Decision **DRAFT DECISION OF ALJ PULSIFER** **(Mailed 8/5/2003)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.	Rulemaking 02-01-011 (Filed January 9, 2002)

OPINION RESOLVING MOTION OF CENTRAL VALLEY PROJECT GROUP

Introduction

This decision grants, in part, and denies, in part, the motion filed on June 4, 2003 by the Central Valley Project Preference Power Post-2004 Implementation Group (CVP Group). The CVP Group consists of certain "preference power customers"[1] under individual contracts with the Western Area Power Administration (WAPA).[2] In its motion, the CVP Group seeks an order from this Commission affirming that no "Cost Responsibility Surcharge" (CRS) shall apply to preference power customers for WAPA power purchased

[1] "Preference power customers" refers to those entities granted a preference by WAPA when contracting to sell surplus federal power, and includes "municipalities and other public corporations or agencies; and also cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (7 USC 901 *et seq.*)"

[2] WAPA is a power marketing agency within the U.S. Department of Energy that sells capacity and energy generated by the U.S. Bureau of Reclamation at Central Valley Project (CVP) hydroelectric plants that is surplus to the CVP's own project power consumption.

after 2004. We grant the motion to the extent it seeks confirmation that those preference power customers meeting their full power requirements through WAPA shall bear no CRS obligation. We deny the motion to the extent it seeks to permit customers to escape CRS responsibility for that portion of their power needs that has been provided through bundled utility service.

The term "CRS" refers to the surcharge mechanism previously adopted and applied to designated direct access and departing load customers under a series of Commission decisions issued in this proceeding. Under the CRS mechanism, designated customers bear a portion of the costs of the California Department of Water Resources (DWR) incurred pursuant to Assembly Bill (AB) 1X, and certain utility costs, as necessary to avoid shifting costs to bundled utility customers. The provisions adopted by the Commission require a CRS to conform with statutory requirements in AB 117. Under the provisions of this legislation, subsection (d) was added to Pub. Util. Code § 366, requiring customers that purchased power from an electric utility on or after February 1, 2001 to bear a "fair share" of DWR's electricity purchase costs, as well as purchase contract obligations incurred.

The CVP motion was filed in response to indications that Pacific Gas and Electric Company (PG&E) intends to apply the CRS to all electricity delivered to WAPA's preference power customers that exceed the customers' respective hydropower allocations under their base resource contracts.

Responses to the motion were filed on June 19, 2003. Responses in support of the motion were filed by the Northern California Power Agency (NCPA) and the University of California/California State University (UC/CSU). Responses in opposition to the motion were filed by PG&E and Southern California Edison Company (Edison), the latter utility having been granted leave to file late

comments on June 26, 2003. The CVP Group was also granted leave to file a third-round reply on July 2, 2003 in response to the replies of other parties. This decision is issued based upon review of the motion and responses thereto, including the third-round reply of CVP Group. No evidentiary hearings are necessary to resolve this matter.

Position of CVP Group

The motion of the CVP Group opposes the assessment of CRS on preference power that is or will be provided by WAPA. As described in the Declaration of Stuart Robertson, attached to the motion, WAPA markets 1470 MW to over 70 preference power customers including irrigation and water districts, federal installations, state universities, and prisons. Under the terms of a contract executed in 1967 between PG&E and WAPA, (identified as Contract 2948A), WAPA integrates its facilities with those of PG&E. Various services provided by PG&E support WAPA's sale of firm power to preference power customers. Contract 2948A is due to expire on December 31, 2004, coincidentally with the expiration of WAPA's existing firm power contracts with each of its preference power customers.

PG&E has indicated that it does not intend to renew Contract 2948A or replace it with a comparable product. PG&E also has informed preference power customers of its intent to apply the CRS to electricity sold by WAPA to such customers in the post-2004 period once existing WAPA contracts expire. By its motion, the CVP group seeks Commission confirmation that CRS does not apply to WAPA power sales to preference power customers, including sales of so-called "custom energy products" delivered by WAPA to "firm" or "shape" its deliveries of CVP hydropower generation.

The CVP Group objects to imposition of a CRS on WAPA customers once Contract 2948A expires at the end of 2004, arguing that there is no causal connection between WAPA's continued service of its preference power customers after 2004 and costs incurred by DWR and PG&E which are the subject of this proceeding. CVP Group argues that DWR did not enter into any power contracts in contemplation of serving preference power customers, and on that basis, such customers are not responsible for the recovery of the costs of those contracts.

CVP Group concedes that DWR has delivered some energy to some of the group's members for which they have not yet fully reimbursed DWR, and CVP Group acknowledges that its members consuming such power remain responsible for DWR Bond Charges. The CVP Group, however, does not believe that its members are responsible for paying any DWR Power Charges. The CVP group contends, moreover, that the "continuous" preference power customers (i.e., those who took all or some of their load from WAPA before DWR began buying power) should be exempt from CRS.

