
12 them want to go out and do some of the heavy lifting  
13 themselves and they're trying to get a certainty in  
14 the CRS so they can have the transparent knowledge of  
15 what it's going to cost to go forward.

16 Q So if I understand your proposal correctly,  
17 you are proposing a parallel treatment for the issue of  
18 new generation that a CCA might bring to the -- bring  
19 on-line and a utility that might bring on-line and the  
20 effect that that might have on the overall wholesale  
21 market; and that to the extent there are benefits  
22 accrued from either of those activities, those benefits  
23 would have to be -- could be reflected somehow, on  
24 the one hand, in either the CRS calculation or somehow  
25 in costs that would be borne by a CCA by the utility's  
26 advent of generation in that market; is that correct?

27 A It's consistent with what I said. It's not  
28 exactly what I said.



1           So I'll say it's correct, but it's not a  
2 replacement for what I said.

3           Q   And to what extent it is not -- if you could  
4 focus me, please, on the aspect of what I've just  
5 characterized that is not consistent or not replacement  
6 for what you just said.

7           A   The first part that I'd have to explain again,  
8 is when you say "parallel," to me "parallel" means both  
9 sides would do the same kind of thing. But it doesn't  
10 tell me one way or the other whether the adjustment  
11 would be -- I'll use another complex word -- symmetric  
12 where it would be similar on both sides.

13           My proposal is it should be similar on both  
14 sides. I'm not about trying to get a special deal for  
15 CCAs, but I am trying to get the Commission to  
16 understand that it should think about CCAs not as being  
17 all like; that the CCAs who build power plants, the CCAs  
18 who don't ask the utility to worry about their long-term  
19 needs and provider of last resort and other kinds of  
20 assurances, those CCAs impose a lower cost on  
21 the utility and they assume some of the benefit  
22 generating effects that utilities might otherwise  
23 provide for both their remaining customers and the CCAs  
24 that don't do those kind of things. And I'm saying this  
25 Commission should devise a way, using forecasts and  
26 estimation, so as to distinguish between those two types  
27 of CCAs: I'll call it the CCAs that don't want to do  
28 anything but get out from under the utility because they

1 don't like them and the CCAs that are aggressive and  
2 they're interested in replacing the utility --

3 MR. SZYMANSKI: Your Honor --

4 THE WITNESS: -- to do these things.

5 MR. SZYMANSKI: I think that Dr. Cicchetti is  
6 testifying way beyond the scope of my question. And  
7 I asked him to focus on one aspect of it, but I hear him  
8 reiterating things that were well beyond the ambit of my  
9 question.

10 If he's regurgitating essentially the whole  
11 bulk of his -- the testimony is that we've heard this  
12 morning, it's not productive for this record or to my  
13 cross-examination.

14 MR. GOLUB: Your Honor, if I might be heard.

15 First of all, counsel interrupted the witness  
16 in the middle of answer, which I don't think is really  
17 appropriate. But secondly, counsel had characterized  
18 Dr. Cicchetti's testimony. Dr. Cicchetti had said, you  
19 know, it's somewhat similar, but it's not exactly what  
20 I really said. Counsel then asked: Well, tell me  
21 precisely what it is where you differ from what I said.  
22 And that is what Dr. Cicchetti was doing. Counsel asked  
23 for it.

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

25 (Off the record)

26 ALJ MALCOLM: Back on the record.

27 Do you have a question pending?

28 MR. SZYMANSKI: Q I'd like you to look at your

1 testimony on page 10, lines 11 through 18. And on line  
2 11, if you substitute the word "CCAs" with the word  
3 "utilities" --

4 A I'm sorry. Could you tell me what line it was  
5 again?

6 Q Line 11.

7 A On page?

8 Q Exhibit 41.

9 A Line 11 on page 11.

10 ALJ MALCOLM: Your reply testimony.

11 MR. SZYMANSKI: Q We're still on the same text  
12 that we've been --

13 A Page 10. Okay. I was losing -- okay.

14 Q Page 10, line 11. And in lieu of the word  
15 "CCAs" you substitute the word "utilities."

16 And furthermore, on line 15, instead of  
17 the word "IOUs," "s" apostrophe there, you substitute  
18 the word "CCA" "s" apostrophe; and on line 17, you  
19 substitute the word "CCAs" with the word "utilities"?

20 MR. GOLUB: Which line?

21 MR. SZYMANSKI: Line 17, the word "CCAs" you  
22 substitute the word "utilities." You reach -- when we  
23 come to the sentence on lines 17 and 18 that says, "In  
24 such cases, where tangible benefits can be quantified,  
25 a reduced CRS fee would be justified."

26 My question to you, Dr. Cicchetti, is whether  
27 or not where tangible benefits can be quantified due to  
28 the utility's deployment of new generation, would there

1 be some benefit to CCAs for which CCAs should have to  
2 pay? ]

3 Q Is that the question?

4 A I can't answer the question without  
5 distinguishing between two types of CCAs: the CCAs that  
6 rely on utilities to produce those benefits, and the  
7 CCAs that opt out of having utilities provide those  
8 benefits.

9 If you focus on the first group, those that  
10 continue to rely on utility for backup services --  
11 reliability services -- then the answer would be yes.

12 But the other group, the answer would be no.

13 Q What if it were the case, as you're suggesting  
14 here, that there is an effect on wholesale markets due  
15 to the deployment of that generation, as you claim; that  
16 there would be by generation brought on line by a CCA?  
17 Wouldn't there be a symmetric benefit, at least  
18 potentially, to CCAs or their customers, due to the  
19 utility's deployment of that generation?

20 A No, because as I explained in the answer to  
21 the prior question, there may be CCAs who buy in the  
22 wholesale market, and there maybe CCAs who go out and  
23 invest in more power than they need, and therefore, they  
24 sell surplus energy into the market. They never go into  
25 the market. In fact, they're penalized, because their  
26 surplus energy gets priced at a lower market because of  
27 these actions.

28 Now, I'm not suggesting that they get an

1 offset to that suppression of price in the market, but I  
2 am distinguishing between a CCA that builds and a CCA  
3 that just simply rides on the wholesale market. And I  
4 think I explained that several times to you.

5 Q So the question of whether there are benefits  
6 to be accrued depends on whether the CCA builds or does  
7 not build generation? Is that -- do I understand what  
8 you've just said, Dr. Cicchetti?

9 A Yes. I'd qualify it one step further, and  
10 say, of course, it depends on the type of generation.  
11 Not all the generation is the same, but it -- and I've  
12 been emphasizing that the Commission should make these  
13 determinations using the same methods as used for other  
14 types of investments that other parties including the  
15 utilities make.

16 MR. SZYMANSKI: Thank you, your Honor. That's all  
17 I have.

18 ALJ MALCOLM: Thank you.

19 Is there any redirect, Mr. Golub?

20 MR. GOLUB: I think there will be. I'll need a  
21 few minutes to organize my thoughts and notes.

22 ALJ MALCOLM: Why don't we do that after lunch?

23 We'll be in recess until 1:30.

24 (Whereupon, at the hour of 12:07  
25 p.m., a recess was taken until 1:30 p.m.)

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AFTERNOON SESSION - 1:30 P.M.

\* \* \* \* \*

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

Mr. Golub, do you have redirect?

MR. GOLUB: Thank you, your Honor.

CHARLES CICCHETTI

resumed the stand and testified further as follows:

BY MR. GOLUB:

Q Dr. Cicchetti, during your cross-examination, you referenced some power plant projects being pursued by Edison and San Diego Gas & Electric. What projects were you referencing?

A The Mountainview project, and the -- a case called "Otay." I'm not sure of the pronunciation.

Q Are you aware of any other projects where the utilities are actively pursuing development of them in California?

A I am not, but that doesn't mean there aren't, but I'm not aware of them.

Q Are you aware of any power plant where one of the investor-owned utilities suggested the possibility of closing a major power plant?

A Yes.

Q What was that?

A The Mohave Generating Station.

Q Also there were some questions asked of you concerning cost shifting and principles under the statute, and so forth. And you give a variety of

1 answers. I'm not going to ask you to re-create all of  
2 that, but I do have a question or clarification.

3 During the course of that discussion, were you  
4 addressing whether any costs could be allocated or  
5 shifted, for that matter, to utility ratepayers? Was  
6 that part of your answer one way or the other  
7 previously?

8 A I was discussing, when I answered that  
9 question, exclusively ratepayers.

10 Q Okay. There were quite a few questions asked  
11 of you that concerned different aspects of your  
12 testimony. I'm going to try and break it out just for  
13 simplicity and efficiency. First, I'm going to ask you  
14 a few questions concerning how the CRS is determined.  
15 And secondly, I'd like to ask you a few questions about  
16 the notion of the credit that would apply to some CCAs  
17 against that number. All right?

18 A All right.

19 Q So, turning first to the CRS determination,  
20 there were some questions asked of you by Mr. Buchsbaum  
21 concerning energy efficiency. And basically, he asked  
22 if you have a fixed CRS, and then you put in an energy  
23 efficiency program, would the CRS per kWh go up. Do you  
24 remember that discussion with him?

25 A Yes.

26 Q If you had energy efficiency in that scenario,  
27 what would happen to the bills?

28 A The bills of the conserving customers would go

1 down.

2 Q Mr. Buchsbaum, as far as I remember, did not  
3 ask you this question related to his question, which is  
4 --

5 MR. SZYMANSKI: Objection. It's not related to  
6 the cross-examination. He may ask a question that's  
7 within the scope of cross, but as a foundation for  
8 Counsel's question. He's not asking something within  
9 the scope of Mr. Buchsbaum's cross.

10 MR. GOLUB: It is within the scope. I'm bringing  
11 out the fact that Mr. Buchsbaum did not bring out all of  
12 the relevant issues in asking his question, and I'm  
13 filling that in.

14 ALJ MALCOLM: That's fine.

15 MR. GOLUB: Thank you.

16 Q With regard to that -- that issue that  
17 Mr. Buchsbaum raised, he, in his question, apparently  
18 was implying that the CRS would be constant for all the  
19 customers in that community.

20 Would you please tell us whether CRS would  
21 have to be constant for all of the customers in a  
22 community choice aggregation community, assuming that  
23 community had an aggressive energy efficiency program?

24 A No, it wouldn't. It would be possible for a  
25 community choice aggregator to at least consider the  
26 possibility of having lower rates, including lower CRS  
27 rates, for energy efficient improving customers or  
28 conservation customers, and to literally raise the rate,



1 the price charged, for customers who don't necessarily  
2 engage in energy efficiency.

3 So I think that it certainly would be possible  
4 to have a CCA that not only was neutral, but maybe even  
5 very positive in promoting energy efficiency.

6 ALJ MALCOLM: Although didn't you testify earlier  
7 that energy-efficient customers' rates would go up?

8 THE WITNESS: I think, your Honor, I testified  
9 earlier that --

10 ALJ MALCOLM: Or by your proposal.

11 THE WITNESS: -- that if you gave a fixed CRS  
12 allocation to a CCA, and that CCA sold less energy,  
13 would that mean the charge per unit would go up for  
14 those customers? And I said yes.

15 And I think now I'm saying: it doesn't have  
16 to be for every single customer in the CCA. You could  
17 have a CCA distinguished between the customers who  
18 conserve and the ones who don't, if they chose to.

19 ALJ MALCOLM: Okay.

20 MR. GOLUB: Q So that would be a matter of  
21 community choice, then?

22 A That's correct.

23 Q Now, this very issue that Mr. Buchsbaum  
24 described with regard to the relationship between CRS  
25 and energy efficiency, does that apply equally to the  
26 investor-owned utilities themselves?

27 A It applies equally in terms of the possible  
28 effect on unit prices for a utility; but it would depend

1 whether applied to their CRS-type charge or not. That  
2 would depend upon exactly how they reflected the CRS  
3 charge and collected it on the customers' bills for what  
4 I think the utilities call the "bundled customers," but  
5 the effect on unit prices or average prices would be  
6 identical.

7 Q And the way it would show up in the rates  
8 would be a function of the way ratemaking was done?

9 A Correct.

10 Q Mr. Buchsbaum also, in discussing the issue of  
11 what the CRS level or rate should be, talked about  
12 Kmart, and talked about a big Kmart coming into town.

13 A He said "Wal-Mart."

14 Q He said "Wal-Mart"? I'm sorry. I don't shop  
15 in them. Target. Whatever. Wal-Mart. I stand  
16 corrected. Actually, I thought he said "Kmart." Okay.  
17 Wal-Mart. A big Wal-Mart coming into town.

18 And I wasn't really sure where it was all  
19 headed, but let me just ask you this question.

20 If a large retailer locates in a community,  
21 what area absorbs the impacts, the economic and social  
22 impacts of that project?

23 A It would be the local community. Good, bad,  
24 and indifferent, they'd have the effects.

25 Q And under -- I won't belabor that topic.

26 You were also asked a question -- I'm not sure  
27 if that goes to the level of CRS or the credit, but I'll  
28 just do it here -- about Exhibit 42 and some of your

1 work. And I was told that you hadn't done --  
2 Exhibit 42. As you had pointed out, you hadn't done  
3 certain studies and so forth.

4           Could you very briefly tell us about your  
5 level of experience and professional background in this  
6 field, with maybe number of years, and just a very quick  
7 sketch?

8           A I first testified on rate design in 1967. So  
9 for the last 37 years, I've been involved in  
10 cost-of-service utility ratemaking, telecommunication  
11 ratemaking.

12           I'm former chairman of the Public Utilities  
13 Commission in Wisconsin.

14           And I have worked as an expert witness in all  
15 but, I think, one or two states and many countries  
16 around the world on these matters.

17           Q And as part of that, have you represented any  
18 investor-owned utilities?

19           A I have.

20           Q So were your opinions expressed in Exhibits 40  
21 and 41 drawing on that professional experience and  
22 background?

23           A Yes.

24           Q Now, I want to turn specifically to the  
25 question of the 50 percent credit that you had discussed  
26 in your prepared testimony for those CCAs which  
27 developed generation. All right? I'm moving off the  
28 issue of what the CRS might be. Let's just assume it's

1 X. It doesn't really matter.

2 I'm moving to the second issue, which is what  
3 kind of accrediting mechanisms we should create against

4 X. I'm not really debating what X is.

5 You were asked some questions by Mr. Buchsbaum  
6 about that, and I would like you to please explain how  
7 you arrived at that number.

8 A I began with the notion of what the wholesale  
9 market benefit might be if a community choice aggregator  
10 built power plants over and above their needs, which I  
11 think most of them that are thinking about creating  
12 joint powers authorities plan to do. And therefore,  
13 you'd likely to have community choice aggregators that  
14 would have more generating capacity and more energy  
15 production than they need to provide for their own  
16 customers' needs.

17 And when that happens or those kinds of things  
18 happen, I imagine that very efficient power going into  
19 the wholesale market, and therefore benefitting the  
20 bundled customers of the utilities, who would be able to  
21 get power from that wholesale market at a much lower  
22 production cost than would be the case in continuing to  
23 have the state to rely on existing natural-gas-fired  
24 generation with exceptionally high heat rates.

25 And when I look at those exceptionally high  
26 heat rates, I see numbers typically, in the way of  
27 dispatch costs or production costs, at times easily  
28 greater than \$50 to \$60 a megawatt-hour. And I think

1 that most of these new combined-cycle gas-fired units  
2 and other plants the JPAs might build would probably be  
3 likely to have production costs in the \$40 range, as  
4 opposed to the \$50 or \$60 range.

5 And when I look at the CRS charge, using the  
6 working number that I think a lot of people use before  
7 it's actually measured of \$27 a megawatt-hour, I take  
8 half of that, and I get 13.50. And I think it's likely  
9 that 13.50 is smaller than the benefits that would  
10 occur, at least in those hours when the CCA is selling  
11 power that it doesn't need into the wholesale market and  
12 making it available to the utilities and their bundled  
13 customers.

