

1 SAN FRANCISCO, CALIFORNIA, MAY 31, 2005 - 12:03 P.M.

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

5 I understand PG&E is recalling Mr. Yee and
6 also --

7 MR. BUCHSBAUM: -- Robert Craig, who is available
8 to answer question on the MDMA, meter data posting fee,
9 which got raised at the last day of hearings last week
10 on Thursday.

11 ALJ MALCOLM: Okay. And then let's go off the
12 record.

13 (Off the record)

14 ALJ MALCOLM: Back on the record.

15 Yes, Mr. Buchsbaum, you may recall Mr. Yee and
16 Mr. Craig.

17 CALVIN YEE and ROBERT CRAIG

18 resumed the stand and testified further as follows:

19 ALJ MALCOLM: Good afternoon. You are both under
20 oath still.

21 Mr. Como.

22 MR. COMO: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. COMO:

25 Q Good afternoon, gentlemen.

26 WITNESS YEE: A Good afternoon.

27 Q I'm Joe Como, representing the City and County
28 of San Francisco.

1 I want to call your attention to cross-exam
2 Exhibit 5-A. It's been marked 5-A.

3 Do you have that before you? It's the PG&E
4 workpaper supporting Consolidated MDMA Meter Data
5 Posting Fee.

6 WITNESS CRAIG: A Right.

7 Q The workpaper shows .092 minutes per month per
8 meter of CSR labor required for usage validation and
9 export; do you see that?

10 A Correct.

11 Q Could you identify how much time each of the
12 two tasks contributed to that amount of time, the usage
13 validation and the usage export?

14 A The time on that was on the basis of a
15 15 minute average correction that needed to be made if
16 an exception occurred. So it -- I don't have a breakout
17 for the .92 minutes between those two tasks.

18 Q Okay. So that was not broken out specifically
19 between the two tasks. It was just lumps?

20 A Correct.

21 Q What is the exception rate that you are basing
22 that on?

23 A I believe the exception rate was .006
24 transactions based on assumed population of 500,000
25 meters.

26 Q Do you -- is usage from bundled service
27 accounts validated?

28 A In what way?

1 There are validations take place; however,
2 it's not validated according to the direct access rules.

3 Q So this is based on the direct access rules?

4 A Correct.

5 Q Okay. So usage for a CCA customer needs to be
6 validated so you can bill them properly for the PG&E
7 element of the tariff as well?

8 A It has to be validated according to the DA
9 rules for settlement purposes specifically.

10 Q And what is the crossover in your mind to
11 the -- why it has to be the same for community choice
12 aggregation customers?

13 A I believe the aggregators expected to settle
14 their energy purchases with the ISO.

15 Q Did you investigate any other way of
16 performing those tasks that would satisfy the same
17 criteria, yet not just applying the direct access rules?

18 A No. I believe the premise was that the direct
19 access rules would be applied to CCA.

20 Q On that same table under Time for Meter Data
21 Posting, it shows .96 minutes per meter per month
22 program or labor; do you see that?

23 A Correct.

24 Q And that's for usage export, storage, and
25 disaster recovery; is that correct?

26 A Yes.

27 Q And same question for those. Can you identify
28 how much time goes into each one of those three

1 elements?

2 A I don't have an incremental breakout between
3 those three because it isn't always possible to tell
4 where an exception might occur.

5 That was based on, again, 15 minutes of an
6 analyst's time to correct an exception on average. Some
7 take more; some take less.

8 Q How was that 15 minutes developed, or where
9 did that come from?

10 A Experience. We have -- you know, VEE kicks
11 out a number of these exceptions in the normal course of
12 events. We have been doing this now for eight or nine
13 years.

14 Q And that's experience with direct access --

15 A Correct.

16 Q -- customers?

17 Did you see any savings based on the
18 differences between CCA customers being aggregated in a
19 geographic area versus direct access customers not being
20 aggregated?

21 A No, I wouldn't because the application of the
22 VEE is at the incremental account level or the meter
23 level.

24 Q I want to turn your attention to the other
25 exhibit that I had marked, Exhibit 6-A; do you that
26 before you?

27 A Yes.

28 Q That's the -- a portion of the document

1 entitled "Standards For Validating, Editing, And
2 Estimating Monthly And Interval Data."

3 A I do have that, yes.

4 Q Could you turn to the table that's on page 2.
5 This document, just to confirm, this was a
6 portion of the data response given to the City and
7 County of San Francisco by PG&E; is that correct?

8 A I believe that's correct, yes.

9 Q And what is the purpose of this table in this
10 document?

11 A This table illustrates the required checks
12 that are a part of the direct access VEE rules specific
13 to interval meters -- interval-metered accounts.

14 Q And they are designed to identify things that
15 can go wrong at a meter or a recorder that cause the
16 data unlikely not to reflect actual usage; is that
17 correct?

18 A Correct.

19 Q And if something goes wrong with the meter or
20 a recorder, would the time needed to address that error
21 be dependent upon whether the customer was a bundled or
22 a CCA customer?

23 A If it was a meter error, no.

24 Q In terms of bundled service customers, do any
25 of these tasks need to be performed on this table for a
26 bundled service customer's meter?

27 A We do perform a couple of them such as time
28 synchronization. We want to make sure that the meter

1 has the correct time.

2 Q Could you go through the list and tell me
3 which ones you do for bundled service customer meters?

4 A Time check. Meter identification check.
5 Pulse overflow. Test mode and sum check.

6 Q So the time check meter -- excuse me -- time
7 check of meter and spike check --

8 A Not spike check.

9 Q I'm sorry.

10 A Spike check would not be performed for bundled
11 service.

12 Q Those are the exceptions --

13 A Oh, I'm sorry.

14 Q Those are the ones that are not performed for
15 a bundled service customer.

16 If those tasks had to be performed for a
17 bundled service customer meter that obviously is also a
18 community service aggregation -- let me strike that.

19 Let me rephrase that.

20 If the meter serves both community choice
21 aggregator and is used for PG&E purposes, isn't there a
22 cost savings by using the same data at the same point
23 and not having to charge the CCA for that service?

24 A No, because there are additional checks that
25 are part of the DA VEE rules need to be performed.

26 Q Because they are performed for direct access
27 customers?

28 A Yes.

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

2 Thank you very much.

3 ALJ MALCOLM: Thank you.

4 Is there any redirect, Mr. Buchsbaum?

5 MR. BUCHSBAUM: Yes, there is, your Honor.

6 REDIRECT EXAMINATION

7 BY MR. BUCHSBAUM:

8 Q In looking at this Exhibit 6-A, and I was
9 looking at the spike check, isn't that the primary cost
10 or one of the primary costs that you have identified --

11 MR. COMO: I'm sorry, I can't hear you.

12 MR. BUCHSBAUM: I'm asking concerning Exhibit 6-A
13 and the spike check.

14 Q I'm just asking, for clarification, what
15 portion of the costs that are indicated on the various
16 time elements you think is attributable to that
17 particular element?

18 WITNESS CRAIG: A The spike check is one of the
19 more frequent VEE failures that causes one to have to
20 look at the results and take action.

21 Q And the items that you included within the
22 time costs that are indicated on Exhibit 5-A, those are
23 the incremental costs, as I understand it, associated
24 with the VEE system; is that correct?

25 A That is correct.

26 Q And these are costs that would not have been
27 incurred but for the VEE system --

28 A Correct.

1 Q -- as a general matter?

2 A Correct.

3 Q Now I have one more question for Mr. Yee
4 from -- just a clarification on some cross-examination
5 that occurred last Thursday.

6 Mr. Yee was asked whether or not the method
7 used for deriving the bill-ready-billing charge was
8 comparable to the method used for deriving the rate-
9 ready-billing charge.]

10 And I just wanted to make sure, because
11 initially Mr. Yee said not directly comparable. I just
12 wanted some elaboration on that answer for the record.

13 WITNESS YEE: A When I answered the other day
14 about the methodology not being directly comparable
15 between rate ready and bill ready, it was more along
16 the lines of the nature of the different processes
17 involved: Bill ready, having to do with primarily
18 dealing with data being received from a third party,
19 whereas rate ready involves activities surrounding
20 billing the data with the rates that are already
21 provided by a third party. However, there are elements
22 that are directly comparable in the development of those
23 fees, and each one of the elements in each of those fees
24 has to do with account assistance.

25 And I referenced, the other day in my
26 testimony, that a certain amount of that is considered
27 routine account assistance, primarily in getting a bill
28 out the door. And there are just naturally occurring

1 sort of exceptions that occur in both bill-ready and
2 rate-ready billing that necessitates a human looking at
3 it for one reason or another. And those are not to
4 be -- shouldn't be construed as any sort of a
5 discretionary type of work that a CCA or ESP might seek
6 to have the utility research.

7 Those are -- as I mentioned the other day,
8 those are critically important in getting a timely and
9 accurate bill out to the customer for the benefit of our
10 mutual customers. So -- and the estimate for that
11 amount of time was based upon -- primarily on our
12 experience with direct access accounts in terms of
13 the amount of exceptions that occurred, and also in
14 development of the bill-ready fee our anticipation of
15 that same level of exception processing since we don't
16 perform any bill-ready processing today.

17 MR. BUCHSBAUM: I have no further questions, your
18 Honor.

19 ALJ MALCOLM: Any follow-up, Mr. Como?

20 MR. COMO: Yes, please, your Honor. One question
21 for each of the witnesses based on Mr. Buchsbaum's
22 redirect.

23 REDIRECT-EXAMINATION

24 BY MR. COMO:

25 Q Mr. Craig, you said that the spike check was
26 a -- was it a high percentage or a significant
27 percentage?

28 A It's one of the more frequent --

1 Q Can you give me a breakdown of what the
2 percentages are between the different tasks?

3 A If I can restate your question as to how many
4 times we would see a spike check occur.

5 Q I'm actually looking at how much it influences
6 the cost. So when you say a certain percentage,
7 I assume that that translates into more time is spent
8 and therefore more cost is incurred.

9 A That's correct. I would say probably -- I
10 don't have a hard number on this -- maybe 50-60 percent
11 of VEE failures we see are attributable to spike check
12 failures specifically.

13 Q But when you -- how much time is spent
14 actually discovering the error?

15 It sounds like once you discover the error,
16 you would discover that it's a spike check error.

17 A The system identifies the error automatically
18 and produces an exception report. That exception report
19 is then reviewed by an analyst.

20 Q I see.

21 A Who will make a determination as to whether to
22 approve it if the customer has a history of spiky usage
23 or will decide to give it further investigation or refer
24 it to a major account rep, perhaps contact with the
25 customer, something of that nature.

26 The sort of basis of VEE is that customers are
27 going to use power in this billing cycle exactly as they
28 have always done historically. So if they do something

1 different which is very frequently with large
2 commercial-industrial customers, a spike is an easy
3 possibility. They run a lot of equipment
4 simultaneously, and in that 15-minute period they exceed
5 what they have done in any other 15-minute period.

6 It doesn't mean it's wrong. It just means a
7 human needs to look at it.

8 Q When you found out that the spike check
9 accounts for 50 or more percentage of the error or
10 the exception report or the error in the exception
11 report, does that translate into 50 percent or more of
12 the cost associated with the numbers on Exhibit 5A?

13 A Yeah. For VEE processing, I would say that's
14 true.

15 MR. COMO: Thank you.

16 Q Mr. Yee, with regard to rate ready and bill
17 ready, I understood from your testimony or -- excuse me,
18 the testimony of the other PG&E witness -- I can't
19 recall his name -- that the time was estimated through
20 manual entry of the information.

21 Did you explore any automation of the system
22 that might reduce the cost or any economy of scale that
23 might sort of lower the cost for a CCA provider?

24 WITNESS YEE: A Not at this time. The estimates
25 for the costs were based upon our current process which
26 we would undergo should an ESP ask us to do bill ready
27 today.

28 Depending on the volume that may occur, there

1 may be opportunity to automate if the business needs
2 dictate.

3 THE CAPTIONER: Did you augment?

4 WITNESS YEE: Automate.

5 THE CAPTIONER: Automate.

6 MR. COMO: Thanks, Mr. Yee.

7 No further questions, your Honor.

8 ALJ MALCOLM: Thank you.

9 MR. BUCHSBAUM: I have one more redirect. Sorry,
10 your Honor.

11 ALJ MALCOLM: Okay.

12 REDIRECT EXAMINATION

13 BY MR. BUCHSBAUM:

14 Q When Mr. Como was asking you questions,
15 Mr. Craig, the implication was that because the spike
16 check was unique to direct access and constituted
17 50 percent, that the other 50 percent of time that is
18 spent is somehow not incremental. Can you explain why
19 that's not the case?

20 WITNESS CRAIG: A As we read meters for bundled
21 customers that are brought into the data retrieval
22 system, a series of checks are done. However for direct
23 access customers, that data is transferred to a separate
24 system, VEE system. Some of those same checks are done
25 again along with the DA specific check, such as spike
26 check. So the process is repeated.

27 Q So it's a second process --

28 A Correct.

1 Q -- it's an additional process --

2 A Yes, that that has to be --

3 Q -- that causes incremental cost in that sense?

4 A Correct.

5 MR. COMO: I'll stop.

6 (Laughter).

7 ALJ MALCOLM: Bravo.

8 MR. BUCHSBAUM: Keep going.

9 ALJ MALCOLM: Thank you, Mr. Yee and Mr. Craig.
10 You're excused.

11 Mr. Florio, would you like to take the stand?

12 MR. FLORIO: Do you need copies, your Honor?

13 ALJ MALCOLM: No, thank you.

14 MR. FLORIO: Should we mark the exhibits first?

15 ALJ MALCOLM: We can do that.

16 MR. FLORIO: First we have the Prepared Direct
17 Testimony of Michel Peter Florio dated April 28th.

18 ALJ MALCOLM: Mark that as Exhibit 10A.

19 (Exhibit No. 10A was marked for
20 identification.)

21 MR. FLORIO: Then there's the Reply Testimony of
22 Michel Peter Florio dated May 9th.

23 ALJ MALCOLM: Mark that as Exhibit 11A.

24 (Exhibit No. 11A was marked for
25 identification.)

26 MR. FLORIO: Finally, the rebuttal testimony dated
27 May 16th.

28 ALJ MALCOLM: I'll mark that as Exhibit 12A.

1 (Exhibit No. 12A was marked for
2 identification.)