The CVP Group argues that no existing statutory or regulatory authority exists for PG&E to impose CRS on preference power customers served by a federal agency. The CVP Group claims that imposing CRS on WAPA preference power customers for costs incurred by DWR or PG&E prior to 2005 would amount to an unlawful, retroactive increase under Contract 2948A, which is a contract under Federal Energy Regulatory Commission (FERC) jurisdiction. CVP Group argues that pursuant to Docket No. ER01-1639, the FERC determined that regardless of the source from which PG&E acquires the energy that it sells to WAPA for resale to preference power customers, and regardless of PG&E's

actual cost of that energy, the price of energy sales to WAPA must be based on PG&E's thermal production costs.

The CVP Group argues that the applicability of CRS to WAPA preference power customers has not been raised in previous phases of this proceeding, and that no notice has been provided to preference power customers alerting them that PG&E intends to impose a CRS levy on preference power sold by WAPA under the Post 2004 plan. WAPA is in the process of defining the power purchase offerings it will make after the contract expiration at the end of 2004. As argued in the Declaration of Stuart Robertson, it is difficult, if not impossible, for CVP Group members to determine whether they should accept "custom products" offered by WAPA when they do not know whether PG&E will attempt to levy CRS on such purchased power. As such, CVP Group argues that this matter needs to be resolved expeditiously through a Commission order in response to its motion in order to preserve the rights of its members.

Position of NCPA

NCPA requests leave to become a party to the proceeding. NCPA is a public agency engaged in the generation and transmission of electric power and energy with fourteen members and four associate members. NCPA is concerned that the disposition of the CVP motion could have a significant impact on its members. Many of NCPA's members rely on WAPA for varying portions of their overall power supplies. Some take service directly from WAPA while others receive WAPA power through facilities owned by PG&E and operated by the California Independent System Operator ("CAISO"). NCPA argues that its interests are unique, and will not be adequately protected by other existing parties. Balancing all of these factors, we will grant NCPA's request for party status in this proceeding.

In its comments, NCPA agrees with the CVP Group, and claims that since preference power customers derive their rights to purchase this power from federal law, they are uniquely situated and clearly distinguished from the types of customers to whom the Commission has applied the CRS or is contemplating the application of a CRS. Further, NCPA argues, DWR neither contemplated providing power to preference power customers, nor included such load in its forecasts. NCPA contends that any application of the CRS to these customers would constitute an impermissible cost shift to customers that received no benefits from DWR purchases.

PG&E expressed no objection to NCPA's request for party status, but observes that all but one NCPA member appear to be publicly owned entities receiving a portion of their power from WAPA with any additional power needs supplied by wholesale energy providers. Since such wholesale customers take no bundled electric service from PG&E, none of their load would be considered "departing load" subject to the CRS under PG&E's tariff. This would be true even if these customers replaced their third-party wholesale contracts with "custom products" from WAPA post-2004.

Attachment 2 of PG&E's response to the CVP Group's motion identified "split wheeling" customers who received bundled energy under PG&E's retail tariffs in 2001 and 2002. Only one of the NCPA's current members — the Port of Oakland — appears on Attachment 2, which shows that the Port received *no* bundled service from PG&E in 2001 and 2002. Assuming the Port of Oakland continues to take *no* bundled service from PG&E in 2003 and beyond, the Port of Oakland would not be liable for any CRS, as it would not have any load that could "depart." Thus, the issue of imposition of the CRS on "departing load" customers appears to be moot as to the NCPA's current members.

Position of UC/CSU

UC/CSU also filed a response in support of the CVP Group motion, noting that the UC Davis campus is a federal preference power customer that has been receiving WAPA power since 1991. After expiration of Contract 2948A on December 31, 2004, UC Davis' power allocation of 15 MW will decline to 6 MW. UC/CSU expresses concern that if CRS is assessed on UC Davis, the university would be forced to pay CRS for WAPA custom product even though it has had a continuous WAPA allocation of at least 15 MW since 1991 and 25 MW from 1996 through June 2001. UC/CSU provided the Declaration of Jill Blackwelder, Associate Vice Chancellor, to support these claims.

As noted by PG&E, U.C. Davis appears to have taken a significant amount of bundled service: 38,012 MWH in 2001 and 82,095 MWH in 2002. PG&E thus contends that receipt of bundled service would make UC Davis a departing load customer under PG&E's Commission-approved electric tariff, subject to the CRS to the extent U.C. Davis replaces its PG&E bundled service with service from another provider.

Response of PG&E and Edison

PG&E disputes portions of the CVP Group motion. PG&E argues that the CVP Group's members and all similarly situated customers bear responsibility for a CRS to the extent such customers meet PG&E's tariff definition of "departing load." To the extent that some CVP Group members have received all of their power needs from WAPA and have never taken PG&E bundled service, PG&E does not consider such entities to be "departing load" customers under its existing tariff, as they have no load that could "depart." Thus, since PG&E does not seek to impose a CRS on those preference power customers

receiving only WAPA power, the applicability of the CRS is not in dispute for such customers.