14 So with that logic in mind, I came up with  
15 50 percent as a ballpark.

16 As I've explained this morning, I truly think  
17 that the Commission could do better than just pick the  
18 50 percent number. It could actually do the production  
19 cost studies and do the other things that would actually  
20 determine those benefits, and then apply those estimated  
21 benefits against the estimated CRS costs, and come up  
22 with a number that wouldn't be reduced mathematically,  
23 but which would be lower based upon proved-up benefits  
24 that could be there.

25 And I prefer the latter approach over the  
26 50 percent, but the 50 percent seems to me like a  
27 conservative, reasonable estimate if the CRS is more or  
28 less \$27 a megawatt-hour.

1           Q    In the context of the credit issue, several  
2 counsel for the investor-owned utilities asked you about  
3 questions revolving around the possibility of utilities  
4 building power plants -- investor-owned utilities  
5 building power plants.

6           We already discussed Otay Mesa and  
7 Mountainview and Mohave, but leaving aside those  
8 specific plants, could you give us an idea of the  
9 situation the investor-owned utilities are in on the  
10 issue of whether they'll actually be generating power in  
11 excess of their own loads, or whether they'll be taking  
12 from the wholesale market from the foreseeable future,  
13 let's say, the next five to ten years?

14          A    I think that most of the utilities -- the two  
15 leading utilities, PG&E and Southern California Edison,  
16 sold their in-state natural-gas-fired generation.

17           To some extent, they're buying some of that  
18 back by taking over in the assignment made to them of  
19 DWR contracts, but even as -- considering that as an  
20 offset to what I'm about to say, I think that the  
21 utilities are net purchasers of energy in a wholesale  
22 market. I think they prefer to get it locked in, rather  
23 than buy spot; but occasionally, I think they're all  
24 buying spot.

25           And under those circumstances, I think it  
26 would be some time before the utilities would be more  
27 than self-sufficient. And therefore, the proposition  
28 that there would be a similar effect on the wholesale

1 market of the utilities' bills, I don't think, is  
2 accurate, at least, until we get the utilities back up  
3 to their -- to being self-sufficient, which they're not.

4 MR. GOLUB: Thank you.

5 I have no further questions.

6 ALJ MALCOLM: Thank you.

7 Any recross?

8 MR. BUCHSBAUM: No, your Honor.

9 ALJ MALCOLM: Okay. Thank you.

10 Thank you, Dr. Cicchetti.

11 THE WITNESS: Thank you.

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

13 (Off the record)

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

15 During our lunch break, I read the relevant  
16 documents that concern the motion of the utilities to  
17 strike certain portions of Mr. Fenn's reply testimony.

18 Mr. Fenn, I was going to give you an  
19 opportunity to write a reply, but I have to say the  
20 motion is so strong and so correct that I don't even  
21 think it would be worth your while or mine to write.

22 Reply testimony is for the limited purpose of  
23 replying very directly and narrowly to some other  
24 party's testimony. And your testimony goes far beyond  
25 IVDA's testimony in several respects.

26 In other respects, it's arguing law or policy,  
27 which is something you could do in your brief and I  
28 encourage you to do in your brief, because I want to

1 hear your views; but I -- I just don't think it would be  
2 worth your while to file anything. And I'm going to  
3 grant the motion. All right?

4 MR. GOLUB: Your Honor, for the record, you  
5 don't -- we had indicated earlier our desire to file  
6 something on it. I take it we will not be given the  
7 opportunity?

8 ALJ MALCOLM: No, I don't think so, because all  
9 parties, including Mr. Fenn, had an opportunity to  
10 present opening testimony, and did. And I can't allow  
11 reply testimony to be -- especially late like this -- to  
12 be used as an avenue for either bolstering existing  
13 testimony, or adding to existing ideas and proposals.

14 So, with that, I'm granting the motion of  
15 PG&E, Edison, and SDG&E to strike certain portions of  
16 Mr. Fenn's reply testimony.

17 We can take care of that more specifically  
18 when he's on the stand.

19 I'd like to call next Mr. Clarke from IVDA.

20 Mr. Blaising.

21 MR. BLAISING: Very good, your Honor. The Inland  
22 Valley Development Agency calls Thomas K. Clarke, and  
23 request that his late-served testimony, dated May 21st,  
24 2004, be marked as the exhibit next in order.

25 ALJ MALCOLM: We will mark Mr. Clarke's prepared  
26 testimony as Exhibit 43, dated May 21st, 2004.

27 (Exhibit No. 43 was marked for  
28 identification.)



1 ALJ MALCOLM: Thank you. Mr. Blaising.

2 MR. BLAISING: Yes. Thank you.

3 DIRECT EXAMINATION

4 BY MR. BLAISING:

5 Q Mr. Clarke, do you have your prepared  
6 testimony, which has been marked as Exhibit -- I believe  
7 it's 43 in this proceeding, before you?

8 A Yes, I do.

9 Q Okay. Was this testimony prepared by you, or  
10 under your direction?

11 A Yes, it was.

12 Q Do you have any corrections, additions, or  
13 changes to make to this testimony?

14 A I have several additions to add.

15 First, on page 3, the sentence ending on line  
16 20 --

17 MR. BLAISING: Let me just note: at this point,  
18 Mr. Clarke and I have noticed that, although it was  
19 provided as a PDF document, there may be some pagination  
20 issues. And so, if we could, use this as an opportunity  
21 as well to see if that's the case.

22 THE WITNESS: We have a copy of the letter from  
23 Senator Nell Soto to the CPUC President Peevey, dated  
24 May 20. And I'd like to have this attached as  
25 Attachment 1 to my testimony.

26 ALJ MALCOLM: Thank you.

27 If there's no objection, I'll attach that to  
28 Mr. Clarke's testimony.

1 MR. HUARD: Your Honor, clarification. The  
2 package I got was a motion to intervene, which included  
3 that letter, I believe.

4 MR. BLAISING: Correct, yes.

5 THE WITNESS: And second, your Honor, on page 4,  
6 the sentence ending on line 3, I'd like to add another  
7 parenthetical, which states, "a copy of the letter from  
8 Senator Bowen to CPUC President Peevey, dated June 1,  
9 2004."

10 And I'd like to have that attached as  
11 Attachment 2 to my testimony.

12 MS. SHIGEKAWA: I'm sorry. Where are you  
13 referring to?

14 THE WITNESS: Again, apologizing. There may be  
15 some pagination problems. Page 4, sentence ending on  
16 line 3.

17 ALJ MALCOLM: And it would read, "a copy of the  
18 letter to the CPUC from Senator Bowen" --

19 THE WITNESS: -- "to CPUC President Peevey, dated  
20 June 1, 2004."

21 MR. HUARD: Do you have copies of these things?

22 MR. BLAISING: I do. A PDF copy of this letter  
23 was e-mailed to all the parties in this proceeding.  
24 We'd simply like to include it as an attachment.

25 THE WITNESS: On page 6, your Honor, line 25, I'd  
26 change the reference to Attachment 1 to be a reference  
27 to Attachment 3.

28 ALJ MALCOLM: I'm sorry. Say that again.

1 THE WITNESS: On page 6, line 25 --

2 ALJ MALCOLM: Mm-hm.

3 THE WITNESS: -- there was a reference to  
4 Attachment 1. That should be Attachment 3.

5 ALJ MALCOLM: All right.

6 THE WITNESS: And finally, on page 7 --

7 MR. HUARD: Wait a minute. Page 6 --

8 MR. BLAISING: This is where we may have an issue  
9 with pagination. This falls under the question,  
10 You maintain that DWR did not  
11 incur costs on behalf of certain  
12 load at Norton. Do you have any  
13 evidence that supports this claim?

14 And there's a parenthetical at the end of the  
15 first sentence that refers to Attachment 1. Because of  
16 the reordering now, it would be Attachment 3.

17 ALJ MALCOLM: Right.

18 MR. HUARD: Thank you.

19 Your Honor, on my copy, it's line 25 on page  
20 6, the very last line.

21 THE WITNESS: Yes, that's correct.

22 And finally, your Honor, on page 7, line 17,  
23 after the phrase, "customer generation departing load,"  
24 I would like to add the phrase, "a new municipal load."

25 MR. BLAISING: Q Are those all the corrections,  
26 additions, or changes you want to make to your  
27 testimony?

28 A Yes, they are.

1           Q    With these changes, do you adopt this  
2 testimony as your sworn testimony in this proceeding?

3           A    Yes, I do.

4           Q    Is this testimony true and correct, to the  
5 best of your knowledge?

6           A    Yes.

7           Q    To the extent the testimony reflects opinion  
8 or judgment, does it reflect your best opinion or  
9 judgment?

10          A    Yes, it does.

11          MR. BLAISING:   Thank you.

12                 Your Honor, Mr. Clarke is now available for  
13 cross-examination.

14          ALJ MALCOLM:   Before we go there, just for the  
15 record, I thought I'd let the parties know that  
16 President Peevey responded to Senator Bowen's letter  
17 with a report on the status of the proceeding.  I don't  
18 think the parties got a copy of that.  I'm not sure.

19                 And I understand that there are no questions  
20 from CCAs or other nonutility parties.  All right.

21                 Mr. Buchsbaum, do you have questions?

22          MR. BUCHSBAUM:  No.  Well, I was going to go after  
23 Southern California Edison.

24          ALJ MALCOLM:   Oh, okay.

25                 Ms. Shigekawa.

26          MS. SHIGEKAWA:  Yeah.

27                                 CROSS-EXAMINATION

28          BY MR. SHIGEKAWA:

1           Q    Good afternoon, Mr. Clarke. My name is  
2 Jennifer Shigekawa, for Southern California Edison.

3                    If you could, look at page 2 of your  
4 testimony, lines 15 and 16. You state that IVDA is a  
5 joint power authority consisting of three cities and one  
6 county; namely, Colton, Loma Linda, and the City and  
7 County of San Bernardino. Is that correct?

8           A    Yes.

9           Q    Now, on page 3, lines 4 through 7, you  
10 indicate that IVDA, as a joint power authority, is  
11 contemplating becoming a community choice aggregator  
12 within IVDA's boundaries. Do you see that?

13          A    Yes, I do.

14          Q    Realizing that Colton is a municipal utility,  
15 does this mean that IVDA will be aggregating the entire  
16 load of the other two cities and the county, or only the  
17 load within the 13,000 acres in and around Norton?

18          A    There are really two questions being answered  
19 there.

20                    There are two joint power authorities that  
21 govern the redevelopment of the Norton Air Force Base.  
22 There's IVDA, which encompasses a broader portion of the  
23 13,000 acres. There's also the San Bernardino  
24 International Airport Authority, which only governs the  
25 land comprising the old air force base itself.

26                    Both of those JPAs, either separately, most  
27 likely, are contemplating community choice aggregation.

28                    And their intent -- and it's still subject to

1 some interpretation of the JPA laws -- would be to only  
2 aggregate for their respective areas that they have  
3 redevelopment responsibilities for.

4 Q So if we're talking about that 13,000 acres,  
5 part of that 13,000 is IVDA, and part of that is  
6 San Bernardino Airport?

7 A The airport authority is a subset within that  
8 same boundary.

9 Q Okay. And the intent is to aggregate that  
10 13,000?

11 A That's one option.

12 The other option is just to have the airport  
13 authority do it for the redevelopment of the airport  
14 authority itself or the air force base property itself.

15 Q Now, how much of that 13,000 acres is actually  
16 on the former Norton Air Force Base?

17 A About 1,800 acres,

18 Q 1,800 acres?

19 A Yes.

20 Q Norton is larger than the 13 --

21 A No. Norton is 1,800 acres out of the 13,000.

22 Q Okay. And then what does the remaining area  
23 represent?

24 A The remaining area is under the authority of  
25 the IVDA, which is just the redevelopment agency for  
26 that designated property.

27 Q And is that undeveloped land? Existing  
28 businesses?

1           A    It's mixed use.  A majority of it is  
2 undeveloped.  The rest of it is business and  
3 residential, but most of it has been declared blighted.

4           Q    And what -- do you have a percentage that --  
5 of the 13,000 that is -- minus the 1,800 that is  
6 currently available for development?

7           A    No, I do not.

8           Q    But you said the majority is undeveloped?

9           A    I would say more than 50 percent of it.

10          Q    Would IVDA, as a joint power authority which  
11 includes the County of San Bernardino, attempt to  
12 aggregate the load of other cities within the county  
13 that are not members of IVDA?

14          A    Other members that are not members of IVDA?

15          Q    Right.

16          A    I don't think that's their intent, no.

17          Q    I think you refer in your testimony to other  
18 cities in San Bernardino County with large load:  
19 Loma Linda, and the city of San Bernardino.  Can you  
20 name some of those other cities in San Bernardino County  
21 that you're referring to?

22               MR. BLAISING:  Your Honor, for Mr. Clarke's  
23 benefit, perhaps you can point to the testimony, to give  
24 him the context.  ]

25               MS. SHIGEKAWA:  Sorry, I thought I had a cite.

26               MR. BLAISING:  Perhaps you could rephrase your  
27 question.  I understood Mr. Clarke to say that it is not  
28 the intention of IVDA to serve load outside the boundary

1 of IVDA?

2 MS. SHIGEKAWA: Q Well, if you could turn to page  
3 8, line 10 to 13, you referred to communities outside of  
4 east San Bernardino Valley that have lands at cheaper  
5 rates. Can you name some of these communities that you  
6 are referring to?

7 A Those would include Redlands, Yucaipa, then  
8 going into the Beaumont and Banning vicinity, once you  
9 get over the pass.

10 Q If you could go back to page 3, please, lines  
11 10 and 11. You state that IVDA proposes a limited CRS  
12 exemption to be given to load at Norton. Do you see  
13 that?

14 A Yes.

15 Q Is that within the 13,000 acres you mention on  
16 line 7 of the same page?

17 A Yes, it would be within the 13,000 acres.

18 Q Is your proposed CRS exemption apply to both  
19 existing and new load at Norton?

20 A I think it would apply to new load and  
21 existing load.

22 Q So your answer is both?

23 A Yes.

24 Q On page 4, lines 15 through 17, you discuss  
25 the testimony of Mr. Florio for TURN. And specifically  
26 on line 16 you mention a CRS credit he proposed for new  
27 generating resources. Do you see that?

28 A Yes, I do.



1 Q Are you aware that TURN's proposal focused on  
2 local generation built by a CCA?

3 A Yes.

4 Q Is IVDA planning to build any new generation  
5 at Norton?

6 A If that is the cost-effective approach for  
7 them to pursue that, yes.

8 Q What year was Norton Air Force Base closed?

9 A I believe it was completely closed down by  
10 1990.

11 Q Moving again to page 8, we were talking  
12 earlier about some of the communities, Redlands,  
13 Yucaipa, Beaumont, that can provide land at cheaper  
14 rates. Can you explain why the Norton land cannot be  
15 provided at those cheaper rates similar to those other  
16 communities to attract businesses?

17 A It is mainly market driven. As development  
18 pushes through the valley, the leading edge of it is the  
19 most expensive land. The further you get from the  
20 development edge of the push, they can attract -- they  
21 can offer cheaper prices. The other areas are not  
22 necessarily adjacent to San Bernardino Valley. But if  
23 you go north of there towards the Victorville area,  
24 there is push to have Apple Valley, Victorville and  
25 those communities also participate aggressively in  
26 attracting businesses by offering discounted land and  
27 economic assistance.

28 Q You were saying the land is cheaper out there

1 because it is further out?