3 MR. FLORIO: I testified the first time

4 ALJ MALCOLM: Still under oath.

5 MICHEL PETER FLORIO, recalled as a
6 witness by The Utility Reform Network
7 (TURN), having been previously sworn,
8 testified as follows:

9 ALJ MALCOLM: Mr. Jazayeri had to be sworn in
10 twice. He wanted to know why.

11 (Laughter)

12 MR. HUARD: Can he make suggestions?

13 MR. FLORIO: Should I proceed, your Honor?

14 ALJ MALCOLM: Go ahead, Mr. Florio.

15 DIRECT EXAMINATION

16 BY SELF:

17 Q Yes. Exhibits 10A, 11A and 12A were prepared
18 by me or under my direction. The facts stated therein
19 are true and correct to the best of my knowledge. And
20 the opinions stated represent my best informed opinion
21 and judgment. And I adopt these three documents as my
22 prepared testimony today.

23 ALJ MALCOLM: Thank you, Mr. Florio.

24 I have cross-examination by Mr. Buchsbaum,
25 Mr. Huard --

26 MR. HUARD: Your Honor, I'm going to waive my
27 5 minutes.

28 ALJ MALCOLM: Mr. Montoya, Mr. Szymanski, and
Mr. Como.

1 MR. COMO: I'm going to waive my 5 minutes also.

2 ALJ MALCOLM: Mr. Fenn.

3 MR. FENN: I'll waive mine as well, your Honor.

4 ALJ MALCOLM: Okay. Anybody else?

5 (No response)

6 ALJ MALCOLM: Do you want to start, Mr. Buchsbaum?

7 MR. BUCHSBAUM: Yes, your Honor. Thank you.

8 I'm going to hand out a series of
9 cross-examination exhibits that I would like to labeled.

10 The first would be a portion of the relevant
11 of Ohio statutes relating to community choice
12 aggregation. That would be cross-examination exhibit --
13 well, Exhibit 13A.

14 ALJ MALCOLM: Yes.

15 (Exhibit No. 13A was marked for
16 identification.)

17 MR. BUCHSBAUM: A copy of the full and complete
18 rules in Ohio on customer choice, and including within
19 that the community choice aggregation piece of
20 the rules. That would be Exhibit 14A.

21 ALJ MALCOLM: All right.

22 (Exhibit No. 14A was marked for
23 identification.)

24 MR. BUCHSBAUM: A sample of excerpts from --

25 MR. HUARD: Your Honor, can I ask the purpose -- I
26 didn't --

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

28 (Off the record)

1 ALJ MALCOLM: Back on the record.

2 MR. HUARD: Thank you, your Honor.

3 I don't -- could you point to Mr. Florio's
4 testimony where he discusses Ohio?

5 MR. BUCHSBAUM: He does not. Other witnesses do.
6 I'm not going to necessarily use the statutes per se
7 as -- I'm going to be asking him his opinion about
8 whether certain provisions of the statute relating to
9 consumer protection matters makes sense or not for
10 California.

11 MR. HUARD: Your Honor that's -- first all, it's
12 not California. Secondly, it's beyond the scope of
13 Mr. Florio's testimony. For those witnesses that have
14 described Ohio, and I believe there is one, I can see
15 appropriate cross-examination. But asking Mr. Florio to
16 opine on a program that he may have no knowledge of on a
17 statute that he probably has likely not read and then to
18 correlate that to another statute in the state of
19 California is a bit beyond the extent of his
20 cross-examination.

21 ALJ MALCOLM: And Mr. Florio knows how to answer
22 those questions. He knows how to protect himself. He's
23 very experienced.

24 MR. HUARD: I'm very well aware of that, your
25 Honor. But from the standpoint --

26 MR. BUCHSBAUM: Your Honor --

27 MR. HUARD: -- if these exhibits are then admitted
28 into evidence, they become exhibits, they can be

1 referred to thereafter even if Mr. Florio takes care of
2 himself.

3 MR. BUCHSBAUM: Your Honor.

4 ALJ MALCOLM: There's documents in the public
5 record. If we're using them for the purpose of getting
6 Mr. Florio's opinion, I don't see any problem with that.

7 MR. HUARD: Okay.

8 MR. BUCHSBAUM: In fact, Rule 73 provides for
9 the Commission taking judicial notice of regulations and
10 statutes outside the statute. So I think this is
11 perfectly appropriate in the context of a rulemaking
12 where we're trying to establish generic rules for
13 the state as a whole.

14 ALJ MALCOLM: Well, at least let's see what
15 questions he's going to ask of the witness.

16 15A is excerpts.

17 (Exhibit No. 15A was marked for
18 identification.)

19 MR. BUCHSBAUM: Is excerpts from CPUC Decision
20 04-12-048 and from CPUC's Decision 04-01-050.

21 ALJ MALCOLM: I'm sorry. What's the second one?

22 MR. BUCHSBAUM: Decision 04-01-050.

23 And then finally, your Honor, Exhibit 16A is a
24 numerical example that I expect to use at some time
25 during the cross-examination.

26 (Exhibit No. 16A was marked for
27 identification.)

28 MR. HUARD: Your Honor, if I could. This is not

1 an objection, but a request.

2 Mr. Buchsbaum, I believe the first two,
3 the Ohio stuff you e-mailed us over the weekend, but as
4 to the PUC order in the numerical exhibit, I did not
5 receive a copy. Do you have extras here?

6 MR. BUCHSBAUM: Yes, we do.

7 MR. HUARD: Could we have copies before you use
8 them?

9 MR. BUCHSBAUM: Yes. We're prepared to hand out
10 all the exhibits.

11 MR. HUARD: Thank you, your Honor.

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

13 ALJ MALCOLM: Off the record.

14 (Off the record)]

15 ALJ MALCOLM: Back on the record.

16 Mr. Buchsbaum.

17 CROSS-EXAMINATION

18 BY MR. BUCHSBAUM:

19 Q Mr. Florio, on page 1 of your opening
20 testimony you state that TURN was an active supporter of
21 AB 117 and that its constituency is residential and
22 small business customers.

23 Is that a fair summary of your constituency
24 and who you represent?

25 MR. HUARD: Mr. Buchsbaum, you cannot be heard at
26 all.

27 THE WITNESS: That's a fair summary, yes.

28 MR. BUCHSBAUM: The question that I asked, which

1 was deemed to be a fair summary, was that TURN
2 constituency is residential and small business customers
3 and that's who he is representing in this proceeding.

4 Q It is fair to say that the utilities,
5 Mr. Florio, have taken some degree of heat, have they
6 not, relating to their supposed interest in initiating
7 various consumer protection rules applicable in this
8 case with regard to CCA; is that correct?

9 A There are disagreements about what the rule
10 should be, yes.

11 Q And I noticed in reviewing your testimony you
12 had commented on a variety of different proposals, but
13 on consumer protection issues and issues such as that,
14 you mentioned generically that perhaps these rules would
15 belong in rules rather than in tariffs; is that correct?

16 A Yes.

17 Q Have you given thought to any specifics about
18 consumer protection, or could I take this opportunity to
19 go through some of our concerns and see whether you
20 share them?

21 A Well, I have given thought to it, although I
22 have been struck by how vague some of the discussion
23 about consumer protection has been. So I would welcome
24 some more specific questions.

25 Q I would welcome it, too. Thank you.

26 Can you define -- have you heard of the term
27 "slamming"?

28 A Yes, I have.

1 Q And could you describe what slamming means?

2 A Well, I think originally it arose in the
3 telecommunications industry, the practice of certain
4 competitive providers of switching customers to their,
5 originally it was, long distance service without the
6 customer's consent or knowledge.

7 Q Do you think --

8 A And actually it can go the other way. You can
9 be slammed by the incumbent as well.

10 Q That's correct.

11 Do you think, given the automatic feature of
12 AB 117, that certain consumers at least will view
13 themselves as being slammed, if you will, when they're
14 switched?

15 A Well, I think that's the reason why the
16 Legislature required significant customer notice
17 component to the program is to prevent that perception.
18 But someone may ignore the notices and still feel
19 slammed.

20 But I think if you get four notices and ignore
21 them all at that point, your complaint doesn't carry the
22 same weight as if it happens without your notice,
23 without you being notified.

24 Q On the issue of notices, how do you feel about
25 simply including an insert, for example, in a garbage
26 bill or even, for that matter, an insert in the utility
27 bill, water, sewage, the like? Do you think customers
28 reasonably are going to be anticipating that such a

1 notice would be an election that they will have to make?

2 A Well, I can think of a number of things of
3 that nature that come in utility bills. And one that I
4 am particularly familiar with is the form for customers
5 to designate someone else to receive notification if
6 they don't pay their bill. I forget exactly what that's
7 called, but it is sometimes used for seniors or other
8 folks who may have difficulty dealing with their -- that
9 comes in your bill. And I think notification for CARE
10 and similar low-income programs, something comes in the
11 bill.

12 So I actually think that's where people expect
13 to see things like that. I think there's a greater risk
14 if you get a separate envelope that clearly isn't a bill
15 that a customer might think this is just junk mail and
16 toss it out.

17 So I think people are accustomed to seeing
18 those kinds of things in their bills as opposed to
19 somewhere else.

20 Q Do you think the average customer would really
21 anticipate receiving a bill from PG&E that he or she
22 might have to make an election?

23 A I think it depends on the degree of publicity
24 that has surrounded that community's adoption of
25 community choice. But I expect in most cities that will
26 be something that will get a fair amount of attention.

27 And particularly the people that feel strongly
28 enough one way or the other to really want to make an

1 election will probably be informed.

2 There may be a lot of people who just don't
3 care. But I think the ones that care will be informed.

4 Q I realize the Ohio statute isn't the
5 California statute, and obviously it has distinctions.
6 But can you turn to page 11 of Exhibit 13-A. I'm
7 looking specifically at 4928.20 B. And just getting at
8 your point about notice, isn't it correct that in Ohio
9 under that section at least it appears that in order to
10 have this automatic feature, there actually has to be a
11 special election?

12 A Yes, I did notice that in the Ohio statute. I
13 will just say the California Legislature in its wisdom
14 chose not to go in that direction. So that's a classic
15 decision for the Legislature to make.

16 Q I agree. But when you were talking about
17 publicity associated with an election, that certainly is
18 one way to assure publicity, would you agree with that?

19 A It is, although in a city as politically
20 active as San Francisco I don't think there's too much
21 risk of this not getting much attention.

22 Q No. But in other cities, as the program
23 expands, certainly, that could become an issue?

24 A It's possible. But I think in that case, that
25 kind of concern would have to be directed to the
26 Legislature.

27 Q But on the issue of publicity that you just
28 raised, is that something that the Commission should try

1 to assure, or is that something that should be left --
2 and again trying to represent the consumers here -- is
3 that something that you feel should be really left to
4 the individual cities?

5 A Well, I think the Legislature has ruled on
6 what kind of publicity is necessary. So I don't
7 think -- I think the Commission's role is to carry out
8 the statute.

9 Q Let's say there's a debate about whether the
10 Commission has decided what kind of publicity is
11 required. I'm asking you as a person that is concerned
12 with consumer interests as a policy matter do you think
13 the Commission, if it views itself as being authorized,
14 should pass some rules on what kind of publicity is
15 required or whether they shouldn't?

16 A Well, if the Commission were writing on a
17 clean slate, I think definitely it should.

18 In this instance the Legislature has specified
19 what kind of notice is required. So I think the
20 Commission's role is to carry that out.

21 If the Commission were contemplating a program
22 to require all residential customers to switch over to
23 realtime metering, I think in that instance where there
24 wasn't Legislature authorization, significant customer
25 notice would be appropriate.

26 But here where the Legislature has already
27 spelled out what the notice requirements are, I think
28 that issue is essentially taken care of.

1 Q Again, I am not going to argue the law here.
2 I'm just trying to get your policy views. Let me ask
3 you some questions delving into the issue of purported
4 slamming.

5 If a customer feels for whatever reason that
6 the notices that he or she received were inadequate,
7 where and to whom should that customer complain?

8 A Well, assuming that they received the notices
9 that they were required to receive, I think that
10 complaint would go to the -- to their legislator.

11 Q So it is your opinion that as long as the CCA
12 follows whatever notice provision is determined to be
13 the law, that there basically would be no right to
14 complain, is that your view?

15 A You always have a right to complain. I think
16 the question is what's the remedy. And certainly such a
17 customer could switch back to utility service and they
18 could complain to their legislator that the law did not
19 provide sufficient notice.

20 Q Who would verify that the city in fact
21 followed the law and/or that in fact the notices that
22 were required were in fact received by the customer in a
23 case of a customer complaining?

24 A I think it is probably a process similar to
25 when the utilities send out notice of rate increases or
26 something like that, that someone files a declaration
27 saying that they have carried out the notice
28 requirements in accordance with the rules.

1 And if someone -- I don't think there's any
2 particular remedy in the case of a rate increase when
3 the customer believes they didn't get that notice.

4 Q In the case of a rate increase, of course, the
5 utility is regulated by the Commission, isn't that
6 correct?

7 A Yes.

8 Q And it is certainly the position of the CCA
9 that they are not regulated by anyone except their own
10 elected officials; is that a fair characterization?

11 A They are regulated by their own elected
12 officials. And I don't think that means they are not
13 regulated by anyone.

14 Q But you're saying basically the consumers
15 would have no recourse to the Commission in such a case,
16 is that your position?

17 A Let me make sure I understand the hypothetical
18 you're posing.

19 Customer A comes forward and says I didn't
20 receive the notice of this program.

21 Q Or I didn't -- you know, if we are going to
22 talk about the statute, the statute says that the notice
23 must fully inform the customer. Who makes the
24 determination -- let's refer to AB 117's language, since
25 we are getting into a little bit of a legal discussion
26 here.]

27 And I'm looking at -- and I hate these
28 subsections, your Honor. They drive me crazy. It's

1 366.2 --

2 A Excuse me, I think I left that in my
3 briefcase.

4 Q -- it looks like (c)13.

5 A Yes.

6 Q And if you read the first sentence, it says
7 the community choice aggregator shall fully inform
8 participating customers.

9 What if the customer has a complaint that they
10 were not fully informed? Who do they appeal to?

11 A I'm reviewing the statute.

12 I think it would be the same process that
13 would be followed in any instance where, you know, a
14 citizen feels that their local government has not
15 complied with the law. So, you know, there -- you can
16 bring a taxpayer suit. There's a whole variety of, you
17 know, legal avenues that people pursue with some vigor
18 when they feel that their city government isn't doing
19 what it's supposed to do.