PG&E argues, however, that several CVP Group members (*e.g.*, Broadview, Glen-Colusa, Lower Tule River, and Santa Clara) have received a portion of their power through bundled utility service from PG&E under so-called "split wheeling" provisions of the contract. Such preference power customers receive a portion of their power needs from WAPA (wheeled over PG&E's transmission system) and the remainder from PG&E (on a bundled service basis pursuant to PG&E's Commission-approved retail electric tariffs). As stated in Article 14(c)(2)(ii) of the contract, PG&E must supply "all additional requirements" for federal preference power customers "under [PG&E's] applicable rates and rules on file with and authorized by the regulatory commission having jurisdiction." Such customers receive separate bills from WAPA and PG&E for their respective portions of power served. Edison agrees with PG&E, claiming there is no evidence that DWR took preference power customers' arrangements after 2004 into account in purchasing power.

PG&E contends that such "split wheeling" customers, including those shown in Attachment 2 to its pleading and any other customers that take bundled service from PG&E on or after February 1, 2001, constitute departing load for that portion of their load formerly served under PG&E's retail tariffs. PG&E intends to bill such customers for payment of the CRS to the extent their bundled service from PG&E is replaced by service from another provider. PG&E intends to apply the CRS to all electricity delivered to WAPA's preference power

customers that exceeds the customer's respective contract rate of delivery (CRD) under Contract 2948A.[3]

To the extent the CVP Group's members or other WAPA customers received an increased allocation of federal preference power — that is, a higher CRD — pursuant to Contract 2948A, PG&E agrees that additional allocation of power (and the resulting reduction of power taken from PG&E) would not constitute "departing load" for purposes of CTC recovery because such fluctuations or changes in load were contemplated and permitted under Article 14 of Contract 2948A. PG&E disputes the CVP Group's claim, however, that this tariff language provides WAPA customers with a blanket exemption from the CTC or subsequent non-bypassable charges such as the CRS. PG&E argues that exemptions only apply to the extent changes in load were contemplated and permitted by Contract 2948A.

Thus, in the case of a hypothetical WAPA customer with a total load of 3000 KW, to the extent WAPA increases that customer's CRD from 1800 KW to 2000 KW in a manner contemplated by Contract 2948A prior to its expiration, PG&E would not consider the 200 KW change to be "departing load." However, once Contract 2948A ends and the "split wheeling" customer terminates taking partial bundled service from PG&E, PG&E would consider the remaining 1000 KW of load served under its retail tariff to be "departing load" subject to the CRS.

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[3] *See* Declaration of Stuart Robertson, page 4, paragraph 8.

Third-Round Reply of CVP Group

The CVP Group, in its third-round reply, noted areas in which parties appeared to agree, and asked the Commission to issue an expedited order confirming the principles on which all parties agree. As noted by the CVP Group, parties agree that full requirements preference power customers bear no responsibility for any component of the DWR-related CRS, and that "split wheeling" preference power customers bear no responsibility for any component of the CRS for electric loads that fall within the customer's CRD.

The remaining issues in dispute concern application of CRS to "split wheeling" customers and new preference power allottees. The CVP Group concedes that it would be appropriate to apply a DWR bond charge, but opposes any DWR power charge, applicable to the that portion "split wheeling" customers' loads supplied by PG&E tariff that exceed the CRD, and to new allottees. With respect to the DWR Bond Charge, CVP agrees that the methodology generally described on pages 3 through 4 of PG&E's Response may after examination and clarification provide a workable basis for assessing the DWR Bond Charge on "split wheeling" customers and new allottees.

With respect to the DWR Power Charge, however, the positions of PG&E, Edison, and the CVP Group still differ. Based on DWR's statements in documents filed with the Commission (discussed in the Motion at page 11, footnotes 23 and 24), the CVP Group believes that DWR was aware of the preference power program as it was contracting for power. With that awareness, CVP Group infers that DWR was also familiar with the post-2004 program as it applied to "split wheeling" customers and new allottees. Based on that inference, CVP Group denies that DWR made power purchases with the end of serving such customers in mind. In similar circumstances involving continuous

direct access customers and customer generation, the Commission has either exempted customers from CRS, or only applied the bond charge.[4]

The CVP Group asks the Commission to issue an order stating that "split wheeling" preference power customers, and new preference power allottees, will bear CRS responsibility limited to the DWR bond charge (and excluding the DWR Power Charge) in proportion to the amount of DWR power delivered by PG&E to these customers. If the Commission does not summarily dispose of this issue in the manner proposed, then CVP Group believes that further discovery is needed to explore the applicability of the DWR power charge to split wheeling customer load supplied by PG&E. CVP seeks evidentiary hearings if the Commission is not inclined to grant the motion on the basis CVP has requested.