2 A Yes.

3 Q But there is no specific prohibition on Norton  
4 providing land at cheaper rates?

5 A I don't think there is any prohibition.

6 Q What about the construction-type incentives or  
7 other incentives that you had referred to. Why couldn't  
8 Norton provide incentives similar to those that you say  
9 are offered by communities?

10 A It is kind on a Catch-22 for them as a  
11 redevelopment agency. They live off the tax increment.  
12 In order for them to offer the incentives, they have to  
13 reinvest that into the redevelopment. So they have to  
14 be able to initially attract businesses that will  
15 construct and operate there.

16 Q So they need to attract the businesses before  
17 they would be able to offer those incentives?

18 A To self-generate the development, yes.

19 Q So as part of your plan to attract these  
20 businesses to Norton through the CRS exemption because  
21 it doesn't have these other incentives --

22 A Yes, that is one of the reasons.

23 Q So is your plan then contingent on these other  
24 cities not engaging in CCA and not receiving a similar  
25 CRS exemption?

26 A We can't prevent anyone from pursuing their  
27 CCA options. If it is something that they deem feasible  
28 for their area, they will do that. If they can offer

1 incentives, they will be able to attract growth.

2 Q Right. So then Norton wouldn't have the  
3 advantage of the incentives --

4 A It would blow right through. We have  
5 determined that once it goes through, it doesn't come  
6 back.

7 Q Then on page 8, line 17 and 18, you state that  
8 one of your concerns about the need to attract  
9 businesses to Norton now is that the growth may not be  
10 infinite and the companies might go elsewhere to follow  
11 the best incentives; is that accurate?

12 A Yes, it is.

13 Q So wouldn't those other cities, Redlands,  
14 Yucaipa and Beaumont, we talked about lose businesses  
15 and growth opportunity if IVDA attracts those businesses  
16 to Norton through the CRS exemption you propose?

17 A Well, all that -- the entire community -- if  
18 Norton would get back to the same status that it had  
19 before the closure of providing jobs and tax base, all  
20 the benefit -- all the communities surrounding there  
21 would benefit through housing, secondary businesses.  
22 That's -- from Colton's standpoint, from the members'  
23 standpoint, that is what is paramount is getting that  
24 area redeveloped to the same economic force that it had  
25 prior to closure.

26 Q Does that contradict your statement then that  
27 the growth is not infinite?

28 A No, it doesn't contradict it. It just says if

1 it bypasses there and goes elsewhere, there will be  
2 limited opportunities to offer development incentives to  
3 prime companies that they want to locate there. You  
4 will end up with leftovers looking for a place to  
5 develop. They don't provide the jobs and the  
6 incentives.

7 Q If your testimony is that attracting business  
8 to Norton would help those surrounding communities,  
9 wouldn't having business in those surrounding  
10 communities conversely help Norton?

11 A Not necessarily, because some of these  
12 communities don't have the ability to grow. Colton, for  
13 example, will virtually build out.

14 Q We are not talking about Colton, we are  
15 talking --

16 A I understand that. We were a member of this,  
17 and you asked if it was going to benefit the surrounding  
18 communities. We are virtually built out; Loma Linda is  
19 virtually built out. So the only option they have to  
20 benefit them is to have IVDA grow.

21 Q But we were focusing on your testimony. It  
22 said that if you attract business in Norton, some of  
23 these competing communities, such as Redlands, would  
24 benefit. I'm asking if the reverse is true, if  
25 businesses were attracted to Redlands, wouldn't Norton  
26 benefit?

27 A Does Norton benefit? No.

28 Q So it is a one way?

1 A Virtually one way, yes.

2 Q One minute. One last question about the  
3 addition that you made to your testimony on page 7, line  
4 17.

5 A Yes.

6 Q Is the issue of the CRS exemption for new load  
7 of new municipal utilities currently before the  
8 Commission?

9 A Yes, it is.

10 Q So it hasn't been decided yet?

11 A I don't believe so.

12 MS. SHIGEKAWA: Thank you, Mr. Clarke. I don't  
13 have any further questions.

14 ALJ MALCOLM: Thank you, Ms. Shigekawa.

15 Mr. Buchsbaum.

16 MR. BUCHSBAUM: Yes, just a few follow-up  
17 questions.

18 CROSS-EXAMINATION

19 BY MR. BUCHSBAUM:

20 Q Now, in your testimony you've stated that the  
21 Commission has provided some limited exemption for new  
22 muni departing load; isn't that correct?

23 A I think what I was referring to was the 3,000  
24 kW exemption, megawatt exemption, for departing load due  
25 do off-site generation.

26 Q Excuse me, can you refer to a page in your  
27 testimony, and I'm referring to lines 2 and 3 where you  
28 are saying that the CPUC affirmed that some limited

1 exemption should be provided to new municipal load.  
2 That is a different decision than the customer  
3 generation departing load decision?

4 A I would acquiesce to your knowledge on that,  
5 yes.

6 Q Now, isn't it true at the current time that  
7 all new muni departed load now bears the CRS subject to  
8 refund?

9 A That is my understanding.

10 Q Now, at the top of page 5 of your testimony  
11 you quote the departing load customer generation  
12 decisions as support for granting an exemption for  
13 Norton. Do you know whether the exemptions that the  
14 Commission -- whether in granting those exemptions the  
15 Commission was looking at the general cost-shifting  
16 language of Section 366.2(d), or the more specific  
17 provisions applicable to CCA's 366.2(e) and (f)?

18 A No, I don't.

19 Q Do you know whether -- which subsections the  
20 muni departing load decision addressed?

21 A No, I do not.

22 Q I just want to obtain some clarifications  
23 about your proposal and whether your proposal is that  
24 every customer at Norton that procures IVDA power should  
25 receive an exemption, or just certain customers.

26 A No, I think everyone there would be eligible  
27 for reduction. It is mainly the -- our position is that  
28 there was no cost responsibility. So that fair share

1 should be reflected in the reduction in the CRS.

2 Q And are you proposing an exemption from tail  
3 CTCs in the bond charge as well?

4 A No, I believe some of those are legitimate.  
5 I'm mainly addressing the DWR charges.

6 Q Are you proposing -- so you are not proposing  
7 in any way to distinguish between customers that would  
8 have moved into Norton any ways and located there with  
9 or without the CRS exemption?

10 A That is correct.

11 Q And those --

12 A I can give you a specific example why we think  
13 it should apply that way. There was discussion earlier  
14 about people trying to game the system by moving from  
15 the investor-owned applicable areas to a CCA trying to  
16 avoid the charges and game those. What is the  
17 exemption? How do you handle the fact that you have a  
18 municipal customer that is going to leave a municipal  
19 system and go to Norton? And there was no cost  
20 responsibility for that customer during the energy  
21 crisis, but now he is moving into the investor-owned  
22 utility area.

23 Should he be subject -- this is a hypothetical  
24 question -- should he be subject to cost responsibility  
25 charges when he goes from not creating those -- causing  
26 those costs to an area that has an overlying charge?

27 Q The issue on the table --

28 A Uh-huh.

1           Q    -- from our standpoint on the issue of  
2 exemption --

3           A    I understand that.  I'm trying to point out  
4 there are exemptions to it from a logical standpoint.

5           Q    So it is your testimony basically there  
6 shouldn't be any safeguards?

7           A    Shouldn't be any what?

8           Q    Shouldn't be any safeguards.

9           MR. BLAISING:  Objection.  By "safeguards,"  
10 perhaps counsel could further explain that in the  
11 context of this question.

12          MR. BUCHSBAUM:  Q   There shouldn't be any rules to  
13 prevent gaming?

14          A    I think there should.  I think there should be  
15 some rules.  I think that should be established in the  
16 calculation of what the cost responsibility share is,  
17 share, for that entity.  Similar to what Dr. Cicchetti  
18 was referring to, it should be a set amount.  Therefore,  
19 they should be able to determine that, and that should  
20 be reflective of any reduction, or exemptions, from the  
21 charges.

22          Q    So I take it though in your case there  
23 wouldn't be any CRS because there is no current load?

24          A    No, there is load there.

25          Q    At Norton?

26          A    Yes.

27          MR. BUCHSBAUM:  I have no further questions.

28          ALJ MALCOLM:  Thank you.



1           Mr. Szymanski.

2           MR. SZYMANSKI: No, thank you, your Honor.

3           ALJ MALCOLM: Any redirect?

4           MR. BLAISING: Yes, your Honor. Just one, perhaps  
5 two.

6                           REDIRECT EXAMINATION

7 BY MR. BLAISING:

8           Q Mr. Clarke, in response to Ms. Shigekawa, you  
9 have indicated something about a one way, if you will,  
10 the economic opportunities pursuing one way and perhaps  
11 not the other way. Would you explain that further? Is  
12 that partly because of the industrial nature of the  
13 military base reuse nature of Norton?

14           A Well, I think she was asking if -- wouldn't it  
15 benefit the rest of the communities -- wouldn't Norton  
16 benefit from the communities, surrounding communities',  
17 growth. Not really. Because there is really no --  
18 nothing that affects Norton or the airport authority  
19 from growth outside of its boundaries. They would have  
20 to be within those boundaries to develop tax increment  
21 jobs and the other. There is not a lot of population  
22 within the IVDA boundaries that would go outside the  
23 communities, the surrounding communities, to work that  
24 don't already do that.

25           MR. BLAISING: Thank you, your Honor, that is all  
26 I have.

27           ALJ MALCOLM: Thank you. Any recross?

28                           (No response)

1 ALJ MALCOLM: Thank you, Mr. Clarke, you are  
2 excused.

3 Let's go off the record.

4 (Off the record)

5 PAUL D. FENN, called as a witness by  
6 Inland Valley Development Agency, having  
7 been sworn, testified as follows:

8 ALJ MALCOLM: Mr. Huard.

9 MR. HUARD: Thank you, your Honor.

10 As discussed off the record, I was going to  
11 ask some implementing questions to get Mr. Fenn on and  
12 have his exhibits marked.

13 Your Honor, I would like to have marked as the  
14 next exhibit in order a document referred to as Local  
15 Power Comments on Customer Responsibility Surcharge and  
16 Utility Cost Issues dated April 15th, 2004.

17 MR. BUCHSBAUM: That is my cross-examination  
18 exhibit.

19 MR. HUARD: I would like to have that even more.

20 There was also an attachment which Mr. Fenn  
21 unfortunately did not hook up initially.

22 ALJ MALCOLM: We will mark that as Exhibit 44 with  
23 the attachment, which is his Attachment A entitled  
24 Community Choice 2005-6, Widespread Forecast Scenario.

25 Is that the one?

26 MR. HUARD: Yes.

27 (Exhibit No. 44 was marked for  
28 identification.)

MR. HUARD: The second item is -- in the last

1 portion of the hearings there was a question about  
2 Mr. Fenn's qualifications. He put together and  
3 distributed at that time an item called Qualifications  
4 of Paul D. Fenn. I would like to have that marked as  
5 Exhibit 45.

6 ALJ MALCOLM: All right.

7 (Exhibit No. 45 was marked for  
8 identification.)

9

10 MR. HUARD: Your Honor, the last item is Local  
11 Power Witness Paul Fenn's Reply Testimony on the  
12 Prepared Testimony of Thomas K. Clarke on Behalf of  
13 Inland Valley Development Agency. There is an  
14 attachment to that which was not made at that time, or  
15 not stapled, with the material that was submitted. That  
16 is the ordinance of the City and County of San  
17 Francisco.

18 I would like to have the two of them served as  
19 a single exhibit, since they were served as a single  
20 exhibit. That would be Exhibit No. 46.

21 ALJ MALCOLM: All right. Mark Mr. Fenn's reply  
22 testimony and the attachment as Exhibit 46.

23 (Exhibit No. 46 was marked for  
24 identification.)

25 ALJ MALCOLM: Off the record.

26 (Off the record)

27 ALJ MALCOLM: Back on the record.

28 Consistent with my earlier ruling with regard

1 to the motion by the utilities to strike certain  
2 portions of Mr. Fenn's Exhibit 46, I would like to state  
3 here for the record that the copy that will go on the  
4 record of the proceeding has deleted portions that are  
5 consistent with the attachment to the utility motion.  
6 If any party wants to -- you have a copy of that  
7 attachment -- get a copy from the utilities.

8 MR. HUARD: Thank you, your Honor.

9 MR. GOLUB: Excuse me, for the record, your Honor,  
10 I don't remember if our discussion of this was on the  
11 record earlier, but we had requested an opportunity to  
12 address the issue. You had denied that opportunity. We  
13 note our objection for the record. We note our  
14 objection to the ruling.

15 I know this is going to create a problem for  
16 our cross-examination because the utility motion was  
17 received by us about 4:00 or 5:00 yesterday afternoon.  
18 We had, at that point, assumed the testimony was, as it  
19 was written, only to find out today that it has been  
20 chopped up. I note all those for the record.

21 ALJ MALCOLM: Thank you.

22 Mr. Huard.

23 MR. HUARD: Thank you, your Honor.

24 DIRECT EXAMINATION

25 BY MR. HUARD:

26 Q Mr. Fenn, were Exhibits 44, 45 and 46 prepared  
27 by you or under your direction?

28 A Yes.

1           Q    Do you have any corrections, additions or  
2 deletions other than those as a result of the motion to  
3 strike today in any of the three exhibits?

4           A    Yes, I do.  Just to -- first, to the opening  
5 testimony which is entitled Local Power Comments on the  
6 Customer Responsibility Surcharge.

7           Q    That is Exhibit 44?

8           A    Exhibit 44, on the cover page, that should be  
9 not comments but testimony of Paul Fenn.

10                   Then within the same document, on page 4,  
11 fourth line down, there is what appears to be a  
12 disembodied sentence.  It is actually an unbolded  
13 heading IRC Complies with AB 117, it should be bolded.

14           Q    Mr. Fenn, I notice that you do not have  
15 numbered lines.  So if you could bear with people and  
16 describe where they appear in order of paragraphs.

17           A    In order of paragraphs, thank you.

18                   This would be just below the fourth line down  
19 from the top of the page on page 4 above the first full  
20 paragraph.  There is a line that says, "IRC Complies  
21 With AB 117."  That is actually a heading and it should  
22 be bolded.

23                   If you go down to page 7 under Section 4,  
24 first paragraph:

25                           While some parties to R.03-10-003  
26                           remain focused on calculation of  
27                           past obligations for Department of  
28                           Water Resources contracts and

1 historical procurement, Local  
2 Power/Local Power...

3 That should read: Local power/ratepayers  
4 for affordable clean energy.

5 Go down to --

6 Q If you can wait a second.

7 A Sorry.

8 Q Mr. Fenn, everyone is hearing these for the  
9 first time, even though you are familiar with them.

10 A Yes.

11 Q What is the next one.

12 A It is on page 8, the second full paragraph:

13 Recognizing this new reality, the  
14 Commission approved a decision on  
15 January 22nd, 2004, requiring the  
16 state's three investor owned  
17 utilities...

18 Investor and owned should be hyphenated.

19 Page 9, the end of the first full paragraph,  
20 the last word is according, it should be accordingly.

21 The same page, page 9, third full paragraph,  
22 the third from the last sentence which begins with for  
23 the other two-thirds, the demand profile of their  
24 counties, "the" should be deleted so it should read:  
25 For the other two-thirds the demand profile of their  
26 counties was taken, et cetera.

27 Page 20, the first full paragraph, there  
28 should be a line inserted. What appears to be the

1 last sentence in that first paragraph is actually a  
2 separate paragraph. "Thus all three utilities want an  
3 incentive mechanism" is a separate paragraph. There  
4 should be a line inserted above that sentence.

5 Then on page 21, the last paragraph, the  
6 IEPR recommends increased funding, "increased" should  
7 not be capitalized. It is small i.