20 Q But you feel it's not the province of the
21 Commission to adjudicate that?

22 A I don't see anything here that gives the
23 Commission that authority. I mean I guess the
24 Commission could, as part of its generic rules for CCA,
25 specify what the notice has to contain.

26 Q Do you think that's a good idea?

27 A Again, this is not an issue on which I filed
28 testimony, but --

1 Q I understand that, but -- yeah.

2 A -- I guess I had envisioned a notice like a
3 notice of rate increase that would be vetted with the
4 Public Advisor's Office. That was what I had in the
5 back of my mind. But as I say, I didn't focus on this
6 in my testimony.

7 Q Okay. I just would like one last question on
8 the notice before moving on.

9 You receive tax forms from time to time, don't
10 you?

11 A Unfortunately, yes.

12 Q And typically when you receive something like
13 a 10-99, it's in a special envelope, isn't it?

14 A Yes. It's usually quite recognizable.

15 Q Do you think, given the importance of this
16 election or the possible importance of this election,
17 that a special notice of that type should be mandated by
18 the Commission?

19 A I guess the concern I have about that is, as I
20 said earlier, that if you're looking for something about
21 your utility service, the bill is the place you are most
22 likely to look. And I'm not sure how -- and you used
23 the analogy to a 10-99. You know, you know when in the
24 year to look for your 10-99s, and if it doesn't look
25 quite like the other ones, you still, you know, know to
26 look for it.

27 If the customer really isn't aware of this at
28 all, I think sending it in the bill is better than a

1 special mailing that -- you know, that the customer
2 might very well just treat as junk mail.

3 Q Well, as you know, there's four notices
4 required.

5 A Yes.

6 Q Wouldn't it make sense that at least one of
7 those goes in a separate envelope?

8 A I think that if that was going to be required,
9 it should have been stated in the legislation.

10 Q And the answer is no?

11 A The answer is I think it's a question for the
12 Legislature, not for the PUC.

13 Q Let me turn now to the issue of exit fees.

14 A Yes.

15 Q Do you know of any restriction in the law on
16 the ability of a CCA to impose an exit fee on a customer
17 once they've opted in?

18 A I am not aware of any.

19 Q Do you believe that a customer should be fully
20 informed at the time he or she makes an election about
21 the exit fees that may be imposed upon them if they
22 choose to depart CCA service?

23 A Well, I certainly know that they're customers
24 of the utilities who don't like having exit fees imposed
25 upon them, but I don't think there is any parallel
26 requirement that customers receive individual notice
27 that they might be subject to an exit fee. So I don't
28 see why CCAs should be treated differently than

1 utilities or ESPs.

2 Q Again, utilities are regulated by the
3 Commission, and these entities will not be.

4 A They'll be accountable to their local
5 governing board that I would hazard a guess is likely to
6 be much more responsive to a constituent complaint than
7 the Public Utilities Commission.

8 Q Can you turn -- I would like to go now to the
9 Ohio rule to point out a distinction. And that's on
10 Rule 4901-1-21-16, and it's all the way near the bottom.
11 It's 11(d).

12 MR. COMO: Can we have the reference again? What
13 page number?

14 THE WITNESS: My third page, I think that that
15 would be. It begins a government or governmental
16 aggregator shall not alter its operation and governance
17 plan.

18 MR. BUCHSBAUM: Q Yes. Can you read that
19 sentence?

20 A A governmental aggregator shall not alter its
21 operation and governance plan in any way that materially
22 affects the customers of the aggregation without first
23 providing notice to all affected customers and providing
24 these customers the opportunity to opt out of the
25 aggregation according to the procedures established for
26 the initial opt-out disclosure notice set forth in
27 rule -- citation of the Administrative Code.

28 The notice shall set forth --

1 Q No.

2 A Stop there.

3 Q Yeah.

4 A Okay.

5 Q Just for the sake of the record, I take it
6 then you disagree or think this kind of a provision is
7 unnecessary in California?

8 A I'm not at this point offering an opinion as
9 it's necessary or unnecessary.

10 I think we have a statute that tells us what
11 the notice requirements are, and we should follow the
12 statute.

13 Q Well, you did submit some testimony concerning
14 the implementation plan.

15 A One brief aspect of it, yes.

16 Q Do you feel the CCAs should be free to amend
17 its implementation plan or to change it at any time?

18 I mean I'm trying to find out how this is
19 going to work practically. The CCA files its
20 implementation plan, has certain terms and conditions,
21 and now the CCA decides it wants to change it. What
22 does it do?

23 A Okay. Again, this isn't a subject that I
24 addressed in my prepared testimony.

25 My belief would be that an amendment to the
26 plan would have to go through the same process as the
27 initial adoption of the plan, which would be, you know,
28 a vote of the council or whatever the appropriate

1 governing body is.

2 Q Would they -- but there wouldn't be any
3 requirement to file that with the Commission in your
4 view?

5 A Probably makes sense to submit it to the
6 Commission for informational purposes.

7 Q But that's all?

8 A I don't see anything in the statute that says
9 otherwise.

10 Q The final area that I wanted to ask you
11 concerning an issue that was present in Ohio is the
12 issue of automatic elections for those customers who are
13 under contract with either a direct access provider or
14 the utility and may incur a penalty as a result of
15 failing to make an election.

16 Are you familiar with that circumstance?

17 A I understand that some customers have special
18 contracts with the utility or have contracts with their
19 ESPs. It's not something that I've focused on for
20 purposes of this testimony.

21 Q How do you think a customer who doesn't --
22 let's take a hypothetical that a customer has signed up
23 with a green-power direct access provider, doesn't read
24 the notice for whatever reason, the notice isn't
25 something that they anticipated, and now they are
26 switched, and they incur a penalty.

27 Do you think that raises a consumer protection
28 issue that the Commission should address at the outset

1 of this program?

2 A Potentially. It's just not an issue that I've
3 studied to see what the parties' positions are in this
4 case. I had limited time to focus on some key issues,
5 and that wasn't one of them.

6 Q Okay. Couple more questions about the
7 implementation plan.

8 Do you think in the Commission's review of an
9 implementation plan it should do any check about the
10 likely availability or credit quality of the CCA?

11 A I'm not sure if that's part of the
12 implementation plan.

13 I believe the tariffs that have been submitted
14 by both the utilities and the CCA parties provide for
15 some kind of credit review in that context.

16 I also think most of the local governments in
17 California are creditworthy, so I don't for see it being
18 a significant issue.

19 Q Well, that's an interesting question that you
20 raise, the creditworthiness aspect of cities.

21 Do you anticipate that the city itself will be
22 the CCA?

23 A In --

24 ALJ MALCOLM: Excuse me. By that do you mean be
25 the entity purchasing the power?

26 MR. BUCHSBAUM: That is -- that is correct or, for
27 purposes of legal formation, whether it's the city
28 itself that basically signs the contracts or some other

1 entity.

2 THE WITNESS: Well, there can be a joint powers
3 authority. But other than that, I don't believe that
4 any other entity is eligible to be a CCA.

5 MR. BUCHSBAUM: Q So it's your testimony that
6 unless the city itself is the CCA, it basically -- it
7 basically can't be a special purpose entity?

8 A I'm uncomfortable with how you phrased that
9 question because, again, it's not a question that I
10 studied in connection with preparing this testimony. It
11 was an assumption I had, which I suppose could be
12 incorrect. It is not something I've studied.

13 MR. BUCHSBAUM: Can I go through my notes for a
14 second, your Honor?

15 ALJ MALCOLM: Okay.

16 MR. BUCHSBAUM: Your Honor, I just wanted to go
17 back to the question of viability because if the CCA
18 were not the city itself, then, Mr. Florio, do you feel
19 that the Commission should review the issue of
20 viability, in other words, if it was a joint power
21 authority or some special purpose entity?

22 ALJ MALCOLM: I'm concerned about this line of
23 questioning because it seems to presume a lot of legal
24 foundation or knowledge as to what the statute intends
25 with regard to the status, the legal status, of the CCA
26 and whether it is, in fact, the city or a joint powers
27 agency or some independent --

28 MR. BUCHSBAUM: Okay. I'll withdraw the question.

1 ALJ MALCOLM: -- entity.

2 MR. BUCHSBAUM: It goes at the issue of viability
3 if a city itself is not the CCA.

4 ALJ MALCOLM: Well, then maybe you could just pose
5 it as a hypothetical if the law provides that the CCA
6 is -- fill in the blank.

7 MR. BUCHSBAUM: Okay. Well, and I certainly can
8 go to a joint power authority, which is authorized and
9 may have no assets.

10 Q Do you think that a question of viability
11 should be reviewed in the case of a separate entity that
12 has no assets?

13 THE WITNESS: A Well, I think the issue -- you
14 used the term "viability," and I'm not sure if you mean
15 creditworthiness or if you mean something beyond that.

16 And "viability" the way it's used in, for
17 example, QF matters has to do with whether the project
18 is going to make it.

19 And I don't think the Commission, while it
20 might want to give advice to a particular proponent that
21 some aspect of their plan seems problematic, I don't see
22 anything that gives the Commission the authority to pass
23 on viability in that sense of a potential CCA.

24 Q Okay. I have a few questions for you about
25 vintaging and whether you believe that vintaging should
26 be required in those cases where the CRS is likely to
27 vary by trivial de minimus amount from year to year.

28 A Well, I think the calculation has to be done

1 in order to even get to that point. If you were at, you
2 know, some fraction of a mil, you know, I think it would
3 be within the Commission's discretion at that point to
4 say, you know, the vintage exit fee for 2007 and -8 will
5 be the same.

6 I guess, you know, we have haven't really
7 addressed how many decimal points you go out to, but
8 you'd have to do the calculation in any event in order
9 to come to the conclusion that the difference was
10 de minimus, so.

11 Q So your testimony is that we are going to need
12 to do this for each year?

13 A Yeah. I don't see how you get around it.

14 Thank you for asking me a question about
15 something that's in my testimony.

16 (Laughter)

17 MR. BUCHSBAUM: Q You are the one who added that
18 you represented consumer interests, so I felt that
19 consumer protection was a legitimate area of
20 questioning.

21 The last set of questions that I have are
22 going to be on the issue of renewables.

23 A Yes.

24 Q And I had a question. You agree that the
25 purpose of the CRS is intended to maintain ratepayer
26 indifference; is that correct?

27 A Yes.

28 Q And if the market price referent at the time

1 that utilities entered into renewables was, let's say,
2 at \$0.08, and then moved down over a period of years to
3 \$0.05. That's in the hypothetical.

4 Rather than -- trying to save time, I'm just
5 trying to get Mr. Florio to agree with me rather than
6 working through the details of the hypothetical.
7 That -- let me strike that.

8 Let me go through the example.

9 The hypothetical -- this is in Exhibit 16-A,
10 do you see that example and have it in mind?

11 A Well, I'm seeing it for the first time, so
12 give me a moment.

13 Q You'll see in the example that the utility has
14 basically entered into a series of renewables in 2004 at
15 \$0.08 per kilowatt-hour --

16 A Yes.

17 Q -- putting it at roughly 10 percent
18 renewables?

19 A Okay. I mean it's unlikely to be a single
20 contract, but that's --

21 Q Yeah, but I'm trying to illustrate.

22 A Okay. So they are at 10 percent, and they've
23 paid \$0.08 for all those -- or an average of \$0.08 for
24 their renewable power, okay.

25 Q And now in the hypothetical the market price
26 referent drops to \$0.05 per kilowatt.

27 A Okay. That's a fairly dramatic shift, but for
28 purposes of discussion.

1 Q Let's just assume there is LNG or something
2 comes about, lowering the price of gas.

3 A Okay.

4 Q So now you've got a stranded cost of \$0.03 per
5 unit or \$3 for the 2004 purchases; do you agree with
6 that?

7 A Well, that's where I have, I guess, a
8 different perspective on this. You are assuming that
9 half the load departs. The utility had been at
10 10 percent RPS compliance. Now they are at 20 percent.
11 That, it seems to me, is a benefit to that utility and
12 its bundled customers, that their RPS compliance is now
13 achieved.

14 So I mean it's a stranded benefit as well as a
15 stranded cost. So it seems like the two cancel each
16 other out.

17 Q Well, let's go back to the example, because if
18 those customers had remained with the utility, that
19 Group B had remained, then the utility would have had to
20 go out and purchase more renewables, would it not, but
21 the cost would have been \$0.05?

22 A Well, the market price referent doesn't tell
23 what you renewables cost. It's a number that's
24 calculated, but it has nothing to do with the cost of
25 renewables.

26 Renewables may cost more or less than the MPR.

27 Q Yes, but the different -- any additional cost
28 is paid for out of CEC funds and is not included in the

1 CRS calculation.

2 A True, but --

3 Q So -- so isn't it correct that the only thing
4 that's going to be included is going to be the \$0.05
5 under the utility's proposal?

6 A The only thing that's included --

7 Q -- in the CRS calculation. It's the market
8 price referent.

9 A Well, you've got to be careful because there's
10 several different market prices at work here. There's
11 the MPR for RPS purposes. There's the CTC benchmark
12 price, and there's whatever market price goes into the
13 CRS calculation. And those potentially are three
14 different numbers, so --

15 Q Well, bear with me, but let's -- I'm trying to
16 get a fairly simple example across.

17 Assume the renewable cost then just drops to
18 \$0.05.

19 A So now this is the actual cost of the
20 renewables, not the --

21 Q Yeah, assume that's the case, plus the market
22 price referent is there.

23 Isn't it true that in that example if Group B
24 hadn't departed, the average cost of the renewables
25 would have gone down to \$0.065?

26 A Would have gone down to six -- I'm not sure --

27 Q It's the blend of \$0.08 and \$0.05.

28 A Oh, okay. Sorry, I was -- it just -- I

1 don't -- what you're describing does not sound like a
2 stranded cost to me. It may be a lost opportunity, but
3 I don't think that's what the CRS captures, is lost
4 opportunity. It's --

5 Q Well, the CRS a trying to keep ratepayers
6 indifferent to the departing load?

7 A Yes, yes.

8 Q And my point is, and I think it's fairly
9 straightforward, is that the average price of renewables
10 would drop to \$0.065 if Group B hadn't departed; isn't
11 that correct?