Moreover, CVP Group argues that PG&E's proposed method to determine CRS for "split wheeling" customers and new allottees is not completely developed. For example, PG&E has not specified how it proposes to calculate CRS where the part of the customer's load that exceeds its CRD has significantly varied over the years, or even within a given year. In some cases, the load may exceed CRD so infrequently that application of a CRS would be administratively burdensome. The CVP Group believes that factual development would show that such circumstances occur for "split wheeling" customers. In any event, CVP argues that the PG&E proposal requires further development and a closer look.

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[4] D.02-11-022, pp. 65-66 ("Since DWR did not purchase power for continuous DA load, that segment of DA customers did not contribute to any cost shifting and therefore should not be required to participate in the ongoing DWR power charge"); D.03-04-030, pp. 52-53 (instituting a cap for customer generation customers who will not be required to pay the power charge).

Discussion

Parties' dispute concerns the extent to which a customer should be required to pay the CRS where the customer's electric load is met by preference power allocations from WAPA with the remainder of its load met through PG&E bundled service on or after February 1, 2001, and that customer subsequently terminates taking bundled service from PG&E.

We affirm that preference power customers are not responsible for CRS to the extent of that portion of their CRD that has been continuously served by WAPA both before and after DWR began procuring power under AB 1X. On this limited issue, parties agree. To the extent that some preference power customers have received all of their power from WAPA and have never taken PG&E bundled service, such entities do not constitute "departing load" customers as defined under PG&E's existing tariff. As PG&E acknowledges, such customers have no load that could "depart." Moreover, DWR recognized the existence of the WAPA preference power deliveries at the time of its entering into contract commitments to procure the utilities' net short requirements. Prior to December 31, 2000, all preference power customers had committed to the WAPA Post-2004 Plan by executing individual base resource contracts.

Thus, we acknowledge that DWR did not procure power to meet preference power customers' load demand that was already being served by WAPA deliveries prior to February 1, 2001. Thus, since no costs were incurred by DWR to serve such load, no costs are shifted to bundled customers by not imposing a CRS on WAPA power deliveries that were continuously delivered both before and after DWR began procuring power under AB 1X. Thus, we affirm that no CRS shall be imposed on those preference power customers that have met their full requirements through deliveries from WAPA, and have not

taken bundled service from PG&E on or after February 1, 2001 to meet a portion of their load.

There remains a dispute, however, concerning the applicability of CRS for so-called "split wheeling" customers that met a portion of their requirements through bundled service from PG&E on or after February 1, 2001 and the remainder through WAPA. Parties dispute whether that portion of the CVP customer requirements constitutes departing load for that portion of their load formerly served under PG&E's retail tariffs.

In its opposition to imposing a CRS on "split-wheeling" customers, the CVP Group concedes responsibility for DWR Bond Charges, but objects to imposition of Power Charges. CVP Group does not dispute that the Commission may choose to levy a DWR Bond Charge on that portion of "split-wheeling" customers' load above their CRD. CVP Group also agrees that the methodology generally described in PG&E's Response may provide a workable basis for assessing such charge. Thus, in recognition of the consensus on this issue, we shall order that "split-wheeling customers" be required to pay a DWR Bond Charge on customers' load above their CRD on the same basis as other departing load.

As a defense against being assessed CRS on the utility portion of the "split-wheeling" load, the CVP Group argues that PG&E lacks current tariff authority to collect such charges. PG&E relies upon its Preliminary Statement BB to claim that "split-wheeling" customers come within the definition of departing load subject to a CRS, including DWR charges. CVP, however, cites an admission by PG&E, noted in Commission Resolution E-3813, dated June 19, 2003, indicating that PG&E did not currently possess tariff authority to collect even CTC from its departing load customers, and had not done so since

Schedule E-Depart expired on March 31, 2002. CVP Group thus argues that PG&E's own tariffs and admissions disprove PG&E's claims that it is entitled to collect DWR and CTC from "split-wheeling" customers.

We find no bar to PG&E recovering otherwise eligible CRS on the applicable portion of split-wheeling customer loads, however, merely due to expiration of PG&E tariff authority on March 31, 2002, as noted in Commission Resolution E-3813. In D.03-07-028, (page 44, footnote 64), the Commission noted the March 31, 2002 expiration of PG&E's E-Depart tariff authority, but authorized PG&E to resume billing authority under the expired tariff schedule in implementing the municipal departing load CRS, as provided for in that order. Thus, CVP's argument that PG&E's expired tariff authority bars it from imposing otherwise applicable CRS on split wheeling customers is not persuasive. PG&E now has Commission authorization pursuant to D.03-07-028 to reactivate its expired tariff authority in order to bill and collect CRS from departing load customers.