8 I don't know whether corrections to the  
9 certificate of service are necessary?

10 ALJ MALCOLM: No.

11 THE WITNESS: No. Then I'll go to the reply  
12 testimony.

13 MR. HUARD: Q First, Mr. Fenn, do you have any  
14 changes to your qualifications?

15 A No, I do not. The reply testimony, this may  
16 have been stricken, but on page 5, still within Section  
17 3 --

18 ALJ MALCOLM: All of page 5 is stricken.

19 THE WITNESS: All of page 5, so no need for  
20 corrections?

21 ALJ MALCOLM: Yes.

22 THE WITNESS: That concludes my corrections.

23 MR. HUARD: Q Thank you.

24 Mr. Fenn, are the statements contained in 44,  
25 45 and 46 true and correct to best of your knowledge and  
26 belief, and do the opinions reflected therein reflect  
27 your best professional judgment?

28 A Yes.

1           Q    Do you now adopt Exhibits 44, 45 and 46 as  
2 your sworn testimony in this proceeding?

3           A    I do.

4           MR. HUARD:   I believe Mr. Fenn is available for  
5 cross.

6           ALJ MALCOLM:   Thank you.

7                   Mr. Golub.

8           MR. GOLUB:   Your Honor, if there is no objection,  
9 why don't we admit the three exhibits so we don't have  
10 to keep referring to them with the cumbersome  
11 terminology, if there is no objection.

12          ALJ MALCOLM:   Is there any objection?

13                   (No response)

14          MR. GOLUB:   Thank you.

15          ALJ MALCOLM:   They are entered for the record.

16                   (Exhibit Nos. 44, 45 and 46 were  
17 received into evidence.)

18          MR. BLAISING:   Your Honor, my assumption was we  
19 would do that at the end.   Should we do that for IVDA at  
20 this point in time?

21          ALJ MALCOLM:   Is there any objection entering into  
22 the record IVDA's testimony?

23                   (No response)

24          ALJ MALCOLM:   All right, we will enter into the  
25 record 44, 45 and 46.   ]

26          MR. HUARD:   Thank you, your Honor.

27                   I may note the procedure over the last two  
28 weeks was the opposite:   We waited until cross was over.



1 But it's fine with me.

2 ALJ MALCOLM: Mr. Golub.

3 MR. GOLUB: Thank you, your Honor.

4 CROSS-EXAMINATION

5 BY MR. GOLUB:

6 Q Mr. Fenn, I invite your attention to  
7 Exhibit 45, page 4, in particular the discussion which  
8 appears around lines 17 and 18, where you say you  
9 participated actively in the progress of the legislation  
10 and then you reference, among other things, AB 117.

11 Can you give us a little bit more detail about  
12 what your role was with regard to AB 117, please?

13 A Yes. I drafted a bill in the year 2000 which,  
14 three years -- two years later became, through  
15 negotiation, AB 117. Originally, I drafted it with  
16 Assembly member Fred Keeley from Santa Cruz in the year  
17 2000. He chose not to sponsor that bill later that  
18 year. The bill did go through the legislative council.  
19 And in 2001, Carol Migden sponsored the bill.

20 So, AB 48X which was the original version  
21 filed in the Assembly, then became AB 9XX. It was  
22 passed and vetoed by the governor, and then was  
23 resubmitted the following year and then passed and  
24 signed by the governor.

25 So I was there from the beginning to the end,  
26 involved in all negotiations, read and responded to  
27 utility amendment requests.

28 And in addition to that, I also drafted

1 the original version of this bill in Massachusetts. So,  
2 had been involved in similar negotiations in other  
3 states including Ohio, New Jersey, and Massachusetts and  
4 California over the last ten years.

5 Q So as I understand it, based on your prior  
6 experience in other states, you came back to California  
7 and you drafted what was initially known as AB 48X?

8 A Yes.

9 Q And that through the legislative process  
10 ultimately became AB 117?

11 A That's right.

12 Q And did you speak to many legislators during  
13 the course of this effort, legislative aides and people  
14 of that sort?

15 A Oh, yes. It was a very active process of  
16 education, lobbying, and negotiation.

17 Q Would you say you have five conversations on  
18 the subject or more?

19 A I'd say I had hundreds.

20 Q Hundreds?

21 A Yes.

22 Q Okay. And during the course of those  
23 discussions, did you find out what the intent of  
24 the legislators were in enacting the final version of  
25 AB 117?

26 A Yes. There was protracted debate around all  
27 the key points, including many of those raised here. So  
28 yes, it was quite clear at the end.

1           Q    You've been in these hearings in this case  
2 I believe every day?

3           A    Yes.

4           Q    Okay.  Have any of the witnesses from PG&E,  
5 Southern California Edison, or San Diego Gas & Electric  
6 Company who appear in this case, have any of them, to  
7 your recollection, participated directly in the process  
8 of what formulated AB 117?

9           A    In the legislature?

10          Q    In the legislature.

11          A    No, none of them were, as far as I know.  
12 I never seen them.

13          MR. BUCHSBAUM:  Your Honor, this is moving  
14 beyond -- this is adding additional direct testimony  
15 that isn't giving us a chance to give responsive  
16 testimony concerning such things as legislative history  
17 and the like.  That is nowhere in the prepared  
18 testimony.

19                I would ask that if this new direct testimony  
20 is going to go on the record, that we have  
21 the opportunity to rebut it.

22          MR. GOLUB:  Your Honor, I don't know what they  
23 want to rebut, but I'm open to that suggestion.  We'll  
24 cross that bridge when we come to it.

25          ALJ MALCOLM:  Actually, I don't want it in  
26 the record.  I think we've gone beyond the time for  
27 submitting direct testimony.  If there had been some  
28 change in circumstances, I wouldn't mind Mr. Fenn

1 updating his testimony, but that isn't the case here.

2 MR. GOLUB: What I'm doing here, your Honor, is  
3 developing foundational information for my examination.  
4 I want to know what he knows about AB 117. His  
5 testimony is replete with references to what AB 117  
6 means. I believe I have a right to cross-examine.  
7 I have a right to know the basis for his opinion.  
8 Nothing more than that.

9 MR. BUCHSBAUM: That was part of the issue, your  
10 Honor. There was also questions raised regarding  
11 PG&E -- his understanding of what PG&E witnesses,  
12 whether they were present --

13 MR. GOLUB: It was one question, your Honor.

14 ALJ MALCOLM: All right. I'd like you to wrap it  
15 up here.

16 MR. GOLUB: We're spending more time with  
17 the objection than with the question. Very well.

18 Q Mr. Fenn, so based on your personal  
19 participation in the enactment of AB 117 -- well, let me  
20 go to the direct testimony. Your direct testimony --

21 Is it correct that your direct testimony at  
22 numerous points relies upon your understanding of what  
23 AB 117 requires and provides for?

24 A Yes.

25 Q Thank you.

26 And I note in particular the very language you  
27 mention that should be in bold on page 4 of your direct  
28 testimony which is Exhibit 44. But referencing that,

1 let me ask you a few questions.

2 Based on your personal participation in the  
3 enactment of AB 117, I'd like you to inform the record  
4 whether AB 117 was intended to prohibit the use of  
5 forecasting as a method of determining costs?

6 MR. BUCHSBAUM: Objection. Objection, your Honor.  
7 If we're going to put this kind of legislative history  
8 on the record, we really should have a full chance to  
9 rebut it and give it thorough -- put on our own  
10 witnesses regarding whether or not forecasting was  
11 somehow precluded by the language.

12 In any event, the probity of all that is  
13 doubtful in any event because you're taking one  
14 witness's opinion. But we should have the opportunity  
15 to put on our own witness then.

16 MR. GOLUB: We're not talking about interpretation  
17 of legislation by someone reading it later. I am asking  
18 for his observations as a percipient witness in  
19 this process.

20 ALJ MALCOLM: I understand.

21 Let's go off the record.

22 (Off the record)

23 ALJ MALCOLM: Go back on the record.

24 This is not the time or the place to ask this  
25 witness questions about legislative history. If you  
26 want to brief legislative history with documents that  
27 are part of the legislative record, you may do that.  
28 It's too late for this witness to present direct

1 testimony on his involvement in the legislation. He's  
2 given us some information here and you may use that as a  
3 foundation for your cross-examination of him on the more  
4 substantive issues.

5 MR. GOLUB: Q Mr. Fenn --

6 I'd note my objection to your ruling.

7 Q Mr. Fenn, at page 4 of your prepared direct  
8 testimony, you assert that an IRC complies with AB 117.  
9 Does an IRC involve the use of forecasting techniques?

10 A Yes.

11 Q Okay. Would you please tell me whether you  
12 have a basis in your experience with the legislation  
13 that would justify the use of forecasting techniques as  
14 method of determining costs under AB 117?

15 MR. BUCHSBAUM: Objection. This is -- you're  
16 going over the same point that has already been ruled on  
17 and objected to.

18 ALJ MALCOLM: Mr. Golub, your question's stricken.  
19 Move on.

20 MR. GOLUB: Very well. Note my objection.

21 I'm going to make a number of questions, your  
22 Honor. You'll have to rule on them.

23 MR. BUCHSBAUM: Your Honor.

24 MR. GOLUB: Q You also talk about --

25 Your Honor, I'm going to ask these questions.  
26 At the least they'll be on the record.

27 MR. BUCHSBAUM: Can we go off the record?

28 MR. GOLUB: I object to going off the record.

1 ALJ MALCOLM: Off the record.

2 (Off the record)

3 ALJ MALCOLM: On the record.

4 I've already ruled that this is not  
5 the opportunity to provide additional new information  
6 about this witness's understanding of legislative  
7 history or involvement in it beyond what's already in  
8 his qualifications or written testimony.

9 And, Mr. Golub, I asked you to just move on.  
10 If you would like to submit in writing some questions  
11 that you would have asked, you may do that, but you may  
12 not use this hearing time to ignore my ruling.

13 MR. GOLUB: I'm not going to ignore your ruling,  
14 your Honor, but are we on the same page that I can ask  
15 him about the basis of his direct testimony?

16 ALJ MALCOLM: I'm sorry?

17 MR. GOLUB: I don't understand entirely the scope  
18 of your ruling. So rather than inadvertently not comply  
19 with it, I thought I was asking this witness --  
20 I believe I'm asking this witness about the basis for an  
21 assertion in his prepared direct testimony, not his  
22 reply, his prepared direct testimony that's been on  
23 file. And that's what I'm asking about, how he can  
24 justify that testimony.

25 ALJ MALCOLM: That's fine.

26 MR. GOLUB: That's what I thought I was just  
27 doing. That's why I was a little perplexed.

28 ALJ MALCOLM: The question I asked him asked him

1 to provide more information about his understanding of  
2 legislative history. That's the one -- those are the  
3 ones I don't want in the record.

4 MR. GOLUB: Let me try -- your Honor, let me try  
5 at least one more question, and if you feel that I'm not  
6 getting it, please -- I'm sure you'll let me know.

7 ALJ MALCOLM: All right.

8 MR. GOLUB: I'm --

9 Q Mr. Fenn, I do not want to you describe  
10 the ins and outs of the legislative history and let's  
11 not take time. I'm simply asking you this question:  
12 With regard to AB 117, does it intend to permit the use  
13 of forecasting as a method of determining costs under  
14 that statute?

15 A Yes.

16 ALJ MALCOLM: That's fine.

17 MR. GOLUB: I'm getting the swing of it, your  
18 Honor. I'll keep trying.

19 Q Did the Legislature -- well.

20 And specifically in that context, did the  
21 legislature intend to restrict the Commission,  
22 the California Public Utilities Commission to only using  
23 historical recorded costs in determining costs under  
24 the statute?

25 A No.

26 Q Thank you.

27 For the purposes of my next question, I'm  
28 going to use two terms that I'll quickly define: Gross



1 cost and net cost. By gross cost, I mean the gross  
2 amount paid without regard to savings or money returned.  
3 By net cost, I'm mean the amount paid out less any  
4 related savings or money returned.

5 So gross cost and net cost. Do you understand  
6 my use of the two terms?

7 A Yes.

8 Q Okay. Would you please tell me whether AB 117  
9 was intended to use net costs or gross costs?

10 A My understanding is that in the use of  
11 the term "cost," it meant net costs.

12 Q When you say "understanding," that's based on  
13 your personal observation of the legislative process?

14 A Yes.

15 Q Thank you.

16 Could you also inform the record whether AB  
17 117 was intended to immunize utility shareholders from  
18 bearing some of the costs -- let's say a fair share of  
19 the costs and risks related to the community choice  
20 aggregation process?

21 A No.

22 MR. BUCHSBAUM: Oh.

23 MR. GOLUB: Your Honor, I'd ask to have that kind  
24 of comment stricken. That's inappropriate. If  
25 Mr. Buchsbaum doesn't like the answer, he should ask  
26 questions, not make sounds.

27 ALJ MALCOLM: Do you have an objection,  
28 Mr. Buchsbaum, to the question?

1 MR. BUCHSBAUM: I do.

2 He was asking a question about the PG&E  
3 shareholders and I didn't see it anywhere in the direct  
4 testimony. And I believe it exceeds the scope of  
5 the direct testimony and should be stricken.

6 MR. GOLUB: We're going to -- actually, I'm  
7 finished with my cross. If we have to argue this -- we  
8 can keep arguing this. We're done.

9 ALJ MALCOLM: What's the question?

10 MR. GOLUB: No. We are done.

11 ALJ MALCOLM: No question pending?

12 MR. GOLUB: It was answered. There's no question  
13 pending.

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

15 (Off the record)

16 ALJ MALCOLM: Back on the record.

17 That was a fair question, Mr. Buchsbaum. That  
18 was his opinion.

19 MR. GOLUB: Thank you, your Honor.

20 ALJ MALCOLM: You're done, Mr. Golub?

21 Mr. Buchsbaum.

22 MR. BUCHSBAUM: Okay. Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. BUCHSBAUM:

25 Q Mr. Fenn, can you please turn to page 23 of  
26 your testimony regarding the computation of the CRS.

27 A Yes.

28 Q Now, you state on line 23 that the CRS should

1 not be subject to change; is that correct?

2 A Where? Could you refer me to the sentence?

3 Q "First, it is critical." I'm reading from --

4 A Yes.

5 Q That the CRS must not be changeable.

6 MR. HUARD: Mr. Buchsbaum, most people do not have  
7 numbered lines. That's why if you could just reference  
8 the words and the approximate position on the page.

9 MR. BUCHSBAUM: I'm sorry. It's at the very  
10 bottom of the page.

11 MR. HUARD: I got it. I just wanted -- in case  
12 you do this on the next one.

13 MR. BUCHSBAUM: No. I don't have very many  
14 questions. I have very few.

15 Q And by the word -- by the words "not  
16 changeable" do you mean fixed?

17 A I was responding to the true-up. I was  
18 suggesting that a true-up is unacceptable.

19 Q But the CRS itself could be adjusted based on  
20 future circumstances; is that your testimony?

21 A How do you mean?

22 Q In other words, from year to year?

23 A That the CRS could change per CCA, you mean,  
24 according to utility procurement?

25 Q Yes. That the CRS itself isn't a one-time  
26 estimate that can never be changed.

27 A What I meant to say is that for any given CCA,  
28 when it passes its ordinance and implements community

1 choice, that its CRS obligation should not be changed  
2 year to year. But as to whether over the course of 20  
3 years with 20 CCAs, different CCAs leaving at different  
4 times, that their departure would -- that each CCA might  
5 face a different CRS, yes.

6 Q Okay. But you're saying that in the case of  
7 each CCA, it should be fixed?

8 A Yes.

9 ALJ MALCOLM: Per kilowatt-hour or total revenue  
10 requirement?

11 THE WITNESS: I couldn't opine on that.

12 ALJ MALCOLM: Okay.

13 MR. BUCHSBAUM: Q What would happen, Mr. Fenn, if  
14 the fixed CCA -- the fixed CRS, excuse me, turned out to  
15 be too high for a particular CCA based on changes in  
16 market conditions so the CCA was no longer viable at the  
17 time it planned to go in business, what would be your  
18 recommendation to the Commission at that point?