12 I mean that, to me, is math.

13 A Well, that's math, but I'm not sure that it's
14 CRS, because you are assuming that there's a market
15 price for calculating the CRS, and then there's some
16 other market price of renewables, which in my
17 experience, you know, they are all over the lot. There
18 is not really a market price.

19 Q Let's assume that the purchase -- the initial
20 purchase was \$0.08, and that's what you paid. That was
21 the market price referent, and it was exactly the same
22 as the cost of renewables. And now it drops over time
23 for some reason to \$0.05.

24 A Now that's both the MPR and the cost of
25 renewables, which are two completely different things.]

26 But for purposes of the hypothetical, we
27 assumed that they both go down in lockstep.

28 Q Right. And in that example, if Group B had

1 remained, wouldn't the average cost have gone from \$0.08
2 to 6-1/2 cents of the renewables.

3 A Under that stylized example, yes, that's
4 correct.

5 Q And if Group B leaves, the average cost of
6 the renewables to the remaining bundled customers would
7 have remained \$0.08?

8 A That's correct.

9 MR. BUCHSBAUM: Okay. I have no further
10 questions?

11 ALJ MALCOLM: Thank you, Mr. Buchsbaum.

12 MR. MONTOYA: Can I go? Is that okay?

13 MR. SZYMANSKI: Sure.

14 MR. MONTOYA: Okay.

15 ALJ MALCOLM: Mr. Montoya.

16 MR. MONTOYA: Sure.

17 CROSS-EXAMINATION

18 BY MR. MONTOYA:

19 Q Good afternoon, Mr. Florio.

20 A Good afternoon.

21 Q Let me get my stuff in order.

22 Just to follow-up on something Mr. Buchsbaum
23 asked you regarding changes to the implementation plan
24 or amendments to the implementation plan. Do you recall
25 that line of questioning?

26 A Yes.

27 Q Let's say the Commission adopted a cost
28 recovery mechanism based on the original implementation

1 plan and then subsequently the CCA amended its
2 implementation plan that affected that cost recovery
3 mechanism. Should the Commission have some role to play
4 there?

5 A If that were to occur, it would change the
6 CRS. However, I think what the Commission has done in
7 the Phase 1 decision and will refine somewhat in its
8 decision here in Phase 2 is really to adopt a generic
9 CRS mechanism that will apply to all CCAs. So the way
10 I see it, the Commission has or by the end of this phase
11 will have already adopted the mechanism that will
12 determine the CRS. And that's generic, and really, I'm
13 not sure what would be in a particular CCA's
14 implementation plan that would change that other than
15 what year of vintaging they would fall in.

16 So, you know, in theory it could happen. But
17 in practice, I'm not sure what could be in that
18 amendment that would lead to that result.

19 Q Okay. Turning to page 1 of your testimony.
20 Again, I think this is the same reference that
21 Mr. Buchsbaum alluded to at line 21 and then continuing
22 to page 2. You indicate there TURN's constituency also
23 consists of residential and small business customers in
24 areas not served by CCAs. Those remaining utility
25 bundled should not be required to subsidize those
26 receiving CCA service and must, at minimum, be held
27 economically indifferent to the existence of CCA.

28 Is that still your testimony, sir?

1 A Yes.

2 Q And similarly you indicate on page 2, line 4,
3 that the Commission should not be so eager to encourage
4 CCA that it allows bundled service customers to be
5 disadvantaged as a result. Is that still your
6 testimony?

7 A Yes.

8 Q With respect to the open season process, you
9 propose that a community choice aggregator only be held
10 financially responsible for meeting its stated
11 operational date.

12 A Mm-hmm.

13 Q And for offering service in good faith to the
14 customer classes that it proposed to serve in its notice
15 of intent; is that correct?

16 A Yes.

17 Q Under your proposal, would that notice of
18 intent be binding on the community choice aggregator?

19 A Yes. And the aggregator itself, not the
20 customer, would be subject to a penalty as I've
21 discussed.

22 Q Okay.

23 A It would be in the nature of a contract with
24 penalties for breach.

25 Q So there would be some appropriate fee if they
26 breached or did not adhere to that?

27 A Yes. If there was damage as a result of that.
28 You could imagine a scenario where there weren't any

1 damages.

2 Q Sure.

3 A But assuming there were, yes.

4 Q Okay. Under your proposal, if I understand
5 correctly, if a community choice aggregator submitted a
6 binding notice of intent to serve, for instance,
7 commercial and industrial customers, would that
8 community choice aggregator be required to offer service
9 to all customers within that class or could it offer
10 service to only certain customers within that class?

11 A That would have to be specified in the notice
12 of intent what their intentions were.

13 And I also suggest that, at least initially
14 since no one knows what the opt-out percentage will be,
15 that the Commission could specify some default
16 assumptions, because I can imagine people arguing about
17 that endlessly, and it's pretty hard to come up to
18 consensus on something that's never happened before.

19 So I think at least until we've got some track
20 record, it makes sense to just pick a number that's in a
21 reasonable range.

22 Q But if I understand your testimony correctly
23 or your position, when you referred to designating
24 the customer class of customers --

25 A Yes.

26 Q -- the class of customers, you're now saying
27 that if they're going to serve all the customers within
28 that class, they should designate so, or if it's just a

1 subset of that class they should state so?

2 A They should state who -- to whom they intend
3 to offer service in whatever categories those break
4 into.

5 I mean, it's conceivable that the CCA's plan
6 wouldn't match up neatly with the utility's rate
7 schedules even. But it needs to be specific.

8 Q What about quantity of load, should the CCA
9 also be required to identify in its binding notice of
10 intent the quantity of a load associated with that set
11 or subset?

12 A Well, that I see coming out of the load
13 forecasts that are submitted to the CEC as part of
14 the resource adequacy process. And both the utility and
15 the CCA have to submit such forecasts to the CEC. And
16 they've got to agree with each at the end of the day, or
17 there's a problem. You can't have a gap and you can't
18 have two LSEs serving the same customer.

19 So I think ultimately if the CCA and
20 the utility don't agree on a forecast, the CEC is going
21 to have to decide that as part of its function in
22 parceling out load responsibility for resource adequacy
23 purposes. But it would clearly be much better if the
24 two parties could come to some agreement. And that's
25 why I suggest the Commission adopt default assumptions
26 for opt-out until there's some real-world experience,
27 because that's an obvious place where you could have
28 disagreement between the entities and no way to tell

1 who's right until you have some historical experience.

2 Q If I understand what you're describing, you're
3 describing kind of a collaborative approach where
4 the CCA and the utility are discussing or trying to come
5 to some agreement on forecast --

6 A Yes.

7 Q -- is that fair?

8 A Yes.

9 Q As part of that dialogue, would the CCA
10 provider be required to disclose to the utility
11 the rates that it intends to charge to various classes
12 of customers?

13 A I don't think so, at least at the point where
14 you're using a default opt-out assumption because --

15 Q Well, what if there is no default opt-out
16 that's adopted?

17 A Well, that would be unwise. But if that's
18 where we end up, then it's going to be pretty difficult
19 to do a load forecast without knowing what the prices
20 are.

21 Q Now along the same lines, I think, of your
22 proposal, you indicate at page 2, line 17, a proposal.
23 You say:

24 ... I propose that the CCA only be
25 held financially responsible for
26 meeting its stated operational
27 date, and for offering service in
28 good faith to the customer classes

1 that it proposed to serve in its
2 notice of intent.

3 Do you see that?

4 A Yes.

5 Q Who would determine if the CCA provider
6 actually offered service to customers in good faith?

7 A The Commission would make that decision.

8 Q And what if the Commission found that they did
9 not offer service in good faith?

10 A I think the consequence of that is essentially
11 a breach of the notice of intent that the CCA would have
12 indicated one thing and in fact not acted in accordance
13 with that representation. So they would be subject to
14 whatever penalties would be appropriate under
15 the failure to meet its notice of intent.

16 Q Do you believe in that instance that
17 the Commission could decertify or revoke the
18 registration of the CCA?

19 A Depends on the severity of the violation, but
20 I could imagine a situation that was so extreme that
21 that would be called for.

22 I don't expect any of the cities that are
23 participating in this proceeding at this point to do
24 that, but you could get some bad actors at some point.

25 Q You're being diplomatic.

26 A I'm being truthful.

27 MR. MONTROYA: No further questions, your Honor.

28 ALJ MALCOLM: Mr. Szymanski.

1 MR. SZYMANSKI: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MR. SZYMANSKI:

4 Q Good afternoon, Mr. Florio.

5 A Good afternoon.

6 Q Paul Szymanski on behalf of SDG&E.

7 I want to follow-up on some of the themes that
8 were earlier discussed, but maybe go a little bit deeper
9 in a couple of areas.

10 With respect to the customer-notice issue and
11 the statutory requirement that the CCA shall fully
12 inform participating customers, who is it that gets to
13 have input on the information that would allow a
14 customer to be fully informed?

15 A Well, again, this is not a topic that
16 I addressed in my prepared testimony. Just looking at
17 the statute --

18 Q My reference is 366.2, small (c), and then
19 (13)(A).

20 A Yeah. And I mean, I don't see anything that
21 gives the Commission jurisdiction over that question, so
22 it would be a matter for civil court.

23 Q Now, is it your view that if the Commission
24 did have authority over the contents of these notices,
25 that the Commission should make a determination on
26 whether the notices did fully inform customers?

27 A That would be similar to a notice of rate
28 increase that is usually developed in cooperation with

1 the Public Advisor's office. But as I look at the
2 statute, I don't see any provision for that here.

3 Q So just to be clear, you're not questioning
4 whether it's a good idea; you're questioning rather
5 whether the Commission has authority to make that
6 determination, is that correct?

7 A That's correct, yes.

8 Q Now if it were to be determined that
9 the Commission did have authority through the statute or
10 elsewhere over the type of notices and the content of
11 notes that were to be issued to the customers, would it
12 be your opinion that the Public Advisor at the
13 Commission should have a chance to review and provide
14 input on those notices?

15 A That's the way those things are usually
16 handled.

17 I have to say I don't know what happens when
18 there's disagreement between the Public Advisor and a
19 utility. And it may be that those things have always
20 been worked out successfully. I just don't know.

21 Q Now would you have any objection to
22 the utility also providing input to the Public Advisor
23 for the Public Advisor to opine on the appropriate
24 contents of that notice?

25 A I think that whenever we get to the point that
26 the utilities allow us to have input on their notices of
27 rate increases, then it might be appropriate for
28 the utility to have input on the CCA's notices. But

1 I haven't noticed that happen lately.

2 Q So you feel that the situation of the utility
3 notices and the CCA notices are parallel?

4 A For this purpose, yes.

5 Q In order for customers to be fully informed,
6 should they know what the CRS is and how much it is and
7 how it's applied to their bills?

8 A Well, I think it's appropriate that they have
9 information comparing what their costs would be. I'm
10 not sure how many customers care about or would
11 understand the details of that. Whether it's CRS or
12 something else, they want to know how's my bill going to
13 be different.

14 And unfortunately, even that can't be anything
15 more than a snapshot in time because, as we know,
16 utility rates change sometimes several times a year, and
17 the CCA's rates may change as well. So all you can
18 really do is give people a snapshot at a point in time.

19 Q But there is an obligation in the statute,
20 right, to fully inform customers, regardless of how well
21 they understand it? We should make an effort to make it
22 understandable really, shouldn't we --

23 A Umm --

24 Q -- so they could be fully informed?

25 A Well, it depends on what you mean by "we."

26 I mean, as I read this -- and I hesitate to do
27 real-time legal interpretation, but it seems to me that
28 the CCA could send out this notice completely on its

1 own. It has the right to use the utility monthly bill,
2 but as I understand it, it doesn't have to. So it's
3 hard to see how the Commission has a role in that.
4 I think somebody that thought the notice was inadequate
5 would have to challenge that in another forum.

6 Q The Commission is empowered to make sure that
7 the conditions of the statute are met, is it not?

8 A It's not clear to me that in every instance
9 the Commission has that authority.

10 Q Well, let's talk about --

11 A They have the authority over a CCA that
12 the statute gives them.

13 Q Well, let's talk about having customers
14 informed about the services that they will receive, both
15 bundled customers who may be CCA customers and actual
16 CCA customers. Does the Commission have no role in
17 that?

18 A Well again, you're asking the question that
19 I didn't address in my prepared testimony. My attention
20 has been called to this subsection 13 which I've been
21 looking at during cross-examination. And I don't see
22 anything in there that provides a role for the PUC other
23 than to order the electrical corporation to include
24 the notice in their regular monthly bills if the CCA so
25 requests.

26 I don't see anything that gives the Commission
27 a role in determining the adequacy of notice.

28 Q So I really don't -- I'm going to avoid now

1 getting into the issue of how we construe statutes. And
2 for legal purposes, as a general matter, we'll spend
3 time with that in briefs.

4 ALJ MALCOLM: Okay.

5 THE WITNESS: Thank you.

6 MR. SZYMANSKI: Q But I do want to ask you some
7 questions about implementing AB 117, since referencing
8 the statute seemed to be --

9 A Unavoidable, yeah.

10 Q Now, in your representation of customers, you
11 are representing bundled customers as well as future CCA
12 customers --

13 A Yes.

14 Q -- is that correct?

15 A Yes.

16 I mean primarily bundled customers because
17 once -- well, they're all customers of the distribution
18 utility, so ...

19 Q And is it your view, if I understood
20 the testimony that you've given and Mr. Montoya referred
21 to some of it a little bit earlier on pages 1 and 2,
22 bundled customers must remain indifferent, and, stated
23 otherwise, not be harmed through the CCA program through
24 the actions of any CCA; is that correct?

25 A Yes.

26 Q So the interest of bundled customers,
27 shouldn't it all be subordinated to the interests of CCA
28 customers or a CCA provider; is that your --

1 A Generally speaking, yes.

2 Q Is there any exceptions to that?

3 A Well, it's a general principle that has to be
4 applied in a variety of different contexts. I suppose
5 we can get into arguments about whether a particular
6 impact is meaningful or trivial or that sort of thing.
7 But as a general principle, bundled customers should be
8 indifferent.

9 Q And to make sure that bundled customers are
10 indifferent, shouldn't they have some access to
11 the Commission to resolve issues where they believe that
12 they have been or might be harmed by the actions of a
13 particular CCA provider?