Moreover, we find that PG&E's Preliminary Statement BB supports the contention that the split wheeling customer load comes within PG&E's tariff definition of departing load. Section 3c of PG&E's Preliminary Statement BB describes the limited "exception" from departing load responsibility for CTC, as follows:

> Those reductions in load that result when a customer who was purchasing a portion of its electricity supply from the Western Area Power Administration under the provisions of Contract 2948-A as of December 20, 1995, and subsequently received increased allocations of such federal preference power **in a manner contemplated under that existing**

> **contract**, will not be classified as Departing Load.[5] [Emphasis added.]

Consistent with this language, as long as fluctuations in the load are contemplated under the WAPA contract, such fluctuations would not be considered departing load. In the case of "split wheeling" customers who take service from both PG&E and WAPA and subsequently terminate bundled service from PG&E at the expiration of Contract 2948A at the end of 2004, however, such termination of bundled service was not "contemplated under that existing contract." As such, changes in load in excess of the CRD were not "contemplated under that existing contract," and thus properly constitute departing load under the tariff.

Our treatment of this issue in D.96-11-041 (69 CPUC 2d 264) supports this conclusion. In that proceeding, some customers who took service from both PG&E and federal power agencies sought a specific exemption from the definition of departing load due to concern that the month-to-month fluctuations in deliveries from PG&E and the federal power sources would be construed as "departing load" subject to CTC. (*See* 69 CPUC 2d at 274.) In D.96-11-041, we rejected the requested exemption on the following grounds:

> [T]hese customers do not fall within the definition of departing load, since they continue to be PG&E customers under the same arrangements that governed their service from PG&E before December 20, 1995, and any reductions in load that fall within the existing arrangements are not "*subsequently* served with electricity from a source other than PG&E." *This conclusion may not apply if the existing arrangements were altered in a way that reduced service from*

[5] PG&E's Preliminary Statement BB was entered into the record as Exhibit 106 in this proceeding; PG&E appended relevant portions as Attachment 3 to its filed response.

> *PG&E and substituted service from another source***.** (D.96-11-041, 69 CPUC 2d at 275, emphasis added.)

We subsequently affirmed this conclusion in D.97-06-060 by stating:

> No exemption [to the definition of departing load] is necessary in PG&E's tariffs, because the definition of departing load does not apply to [WAPA] customers who are merely shifting their allocation of federal preference load and PG&E load in a manner contemplated under the existing contract. While no exemption is necessary in this instance, PG&E should clarify the tariff language included in its Preliminary Statement to further define "departing load" in accordance with this decision. (D.97-06-060, 72 CPUC 2d 736, 774–775, emphasis added.)

Thus, termination of PG&E bundled service under the split wheeling arrangements at the end of 2004 and substitution of other replacement power would, in fact, constitute departing load that would alter existing contract arrangements, in the manner described in D.96-11-041.

CVP alleges there is a factual dispute, however, concerning whether or to what extent DWR may have taken into account the load of "split-wheeling" customers and new preference power allottees in contracting for and procuring power pursuant to its authority under AB 1X. As noted by the CVP Group, the Commission has previously limited the applicability of DWR Power Charges to certain categories of Customer Generation Departing Load based on evidence that DWR took such departing load into account in its power procurement.[6]

CVP Group has not demonstrated, however, that DWR subtracted the bundled utility component of load demand of split wheeling customers in its forecasts and procurement of contract power. CVP Group cites DWR's recent

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[6] *See* D. 03-04-030, pp. 52-54.

filing of its Supplemental Determination of 2003 revenue requirements in which DWR indicates that it has consistently modeled power sales and purchases between PG&E and WAPA as a bilateral contract obligation of PG&E that reduces total URG energy available to serve retail customers. The cited passage is silent, however, concerning whether or to what extent DWR explicitly excluded the portion of "split wheeling" customer load that was served with bundled utility power rather than WAPA power.

We find no basis to conclude that DWR subtracted any split wheeling component of bundled load in its forecasts of procurement requirements. Moreover, we find no justification for further evidentiary hearings to determine the applicability of CRS to the portion of the split-wheeling load served by PG&E. We shall, however, grant the motion of CVP for late-filed receipt into the record of a sworn declaration of Dan L. Carroll together with a CVP data request and response from Navigant Consulting, Inc. the data response into the record is hereby granted. CVP filed its motion on August 28, 2003, for an order setting aside submission to receive into the record this declaration and Navigant data response.[7] Navigant consulted with DWR during the period that it was procuring power to meet the net short requirements of PG&E.

On September 12, 2003, PG&E filed an opposition to the motion for late-filed receipt. PG&E argues that the motion is moot since CVP has already had the opportunity for the Commission to consider the significance of these materials through citations made to the data response in its comments on the

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[7] CVP initially appended the Declaration and Data Response to its comments on the draft decision. After the appended materials were rejected by the Docket Office, CVP

Footnote continued on next page

Draft Decision. PG&E also argues that the data response offered by CPV is irrelevant and that no new evidence is provided by the materials in question.