19 A If the Commission had given a -- too high a  
20 CRS?

21 Q No. The CRS at the time that it gave -- that  
22 it was estimated was correct, but because of changes in  
23 market conditions such as high gas -- such as higher gas  
24 prices, higher energy prices, the CRS turns out two or  
25 three years later to be way too high, what should happen  
26 in that case, and the CCA --

27 A I believe --

28 Q -- and the CCA is not viable?

1           A    I believe that the Commission will have to  
2 depend upon forecasting estimates in order to undertake  
3 a rational CRS process.

4                    So in my view, the risk of forecast -- of  
5 misforecasts are part of the game. And there's no way  
6 around them. It's just -- that would have to hold.

7           Q    So if the CRS turned out to be too high,  
8 the CCA just simply wouldn't form?

9           A    Well, first of all, it takes multiple years  
10 for CCAs to form. So it's not as though there's kind of  
11 a blind process. I think the process is flexible enough  
12 that if a CRS is too high, for example, for a CCA to  
13 find competitive supply, then they wouldn't do it. They  
14 wouldn't pass the ordinance and change suppliers. If  
15 they changed suppliers and discover that, in fact, their  
16 CRS had been set too high, then it's unfortunate, but  
17 it's not disabling to that entity because it's already  
18 implemented; it's already found adequate service even  
19 with a CRS that's too high.

20           MR. BUCHSBAUM: Your Honor, I have a  
21 cross-examination exhibit that I would like to mark next  
22 in order. I believe it's Exhibit No. 47.

23           ALJ MALCOLM: Yes.

24           MR. BUCHSBAUM: For identification only.

25                    Can we go off the record while I hand this  
26 out?

27           ALJ MALCOLM: Off the record.

28                    (Off the record)

1 ALJ MALCOLM: Back on the record.

2 We'll mark as Exhibit 47 this letter from  
3 Governor Schwarzenegger to President Peevey.

4 (Exhibit No. 47 was marked for  
5 identification.)

6 MR. BUCHSBAUM: Q Mr. Fenn, if you turn to page 2  
7 of this letter, the third full paragraph, second line,  
8 it's actually highlighted, and I apologize because it's  
9 somewhat hard to read, but could you read that line into  
10 the record beginning with the word "Now"?

11 MR. GOLUB: Excuse me. I apologize for  
12 interrupting. But just for the record, is this a letter  
13 from Governor Schwarzenegger dated April 28, 2004, to  
14 President Peevey?

15 MR. BUCHSBAUM: That's right.

16 MR. GOLUB: And I have one question. There's a  
17 lot of highlighting. Was that done by the Governor or  
18 President Peevey?

19 MR. BUCHSBAUM: No. I'll apologize for that.  
20 That -- unfortunately this morning when he tried to find  
21 a copy, this was the only one available in our office.

22 MR. GOLUB: So basically --

23 MR. BUCHSBAUM: No. I apologize. And  
24 the highlighting is not part of the original letter.

25 MR. GOLUB: So, for purposes of that record, we'll  
26 just disregard that highlight.

27 MR. BUCHSBAUM: Disregard the highlight, but not  
28 the language under the highlight.

1 THE WITNESS: "Now is the time" this sentence?

2 MR. BUCHSBAUM: Q Correct.

3 A This is Governor Schwarzenegger speaking, not  
4 me.

5 Now is the time for utilities to  
6 lock in these low prices through  
7 long-term contracts.

8 Q Do you think the Commission should follow that  
9 direction from the Governor?

10 A Absolutely not.

11 Q Can you turn -- can you read the read line  
12 one, two, three, four, five on the same page, which  
13 begins with the words "To compensate."

14 MR. GOLUB: I'm sorry. What page?

15 MR. BUCHSBAUM: Same page. Same paragraph.

16 MR. GOLUB: You lost me. What page number?

17 MR. BUCHSBAUM: 2.

18 Q It's in the same paragraph. It begins with  
19 the word "To compensate for these plant retirements."

20 A You want me to read it?

21 Q Yes, please.

22 A

23 To compensate for these plant  
24 retirements and to plan for  
25 the inevitable return of strong  
26 economic growth, California cannot  
27 afford to delay the construction  
28 of new power plants.

1 Q Do you agree with that?

2 A I'm not sure what it means.

3 MR. BUCHSBAUM: I have no further questions, your  
4 Honor, but I would ask that the letter be admitted into  
5 the record. And if there's an objection based upon  
6 the highlighting, I can get a clean letter.

7 ALJ MALCOLM: Is there any objection?

8 (No response)

9 MR. GOLUB: Can we go off the record just one  
10 second, your Honor?

11 ALJ MALCOLM: Off the record.

12 (Off the record)

13 ALJ MALCOLM: Back on the record.

14 Go ahead, Mr. Huard.

15 VOIR DIRE EXAMINATION

16 BY MR. HUARD:

17 Q Mr. Fenn, have you ever seen this letter  
18 before?

19 A No, I haven't. Nor have I read it now. I was  
20 just directed to read two sentences.

21 MR. HUARD: Thank you, your Honor. That's all  
22 the questions I have.

23 ALJ MALCOLM: Okay. Anything further?

24 MR. BLAISING: Can I ask one, your Honor?

25 ALJ MALCOLM: Mr. Blaising.

26 VOIR DIRE EXAMINATION

27 BY MR. BLAISING:

28 Q Mr. Fenn, are you familiar with Assembly Bill



1 57, which set certain standards for generation  
2 procurement and the investor-owned utilities entering  
3 into the procurement and also perhaps the construction  
4 of generation facilities?

5 A Yes.

6 MR. BLAISING: Thank you.

7 That's all I have, your Honor.

8 ALJ MALCOLM: Thank you.

9 Ms. Shigekawa.

10 CROSS-EXAMINATION

11 BY MS. SHIGEKAWA:

12 Q Good afternoon, Mr. Fenn. My name is Jenny  
13 Shigekawa for Southern California Edison.

14 A Hi.

15 Q Would you turn to the bottom of page 4 of your  
16 opening testimony. And at the bottom there, you suggest  
17 certain deadlines for CCAs; is that correct?

18 A Yes.

19 Q And page 5 at the top, under the number 5, do  
20 you have a correction to that sentence?

21 A Oh, yeah. It looks like my numeration is off.  
22 So it's should be a fifth date by which an ESP is  
23 chosen, a sixth date involving notification of  
24 customers.

25 Then under 6: Seventh date involving transfer  
26 of customers.

27 Under 7: An eighth date for end of  
28 the opt out period.

1 Under 8: A ninth day involving termination of  
2 a CCA contract.

3 Under 9: Annual notification requirements.  
4 And the rest is correct.

5 Thank you.

6 Q And under number 5 you say "a fifth date by  
7 which an ESP is chosen." Are you recommending that as  
8 a requirement, a CCA must establish a relationship with  
9 an ESP?

10 A Yes.

11 Q If you return to page 6, you talk about  
12 the experience in Ohio. There are three CCAs that  
13 aggregate and constitute over 98 percent of all direct  
14 access in the state; is that correct?

15 A Yes.

16 Q Did those three CCAs in Ohio contract with  
17 ESPs to provide community aggregation services?

18 A Yes, they did.

19 Q And then also on that page, you reference  
20 98 percent of community aggregation in Ohio. And do you  
21 mean by that the remaining 2 percent of the competitive  
22 electricity market is direct access and is also served  
23 by the ESPs?

24 A Well, yes. Under Ohio, CCA is a subset of  
25 direct access. So of the -- within the direct access  
26 market, 98 percent is community choice.

27 Q And then the 2 percent?

28 A 2 percent is individual contracts as consumer

1 choice.

2 MS. SHIGEKAWA: Those are all my questions.

3 ALJ MALCOLM: Thank you, Ms. Shigekawa.

4 Mr. Szymanski.

5 MR. SZYMANSKI: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. SZYMANSKI:

8 Q Good afternoon, Paul.

9 A Hi.

10 Q Paul Szymanski on behalf of SDG&E.

11 Just briefly, could you please turn to your  
12 opening testimony, Exhibit 44 at page 16.

13 A Okay.

14 Q Right about the middle of the page, do you see  
15 the line that says, "Thus, the utilities refuse to even  
16 discuss the costs that would be associated with a full  
17 disclosure of customer billing and load data to CCAs as  
18 required by AB117," and then following by that, there's  
19 a quote apparently from AB 117. Do you see that  
20 reference?

21 A Yes.

22 Q On what basis do you assert that the utilities  
23 refused to discuss the costs associated with the full  
24 disclosure of customer billing and load data?

25 A It was based upon the strawman proposal which  
26 did not include it, even though it had been requested,  
27 based upon the premise that it would not be provided and  
28 therefore the costs should not be outlined. That was

1 what was presented in the strawman.

2 Q Have the utilities refused to provide cost  
3 data?

4 A You did not provide -- I would consider that  
5 de facto refusal given that it was requested.

6 Q It was required, in your opinion, based on  
7 a ruling from the judge that cost data be provided  
8 within the strawman?

9 MR. GOLUB: Objection. I didn't hear that in  
10 the testimony, your Honor.

11 MR. SZYMANSKI: I'm asking the witness to clarify  
12 what he just asserted.

13 ALJ MALCOLM: It's a fair question. He's just  
14 asking what his understanding was of what was required.

15 MR. HUARD: Your Honor, if I could, he's referring  
16 to a sentence in the testimony that says customer  
17 billing and load data. That's "cost" in the line  
18 before, but the data didn't refer to cost data. So I'm  
19 getting kind of mixed up in what you're asking about  
20 versus what he's answering.

21 I mean, the sentence that was referred to  
22 doesn't say refused to provide cost data. It was  
23 provide customer billing and load data. ]

24 ALJ MALCOLM: Well, it says the costs associated  
25 with disclosure of the data.

26 MR. HUARD: Okay.

27 THE WITNESS: The response cited here was that  
28 utilities will not release --

1 MR. HUARD: Thank you.

2 THE WITNESS: -- customer-specific information.

3 The question whether you would release it is  
4 the subject of this proceeding. So for you to say you  
5 will not release it, I would consider a refusal.

6 ALJ MALCOLM: Well, now I am confused, because  
7 this says the utilities won't discuss the costs of  
8 disclosing the billing data.

9 THE WITNESS: But that's what I mean. They --  
10 when this document was submitted, the straw man, it did  
11 not include costs as a result of this refusal.

12 ALJ MALCOLM: All right.

13 THE WITNESS: There was no outlining of costs that  
14 would be associated with a full disclosure based upon  
15 the simple assertion that you will not disclose it.

16 ALJ MALCOLM: So you have a question pending,  
17 Mr. Szymanski.

18 MR. SZYMANSKI: Q So, Mr. Fenn, the basis for  
19 your assertion that the utilities refused to even  
20 discuss the costs, as referred to here in your prepared  
21 testimony, is based upon what you understood the Judge  
22 to require utilities to provide in the context of  
23 providing their straw man? Is that correct?

24 A Yes.

25 MR. SZYMANSKI: Okay. No further questions.

26 ALJ MALCOLM: Thank you, Mr. Szymanski.

27 Other questions, Mr. Blaising?

28 MR. BLAISING: I just had one.

## 1 CROSS-EXAMINATION

2 BY MR. BLAISING:

3 Q Mr. Fenn, Scott Blaising, for the Inland  
4 Valley Development Agency.5 I had one follow-up question based on a  
6 question that Ms. Shigekawa asked you concerning the  
7 relationship that you anticipate between a community  
8 choice aggregator and ESP, or energy service provider.9 MS. SHIGEKAWA: Can I just say that I thought we  
10 had established an order that CCA participants go first?  
11 And we're trying to finish up in the next half an hour.12 ALJ MALCOLM: Yeah. I'll allow the question as  
13 long as this is it. You're right. I mean, this is out  
14 of order.15 MR. BLAISING: Oh. I'll withdraw the question.  
16 It dealt with a term of art, and I was hoping that he  
17 would clarify that. We withdrew the question.

18 ALJ MALCOLM: All right. Thank you.

19 Anybody else?

20 Is there any redirect, Mr. Huard?

21 MR. HUARD: Your Honor, that's probably not my  
22 role.23 Mr. Fenn, do you want to -- is there anything  
24 further you want to add?

25 MR. FENN: No.

26 ALJ MALCOLM: All right. Thank you, Mr. Fenn.  
27 You are excused.

28 MR. BUCHSBAUM: Your Honor, when would I move to

1 admit the cross-examination exhibit?

2 ALJ MALCOLM: Off the record.

3 (Off the record)

4 ALJ MALCOLM: Back on the record.

5 Before we have Mr. Jazayeri on the stand --  
6 although, Mr. Jazayeri, you're welcome to come up and  
7 get settled -- I wanted to talk about the treatment of  
8 these three utility documents on the allocation of  
9 customer service costs. I want to mark them and enter  
10 them as exhibits, but, consistent with my treatment of  
11 Mr. Fenn's reply testimony and some of the cross by  
12 Mr. Golub, I'm striking portions of each one of these  
13 exhibits, because it goes beyond my request for  
14 information. So that will make everybody unhappy,  
15 right?

16 MR. HUARD: No, your Honor. I was going to ask  
17 that that happen. I appreciate your ruling in advance.

18 ALJ MALCOLM: Yes. So I'll do that now on the  
19 record. Let's go back on the record.

20 We'll mark -- we need to mark some exhibits.  
21 First one is PG&E's response to my question about cost  
22 allocation of customer service -- customer services,  
23 dated June 18th, 2004. And I'm going to mark that as  
24 Exhibit 48.

25 (Exhibit No. 48 was marked for  
26 identification.)

27 ALJ MALCOLM: And, consistent with my earlier  
28 rulings that this is not an opportunity at this point

1 for additional direct testimony, I am striking from that  
2 document Mr. Smith's declaration, starting with  
3 paragraph 6 on page 4, and all of paragraph 7, going  
4 over to page 5, except for the last paragraph that  
5 starts, "I hereby declare." That's information I didn't  
6 ask for, and that might be controversial.

7 I'm marking as Exhibit 49 Edison's response to  
8 my inquiry, dated June 21st.

9 (Exhibit No. 49 was marked for  
10 identification.)

11 ALJ MALCOLM: And, as I did with the PG&E  
12 response, I'm striking portions of the declaration that  
13 go beyond my request for information, starting on the  
14 first page of the declaration of Mr. Jazayeri, that's  
15 identified as paragraph 4, over to page -- the next  
16 page, paragraphs 5 and 6.

17 We'll mark as Exhibit 50 SDG&E's response,  
18 dated June 23rd, on the same issue.

19 (Exhibit No. 50 was marked for  
20 identification.)

21 ALJ MALCOLM: And, consistent with my treatment of  
22 the other two utility exhibits, I am going to strike  
23 Ms. Osborne's testimony, starting in the middle of  
24 paragraph 2, where it says, "ALJ Malcolm's concern  
25 focuses on." Strike that, the remainder of that  
26 paragraph.

27 And then in paragraph 3, strike the first  
28 sentence. It starts, "The answer to the question."



1           Going over to page 3, strike everything on  
2 that page, starting with, on the second line, "Moreover,  
3 as explained in more detail below."

4           Strike all of page 4.

5           Page 5 is fine.

6           MS. BERLIN: It doesn't have the page numbers.  
7 Could you just repeat the paragraphs that were stricken  
8 from PG&E's exhibit?