14 A Well, I think that's what we're doing in this
15 proceeding. We're setting the CRS and we're setting
16 the service fees, and those are the main areas where
17 I think there could be an impact.

18 I mean, if a particular CCA goes out and buys
19 a certain type of power, I don't see how that has any
20 direct impact on bundled customers other than as it
21 impacts the CRS.

22 Q So is it your view that it's not conceivable
23 today to see how bundled customers might be harmed in
24 the future and therefore there should be some relevance
25 to how the customer should or shouldn't be able to
26 address the Commission?

27 Let me state this differently?

28 A Yeah. I'm having trouble --

1 Q Little confusing.

2 A It's awfully vague.

3 Q If a customer, a bundled customer believes it
4 is harmed at some point in the future, should that
5 customer have access to the Commission to obtain
6 resolution to its issue or to seek a remedy in the event
7 it indeed is harmed?

8 A Yes. But at this point I don't envision what
9 that harm would be other than the CRS or the various
10 transaction fees, which presumably the Commission will
11 be reviewing from time to time.

12 If you've got some other kind of harm in mind,
13 I'm happy to address that. But I just -- aside from
14 those two areas, I -- or maybe the overall rules for
15 the program, I just don't -- I'm not -- I don't know
16 what you're talking about.

17 Q In your experience as a representative of
18 consumers, do you find that we can resolve once and for
19 all on day one of a certain new program that we can
20 identify all the potential consequences and harms of
21 that type of that program.

22 A Very rarely.

23 Q And certainly that was the case for direct
24 access, was it not?

25 A It was the case for all of restructuring, yes.

26 Q Is it likely that here in May and June of 2005
27 we can anticipate all the potential ways in which
28 bundled customers could be harmed by the CCA program for

1 the actions of any particular CCA provider?

2 A Well, certainly, we can't foresee the future
3 and what might arise. And certainly TURN or anybody
4 else is at liberty in the future to file a complaint or
5 petition to modify the decisions in this proceeding or
6 to ask for a review of the various fees. I'm not sure
7 what more than that you're looking for.

8 Q If a bundled customer comes to you at TURN and
9 says I've been harmed because I can't resolve a billing
10 dispute that I have with my CCA provider and I believe
11 I'm being harmed, can that customer seek recourse at the
12 Commission?

13 A Well, I thought you started out saying a
14 bundled customer came to us, and then you said I'm
15 having trouble with my CCA provider.

16 Q Oh, I'm sorry.

17 A So, yeah.

18 Q I misspoke.

19 A If a CC- -- go ahead.

20 Is it a CCA customer that comes to us and says
21 I'm having trouble?

22 Q Yes, sir.

23 A Okay. What we would probably do in that
24 instance is, first of all, see if they had talked to the
25 appropriate people with the city. Potentially, if it
26 seemed like a serious enough situation, we might contact
27 the city on their behalf. It depends on
28 the circumstances.

1 I mean, we have one person on staff who
2 follows up with all these kinds of issues. And we can't
3 solve them all, but we do attempt to help people with
4 their problems with the utilities and occasionally with
5 ESPs. And I assume we would do the same thing with a
6 community aggregator.

7 Q Well, let me -- let me focus --

8 A Yeah.

9 Q -- the focus even further if I might.

10 Can that customer, that CCA customer, if it's
11 unable to obtain what it believes is a satisfactory
12 remedy from the CCA provider, can that customer seek
13 relief from the Commission?

14 A It depends on the nature of their complaint.

15 Q Okay.

16 A If their complaint is that the rate that their
17 CCA provider is charging them is too high, that's not
18 something the Commission can adjudicate.

19 Q What if it's the case that the customer claims
20 that the CCA provider is charging the customer more than
21 what the CCA customer believes the customer should be
22 charged?

23 A Well, that would be a question of what are the
24 rates that are approved for that entity to charge. And
25 presumably, they'll have something like tariffs that lay
26 out what their rates are.

27 Q Right.

28 A I mean, it would be no different than with

1 somebody disagreeing with their garbage bill.

2 Q And if the customer cannot seek -- obtain
3 resolution of that dispute at the city, can the customer
4 obtain the Commission's involvement?

5 A Well, that does seem to me to be a legal
6 question. I think the answer is no, just as it would be
7 no for a sewer bill. But I'm -- it's not something I've
8 researched in great depth for this testimony.

9 Q Is it appropriate to send a customer to the
10 legislature to seek a change if he is complaining about
11 excessive charges -- excessive commodity charges, for
12 example?

13 A Well, sometimes we do that when the problem
14 that someone's addressing is something that can only be
15 fixed by legislation. I would think in the context of
16 CCA, the first resort would be to the local governing
17 body. In my experience, those -- whether it's a county
18 board of supervisors or a city council tends to be more
19 responsive to individual complaints than the Public
20 Utilities Commission.

21 So I would think that's the normal avenue for
22 these kinds of things. We have a lot of experience with
23 customers who call the Public Utilities Commission with
24 problems and questions and they end up getting referred
25 to us. So that's not a real admirable track record to
26 point to to say the PUC is going to solve all of
27 the customers' concerns and problems.

28 ALJ MALCOLM: Mr. Szymanski, is this a good place

1 to take a break?

2 MR. SZYMANSKI: Sure.

3 ALJ MALCOLM: We'll be in recess until 2:15.

4 (Recess taken)]

5 ALJ MALCOLM: Please come to order.

6 Mr. Szymanski.

7 MR. SZYMANSKI: Thank you, your Honor.

8 Q I just have a few more, Mr. Florio.

9 Would TURN be concerned if it believed that
10 the CC provider's rate structure was designed in such a
11 way that it effectively foreclosed certain classes of
12 customers from participating in CCA?

13 A Yes.

14 Q What would be an appropriate type of recourse
15 that those customers might pursue?

16 A Well, of course they would have the normal
17 political recourse through their city, but I think also
18 that that could be considered a breach of the binding
19 notice of intent if a CCA hypothetically said we intend
20 to serve all customers and then adopted a rate structure
21 particularly for the residential class that appeared
22 designed to drive people to opt out. I think that's
23 where the good faith question could arise.

24 That doesn't mean that a rate half a cent
25 higher than the utility's is necessarily a bad thing.
26 But if the rates were twice as high or something like
27 that, I think you start to question whether there was a
28 legitimate attempt there to provide service to that

1 class.

2 Q And you would probably expect, wouldn't you,
3 that customers would be looking at the rates of the
4 commodity component of their bills in determining
5 whether they should remain with the utility or go to CCA
6 service; is that correct?

7 A Yes, they would be comparing their bills. I
8 think they would also look at things like the content of
9 the portfolio in terms of renewables. They might
10 consider relative responsiveness in terms of customer
11 service, local control. All kinds of things like that
12 are likely to be part of the consideration.

13 Q Let's talk for just a moment about the
14 information that a CCA provider puts in its
15 implementation plan. Let's say that a CCA provider
16 makes representations about the types of generation it
17 would -- that it will use to serve customers, certain
18 percentage of renewables, for example, and makes other
19 specific representations in the implementation plan. We
20 go through the opt-out noticing periods and then the CCA
21 determines it wants to make a change to the terms and
22 conditions, one or more terms and conditions, that are
23 material to the implementation plan.

24 I believe when Mr. Buchsbaum raised similar
25 question a little bit earlier this afternoon you
26 indicated that at a minimum the Commission should be
27 notified; is that correct?

28 My question to you is are customers protected

1 if, generally, if there are material changes to the
2 implementation plan after the opt-out notice periods run
3 such that it might have affected the decision whether or
4 not to remain with the utility or go to CCA?

5 A Well, I think it depends on the circumstances.
6 And I think in your question as well as the ones that
7 Mr. Buchsbaum asked seem to have an underlying
8 assumption that the Public Utilities Commission is the
9 sole, exclusive or best source of consumer protection in
10 the State of California and somehow clearly superior to
11 local government in that respect. And I don't accept
12 that underlying premise.

13 However well or poorly the Commission may
14 provide what I guess I would call wholesale consumer
15 protection in its ratesetting functions and such and in
16 terms of retail consumer protection dealing with
17 individuals who call in with problems, I don't think the
18 record is very good.

19 So I have a hard time accepting the premise
20 that all that is good and right in the area of consumer
21 protection derives from this building and the one a
22 couple blocks down the street is clearly inferior. I
23 just don't think that's the case.

24 Q I don't think you answered my question. I
25 think you addressed an implicit assumption that wasn't
26 in my question. I have doubt if it was in
27 Mr. Buchsbaum's questioning either.

28 But we are trying mightily to understand what

1 bundled customers would do in the event that they are
2 harmed or potentially harmed, and we are trying to
3 understand what CCA customers will do in the event they
4 believe they are harmed. And we are trying to get down
5 to the specifics. That is what we are trying to
6 understand here about the role of the Commission in
7 either of those types of efforts. So that's the
8 implicit statement in my questioning.

9 But as I understand it, the Commission could
10 have some role in helping bundled customers remain
11 indifferent; is that what I understand your testimony to
12 continue to be?

13 A That's the primary role of the Commission as I
14 see it.

15 Q I would like to refer you to an attachment to
16 your opening testimony, please.

17 A Yes. That's the draft open season tariff?

18 Q Yes, sir.

19 I want to ask you about one specific aspect of
20 the open season tariff.

21 In lines 38, 39, 40, in that area, there is
22 some language that was stricken. Part of that language
23 indicated that in the utilities' proposed version of
24 this tariff we were seeking a determination from the
25 Commission that the utility should no longer be
26 obligated to serve the load that the CCA has purported
27 to serve. And I see that you have taken it out.

28 Is there a reason for your deletion of that

1 language? Is it that you -- do you intend to preclude
2 the Commission from reviewing the binding forecast
3 and/or making such a determination?

4 A I'm glad you asked me that because I think my
5 intent there may be somewhat unclear.

6 My conception of the notice of intent is that
7 it is self-executing. When it is filed the utility
8 would be relieved of the obligation to serve. The
9 Commission would -- in setting up the notice of intent
10 process, that should be part and parcel of it. So you
11 wouldn't have to have for each individual notice of
12 intent a Commission order to the utility saying okay,
13 you have received this, now you are not responsible for
14 serving that load.

15 It would be understood that once the notice of
16 intent was filed the utility would be relieved of the
17 obligation to serve.

18 Now my proposed process doesn't have the
19 binding load forecast. It has the utility and the CCA
20 agreeing on the forecast, or if they are unable to, the
21 CEC resolving that as they will resolve other
22 forecasting problems in the resource adequacy process.

23 But the utility would be relieved of the
24 obligation automatically without having to have a second
25 step of a Commission decision in each individual case.

26 Q Doesn't eliminating that step of having a
27 Commission directive put a premium on having a clear and
28 unequivocal statement of intent that we can all agree on

1 the format and we can all agree on what indeed the
2 intent was in the binding intent?

3 A Yes.

4 Q So I guess what I'm concerned about is whether
5 the Commission should make the determination that indeed
6 whatever representation that's made that is
7 characterized as being the binding intent does in fact
8 for the Commission's purposes relieve the utility of
9 that obligation? Wouldn't all parties and the
10 Commission be better served, this is my question to you,
11 wouldn't we all be better served if we had that specific
12 directive that we could all therefore march forward on
13 the same page?

14 A Yes, and I think that should be done
15 generically in the decision here and not on a
16 case-by-case basis for each individual CCA.

17 If you put a separate step in there, then you
18 are going to have the problem of, well, what happens
19 during the gap between when the CCA files the notice of
20 intent and when the Commission issues the order. And
21 you are just going to add another layer of, well, is
22 that in the CRS; is that not in the CRS; what do we do;
23 what if the Commission's decision is delayed.

24 What I have attempted to do with my proposed
25 tariff is to link this very directly with the load
26 forecasting exercise that's used in the resource
27 adequacy process where it is being very carefully laid
28 out in that proceeding that LSEs submit forecasts, the

1 CEC reviews those and is authorized to make changes of
2 certain types if they think they're necessary, then
3 produces a final load forecast for each load-serving
4 entity that is the basis for their obligation to
5 procure, to meet a particular load target 90 percent
6 year ahead and hundred percent month ahead.

7 And I think integrating those two processes is
8 the best way to assure that we have a process that works
9 smoothly. And I don't think you need a separate step
10 for CCA other than to participate in good faith in that
11 load forecasting exercise.

12 Q So, would you agree that the utilities should
13 not assume any reasonableness risk if it goes with your
14 proposal of a binding notice of intent?

15 A You mean if the utility did not procure for
16 load for which it had received such a notice of intent,
17 that that action would not be subject to reasonableness
18 review? I agree with that. Would not be subject to
19 reasonableness review.

20 Q And in fact is it your understanding that that
21 type of review would be prohibited under AB 57?

22 A I would rather not draw legal conclusion on
23 the spot, but reasonableness reviews have been much
24 diminished in scope. And it seems to me that what we
25 are trying to set up here is a clear process where
26 people know what their rights and responsibilities are
27 up front, and that's not consistent with an after the
28 fact reasonableness review.

1 So whether or not AB 57 specifically requires
2 it, I think that a utility responding to a notice of
3 intent in the way that I have indicated should
4 definitely be considered reasonable.

5 Q Do you have any suggestions about exactly what
6 the binding notice of intent should look like or consist
7 of in its form that would be issued -- that would be
8 prepared, as you said, on a generic basis?

9 A It would be desirable to come up with a
10 template. I didn't attempt to do that here. I think
11 there should be a form that's uniform for all of the
12 utilities that says CCA X here by providing notice that
13 as of date Y it will begin serving loads in, and then
14 describe with some specificity what those intended loads
15 are, will offer service to the following loads. They
16 can't say for sure that they will serve them.

17 And any ambiguity in that would need to be
18 worked out in the load forecasting process. Maybe there
19 does need to be some kind of feedback loop to amend the
20 notice of intent if between the time it's filed and the
21 load forecast goes into the CEC a month later there is
22 some clarification that needs to happen. But I think it
23 should be as objective, clear and straightforward as
24 possible.

25 Q And on whom would that binding notice of
26 intent be served?

27 A It certainly would have to go to the utility
28 and to the CPUC. I know there have been some concerns

1 expressed about confidentiality, so it may be that
2 further distribution of that would be limited in some
3 way or redacted in some way. We certainly receive a lot
4 of confidential information under protective orders that
5 we routinely honor. And I wouldn't have any objection
6 to that type of confidentiality applying to these
7 notices if need be.