Notwithstanding PG&E's arguments, the materials were used by CVP in support of its arguments in its comments on the Draft Decision. Parties have had the opportunity to comment upon the substance of claims made by CVP concerning the late-filed data response in their opening and reply comments on the Draft Decision. In the interests of providing a full opportunity for CVP to make its showing and clarity of the record, we shall accordingly receive this material into the record.

CVP characterizes the receipt into evidence of its attached declaration and additional Navigant data response as "thus providing the Commission with a full record with which to make its decision."[8] By its own statement, CVP thus acknowledges that with the receipt of the declaration and Navigant data response, the record is now complete as a basis for the Commission to render a decision on the applicability of the DWR power charge to the split wheeling load. We agree there is sufficient basis to resolve the treatment of split wheeling and there is no merit in belaboring this issue by ordering additional evidentiary hearings.

CVP argues that the data response from Navigant provides relevant evidence that WAPA load was not included in DWR's load assumptions. The Navigant data response relates to DWR's treatment of WAPA customers in forecasts underlying its power purchases for customers in the PG&E service

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filed a separate motion seeking leave to offer the appended materials into the record for consideration by the Commission.

[8] CVP Motion to Reopen the Record, page 6.

territory. The data response indicates DWR did not procure power on behalf of WAPA load which it characterizes as "a bilateral obligation of PG&E's utility retained generation" that was not considered part of PG&E's net short.

As further stated in the data response, DWR assumed there would be no further obligation by PG&E for bilateral power to WAPA customers after 2004 when the PG&E/WAPA power supply contract arrangement expires. As a result of the assumptions that it made regarding PG&E's bilateral obligation to WAPA, DWR believed that it had no responsibility to purchase power to directly supply WAPA requirements.

PG&E disagrees with the inferences that CVP draws from the DWR data response, arguing that CVP focuses on an irrelevant provisions of the WAPA contract, as referenced in the Navigant data response to support its claims that no CRS obligation should apply to split-wheeling load.

The relevant issue in dispute here is the treatment of split wheeling load. The data response, however, offers no evidence that DWR excluded the split wheeling component from bundled load in making its power purchases on behalf of PG&E customers. In its data request, CVP did not identify split wheeling by name nor seek confirmation that DWR in fact subtracted the split wheeling load in determining its procurement requirements. The data response, likewise, fails to indicate that DWR excluded "split wheeling" load in determining procurement obligations. PG&E, in its reply comments on the Draft Decision, notes that "[g]iven the very modest amount of bundled service that WAPA split-wheeling customers receive from PG&E, it is likely that DWR

was not even aware that "preference power customers" were included within PG&E's bundled load."[9]

Rather than addressing the split wheeling load issue, CVP argues that the data response "confirms that DWR did not plan to serve the loads for which PG&E was providing firming power under Contract 2948-A."[10] In various references to the Navigant data response, CVP focuses on PG&E's "firming" obligations under Contract 2948A.[11] Article 12(b)(2) and Article 21(b), (c), and (d) of Contract 2948A require PG&E to supply "additional energy" to WAPA to "firm" the CVP's own hydropower generation. PG&E agrees that DWR did not purchase power in anticipation of fulfilling PG&E's "firming" obligations, but argues that such obligations are irrelevant to the treatment of split wheeling. As noted by PG&E, its "firming" obligations relate to wholesale power requirements rather than to the retail load requirements that were met through split wheeling.

The provision of split-wheeling is separately addressed in Article 14(c)(2)(ii) of the contract which requires PG&E to supply "all additional requirements" for federal preference power customers "under [PG&E's] applicable rates and rules on file with and authorized by the regulatory

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[9] PG&E Reply Comments, page 4.

[10] CVP Comments on Draft Decision, page 6.

[11] Various citations made by CVP Group indicate that the WAPA loads for which DWR did not plan to supply had reference to "firming" CVP wholesale obligations. *See, e.g.*, CVP Group Comments, p. 6, stating that "the response confirms that DWR did not plan to serve the loads for which PG&E was providing *firming power* under Contract 2948-A"; "the response indicates that because of PG&E's *firming* obligations, it had less URG to serve its retail customers;" "DWR clearly assumed that *firming* services would be provided by parties other than PG&E") (emphasis added).

commission having jurisdiction." The data response thus contrasts WAPA loads as distinct from retail loads for which DWR was authorized to serve.

The distinction indicates that it is wholesale load obligation (and not utility retail obligations) that was excluded by DWR. Split wheeling load is a component of retail load, therefore, and not part of wholesale obligations as addressed in the data response. The data response does not indicate any reduction in retail load requirements was made to reflect any "split wheeling" component. Rather, the response affirms that Division 27 of the Water Code authorized DWR to meet retail load. Since the split-wheeling component of the WAPA contract is a retail load component, DWR's procurement to meet retail load logically included split wheeling load.