9           MR. HUARD: Your Honor, I'll give her my copy.

10          MS. BERLIN: Okay. Thank you.

11          ALJ MALCOLM: Thank you.

12                   And, Ms. Shigekawa, you may recall your  
13 witness.

14          MS. SHIGEKAWA: Southern California Edison recalls  
15 Dr. Jazayeri to the stand.

16          ALJ MALCOLM: Good afternoon, Dr. Jazayeri. You  
17 are still under oath.

18          THE WITNESS: Thank you, your Honor.

19          MS. SHIGEKAWA: And Edison would like to mark the  
20 document entitled, "Additional Reply Testimony of  
21 Southern California Edison Company on Cost  
22 Responsibility Surcharge Issues," as the next exhibit in  
23 order. I believe it's Exhibit 51.

24          ALJ MALCOLM: Yes, it is. We'll mark that as  
25 Exhibit 51.

26                   (Exhibit No. 51 was marked for  
27 identification.)

28                   AKBAR JAZAYERI recalled as a witness  
in rebuttal by Southern California Edison

1 Company, having been previously sworn,  
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MS. SHIGEKAWA:

5 Q Good afternoon, Dr. Jazayeri.

6 Are you sponsoring the exhibit we just marked  
7 as Exhibit 51?

8 A Yes, I am.

9 Q Do you have any changes to your testimony?

10 A Just one correction. It's on page 1, line  
11 number 5. I would like to insert the word "exemption"  
12 between parenthetical "CRS" and "be." So it should  
13 read, "CRS exemption be provided."

14 ALJ MALCOLM: I'm sorry. What line was that,  
15 again?

16 THE WITNESS: Line 5. There is a parenthetical,  
17 "CRS" and the word "be." I would like to insert the  
18 word "exemption."

19 MR. HUARD: On page 1?

20 THE WITNESS: Yes.

21 MR. HUARD: Thank you.

22 THE WITNESS: That's it.

23 MS. SHIGEKAWA: Q And to the extent Exhibit 51  
24 contains facts, are those facts true and correct, to the  
25 best of your knowledge?

26 A Yes, they are.

27 Q And to the extent that Exhibit 51 contains  
28 opinions, do those represent your best professional

1 judgment?

2 A Yes, they do.

3 MS. SHIGEKAWA: The witness is available for  
4 cross-examination.

5 ALJ MALCOLM: Thank you.

6 Mr. Blaising.

7 MR. BLAISING: Yes. Thank you.

8 CROSS-EXAMINATION

9 BY MR. BLAISING:

10 Q Good afternoon, Dr. Jazayeri.

11 A Good afternoon.

12 Q If you would, please turn to page 2 of  
13 Exhibit 51, please, lines 19 through 21, on my copy,  
14 beginning with the sentence, "Therefore, SCE forecasted  
15 a very limited amount of load loss due to the closure of  
16 Norton and the forecast relied upon by IVDA, and  
17 attached to its testimony."

18 Are you stating in that sentence, then, that  
19 there was a net load loss forecasted?

20 A As I indicate in the prior lines, starting on  
21 line 14, we had basically about 4,186 megawatt-hours in  
22 1997. We forecasted that that would drop to 3,663  
23 megawatt-hours in 1998. And it stays at that level as  
24 related to what we call the "other public authority  
25 sector," which is what we usually have the military and  
26 the government institutions in; but they also had some  
27 forecasts on the commercial side related to the  
28 development in the airport under the airport authority,

1 because that was just part of our commercial sector  
2 forecast.

3 I can't tell you whether it was 500  
4 megawatt-hours or 200 megawatt-hours or 500. That's why  
5 I hesitate to answer that, because that data just goes  
6 into the commercial sector data. And then we forecast  
7 what's going to happen to the commercial class. And we  
8 were basically looking at significant growth in our  
9 commercial class, but we didn't look at specifically  
10 what the airport authority's load contribution to the  
11 commercial class load was.

12 Q Okay. On that same page, line 15 and line  
13 18 -- on line 15, you refer to a term, "Norton." And  
14 then on line 18, you refer to a term, "San Bernardino  
15 International Airport." Do you understand these terms  
16 to essentially encompass the same geographic area?

17 A That is my understanding from reading  
18 Mr. Clarke's testimony; that we basically are talking  
19 about the same area.

20 So if the load was going down there due to the  
21 closure of the base, and at the same time there was some  
22 development due to the airport.

23 Q In developing your testimony, did you have  
24 that understanding; that they were the same terms?

25 A The same terms? I do not understand what you  
26 mean by that.

27 Q I apologize. You indicated that, based on  
28 your hearing of Mr. Clarke's testimony, you came to that

1 conclusion.

2 I'm asking: in the development -- when you  
3 actually wrote your testimony, did you have the  
4 understanding that the terms encompassed the same  
5 geographic area?

6 A Yes, because when I was referring to  
7 Mr. Clarke's testimony, I was referring to his written  
8 testimony, not his testimony on the stand.

9 Q Ah. Thank you.

10 Do you have the same understanding -- let me  
11 ask it this way. Mr. Clarke testified on the stand that  
12 the San Bernardino International Airport and Norton  
13 encompasses approximately 1,800 acres. Is that your  
14 understanding as well?

15 A At the time I read the testimony, I focused on  
16 the 13,000 acres. And I understood by reading the  
17 testimony before hearing Mr. Clarke today that the  
18 13,000 was mostly the Norton Air Force Base, and just  
19 some limited area surrounding that. And my  
20 understanding was that the airport is being developed in  
21 the same area.

22 Q Okay. On lines 17 through 19, you indicate  
23 that SCE forecasted some amount of additional load in  
24 the San Bernardino International Airport as part of its  
25 commercial class load during the forecast period of 1997  
26 to 2002. How much new load growth did Edison forecast  
27 in this area?

28 A Again, that's -- in your prior question, I

1 stated you can't really discern that. The reason for  
2 that is: usually the way that load forecasting for the  
3 utility is done, they look at it by commercial,  
4 industrial, and other public authorities, as well as the  
5 residential class. And we take all of the metered usage  
6 of the customers in those classes, and then, based on  
7 the economic projection, housing developments, et  
8 cetera, we basically forecast a growth in our load.

9 So we had started with the load, and then we  
10 basically applied to it the 2, 3 percent load growth.  
11 So it's kind of hard to say of that entire commercial  
12 class how much was the San Bernardino, because we do not  
13 do individual rate -- I'm sorry -- load forecasts for  
14 individual customers. We do it as sectors.

15 Q Given your experience in forecasting load and  
16 your understanding of this area as being 1,800 acres,  
17 including an airport, is it your opinion that the amount  
18 of new load growth would be greater than the amount of  
19 load lost as a result of the military base's closure?

20 A Again, I'm talking about road -- I do not  
21 really know about the 1,800. The question is the  
22 13,000. I can't really have any independent basis to  
23 tell you whether the airport growth was more than 500 or  
24 not, which is the load loss in Norton.

25 Q Okay. Very good. Still on page 2, line 15,  
26 you reference a load level for Norton of 4,186  
27 megawatt-hours per year. What kW demand does this  
28 figure represent, assuming some level of load factor?

1           A    Yeah.  I don't know.  I mean, usually the way  
2 we convert the megawatt-hours to megawatts or kilowatts  
3 is by dividing the number by 8,760, which is the number  
4 of hours in the year, and then dividing it by the load  
5 factor.  So that would be the calculation that needs to  
6 be done, but I haven't done that calculation.

7           Q    Okay.  What would be a reasonable  
8 approximation of a load factor for this type of load,  
9 given your understanding of load forecasts?  What load  
10 factor would you use?

11          A    Our system average load factor generally is  
12 between 50 and 55 percent.

13                In other words, the industrial customers have  
14 much higher load factor compared to residential and  
15 commercial customers.

16          Q    Okay.  Very good.  If you would, turn please  
17 to page 3, lines 5 through 8.  The sentence reads,  
18                Even assuming that SCE or DWR  
19                included significant load losses  
20                of Norton in their sales forecast,  
21                (which, as described above, they  
22                did not) there's no reason for new  
23                customers to be exempt from CRS  
24                simply because their load is  
25                replacing other lost load.

26                Is it your understanding, Dr. Jazayeri, that  
27 IVDA is proposing a CRS exemption for just new load or  
28 new customers?

1           A    When I was, again, reading -- not having heard  
2 Mr. Clarke's testimony today, when I read the testimony,  
3 my understanding was that Norton Air Force Base has  
4 closed. There was not much development there. And the  
5 interest of the IVDA is to receive a CRS exemption to  
6 attract new load to that area. And this testimony is  
7 based on that understanding.

8           Q    Okay. All right. If you would -- and I just  
9 have, I believe, one or two more questions here --  
10 assume for a moment that a CRS exemption would not apply  
11 or is not being proposed for new customers, but rather  
12 to existing load or existing customers -- the load  
13 levels that you described in your testimony at Norton;  
14 and that, but for this -- some type of incentive, this  
15 type of incentive -- that that load otherwise would have  
16 been lost as part of the military base closing process.

17                   Assume also that Edison forecasted that there  
18 would be some load loss.

19                   Under this hypothetical, would you agree that  
20 in such a situation, CRS exemption would not violate the  
21 principles of cost causation?

22           A    I guess I -- I'd like to take a little bit of  
23 exception to the premise of your question, because the  
24 customers are currently there. As bundled service  
25 customers, they are paying the utility's rate, which  
26 includes all DWR and URG costs; but the CRS is a  
27 separation of a portion of those costs into a separate  
28 rate component.



1           So if, as bundled service customers, they  
2 exist there today, and they are doing business as  
3 existing customers, I just don't know why a CRS  
4 exemption would be necessary for them to stay in that  
5 environment. So --

6           Q   Well, my question didn't really relate as much  
7 to the rationale for why they would stay, but more just  
8 the principle of cost causation.

9           And under a hypothetical which assumed that  
10 we're not talking about new load, but rather, existing  
11 load, and an assumption that that load was forecast as  
12 being lost, a CRS exemption, under those conditions,  
13 would that violate the principles of cost causation, as  
14 you understand that principle?

15          A   If you look at our sales forecast that we  
16 started with, first of all, you know, I'm not sure and I  
17 can't really positively state one way or the other  
18 whether they forecasted any loss of load, because --

19          ALJ MALCOLM:   Well, Mr. Jazayeri, he was asking  
20 that as a hypothetical, so you have to assume that.

21          THE WITNESS:   Okay.

22          ALJ MALCOLM:   Maybe you don't agree with his  
23 hypothetical, and that's fine, but assume his  
24 assumptions.

25          THE WITNESS:   I say if there was an existing  
26 customer that was assumed to be lost in the DWR sales  
27 forecast -- is that what the hypothetical is? Yes, I  
28 agree.

1 MR. BLAISING: Q Okay. Thank you. Then back on  
2 page 2, line 2 -- I apologize. I believe my numbering  
3 is off on this. Could I have a moment off the record,  
4 your Honor, just a moment?

5 ALJ MALCOLM: Yeah. Off the record.

6 (Off the record)

7 ALJ MALCOLM: Back on the record.

8 MR. BLAISING: Thank you, Dr. Jazayeri.

9 On page 2, line 14, you start a sentence by  
10 saying, "As stated in SCE's response to the discovery  
11 request by IVDA."

12 Your Honor, if I could introduce as a  
13 cross-examination exhibit that response --

14 ALJ MALCOLM: All right. I'll identify that  
15 document as Exhibit 52.

16 (Exhibit No. 52 was marked for  
17 identification.)

18 ALJ MALCOLM: And it's a data request from  
19 Southern -- response from Southern California Edison to  
20 IVDA, dated May 27th, 2004.

21 MR. BLAISING: Your Honor, I apologize. I only  
22 had a limited number of copies. I'd be happy to e-mail  
23 the document to parties. And some are available for  
24 viewing here.

25 ALJ MALCOLM: Okay.

26 MR. GOLUB: Could Counsel provide copies to  
27 everyone in the next day or two?

28 MR. BLAISING: I certainly will. Tonight I will.

1 MR. GOLUB: Thanks.

2 ALJ MALCOLM: Please let me know if there's a good  
3 place to take a five-minute break.

4 MR. BLAISING: I'm done with this question,  
5 your Honor.

6 ALJ MALCOLM: Back on the record.

7 MR. BLAISING: Q Does the cross-examination  
8 exhibit represent the full extent of Edison's response  
9 to the discovery request by IVDA, Dr. Jazayeri?

10 A Yes, it does.

11 MR. BLAISING: Thank you, your Honor.

12 At an appropriate time, I would ask that that  
13 be moved into the record to provide clarity.

14 ALJ MALCOLM: All right. Is there any objection  
15 to moving 52 into the record?

16 All right. Then we'll enter that into the  
17 record.

18 (Exhibit No. 52 was received into  
19 evidence.)

20 ALJ MALCOLM: Are you done?

21 MR. BLAISING: Thank you. I'm done.

22 ALJ MALCOLM: All right. We'll be in recess until  
23 3:25.

24 (Recess taken)

25 ALJ MALCOLM: On the record.

26 Mr. Golub.

27 MR. GOLUB: Yes.

28 CROSS-EXAMINATION

1 BY MR. GOLUB:

2 Q Dr. Jazayeri -- I'm working on it -- I invite  
3 your attention to Exhibit 51, which I believe is the  
4 correct number of your additional reply testimony,  
5 page 1, line 19, if you'd be so kind. And I note there,  
6 you say -- you list the arguments advanced by Inland  
7 Valley Development Authority. And then you say, "None  
8 of the stated reasons justifies the exemption  
9 requested." Okay? Do you see that passage?

10 A Yes. Yes, I do.

11 Q Now, when you say that, are you saying there  
12 are no reasons, or you're simply saying none were  
13 stated?

14 A I think I am saying none of the ones I would  
15 have stated were by the IVDA. I can think of others  
16 that it has stated.

17 Q So you're testifying there are no other  
18 reasons in your professional judgment that would justify  
19 that exemption?

20 A I cannot state that absolutely. There may be  
21 some situation. I just can't think of it, so --

22 Q Okay. Let me suggest one situation that might  
23 be worth you considering in your answer. Let's assume  
24 that the Inland Valley Development Authority, as part of  
25 its proposal, intends to build a large, very efficient,  
26 environmentally desirable power plant at Norton, take  
27 the environmental impacts associated with having a power  
28 plant in their particular community, and export a

1 significant amount of power to other entities in  
2 California; potentially Edison, if they wanted it, or  
3 PG&E, if they wanted it.

4 Take that situation, and tell me whether you  
5 can see any justifications for eliminating or reducing  
6 the CRS.

7 A I think this goes into the subject of my  
8 earlier testimony in the earlier round of this  
9 proceeding, where I stated that when an entity decides  
10 to build new generation and, under your hypothetical,  
11 let's say, sell it to the utility, I think that entity  
12 makes an economic decision, given the bundled service  
13 rate, given what the customer or what the entity can  
14 build the generation for. It makes a decision, and then  
15 determines what the revenues and costs are. And that  
16 decision is made by the entity on an economic basis.

17 Q Very well. That may very well be true, but  
18 I'd like to focus on my question, which is: when they  
19 make that decision, what treatment should they get under  
20 the CRS? They've made that decision for whatever reason  
21 under your assumption of economics, or maybe they do it  
22 as public policy. For whatever reason, they make the  
23 decision, and it has the effect I described. Now, what  
24 do we do about the CRS in that circumstance?

25 A Again, earlier testimony stated we are not  
26 proposing a CRS exemption or, I think, the CRS exemption  
27 is not justified, because those are historical costs  
28 that are incurred by DWR and the utility, and all

1 customers should pay for them that those investments  
2 were incurred for.

3 Q But if someone -- would you agree with this  
4 statement? In that scenario, that entity provided a  
5 benefit to California at large, including most of the  
6 bundled customers.