8 And I think the same -- the protective
9 order -- I think you asked earlier about rates.
10 Possibly if the utility's load forecasting team needs to
11 see the CCA's rates in order to work out a forecast, you
12 could have a confidentiality protective order that was
13 limited to those people viewing the data for that
14 purpose and not disseminating it further within the
15 company. But I think that's something that people can
16 probably work out on their own.

17 Q So just so I can be sure I understand, the
18 binding notice of intent provides on a generic basis
19 very clear and concrete and specific information about
20 the date of departure, the expected amount of load?

21 A Well, the classes to whom -- the types of
22 customers to whom the CCA intends to offer service. And
23 my recommendation would be that at least until we gain
24 some real experience, the Commission specify these
25 default assumptions for the percentage of opt out that
26 then both the utility and the CCA could rely on without
27 worrying about being challenged for doing so.

28 Q And that information contained in that notice

1 then would be factored into the long term procurement
2 planning process?

3 A Yes.

4 MR. SZYMANSKI: Can I just check my notes for a
5 second, your Honor.

6 Thank you, Mr. Florio. That's all I have.

7 Thank you, your Honor.

8 ALJ MALCOLM: Thank you, Mr. Szymanski.

9 Mr. Florio, do you have any redirect?

10 MR. HUARD: Your Honor, I had one question.

11 ALJ MALCOLM: I'm sorry.

12 MR. SZYMANSKI: Is this a cross-examination
13 question?

14 MR. HUARD: This is one question -- yes, it is,
15 actually, a cross-examination.

16 CROSS-EXAMINATION

17 BY MR. HUARD:

18 Q Mr. Florio, you were asked questions about
19 whether the public advisor's office should be part of
20 the review process for the notices.

21 Were you aware that the joint CCA proposed
22 rules would provide at Section H4E that notifications
23 must be reviewed by the public advisor of the Commission
24 to ensure accuracy of any utility information?

25 A I had forgotten that fact. And yes, that is
26 part of the CCA proposed tariff. And I commend the CCAs
27 for offering that.

28 MR. HUARD: Thank you. That was my one question,

1 your Honor.

2 ALJ MALCOLM: Any redirect?

3 THE WITNESS: No.

4 ALJ MALCOLM: Thank you, Mr. Florio. You are
5 excused.

6 We will be off the record for a minute.

7 (Off the record)

8 ALJ MALCOLM: Back on the record.

9 Mr. Florio.

10 MR. FLORIO: Yes. I would like to move the
11 admission of Exhibits 10-A, 11-A and 12-A.

12 ALJ MALCOLM: Is there any objection?

13 (No response)

14 ALJ MALCOLM: Hearing none, we will move those
15 three exhibits into the record.

16 (Exhibits Nos. 10-A, 11-A and 12-A
17 were received into evidence.)

18 MR. FLORIO: Thank you. With, of course, Question
19 and Answer 7 of the rebuttal has been stricken.

20 ALJ MALCOLM: Let's go back off the record.

21 (Off the record)

22 ALJ MALCOLM: Back on the record.

23 Mr. Florio reminds me that I had stricken
24 Question and Answer 7 of Exhibit 12-A, the rebuttal
25 testimony of Mr. Florio.

26 Thank you, Mr. Florio.

27 MR. FLORIO: Thank you.

28 ALJ MALCOLM: Mr. Fenn, you may take the stand.

1 Off the record.

2 (Off the record)]

3 ALJ MALCOLM: We will be back on the record.

4 PAUL FENN

5 resumed the stand and testified further as follows:

6 MR. HUARD: Yes, your Honor.

7 Mr. Fenn has resumed the stand on behalf of
8 Local Power. I believe he has been previously sworn.

9 ALJ MALCOLM: Yes, he has.

10 You are still under oath.

11 MR. HUARD: Your Honor, I believe that Mr. Fenn
12 has three pieces of testimony: His opening, his reply
13 and his rebuttal testimony. If they could be marked as
14 the next items in order for identification.

15 ALJ MALCOLM: I'll mark Mr. Fenn's opening
16 testimony as 17-A, his reply testimony as 18-A, and his
17 rebuttal testimony as 19-A.

18 (Exhibits No. 17-A, 18-A and 19-A
19 were marked for identification.)

20 MR. HUARD: Thank you, your Honor.

21 DIRECT EXAMINATION

22 BY MR. HUARD:

23 Q Mr. Fenn, you've already been asked about
24 your name and address. I'll skip that.

25 Was exhibit -- were Exhibits 17-A, 18-A and
26 19-A prepared by you or at your direction?

27 A Yes, sir.

28 Q Do they reflect your best judgment and expert

1 opinion in this proceeding?

2 A Yes, they do.

3 Q Do you have additions, deletions or
4 corrections to you testimony?

5 A Yes, sir, I have several.

6 Q Can you please go through them?

7 A Certainly.

8 Q Can you mark them on my copies that you have?

9 (Laughter)

10 THE WITNESS: Yes.

11 Please if you go to 17-A, the opening
12 testimony, on page 6. Unfortunately, this testimony
13 is -- the lines are not numbered, but if you go down to
14 the second paragraph, first sentence, the last word,
15 you'll see "AB1171."

16 If you would please strike "AB1171" and insert
17 "AB117" in its place.

18 MR. SZYMANSKI: Could you please repeat that
19 location?

20 THE WITNESS: Certainly. On page 6, and actually
21 it's the first full paragraph. I should recharacterize
22 that. The very last word of the first sentence is
23 "AB1171."

24 So you strike "1" or insert -- strike "AB1171"
25 insert "AB117."

26 Then on page 7 of the same document, the
27 bottom of the page, the indented quotation at the end of
28 first sentence -- I'm sorry -- the beginning of the

1 first sentence there's a semicolon. That should be
2 deleted.

3 If you go to page 8, please, the sixth line
4 down from the top, delete the word "party," and insert
5 in its place the word "part."

6 On the same page, page 8, the first full
7 paragraph, in the fifth line, delete the word "that."

8 Excuse me, I'm sorry. Excuse me just one
9 moment. I need to check the document here.

10 Okay. Please go to page 13, the second line
11 from the top. Insert or -- excuse me. Okay. Excuse
12 me. Insert the word "procedure" after the word "basic."

13 On the same page, the fourth line, insert the
14 word "and" before the word "adopting."

15 On page 14, the first full paragraph, sixth
16 line, delete the end parenthesis there after R.1-10-024.
17 There is an end parenthesis there that should be deleted
18 please.

19 Page 17, sixth line from the top, delete the
20 word "however."

21 The seventh line from the top, delete the word
22 "not" before "necessarily."

23 Now please go to Exhibit 18-A, the reply
24 testimony. The lines are numbered in this document.
25 Page 13, please.

26 Line 14, delete the period following the word
27 "forecast."

28 And then please go to Exhibit 19-A, the

1 rebuttal testimony, page 4, line 8. Insert the word
2 "gas" after the word "sell."

3 If you go to line 9, please insert the word
4 "to" in front of the word "its."

5 And line 11, please insert a hyphen between
6 the word "pass" and the word "through."

7 Line 14 of page 5 now, I'm sorry. It's
8 line 14, page 5. Delete the word "only" and insert the
9 word "yet."

10 In line 15, insert the word "has" before the
11 word "undertaken."

12 Then in line 17, please delete the words "not
13 only is" and insert an apostrophe at the end of the word
14 "utilities" in line 17 as well.

15 And that -- I'm sorry, there are three more
16 changes please.

17 On page 9, line 18, delete the words "to
18 predict the" and insert a period after the word "magic."

19 On page 14 --

20 ALJ MALCOLM: Would you repeat that last
21 correction, please.

22 THE WITNESS: Oh, yes, please. That is on page 9
23 in line 18 delete the words "to predict the" and insert
24 a period following the word "magic."

25 Going to page 14, line 8, please delete the
26 copyright symbol after the number "366.2" and insert a
27 letter "C" inside of parentheses.

28 And then on page 18, please, the last

1 correction, line 4, delete the word -- the letters "Th"
2 and replace it with the word "the."

3 And that concludes my corrections, your Honor.

4 ALJ MALCOLM: All right. Thank you.

5 MR. HUARD: Q Thank you, Mr. Fenn.

6 Does this conclude your revisions?

7 A Yes, it does.

8 Q Do you now adopt these exhibits as your sworn
9 testimony in this matter?

10 A Yes, I do.

11 MR. HUARD: Your Honor, the witness is available
12 for cross-examination.

13 ALJ MALCOLM: Thank you, Mr. Huard.

14 Mr. Buchsbaum.

15 MR. BUCHSBAUM: Thank you, your Honor.

16 CROSS-EXAMINATION

17 BY MR. BUCHSBAUM:

18 Q Could you turn to page 25 of your opening
19 testimony?

20 A Certainly.

21 Q And the -- in the last full paragraph --
22 actually it covers almost the entire page, but right
23 before the new paragraph, you basically say that the
24 Commission does not have jurisdiction over a CCA to
25 demonstrate resource adequacy at least in the
26 implementation plan.

27 Do you believe the Commission has jurisdiction
28 over a CCA generally with respect to resource adequacy

1 requirements?

2 A My understanding is that jurisdiction is
3 limited to the CEC.

4 Q Are you aware also a Commission decision that
5 has stated that it does have jurisdiction?

6 A No.

7 Q If there were such a decision, would you see
8 an attorney to challenge that?

9 A I'm not sure I understand the question.

10 Q Would you -- would you consent, assuming the
11 Commission has asserted jurisdiction and you're working
12 with the CCA, would you adhere to that jurisdiction?
13 Would you recommend to your client to adhere to it, or
14 would you see an attorney concerning that?

15 A I suppose it would depend upon the case. I
16 mean it's hard for me to say.

17 Q Okay. Turning to page 9 of your reply
18 testimony, I was trying to understand the role of the
19 CCA and an ESP in your opinion. And you seem to be
20 drawing a distinction there.

21 You say at the bottom of the answer, the full
22 Q and A that appears on page 9, that CCAs are not
23 permitted to play both aggregator and marketer under
24 AB 117. And I was trying to understand what you meant
25 in your statement that a CCA is not permitted to be a
26 marketer.

27 A This Q and A was a response to utility
28 concerns about -- I think about certain jurisdictions

1 that had become ESPs under direct access. So I was
2 drawing a contrast to that case or that example in which
3 a public agency became an ESP and contrasting it to this
4 case in which local governments are entering into
5 agreements with ESPs. So that was the purpose of that
6 statement.

7 Q You made sort of the same statement, if you
8 can turn to page 16 of your rebuttal.

9 A Okay.

10 Q And there you talk about a binding commitment.
11 And you said I meant that a five-year binding commitment
12 cannot be undertaken by a CCA until it has a five-year
13 contract with an ESP; do you see that sentence?

14 A Yeah.

15 Q Are you suggesting that a CCA cannot go out on
16 its own and contract for power?

17 A My understanding is that the statute specifies
18 ESPs as the providers of service to CCAs. So -- and I'm
19 not familiar with any case in which a CCA has gone out
20 for -- self-supply, but rather have gone through, like,
21 retail competitive suppliers in order to secure those
22 services.

23 Q Could a CCA, for example, build its own power
24 plant?

25 A A CCA -- well, I think there are a number of
26 opportunities for CCAs to invest in demand-side
27 resources. I mean under AB 117 that certainly is
28 outlined, the energy efficiency function. And the

1 opportunities for CCAs to invest in renewables is
2 clearly there.

3 I don't -- I'm not clear really on the
4 opportunities for CCAs to build power plants at least in
5 the conventional power plant. And so I'm not sure I
6 could answer that question.

7 Q Are you sure that a CCA can't go out and make
8 its own commitment for power?

9 A I see a very clear role for ESPs in AB 117 as
10 the entities with which CCAs will negotiate. And I see
11 a pretty clear firewall in the definition of an ESP
12 within AB 117 preventing of kind of back-door
13 municipalizations. So for that reason I think there is
14 a clear and necessary role for ESPs in providing the
15 service.

16 Q Well, given that scenario that you posit, who
17 has the responsibility for the customer? Is it the ESP
18 that has been basically delegated this responsibility to
19 go out and procure, or is it the CCA, the government
20 agency?

21 A I think there is a distribution of
22 responsibilities where the CCA plays one role and the
23 ESP plays another role.

24 And one of the purposes of my testimony has
25 been to try and clarify the line between those roles.

26 So I think there is -- you know, the
27 responsibilities of the CCA and the ESP have to be
28 clearly defined. Partly they're defined by the statute

1 itself, and partly they are defined at the discretion of
2 the CCA.

3 ALJ MALCOLM: Does this require some knowledge of
4 agency law or vicarious liability?

5 MR. BUCHSBAUM: No, I -- I wasn't -- I wasn't
6 going there at all.

7 I was just trying to understand the structure
8 that -- I think one of the confusions here is to
9 understand exactly the types of structures that CCAs are
10 going to be utilizing in order to understand what kind
11 of regulation, if any, is appropriate. So I'm trying to
12 understand in Mr. Fenn's opinion how CCAs are likely to
13 be organized.

14 ALJ MALCOLM: Okay. But weren't you talking about
15 liability to the ratepayers or customers?

16 MR. BUCHSBAUM: I think I was talking about
17 responsibility to customers, who was -- who was going to
18 have the ultimate responsibility to customers. Was it
19 going to be a relationship with the ESP or a
20 relationship with the CCA. I did ask that.

21 Q Who does have the principal relationship to
22 the customer?

23 THE WITNESS: A I'm not sure what you mean by
24 "relationship." Special relationship --

25 Q Well, who is the customer -- who is serving
26 the customer?

27 A That is left up to the CCA, I believe, that
28 the CCA -- because the CCA under the statute, for

1 example, has the option of deciding whether it will post
2 a bond to demonstrate insurance or demonstrate insurance
3 to cover the cost of involuntary return of customers,
4 just as an example.

5 So that would be a decision of the CCA whether
6 it wanted to assume that burden itself or wanted to
7 delegate that burden to the ESP.

8 And I would say that the same requirement or
9 the same opportunity would apply to the CCA in terms of
10 resource adequacy, that the obligation -- the legal
11 obligation of a load-serving entity could be given to an
12 ESP by a CCA or it could be held by the CCA if it wished
13 to.