As pointed out by PG&E, moreover, customers that received service pursuant to split wheeling were separately billed by PG&E for the portion of their power served under PG&E bundled retail tariff. Thus, payments for load under the WAPA contract would be separate from split wheeling load that was served by bundled utility tariff. By contrast, provisions of the WAPA contract dealing with PG&E's obligations to firm the CVP's load is *not* relevant, however, to treatment of split wheeling retail load. Thus, our consideration of the Navigant data response provides no basis to change our conclusion that split wheeling was included in the load for which DWR procured power.

Moreover, there is no dispute that the split-wheeling load on which PG&E proposes to impose a CRS constitutes bundled service on and after February 1, 2001. Likewise, the CVP group does not dispute that cost responsibility in fact applies to the bundled portion of the split wheeling load in excess of the CRD, but merely argues over the scope of elements included within that responsibility. Specifically, CVP Group concedes that split-wheeling

customers should bear a DWR Bond Charge for bundled service deliveries in excess of the CRD, but merely objects to extending this responsibility to include the DWR power charge. Yet, DWR costs for which reimbursement is required are not limited to the Bond Charge but also include the Power Charge. As required by AB 117, customers that took bundled service from the utility on and after February 1, 2001 must bear their "fair share" of such DWR costs to prevent cost shifting. AB 117 expressly states that the "fair share" includes "electricity purchase contract obligations incurred…" Such contractual obligations are incorporated into the ongoing DWR Power Charges that are imposed on direct access and departing load customers to avoid shifting stranded costs to bundled customers.

Correspondingly, consistent with AB 117 requirements, we conclude that "split-wheeling" customers should bear both the DWR Bond Charge and Power Charge for the applicable bundled service volumes in excess of the CRD.

CVP Group argues that PG&E's proposed method to determine CRS for "split-wheeling" customers and new allottees is not completely developed. For example, PG&E has not specified how it proposes to calculate CRS where the part of the customer's load that exceeds its CRD has significantly varied over the years, or within a given year. CVP Group argues that in some cases, the load may exceed CRD so infrequently that application of a CRS would be administratively burdensome. The CVP Group believes that factual development would show that such circumstances occur for "split-wheeling" customers, and thus proposes that the PG&E methodology be examined more closely.

We agree that some additional explanation of the methodology to determine specific volumes of departing load of split wheeling customers subject

to the CRS is in order. While the hypothetical example offered by PG&E illustrates the principles under which the CRS would be applied, it is not clear as a practical matter precisely what portion of each customer's load would be treated as being above the CRD and thus subject to a per-kWh CRS as "departing load." Yet, we view this as a technical implementation matter rather than a generic issue that rises to the level requiring additional evidentiary hearings.

Accordingly, in the interests of providing more certainty to preference power customers as to their CRS obligation for departing load, we shall direct representatives of PG&E and CVP Group members to meet and confer to define outstanding questions that CVP Group Members have concerning the manner in which volumes subject to the CRS would be identified and billed. UC/CSU shall also be included in the meet-and-confer process. To the extent the parties cannot reach timely agreement as to the manner in which the quantification of departing load volumes will be identified and billed in accordance with the principles outlined in this order, either party may file a subsequent motion for clarification of the methodology for identifying and billing CRS to the applicable portion of split wheeling load.

Once disposition is reached concerning the manner in which the volumes of split wheeling load subject to CRS, then PG&E shall promptly file and advice letter with the Commission with the necessary tariff amendments specifying the manner in which the applicable volumes of split wheeling load subject to CRS will be identified and billed.

Comments on Draft Decision

The draft decision of Administrative Law Judge (ALJ) Thomas R. Pulsifer in this matter was mailed to the parties in accordance with § 311(g)(1) of the Pub.

Util. Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on August 25, 2003, and reply comments were filed on September 2, 2003.

Assignment of Proceeding

Carl W. Wood and Geoffrey F. Brown are the Assigned Commissioners and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. DWR began buying electricity on behalf of the retail end use customers in the service territories of the California utilities: for PG&E and SCE on January 17, 2001, and SDG&E on February 7, 2001.

2. AB 1X, together with AB 117, provides for DWR to collect revenues by applying charges to the electricity that it purchased on behalf of all retail end customers that took bundled utility service on or after February 1, 2001 in the service territories of the three major utilities.

3. Consistent with AB 1X and AB 117, retail customers that took bundled service on or after February 1, 2001 are responsible for paying a fair share of the DWR revenue requirements.

4. To the extent that some of the CVP Group preference power customers have received all of their power needs from WAPA, and have never taken bundled service from PG&E, such entities do not meet the definition of departing load under PG&E's tariffs, and consequently have no load that could "depart."