7 MS. SHIGEKAWA: I'm going to object. I think that  
8 Counsel is going to Dr. Jazayeri's opening testimony,  
9 and moving beyond the scope of IVDA's request for a  
10 specific exemption for Norton.

11 Mr. Golub had the opportunity to question  
12 Dr. Jazayeri on the stand during the second or third day  
13 of hearings when he was on the stand for over a day.

14 MR. GOLUB: Your Honor, the witness has mentioned  
15 that other testimony. And I haven't gone there yet.  
16 And I don't know that I'll ever go there.

17 I asked him about his testimony. He said  
18 there may be some circumstances that would justify the  
19 exemption. He actually said maybe he could think of  
20 one.

21 I came back and we're discussing one. This is  
22 directly related to his testimony. The fact that he  
23 thinks he's discussed it elsewhere is not relevant.

24 ALJ MALCOLM: His testimony today is only on  
25 IVDA's proposal.

26 MR. GOLUB: Mm-hm.

27 ALJ MALCOLM: And even though there may be another  
28 circumstance where he can imagine an exemption would be

1 appropriate, we're not going to go down that path to the  
2 many other places. ]

3 I mean, I'll let you ask this question, then I  
4 want you to move on from there.

5 MR. GOLUB: Uh-huh.

6 Q Would you please answer the question.

7 A Could you repeat it, please.

8 Q Let's assume that a decision has been made to  
9 build this power plant that has the characteristics I  
10 describe: Environmentally desirable, economically  
11 efficient, and a significant amount of export of that  
12 power to other consumers in California, and for the  
13 purpose of this assumption, let's say, to Southern  
14 California Edison, okay? They have done that.

15 Now, what reflection should they have of  
16 that -- what reflection should there be of those facts  
17 in the CRS?

18 MS. SHIGEKAWA: I think Dr. Jazayeri already  
19 answered the question. He said we are not proposing  
20 any. It is asked and answer.

21 MR. GOLUB: Let him answer that and we will find  
22 out. It will be very quick

23 THE WITNESS: Exactly as stated, I don't believe  
24 there should be an exemption.

25 MR. GOLUB: Q Your reason for that position is?

26 A Again, because the CRS has to do a lot of  
27 historical costs that incurred by DWR and the utility on  
28 behalf of all customers. All customers should pay for

1 that.

2 Q Well, now, are you saying those historic costs  
3 will be fixed in the CRS?

4 ALJ MALCOLM: Mr. Golub, this was a subject of his  
5 opening testimony. It is very specific. It is not the  
6 subject of his testimony in reply to IVDA.

7 MR. GOLUB: I think it was. He said there is no  
8 reason for that. All right, your Honor, I will abide by  
9 your ruling, of course, and move along.

10 Q At page 3 -- I'll note my objection for the  
11 record, of course -- page 3 you reference Edison's  
12 economic development rate. Now, that is in your  
13 Exhibit 51, isn't it?

14 A Yes, it is.

15 Q Was that in your testimony before?

16 A No. I think I had mentioned there too as  
17 well.

18 Q It was in reference -- what is the relevance  
19 of that to your testimony? You make a comment on it,  
20 and obviously it must have some significance. Please  
21 explain the significance.

22 A I think the significance is described in  
23 paragraph -- on page 3 starting at line 11. What I'm  
24 proposing is that instead of having a certain exemption  
25 from CRS for IVDA, and particularly the area that IVDA  
26 is interested in, there could be an economic development  
27 rate, as SCE has proposed, for development in different  
28 areas.



1           Q    By the way, you say an estimated. Did you say  
2 it was "estimated"?

3           A    I'm sorry. I didn't use that word.

4           Q    So you are saying that they should take what  
5 Edison is offering and not try to develop their own  
6 plant, that is the point?

7           A    I don't think that is what I said.

8           Q    It sounded like it. Let's go over this again.  
9 You are saying -- you mention this economic development  
10 rate. Why is that relevant to the testimony here?

11          A    I was just suggesting that in this case IVDA  
12 is asking for an exemption because of the economic  
13 development. What I'm saying is that such a rate is  
14 available to IVDA, whether it is a CCA customer or a  
15 bundled utility customer. An economic development rate  
16 would be available. That under the but-for tests, which  
17 I described on the previous round of testimony, that  
18 that would be available to all customers, whether they  
19 are CCA or bundled service. I'm opposing a CRS  
20 exemption to one area for the purpose of attracting  
21 business.

22          Q    Now, AB 117 is entitled community choice,  
23 right?

24          A    Yes.

25          Q    So are you saying that the community shouldn't  
26 make the choice on this economic development matter,  
27 instead it should be something that Edison determines is  
28 appropriate?

1           A    AB 117 is community choice aggregation. The  
2 community decides to aggregate its load, then it is  
3 subject to certain charges by the utility. I'm opposing  
4 the concept that that charge of the utility can be  
5 discounted to some customers in one area, like in IVDA  
6 area, but not in the next area.

7           Q    But doesn't your testimony therefore boil down  
8 to the fact that you are saying that Edison's economic  
9 stimulus rate is the one that should be used for all  
10 these communities, including this particular one, as  
11 opposed to one that they would like to have?

12          A    If they would like to have --

13          ALJ MALCOLM: The CRS is an Edison charge also.

14          MR. GOLUB: Huh?

15          ALJ MALCOLM: The CRS is an Edison charge also.

16          MR. GOLUB: No, I'm talking about economic  
17 stimulus rate they are proposing.

18          Q    You are saying though what you really think  
19 they should use is Edison's economic stimulus rate and  
20 stop insisting on trying to develop one -- develop one  
21 for their particular area only?

22          A    I'm not saying that can't develop other  
23 economic stimulus. I'm saying a CRS exemption should  
24 not be used as an economic stimulus.

25          Q    You advanced as a reason in support of that  
26 that there is an Edison economic stimulus rate, correct?

27          A    Yes, which is not provided to any customer.  
28 It is provided to a customer that but for the rate would

1 not add the load.

2 Q A customer that Edison thinks is deserving of  
3 the stimulus?

4 A It is not necessarily deserving in the  
5 existence of that customer under the but-for test, would  
6 allow the rate to other customers to go down. It is  
7 basically what Dr. Cicchetti has referred to as the  
8 theory of discrimination in his testimony. That in this  
9 case the customer wouldn't come under stimulus as  
10 provided.

11 Q But you are objecting to the community, in  
12 this case IVDA, having a different economic stimulus  
13 package?

14 A I'm not objecting to that, no. No.

15 Q So then the fact that Edison has it is an  
16 irrelevant observation?

17 A I'm saying CRS exemption should not be used as  
18 that stimulus.

19 Q What is the -- well, we will move on.

20 On this economic stimulus rate that Edison has  
21 proposed, if a community chooses to adopt community  
22 choice aggregation, they get cut off?

23 A No, they do not.

24 Q They get that same rate?

25 A Yes.

26 Q When you say -- you mean the community choice  
27 aggregation customers get it?

28 A Yes.

1           Q   Not just the Edison customers who opted out of  
2 community choice?

3           A   It would be available to the DA customers, to  
4 the perspective CCA customers and to the bundled service  
5 customers.

6           Q   Assuming that is correct, your proposition,  
7 therefore these communities shouldn't try to develop  
8 their own economic stimulus package?

9           A   Again, that is my proposal.

10          Q   It is your business. Are you saying you  
11 object to them developing their own economic stimulus  
12 package?

13          A   No, I do not.

14          Q   Now, let me ask you about this economic  
15 development rate. Does that involve cost shifting to --  
16 from one class of customers to another?

17          A   No, it does not. Because, again, under the  
18 but-for test, the customer would not bring in its load  
19 to Edison's service territory, whether it is a CCA, a  
20 direct access, or bundled service customers, absent the  
21 rates. So there is a strict requirement that the  
22 customer has to provide the data to say that the rate  
23 wasn't a material factor in its decision.

24          Q   Let me understand this. Let's say a large  
25 factory is going to move into the area and qualify for  
26 the Edison economic stimulus rate. You are going to  
27 give them a discount compared to what they would  
28 otherwise pay, correct?

1           A    Yes.

2           Q    Okay.  Now, if they pay the full baggage on  
3 that rate, the regular baggage, all customers would  
4 benefit, right?

5           A    But you wouldn't realize the full baggage rate  
6 absent the discount.

7           Q    So you are looking at the net cost of bringing  
8 that customer into the system?

9           A    You are looking at the contribution to margin  
10 by that customer, bringing that customer to the system.

11          Q    I do understand what you are saying, and there  
12 is nothing wrong with what you said.  I want to make  
13 sure we get it into the nomenclature.

14                  What you are saying is yes, we are giving up a  
15 piece of income that we would have gotten from this new  
16 factory, because by bringing that customer into the  
17 system, the customer is at least contributing something  
18 that makes all of this better off?

19          A    That is correct, because absent the rate, it  
20 wouldn't materialize.

21          Q    I didn't mean to argue.  I'm trying to put it  
22 in simple terms that even I can understand.

23                  Page 2, line 2 of your testimony, of  
24 Exhibit 51, you state there is no legislation providing  
25 a preference in the recovery of CRS to a particular  
26 portion of Edison's service territory.  So you consider  
27 a community choice aggregator to be part of your service  
28 territory?

1           A    Currently it is, yes.

2           Q    Once they become a community choice  
3 aggregator?

4           A    We still provide distribution services and  
5 customer services.  So, theoretically speaking, they are  
6 still part of our service territory, but they are not  
7 our customers for procurement and generation.

8           Q    What -- you say there is no legislation.  What  
9 legislation did you review to come to that conclusion?

10          A    I'm not aware of any legislation that says a  
11 CRS exemption should be provided to a particular portion  
12 of a CRS service territory.  That is actually the reason  
13 that IVDA states that they are in this proceeding  
14 because they were trying to get legislation for  
15 providing similar kind of exemption.

16          Q    My question to you is:  What did you review in  
17 coming to this conclusion?  Did it come out of the air,  
18 did you look at something?

19          A    I have been involved in Commission's CRS  
20 proceeding.  And if there was any piece of legislation  
21 regarding exemption to anyone, I'm sure it would have  
22 been raised in that proceeding.  That has been going on  
23 the last two years.

24          Q    Is there legislation prohibiting such  
25 treatment?

26          A    I think AB 117 itself in terms of every  
27 customer contributing to the DWR contract cost, the  
28 utilities' past procurement and generation costs,

1 basically is the legislation that requires everyone to  
2 pay. So there should be a piece of legislation that  
3 exempts people from that.

4 ALJ MALCOLM: Let's go off the record for a  
5 minute.

6 (Off the record)

7 ALJ MALCOLM: Back on the record.

8 MR. GOLUB: What would you like me to do?

9 ALJ MALCOLM: Continue.

10 MR. GOLUB: At page 2, line 2, you state that  
11 Public Utilities Code 3662(d), (e) and (f) must govern  
12 this case.

13 A I'm sorry, what page were you referring to?

14 Q Page 2, line 2, I think.

15 A I don't see that.

16 Q I must have got my notes mixed up here.

17 MR. BLAISING: Line 12.

18 THE WITNESS: Yes, I see that now.

19 MR. GOLUB: Thank you.

20 Q Are you contending that that section was not  
21 intended to immunize utility shareholders from bearing a  
22 fair share of the cost and risks of serving community  
23 choice aggregators?

24 A I'm not stating that anywhere. But that is  
25 our position that Section 366.2(d), (e) and (f)  
26 basically proscribes how the CCA customers should pay  
27 for several charges, or several type of costs, the DWR  
28 costs, the utilities' costs, and that sort of thing.

1           Q    Doctor, we are running short on time. I would  
2 have to ask you to be more direct. I'm asking you  
3 that -- are you contending that the utility shareholders  
4 should not bear a fair share -- fair share of these  
5 costs?

6           A    That is what I'm contending. I don't see  
7 anywhere on AB 117 that says utility shareholders should  
8 bear a portion of those costs.

9           Q    So transcending whether you are legislatively  
10 required, you are further stating that on behalf of  
11 Edison that Edison is unwilling to absorb a fair share  
12 of those costs through the utility shareholders?

13          A    That is correct.

14          Q    Are you contending, referencing that same  
15 section in your testimony, that those portions of  
16 legislation were intended to allow utilities to impose  
17 costs on community choice aggregators that ignore  
18 savings that community choice aggregators may bring to  
19 the system?

20          A    Again, I didn't say that. The language of the  
21 legislation in those sections speaks for itself. I  
22 think you would like to interpret the word "cost" there  
23 as "net cost." And I think we disagree with that. We  
24 just say the word "cost" is there. I'm not seeing the  
25 word "net" in front of the word "cost."

26          Q    I'm asking you Edison's position. Let's not  
27 argue about the statute. Is it Edison's position that  
28 you are going to impose costs on community choice



1 aggregators and their customers but ignore related  
2 savings of those aggregators that the customers provide  
3 back to the system?

4 ALJ MALCOLM: Mr. Golub, this goes way beyond  
5 IVDA's testimony and Mr. Jazayeri's response to it.  
6 These questions go to what we spent two weeks on.

7 MR. GOLUB: Well...

8 ALJ MALCOLM: If you have more questions that are  
9 directly related to IVDA's proposal, that is fine.

10 MR. GOLUB: I'll try to stick with your Honor's  
11 ruling. I am reading from his testimony. Let me move  
12 on.

13 ALJ MALCOLM: His testimony is offered in the  
14 context of IVDA's testimony.

15 MR. GOLUB: Q Is the -- with regard to IVDA's  
16 proposal, you've indicated you don't agree with it. Has  
17 any study been made at Southern California Edison of  
18 ways in which IVDA's objectives can be achieved  
19 consistent with Edison's understanding of AB 117?

20 A No, we have not done a study to identify any  
21 benefits that IVDA's action may provide to Edison's  
22 customers, no.

23 Q As far as you know -- well, okay.

24 Your Honor, I do have quite a few other  
25 questions. And with all due respect, I disagree with  
26 your ruling. But I have a hunch you are going to make  
27 the same ruling time and again.

28 What I would suggest is let Mr. Blaising go

1 because I gathered he has something urgent.

2 ALJ MALCOLM: He has a question of PG&E.

3 MR. GOLUB: I understand that. I was going to --  
4 however your Honor wants to proceed, I was going to stop  
5 and let -- I thought you said 4:00 we have to stop?

6 ALJ MALCOLM: We do.

7 MR. GOLUB: I would like to defer.

8 ALJ MALCOLM: So we should call the PG&E witness?

9 MR. GOLUB: I'm deferring to Mr. Blaising rather  
10 than have him lose his opportunity.

11 ALJ MALCOLM: Thank you. You are excused,  
12 Mr. Jazayeri. Thank you.

13 MR. BUCHSBAUM: PG&E recalls Mr. David Ruben to  
14 the stand.

15 DAVID RUBIN

16 resumed the stand and testified further as follows:

17

18 ALJ MALCOLM: You are still under oath,  
19 Mr. Rubin.

20 MR. BUCHSBAUM: I would like to have the next  
21 exhibit entitled Supplemental Reply Testimony of Pacific  
22 Gas and Electric Company, Community Choice Aggregation  
23 OIR in Response to May 21, 2004, so on, Prepared  
24 Testimony of Thomas K. Clarke, marked as the next  
25 exhibit in order. I believe that is 52 or 53?

26 ALJ MALCOLM: We will mark that as Exhibit 53.

27 (Exhibit No. 53 was marked for  
28 identification.)