14 But in terms of the actual -- the
15 likelihood -- you are asking who will, because you are
16 asking me to predict what will happen in the future. I
17 could only base my answer on what's happened in the
18 past, and what has happened in the past with CCAs is
19 that they have placed those burdens on the ESP. And so
20 they need to negotiate those details with an ESP before
21 they are prepared to go ahead.

22 If they are prepared to assume those risks
23 related to resource adequacy, excuse me, or to contract
24 failure, generally speaking, I would say that they are
25 then prepared to municipalize their services and
26 probably would not limit their activities to CCA.

27 And so I view it as being important in terms
28 of protecting their ability to move forward on a low-

1 risk basis for them to delegate or have the opportunity
2 and the right to delegate those roles to the ESP. And
3 that's really the basis of my remarks here.

4 Q And I guess they could even delegate answering
5 the phones, for example, is that true as well, I mean
6 handling customer complaints?

7 In your opinion, you are envisioning, as I
8 understand it, a fairly minor role for the government
9 and kind of a contracting capacity where the ESP takes
10 over most of the -- most, if not all, of the functions
11 of this particular business; is that -- is that correct?

12 A Most of those elements of the business related
13 to risk in particular.

14 I wouldn't say customer service. I think
15 that's -- there is not a great deal of risk attached to
16 customer service. So then that would really be a
17 case-by-case determination by ESPs.

18 But when it comes down to assuming forecasting
19 risks, assuming resource adequacy obligations,
20 committing to serve load by a certain date, I think
21 those are -- quite naturally are ESP risks -- borne
22 risks. And a CCA should at least have that opportunity
23 to make a determination as to how those risks would be
24 handled and not have them predetermined through --
25 through PUC policy.

26 Q Well, assuming -- assuming the CCA does
27 delegate to the ESP these functions, would you suggest
28 that there is a role for Commission regulation of the

1 ESP on various matters?

2 A No.

3 Q You still don't?

4 A No, I mean they are under a contractual
5 relationship with the CCA. And the CCA has the ability
6 to enforce contracts, as they do on a routine basis for
7 garbage and cable TV, and so on.

8 So the CCA under the model that I'm describing
9 is in the rate-setting role obviously. It is in the
10 contract-compliance role. It's making all the basic
11 policy decisions. It's setting the bidding requirements
12 for ESPs. So they have a very strong hand in terms of
13 ensuring consumer protection. I mean that's the whole
14 idea I maintain in my testimony, that the CCA is a
15 consumer protection mechanism.

16 And so I would say that there is no need for a
17 Commission role in that relationship.

18 Q There certainly could be a different -- see, I
19 think -- I think what you are now saying is that there
20 could be a different type of CCA, one that, in fact,
21 goes out and does many of these functions on its own
22 with a perhaps significant size staff; is that correct?

23 A I consider that to be politically impossible
24 because -- for the very reason that if a city were
25 prepared to assume those risks, they would municipalize.
26 They would not bother with this lower risk approach.

27 If they're willing to be responsible
28 particularly for resource adequacy but also be

1 responsible for the possibility of a contract failure,
2 then they are willing to take on major risks and
3 responsibilities. And that's the major barrier to
4 municipalization.

5 So, in my view, that will never occur. In
6 cities that are prepared to take on those risks, they
7 will municipalize.

8 Q Do you envision CCAs being able to impose exit
9 fees --

10 A Yes.

11 Q -- on their customers?

12 You do.

13 A Yes.

14 Q On page 5 of your reply testimony -- changing
15 subjects now -- you refer to CCAs as elected local
16 government agencies.

17 A Which line is that, sir?

18 Q This is on page 5 of your reply testimony.

19 A Is there a number to the -- oh, here we go.
20 Line 20.]

21 Q Yes, sir.

22 And I guess the question comes up: Are you
23 suggesting that the CCA, the governing board of the CCA
24 itself be elected officials or appointed officials?

25 A Well, in the case of a joint powers agency,
26 I have to have a look at the statute, but I don't
27 believe there are any provisions for how joint powers
28 agencies -- how the members of JPA governing boards are

1 appointed or whether they are elected or required to be
2 elected officials.

3 In the case of existing multijurisdictional
4 aggregations in both Massachusetts and Ohio, they do
5 consist of elected officials. City councils or mayors
6 are appointed by their colleagues to represent
7 the jurisdiction on that joint power -- in that entity.

8 So I would say based on experience, yes, they
9 are all elected officials on the governing board of both
10 JPAs and, obviously, on city councils and boards of
11 supervisors.

12 Q So you don't contemplate a separate not
13 elected agency in implementation plans that's going to
14 be running CCAs?

15 A Well, just given that the award of contract
16 must occur by ordinance, so you have to have an entity
17 with the ability to adopt an ordinance. These are local
18 government entities that run CCAs directly. They're not
19 run by independent agencies or by bureaucrats.

20 Q One final area of questioning on the
21 assignments of DWR contracts or whatever exactly you
22 were referring to on page 5 of your opening testimony.
23 You were stating that transfer of a contract would only
24 require creditworthiness requirement from the CCA. What
25 did you mean by that?

26 I'm going to page 5 of your opening testimony.

27 A Just reading the page here.

28 Just that they would to demonstrate

1 creditworthiness in order to take on these contracts.

2 Q But you then go on to say it would not be
3 difficult considering the volume of revenue in a CCA ESP
4 contract.

5 A Yeah.

6 Q Is that the way creditworthiness is usually
7 determined, is just based on revenue?

8 A I think it should be the basis for this, yes.
9 I don't know if it normally is. I'm not an expert in
10 finance. I would say in this case it should be.

11 Q Are you aware that many if not all DWR
12 contracts preclude assignment?

13 A I'm aware that utility contracts don't and
14 that there are more difficulties facing DWR contracts,
15 yes.

16 Q Have you looked at any of the DWR contracts --

17 A No.

18 Q -- specifically?

19 A No, I have not.

20 MR. BUCHSBAUM: I don't have any further
21 questions.

22 ALJ MALCOLM: Thank you, Mr. Buchsbaum.

23 Mr. Szymanski.

24 MR. SZYMANSKI: Thank you, your Honor.

25 CROSS-EXAMINATION

26 BY MR. SZYMANSKI:

27 Q Good afternoon, Mr. Fenn.

28 A Good afternoon.

1 Q Paul Szymanski on behalf of SDG&E.

2 Would you kindly turn to your opening
3 testimony at pages 13 to 14, the document just marked as
4 Exhibit 17A.

5 A Yes, I see it.

6 Q Thank you.

7 The bottom of page 13 and continuing on to
8 page 14, you state, Customer-related rules and
9 procedures need to address, and then continuing on to
10 page 14, there's a list of ten or more topics. Do you
11 see that text there?

12 A Yes, I do.

13 Q Is it your testimony that in the development
14 of statewide rules for the implementation of CCA, which
15 is what we're doing here in this rulemaking, that each
16 of these topics has to be fully addressed in a CCA
17 provider's implementation plan?

18 A These are -- clearly, these are not itemized
19 within AB 117. So under the statute they are not
20 required to be.

21 My purpose in outlining these elements was to
22 make the case for an opportunity, which I see in
23 the implementation plan, for the coordination of utility
24 procurement and CCA load departures.

25 I believe that if implementation plans contain
26 this level of detail, and to the extent that they do,
27 that they provide an opportunity for the Commission and
28 for utilities to avoid overprocurement.

1 Q So is it your testimony that an implementation
2 that contains all of these topics and addresses each of
3 these topics in full is a good idea?

4 A Yes.

5 Q Okay. Now, the first topic listed is consumer
6 protection. And I wanted to obtain your testimony about
7 whether it would be a good idea to contain -- what a
8 good implementation plan would contain with regard to
9 consumer protection.

10 A Well, in particular, it would provide for a
11 program of customer notification. Obviously a
12 commitment to -- a plan for a clear comparison of
13 services that are bid by an ESP to the utility services.
14 It would provide for an equitable treatment of customer
15 classes. It would provide for a process of customer
16 complaints to the CCA. It would provide for an
17 nonprejudicial treatment of customer classes. Universal
18 service requirements. I mean, there are a number of
19 elements. It's hard for me to think of every element
20 that would fall under consumer protection, but those
21 would be top of the list.

22 Q Okay. Thank you.

23 Now moving on to a little further on on pages
24 14 and 15. In fact, it's the end of the paragraph that
25 follows that list on page 14.

26 A Oh.

27 Q The second-to-the-last sentence, there's a
28 reference to ESP nonperformance. Do you see that?

1 A Yes.

2 Q What do you mean by ESP nonperformance?

3 A Let me just have one look at this for a
4 moment, please.

5 Well, in particular, I'm referring to the
6 section of AB 117 in which either on ESP or a CCA is
7 required to post a bond or demonstrate insurance to
8 cover costs associated with involuntary return of
9 customers. So that involuntary return is what I'm
10 referring to here as nonperformance. Contract failure.

11 Q Contract failure between the CCA and an ESP or
12 contract failure between some other parties? What are
13 you referring to?

14 A I'm just referring to the scenario that is
15 covered by the section of AB 117 concerning
16 the insurance bonding requirement of ESPs and CCAs.

17 Q Is it conceivable that a CCA customer would be
18 harmed in the event of a nonperformance of an ESP under
19 a contract between a CCA provider and its ESP?

20 A Well, the harm would -- I think not, because
21 the harm would be prevented by the posting of the bond
22 or the demonstration of insurance.

23 Q So your proposal would be that the insurance
24 or bond requirement would be enough such that a CCA
25 customer would have an adequate remedy in the event of a
26 failure of any type between the CCA and its ESP if it
27 has an ESP?

28 A I'm sorry. You said that it would -- that

1 the bond or insurance would adequately cover any
2 scenario?

3 Q Right.

4 A I -- that's a very broad question and
5 difficult for me to answer categorically. But I believe
6 the intent of the section of code is that -- is to
7 provide for costs associated with an involuntary return
8 of customers to the utility so that those costs are not
9 shifted on to the CCA customers.

10 Q And do you agree that those costs, if there
11 are any, should not be submitted onto bundled customers?

12 A Yes.

13 Q Now, I'd like to move to page 15.

14 MR. MONTTOYA: Of the opening?

15 MR. SZYMANSKI: Yes. I'm still in the opening
16 testimony.

17 Q There's some boldface type that references
18 subsection G. And then in the next sentence you said
19 that the requirement here -- and I'm paraphrasing a
20 little bit -- should require a list of potential ESPs
21 who might seek to enter into an agreement to become the
22 CCA's chosen provider.

23 Do you see that text there?

24 A Yes, I do.

25 Q Can you tell me what you're basing that
26 statement on that the list should contain potential
27 ESPs?

28 A This is -- refers to -- yeah. I mean,

1 the subsection G requirement is an interpretation of
2 that requirement, saying that the CCA would provide a
3 list of ESPs that might be participating in its RFP who
4 might be interested in serving, whether as a result of a
5 request for qualifications or as a result of some kind
6 of negotiation, with ESPs so that it could compile such
7 a list.

8 Q I'll tell you what my section G says, and you
9 can tell me if you're reading the same section G. It
10 says: The implementation plan will include all of
11 the following. And then for section G it says: A
12 description of the third parties that will be supplying
13 electricity under the program, including, but not
14 limited to, information about financial, technical and
15 operational capabilities.

16 And my question is not one of statutory
17 interpretation or a legal question, it's -- I'm trying
18 to understand where you arrived at the concept of a
19 potential ESP from that language or anywhere else.

20 A Just -- I mean, that's my read of its meaning.
21 That you have third parties. You don't have a third
22 party. It's not asking for a single entity to be
23 identified. It's asking for any number of parties to be
24 identified.

25 Q Also in section G there's a reference to
26 financial, technical, and operational capabilities. For
27 financial capabilities, what should be disclosed in an
28 implementation plan?

1 A Just publicly available information on the
2 company. It's the amount of business it does, the kinds
3 of business it's in.

4 Q Would it help to know whether the company is
5 financially capable of undertaking the type of
6 operations and commitments that it's purporting to make
7 with these associated CCA?

8 A Certainly. That's the purpose of the section.

9 Q Okay. Might that information require more
10 than publicly available financial data?

11 A I think not.

12 Q For technical information, would it be useful
13 for the CCA and parties who are looking at
14 the implementation plan, potential customers possibly,
15 to understand whether the third party supplier is
16 technically capable of providing the services that it's
17 purporting to provide?

18 A Certainly, yeah.

19 Q And how would such a company do so?

20 A I mean, generally speaking, it would be
21 demonstrated by the kind of experience in the existing
22 business of the company.

23 Q Let's say it's an upstart company that's
24 providing solar power, it's never provided more than
25 1/10th of a megawatt of power to any particular customer
26 but it purports to provide a substantial portion of
27 the load for a major California city. What would be
28 the showing that such a third-party supplier would make

1 to show that it is technically capable of delivering on
2 the representations it makes?

3 A I'm sorry. Could you repeat the question?

4 Q How does a third-party supplier that provides
5 renewable power make a represen- -- make a showing
6 through the CCP -- CCA provider that it is technically
7 capable of providing the power that it is endeavoring to
8 provide to the contract? Do you understand
9 the question?

10 A I think so.

11 The first phrasing of the question, you
12 mentioned a company that had no experience and no
13 exiting business virtually. So how would that company
14 demonstrate? It wouldn't. It would fail to
15 demonstrate, very likely.

16 I think through, just again, through the
17 provision of, basically, information about the company
18 that a CCA would be able to determine and it would be
19 clearly its responsibility to determine whether it is
20 prepared to provide service as promised.

21 Q Now when the CCA discloses the operational
22 capabilities of the third parties that supply
23 electricity, what type of operational capabilities do
24 you think will be contained and should be contained
25 within the implementation plan?

26 A Well, mostly it's just an outline of what
27 kinds of business the company's in, what kind of markets
28 it currently serves, where those markets are, what is

1 the nature of the service that it provides, how much
2 revenue the company has per year, how much staff it has.
3 Again, these are you know, general information found in
4 public documents about those companies.

5 Q But what if it's not general information found
6 in public documents and we're dealing with a CCA,
7 probably a new CCA, we may be dealing with somebody who
8 has never entered into an arrangement with an entity to
9 deliver power through that CCA. It might be providing
10 other services too. How do we assure ourselves through
11 publicly available information or any other information
12 that basically that the third-party provider will be
13 able to do what it purports to be able to do?