5. No cost shifting between customer groups would result from excluding preference power customers that never took bundled service from PG&E with respect to CRS obligations.

6. Certain members of the CVP preference power customers have received only a portion of their power through WAPA, with the remaining power needs

met through bundled PG&E utility service during periods on or after February 1, 2001, on a split-wheeling basis pursuant to contract.

7. To the extent preference power customers that took power under split wheeling arrangements on or after February 1, 2001, subsequently terminate bundled service under those split wheeling arrangements after December 31, 2004, such termination constitutes "departing" load under the provisions of PG&E's tariff.

8. Split wheeling is a component of retail load, therefore, and not part of wholesale obligations as addressed in the data response from Navigant, received into the record as a late-filed item. The Navigant data response does not indicate any reduction in retail load requirements was made to reflect any "split wheeling" component.

9. The data response from Navigant, received into the record as a late-filed item, indicates that DWR did not procure power to serve the wholesale power needs of WAPA Preference Power Customers, but that it did in fact bear responsibility to meet the power supply needs of PG&E's retail end users.

10. In D.96-11-041, the Commission has previously determined that customers receiving increased allocations of federal preference power under Contract 2948 would not be classified as departing load under PG&E's tariff to the extent such increased power was allocated in a manner contemplated under that existing contract.

11. In D.97-06-070, the Commission further clarified that if such existing contract arrangements were altered in a way that reduced service from PG&E and substituted service from another, the exclusion from departing load may not apply.

12. The record does not support a finding that DWR reduced its load forecasts to reflect the termination of the split wheeling requirements for bundled load in excess of CRD levels after December 31, 2004.

Conclusions of Law

1. Consistent with the provisions of AB 1X and AB 117, departing load customers that took bundled service from PG&E on or after February 1, 2001 are responsible for paying their "fair share" of DWR costs.

2. The provisions for imposing CRS-related costs on departing load customers as adopted in D. 03-04-030 and D. 03-07-030 form a basis for applying corresponding CRS-related costs to the departing load component of preference power customers' split-wheeling load.

3. Preference Power customers bear cost responsibility for the CRS, including the DWR bond and power charges, to the extent they meet the definition of departing load under PG&E's tariff and pursuant to the previous Commission decisions adopted in this rulemaking.

4. Preference power customers that have taken no bundled utility service from PG&E on or after February 1, 2001, but have met their full contract needs through WAPA deliveries, bear no responsibility for paying a CRS.

5. In order to prevent cost shifting and to impose cost responsibility in accordance with AB 1X and AB 117, split-wheeling preference power customers must bear cost responsibility for the portion of their load that is met by bundled utility service and that subsequently is terminated after December 31, 2004.

6. Since the CRS is imposed pursuant to IOU tariffs and is collected based only upon bundled utility power deliveries pursuant to IOU tariffs, there is no conflict with FERC rules regarding the pricing of WAPA power.

7. No evidentiary hearings are necessary to resolve this motion, but a meet-and-confer session among interested parties, including UC/CSU, is warranted to resolve outstanding technical implementation issues relating to the quantification of departing load in excess of CRD levels under the provisions of Contract 2948A.

O R D E R

IT IS ORDERED that:

1. The motion of CVP Group regarding cost responsibility of Preference Power Customers is granted in part and denied in part, as ordered below.

2. No CRS shall apply to those preference power customers that have met their full power requirements through deliveries from WAPA, and have not taken bundled service from PG&E since February 1, 2001 to meet a portion of their load.

3. Split wheeling preference power customers shall bear no responsibility for any component of the CRS for electric loads that fall within the customer's contract rate of delivery (CRD) in the manner contemplated under the existing provisions of Contract 2948A.

4. A CRS shall be imposed on split wheeling preference power customers to the extent they received a portion of their power through PG&E bundled service to the extent such power exceeds the customer's CRD in the manner contemplated under the existing provisions of Contract 2948A.

5. PG&E, CVP customers, and UC/CSU shall meet and confer within 20 business days of the effective date of this decision to identify and discuss resolution of any outstanding questions concerning the manner in which

relevant preference power volumes in excess of the CRD and subject to the CRS would be identified and billed by PG&E.

6. To the extent the parties cannot reach timely agreement as to the manner in which the quantification of departing load volumes will be identified and billed in accordance with the principles outlined in this order, either party may file a subsequent motion for clarification of the methodology identifying and billing CRS to the split wheeling load.

7. PG&E is directed to promptly file an advice letter with the appropriate amendments to its tariff to reflect the identification and billing of CRS for the applicable split wheeling volumes upon resolution of this matter in accordance with process outlined in this decision.

8. The motion of CVP Group, dated August 28, 2003, for receipt into the record of late-filed materials is hereby granted.

9. The motion to intervene of the NCPA is hereby granted.

This order is effective today.

Dated _____, at San Francisco, California.