1 DIRECT EXAMINATION

2 BY MR. BUCHSBAUM:

3 Q Was this exhibit prepared by you or under your  
4 direction?

5 A It was.

6 Q Do you have any changes or corrections to this  
7 exhibit at this time?

8 A Not at this time, no.

9 Q Are the facts stated therein true and correct  
10 to the best of your knowledge?

11 A To the best of my knowledge, yes.

12 Q Do the opinions therein reflect your best  
13 professional judgment?

14 A They do.

15 MR. BUCHSBAUM: Thank you. Mr. Rubin is available  
16 for cross-examination.

17 CROSS-EXAMINATION

18 BY MR. BLAISING:

19 Q Good afternoon, Mr. Rubin. I'll try to be  
20 brief on this.

21 If you would please turn to page 2 of your  
22 reply testimony on the portion between lines 18 through  
23 lines 23. In that you state:

24 As a primary matter, in  
25 determining that exemptions from  
26 certain CRS components applied to  
27 customer generation in Decision  
28 03-04-030, the Commission was

1           relying not upon the amount of  
2           customer generation that was  
3           already embedded IOU's forecasts,  
4           but rather on the fact that DWR  
5           itself made a further reduction to  
6           those forecasts that are  
7           approximately 3,000 megawatts  
8           prior to entering into procurement  
9           contracts.

10           Mr. Rubin, are you aware of any pending  
11          petition before the CPUC in which the accuracy of your  
12          legal conclusion has been raised as an issue?

13           A    I'm aware that there is a pending position  
14          before the CPUC with respect to 03- -- I believe it is  
15          03-07-028. I, not being an attorney, do not have an  
16          opinion on any of the relevance of the legal challenge.  
17          I do in my testimony cite directly from the Commission  
18          decision, that essentially corresponds to my own  
19          conclusion.

20           Q    Just to follow up, would you agree that that  
21          petition that is pending before the Commission raises,  
22          if not the exact issue, but a similar issue as to what  
23          the Commission, in determining -- in making that  
24          statement was relying upon?

25           A    I would have to take a look at the petition in  
26          order to be able to answer that question thoroughly.

27           MR. BLAISING: Thank you. That is it.

28           ALJ MALCOLM: Thank you, Mr. Blaising.

1 Mr. Golub.

2 CROSS-EXAMINATION

3 BY MR. GOLUB:

4 Q Hello. Good to see you again, Mr. Rubin.

5 A Good afternoon.

6 Q At page 1-4, you -- line 10, you state that  
7 both fairness and the anticost-shifting provisions of AB  
8 117 dictate certain results.

9 A That is correct.

10 Q Now, is it correct that your entire testimony  
11 should be read as related only to IVDA and have no  
12 bearing on any of the other CCAs in this case?

13 A I was responding specifically to IVDA's  
14 testimony.

15 Q Well, but, I appreciate that. But the  
16 question is: Does this testimony have -- are you  
17 advancing this testimony as having any relevance to any  
18 other community choice aggregators, or potential  
19 community choice aggregators, including, for instance,  
20 my client, Cal-CLERA?

21 A In an earlier phase of this proceeding we did  
22 testify to essentially this same principle.

23 Q But I'm asking about this testimony?

24 A I would say that this statement in this  
25 testimony in fact, again, represents our testimony  
26 throughout this proceeding.

27 MR. GOLUB: Your Honor, you see, now, it is  
28 exactly what I had feared. This is not intended to be

1 limited to this --

2 ALJ MALCOLM: No. Mr. Rubin has already testified  
3 about the application of these principles to every other  
4 party except for IVDA's proposal submitted late.

5 MR. GOLUB: I understand.

6 ALJ MALCOLM: You had an opportunity to examine  
7 him and any other utility witness on these principles  
8 over the course of two weeks earlier in the month.

9 MR. GOLUB: I appreciate what you are saying, your  
10 Honor. What I was saying -- I was just trying to draw  
11 that point for you so I could leave this be. And  
12 instead of him saying this is limited to IVDA, he says  
13 it would be applicable to all CCAs.

14 ALJ MALCOLM: No, his testimony only responds to  
15 IVDA's proposal. Whether or not his proposal goes to  
16 larger issue has already been the subject of his  
17 cross-examination.

18 MR. GOLUB: But as to this testimony it could not  
19 be used against any CCA, potential CCA, only IVDA. Is  
20 that what we are saying?

21 ALJ MALCOLM: Yes.

22 MR. GOLUB: I'm asking that so that later I won't  
23 find this in a brief.

24 ALJ MALCOLM: As far as I know, the witness would  
25 have to answer that question, but this testimony is for  
26 the purposes of IVDA's testimony.

27 MR. GOLUB: Your Honor, I don't want to belabor  
28 it. My fear is later on the utilities will argue, yeah,

1 it is IVDA but the principles are applicable elsewhere.

2 ALJ MALCOLM: He has already said they are  
3 applicable elsewhere in other testimony.

4 MR. GOLUB: The other testimony I'm not  
5 addressing. But in this testimony are they going to try  
6 to apply to my client, in which case we are going to  
7 have to cross-examine. If it does not apply to my  
8 client and does not apply generically, then we can cut  
9 this short.

10 MR. BLAISING: I think the wording of it is it  
11 does relate to Norton in that sentence would be proper,  
12 I trust. That was the intent.

13 MR. GOLUB: I wanted to nail that down, your  
14 Honor, in which case we can make this quicker. I don't  
15 think I'm asking anything unfair here. This would be  
16 the logic of the utilities.

17 ALJ MALCOM: I won't testify for him, but this is  
18 his testimony with regard to IVDA's.

19 MR. GOLUB: Only?

20 ALJ MALCOLM: Yes.

21 MR. GOLUB: Thank you, your Honor. Then I think I  
22 can limit my exam.

23 Q At page 1.4 you state that IDVA's economic  
24 argument can be any city. You underline the word "any"?

25 A Yeah, I see that.

26 Q Do any communities in California have the  
27 objectives of economic development and job creation  
28 similar to those at IVDA?

1           A    I know it was -- as a general matter, quite a  
2 few cities and counties in California have a general  
3 objective of economic development. I don't know how it  
4 compares specifically to IVDA's.

5           Q    Understood. Does PG&E consider these  
6 community objectives to be appropriate social goals?

7           A    We consider economic development, economic  
8 growth to be appropriate goals, yes.

9           Q    Would PG&E intentionally adopt a position  
10 which would frustrate or interfere with achievements of  
11 these objectives by communities?

12          A    With all due respect, that is a hard question  
13 to answer in the hypothetical. If you can provide a  
14 specific example, I would be happy to respond.

15          Q    You can't answer it unequivocally one way or  
16 other?

17          A    It is such a broad, general question. Without  
18 specifics, it is hard to get a handle on it.

19          Q    Does PG&E put a higher priority on protecting  
20 shareholder value than upon supporting communities in  
21 their efforts to achieve those objectives?

22          A    Can you point me specifically to where in my  
23 testimony I address that issue?

24          Q    You just asked me to give you more specifics.  
25 I just did.

26          A    With all due respect, the question, again, is  
27 very broad around trade off between shareholder and  
28 community interest. Again, I thought my testimony was



1 specifically addressing IVDA's proposal as far as a CRS  
2 exemption.

3 Q You are making two arguments. One, you are  
4 trying to limit the scope. Let's let the Judge rule on  
5 that. I'm asking you about your testimony.

6 Are you saying that you don't know which of  
7 those PG&E would put a higher priority on?

8 MR. BUCHSBAUM: Objection. I think it is beyond  
9 the scope of the testimony responding to IVDA, to ask  
10 whether or not the shareholders should bear burden.  
11 There is no evidence, no statement along those lines in  
12 this response to the specific position of IVDA.

13 ALJ MALCOLM: Yes, I'm going to sustain the  
14 objection. Move on.

15 MR. GOLUB: He doesn't want to answer the  
16 question, your Honor, the record will so reflect.

17 Q At page 1-4, line 14, you reference the  
18 economic development rate that PG&E was -- had just  
19 proposed on June 14th?

20 A That is correct.

21 Q Does that economic development rate involve  
22 cost-shifting from one class to another?

23 A No, it does not.

24 Q Can you tell me why it does not?

25 A It does not for many of the same reasons that  
26 Dr. Jazayeri responded to with respect to Edison's  
27 economic development rate. We have specific eligibility  
28 criteria that governs the application of the rate. So

1 it would be applied only to those customers whom, absent  
2 the rate, would make a different location decision  
3 outside of California. Having those customers to either  
4 choose to locate within our service territory, whether  
5 served by PG&E as a bundled area or a CAA, versus  
6 located outside of California confers benefit on all  
7 other ratepayers.

8 Q And just to draw out what you are saying, even  
9 though you are giving them a discount, the community,  
10 the society at large, is better off because they were  
11 contributing something to society at large?

12 A I would clarify the question insofar as we  
13 don't consider it to be a discount. We consider it to  
14 be essentially an incentive to get the customer to make  
15 a location decision. It is a material decision because  
16 if you call it a discount, you are making it sound like  
17 we are offering something we believe that the glass is  
18 half full, not half empty.

19 Q It is too late in the day to argue over  
20 incentive discounts. Use your words and answer the  
21 question.

22 A The question is yes, but having the customer  
23 make a location decision they do with rating material  
24 factor, all of our ratepayers are better off. That  
25 would be true whether the customer is located in the CCA  
26 area, or not.

27 ALJ MALCOLM: Mr. Golub, wrap up.

28 MR. GOLUB: Q Was that applied equally to

1 community choice aggregation entities and to PG&E's own  
2 customers?

3 A The rate would be available, again, whether  
4 the customer was bundled or direct access under  
5 community choice aggregation program.

6 Q I missed that last time with Dr. Jazayeri, but  
7 I'm smarter this time around. It is not applied equally  
8 though, is it?

9 A We decided, we believe, in a way that  
10 essentially it does apply equally.

11 Q But doesn't it apply to the entire bundled  
12 rate?

13 A It is calculated to apply to the entire  
14 bundled rate. And for a customer that is a community  
15 choice aggregation customer, or direct access, we would  
16 essentially, for purposes of calculating the incentive,  
17 consider as if they were paying the bundled rate, and  
18 apply the percentage restrictions to the nongeneration  
19 rate components. So it would be neutral. ]

20 ALJ MALCOLM: Mr. Golub.

21 MR. GOLUB: Q Well, to put it this way, does that  
22 mean that it's the same cents-per-kilowatt-hour in both  
23 situations?

24 A For two hypothetical customers, yes, that  
25 would be the case.

26 Q Well, other things being equal --

27 A Yes.

28 Q -- the incentive -- there's no different

1 difference in the incentive?

2 A That's correct.

3 Q It would be the same amount?

4 Is that true with the Edison incentive rate  
5 that you describe in your testimony?

6 A I don't have, myself, all the details around  
7 Edison's rate to be able to comment on it.

8 Q Okay.

9 ALJ MALCOLM: Mr. Golub, you have to wrap it up.

10 MR. GOLUB: I'm sorry?

11 ALJ MALCOLM: You have to wrap it up. Do you have  
12 one other question?

13 MR. GOLUB: I do have more questions. I guess  
14 I'll just ask -- it's more than one. Tell me what you'd  
15 like to do, your Honor.

16 ALJ MALCOLM: Well, it's after 4:00.

17 MR. GOLUB: Hmm?

18 ALJ MALCOLM: It's after 4:00. I'm asking you to  
19 wrap it up.

20 MR. GOLUB: Well, I can't wrap it up in 30  
21 seconds, so if you want me to stop, if that's the  
22 instruction, I'll of course comply with your order.

23 ALJ MALCOLM: Do you have any additional questions  
24 that are essential?

25 MR. GOLUB: Of Mr. Rubin? Yes, I do. Yes, I do,  
26 your Honor.

27 ALJ MALCOLM: Can you take get them done in a  
28 minute or two?

1 MR. GOLUB: I will try. I honestly don't think it  
2 will be that fast. I mean, it's your decision, your  
3 Honor.

4 ALJ MALCOLM: Go ahead. I'm going to cut you off  
5 in about two minutes.

6 MR. GOLUB: All right.

7 Q You state -- remember your testimony at page  
8 1, line 12 about -- excuse me, page 1.4 about fairness  
9 and anti cost-shifting provisions?

10 A Yes.

11 Q Is there anything unfair in an exemption if  
12 the exemption results in the bundled customers getting  
13 benefits also?

14 A Under our -- as I mention in my testimony, our  
15 economic development proposal, there would be in fact a  
16 reduction calculated according to the description  
17 I provided earlier. If, in fact, again, the criteria is  
18 satisfied that the customer would not make the location  
19 decision absent the type of rate option that we've  
20 described as part of the Schedule ED, then I would say  
21 that would be fair. And we put before the Commission  
22 the arguments why that would be fair.

23 Q Now, that's in the context of PG&E's stimulus  
24 rate, incentive rate?

25 A That's correct. Schedule ED.

26 Q But my question was different. The question  
27 I asked you to answer was is there anything unfair in  
28 the kind of exemption or reduction in CRS if it results

1 in benefits to all the bundled customers as well as to  
2 the community choice aggregators that have the exemption  
3 or reduction?

4 A Okay. I'm sorry. I thought I did answer that  
5 question. If you --

6 Q Well, I don't think you did. But in fairness,  
7 it's very parallel. I really think I understand what  
8 you are saying.

9 Here's the prop- -- here's the hypothetical.  
10 Assume with me that an exemption granted to a community  
11 choice aggregator -- and we'll use IVDA as  
12 the example -- resulted in the community choice  
13 aggregator getting a significant reduction in the CRS.  
14 Further assume that due to the facts related to the  
15 situation, it also resulted in benefits to bundled  
16 customers. Is that unfair?

17 A And I'm not trying to mix the question.  
18 I thought I answered that. Under the proposal that we  
19 described, we would be providing a reduction in all rate  
20 components to the customer.

21 If I could be clear, the CRS is the customer's  
22 charge, the customer's obligation, not the CCA's  
23 obligation. And so in the hypothetical that you  
24 proposed around a reduction to the CCA, I just don't --

25 Q The reduction --

26 ALJ MALCOLM: I have to interrupt you, Mr. Golub.  
27 I'm sorry. I do. I can't continue this hearing.

28 MR. GOLUB: I understand, your Honor.

1 I appreciate what you have done. And I have to note I'm  
2 not finished, but I understand your situation, too.

3 ALJ MALCOLM: All right. Thank you.

4 Mr. Rubin, you're excused. Thank you.

5 Is there any objection to entering into  
6 the record Exhibits 48, 49, 50, 51 or 53?

7 (No response)

8 ALJ MALCOLM: No. I will enter those exhibits  
9 into the record.

10 (Exhibit Nos. 48, 49, 50, 51 and  
11 53 were received into evidence.)

12 ALJ MALCOLM: Mr. Szymanski asked me about  
13 transcript corrections. If you have any, serve them on  
14 all parties electronically. And I'll make sure that if  
15 you don't get them to the reporters, I'll make sure  
16 the reporters get them as well.

17 And are there any other procedural matters?

18 MR. SZYMANSKI: Is there a time frame for  
19 submitting those? I was going to propose that we do it  
20 by a week from tomorrow, which would still allow a week  
21 before briefs were due for any modifications to be  
22 incorporated --

23 ALJ MALCOLM: Sure. Is there any --

24 MR. SZYMANSKI: -- in the parties' briefs.

25 ALJ MALCOLM: -- objection to having them  
26 submitted by, what --

27 MR. SZYMANSKI: July 2nd.

28 ALJ MALCOLM: -- July 2nd?

1 MR. SZYMANSKI: Yes.

2 ALJ MALCOLM: Then transcript corrections are due  
3 July 2nd.

4 We already scheduled briefing dates of July  
5 9th and 23rd.

6 Anything else?

7 (No response)

8 ALJ MALCOLM: All right, then Phase 1 is submitted  
9 upon receipt of reply briefs.

10 Thank you all very much.

11 (Whereupon, at the hour of 4:10 p.m.,  
12 Phase I was submitted upon receipt of  
reply briefs due July 23, 2004.)

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