14 A I view that as being the decision,
15 responsibility, the due diligence of the CCA and not
16 anything beyond that.

17 Q What should be the Commission's role in
18 reviewing information that would be provided pursuant to
19 Section G here?

20 A None, except for its existing regulation of
21 ESPs. But it's not -- nothing regarding subsection G
22 specifically. I don't see any basis for the role.

23 Q Would you please now turn to page 19 of your
24 opening testimony. In the first full paragraph there,
25 in the first sentence you indicate -- and I'm jumping
26 into about the middle of the sentence -- the Commission
27 should maximize its familiarity with what a CCA is
28 undertaking and actively engage the CCA during

1 the statutory 90-day certification process to determine
2 the best course of action, comma, and employ its
3 authority to incentivize good behavior by CCAs.

4 Now, first of all, with respect to that
5 sentence, are you referring to the CPUC or some other
6 Commission?

7 A The CPUC.

8 Q Okay.

9 A Yeah.

10 Q What authority are you referring to there in
11 the last part of that sentence?

12 A Referring to the authority to establish to
13 present its finding regarding cost recovery and its
14 authority to set the earliest departure of the load.

15 Q What kind of actions are you recommending that
16 the Commission take to incentivize good behavior by
17 CCAs?

18 A Well, what I've proposed is a gating system
19 under which the increasing commitment by a CCA would be
20 matched by increasing limits placed on utilities,
21 obligations placed on utility procurement. Within that
22 coordination, I'm proposing that the Commission use its
23 authority to -- primarily to hold CCAs accountable to
24 their own implementation plans, but also to -- during
25 the 90-day information request period to collect and --
26 information from the CCA and to -- through that
27 dialogue, to provide guidance to the CCA where it sees
28 problems, and to identify concerns or issues related to

1 the detail of the plan to inform and educate the CCA
2 regarding those problems. And then using these two
3 authorities to set the -- present findings regarding
4 cost recovery and setting the date accordingly.

5 Q I'm not sure I followed exactly what you said
6 there. Let's try it one more time and maybe you can
7 break it down for me.

8 What is the authority that you're referring to
9 here in that sentence? Is it a statutory authority or
10 is it some other authority that you're referring to?

11 A I'm referring to the section of AB 117
12 concerning the implementation plan. In particular, the
13 sections that outline the 90-day information request
14 process, the 10-day notification to the utility after
15 the submission of the plan, and then the provision of
16 findings concerning cost recovery to the CCA after 90
17 days, and finally the determination of the earliest
18 possible date for the CCA's departure.

19 I feel that those authorities provide
20 the basis for coordination beyond the open season
21 proposals that's been put forward by the utilities and
22 other parties and beyond a straight cutoff date based on
23 transfer of customers.

24 What I'm trying to do with this is to have a
25 more incremental process with greater cooperation and
26 with this authority to delay the departure according to
27 the annual procurement of the utility and the ability to
28 present findings on cost recovery, provide the

1 Commission with authority to guide that process.

2 Q Let me just try one more time.

3 A Okay.

4 Q How are those specific authorities used to
5 incentivize good behavior by a CCA? Can you give me an
6 example of how those authorities are used or could be
7 used to incentivize good behavior, as you refer to it
8 here?

9 A Well, number one, having your departure date
10 delayed is one incentive or threat which could influence
11 a CCA's behavior. And then clearly having the prospect
12 of a higher exit fee attached to an implementation plan
13 would provide another incentive to the CCA.

14 Q I would like to refer you now to a document
15 that was mentioned in an e-mail from Wendy Keilani of
16 SDG&E, which looks like this (indicating). It's
17 the San Francisco Community Choice Aggregation Draft
18 Implementation Plan submitted by Local Power. Do you
19 have a copy of that handy?

20 A What I have is the same as what you have,
21 which is the posted documents from the Local Agency
22 Formation Commission.

23 Q Well, I had just a few questions on some very
24 specific language in there.

25 A Okay.

26 Q And if you don't mind, I'd like to go through
27 a couple of these questions.

28 A Certainly.

1 Q First of all, I just need to understand as a
2 foundational matter, was this document prepared by you
3 or under your supervision?

4 A Yes, it was.

5 Q Can you explain --

6 MR. HUARD: Your Honor.

7 Q -- for the record why --

8 MR. HUARD: Can we go off the record for just a
9 second?

10 ALJ MALCOLM: Off the record.

11 (Off the record)

12 ALJ MALCOLM: Back on the record.

13 MR. SZYMANSKI: Q Mr. Fenn, could you please
14 explain why Local Power filed a draft implementation
15 plan?

16 ALJ MALCOLM: Mr. Szymanski, excuse me. It's
17 still buzzing.

18 Off the record.

19 (Off the record)]

20 ALJ MALCOLM: Back on the record.

21 Mr. Szymanski.

22 MR. SZYMANSKI: Thank you.

23 Q Let me restart this line of cross.

24 Was this document filed with the Commission,
25 Public Utilities Commission?

26 A This document has not been adopted by the City
27 and County of San Francisco. So it could not be filed
28 with the Commission.

1 Q Okay.

2 A The document was approved by the local,
3 San Francisco Local Agency Formation Commission on May
4 the 13th and has now been referred to the Board of
5 Supervisors alongside the plan which is still not
6 linked. So the city is in the process of determining
7 what its final implementation plan will be. But this
8 document is not yet ready to be submitted to the CPUC.

9 Q That is really helpful to know. Some of us
10 are not as close as others are to the process.

11 A Just to give you -- you asked me why I filed
12 it. The local agency formation Commission conducted a
13 series of four hearings over two months, concluding with
14 this May 13th hearing. During that period of time the
15 Local Agency Formation Commission chairman requested
16 that I submit a draft as part of the mix to supplement
17 work being done by city agencies in order to refine its
18 discussion and clarify its intent.

19 The real purpose that I am playing in the city
20 is to supplement internal agency processes, at the same
21 time having a direct contact and link with the Board of
22 Supervisors which I have had since 1998. So it is a
23 long time process.

24 Q How many potential CCA customers are there for
25 the City and County of San Francisco?

26 A Customers? I think is somewhere -- you should
27 probably ask Mr. Casey this -- but I think it is
28 somewhere around 400,000 or 400 plus.

1 Q That is the number of potential CCA customers?

2 A I couldn't give you an exact number, but yes.
3 I don't recall the exact figure but it's in that area.

4 Q And do you happen to know how many of those
5 customers are residential customers?

6 A Again, you should probably ask Mr. Casey that
7 question. They have --

8 Q I am asking you if you know. If you don't
9 know, that's fine.

10 A I don't recall the exact figure.

11 Q Okay. On page 1 of the document, in the third
12 paragraph down, it is in the executive summary, you
13 state that a publicly controlled CCA will provide both
14 cost reductions and increased power service reliability
15 to its customers.

16 Do you see that?

17 A Yes.

18 Q Are you stating that cost reductions and
19 increased reliability are a certainty, or are they just
20 possibilities?

21 A They are possibilities, certainly.
22 Certainties would be a little overstated, don't you
23 think?

24 Q On page 4 in the first full paragraph you
25 state that the CCA program in San Francisco, that is a
26 quote, means not only savings in commodity price but
27 hard savings to all ratepayers.

28 Do you see that text?

1 A Where is it? Which paragraph?

2 Q It is in the first full paragraph on page 4,
3 the paragraph begins "San Francisco's energy
4 independence structure."

5 A Yes.

6 Q It is the same sentence but just a little
7 further down.

8 A Yes, I see it.

9 Q Are you stating that those savings are
10 certain, or are they just possible?

11 A These are savings related to the installation
12 of 360 megawatts of renewable energy and energy
13 efficiency infrastructure. So I would consider it to
14 be -- nothing is certain in this world, but I would
15 consider it to be highly likely.

16 Q So throughout this draft where you say text
17 like "it will result in" or "X means Y" or "X will
18 result in Y," do you mean that we should construe that
19 language to mean is likely or is possible, or is less
20 than certain? Can you help me understand how I should
21 construe that language?

22 A You should construe it within its context,
23 which is the introduction to 150-page document, the
24 first four pages. So if you want certainty you get into
25 the detail. You don't go to the introduction.

26 Q Well, I have looked at all of this document
27 and I don't know what the actual fact of the matter is
28 regarding the representations. So I am trying to

1 understand whether your representations, I should be
2 looking at the first four or five pages, or whether
3 there is something else later in the document that will
4 help better illuminate how to construe that term "will
5 result in."

6 A You should construe it where commitments are
7 made, you can construe commitments. An introductory
8 remark is not a commitment. We are not making resource
9 adequacy commitments in the introduction to the plan.
10 Those details are to be found later in the document
11 along with a very detailed schedule of energy efficiency
12 and renewable energy installations. So I would refer
13 you to those detailed sections of the plan.

14 But again, this is not an adopted document.
15 So you are asking me as the presumed King of
16 San Francisco what the city will deliver to the
17 Commission. This is a document in process that you are
18 asking me about.

19 Q I am asking you as the author of this document
20 what you meant by what you said here.

21 A I have answered you.

22 Q Can you tell me whether CCSF will actually
23 implement a CCA program here in San Francisco?

24 A That would be a decision of the Board of
25 Supervisors.

26 Q So can you tell me whether CCSF will adopt a
27 CCA program here in San Francisco?

28 A Can I tell you? Yes, I can.

1 Q Okay. And what is the answer?

2 A Yes, it will.

3 Q Can you tell me when it will do so?

4 A No.

5 Q But you could state here as a certainty that
6 CCSF will certainly implement a CCA program here in
7 San Francisco?

8 A Let me explain to you. This document --

9 Q I really asked a yes or no question. I know
10 we are running long on time. So I am hoping you can at
11 least --

12 A I think you misconstrued the document. So I
13 need to explain to you that this is a draft document.

14 ALJ MALCOLM: I'm sorry, Mr. Fenn. You have to
15 answer his question.

16 THE WITNESS: What is the question, please?

17 ALJ MALCOLM: Whether the City and County of San
18 Francisco intends to implement a CCA program.

19 THE WITNESS: As Ordinance 8604 adopted May 11,
20 2004 indicated, yes, the Board of Supervisors fully
21 intends, has declared itself a CCA and has declared its
22 intent to implement. That is all I can tell you.

23 If you ask me what I think about what the city
24 will do, I will tell you. But the decision is to the
25 board. The draft rhetoric in this plan which you have
26 read to me is prepared draft for the board's adoption.
27 It will determine when it votes what the exact verbiage
28 will be used to address the Commission. But this is a

1 document if adopted --

2 MR. SZYMANSKI: The witness isn't answering my
3 question. I don't know what he is testifying to right
4 now.

5 ALJ MALCOLM: Mr. Fenn --

6 THE WITNESS: I failed to understand. Please,
7 would you explain to me what the question is.

8 MR. SZYMANSKI: If I might I will restate the
9 question.

10 ALJ MALCOLM: I would remind you, Mr. Szymanski,
11 he doesn't represent San Francisco. He represents --

12 MR. SZYMANSKI: I understand that. He is making
13 numerous representations in this draft, and it is on a
14 public website. It is germane to the substance of this
15 rulemaking in terms of what it might mean for how we
16 adopt implementation plans.

17 ALJ MALCOLM: Right. I think that's fine that you
18 ask him questions about the meaning of the document in
19 terms of its substance. I don't know if he is the
20 appropriate person to talk to about what San Francisco
21 intends to do.

22 MR. SZYMANSKI: Well --

23 ALJ MALCOLM: It could be sort of hearsay maybe.
24 We have witnesses for the City of San Francisco here.

25 MR. SZYMANSKI: We will have time with them, I'm
26 sure.

27 The question I am focusing on is not his
28 testimony as to whether or not San Francisco intends to

1 implement a CCA program, but whether he can state that
2 San Francisco will implement a CCA program. That's my
3 question to Mr. Fenn.

4 THE WITNESS: Can I state that it will? Yes, I
5 can. But you are asking me if I am right or wrong. You
6 will to have answer that question.

7 MR. SZYMANSKI: We can move on.

8 ALJ MALCOLM: Thank you.

9 MR. SZYMANSKI: Q In your reply testimony -- I am
10 now moving away from the document we were just
11 discussing and I am in what's been marked as 18-A.

12 At approximately line 15 there is the
13 statement: Given that one utility, SDG&E, continues to
14 maintain that CCA will not occur within its service
15 territory. Then it goes on.

16 Do you see that text.

17 A We are on page 3?

18 Q No. Page 12 of the reply testimony. Sorry.

19 A Yes. Which line?

20 Q It is line 15-and-a-half, actually. It
21 begins: Given that one utility, SDG&E, and the sentence
22 continues on.

23 A Yes.

24 Q Can you tell me when or where SDG&E has
25 maintained that CCA will not occur within its service
26 territory?

27 A In the Rulemaking 04-04-003.

28 Q And what did SDG&E do or say that is the basis

1 for your assertion that SDG&E has maintained as you say
2 here?

3 A It has forecasted no losses of load from CCA
4 within the service territory despite the adoption of an
5 ordinance by Chula Vista within its service territory
6 declaring its intent to implement and to depart.

7 Q Are you able to tell the Commission and SDG&E
8 right here today that it is absolutely certain -- that
9 you are absolutely certain that CCA will occur within
10 SDG&E's service territory because of the ordinance Chula
11 Vista has passed?

12 A No.

13 MR. SZYMANSKI: That's all I have, your Honor.

14 ALJ MALCOLM: Thank you, Mr. Szymanski.

15 MR. MONTOYA: Your Honor, I have a couple
16 questions based on the questioning that was asked, if
17 you can indulge me. I promise I will not take a long
18 time.

19 ALJ MALCOLM: Okay.

20 CROSS-EXAMINATION

21 BY MR. MONTOYA:

22 Q Good afternoon, sir.

23 A Good afternoon.

24 Q You indicated in response to an earlier
25 question regarding resource adequacy that you believe
26 that jurisdiction on that topic vis-a-vis CCAs is
27 limited to the CEC; is that correct?

28 A Yes.

1 Q What authority do you base that on or what
2 statute are you referring to?

3 A My understanding is that is a decision -- that
4 the resource adequacy requirement for LSEs places the
5 CEC in the role of receiving resource adequacy
6 demonstrations from LSEs.

7 Q So does the CEC have jurisdiction to penalize
8 the CCA if it fails to meet its resource adequacy
9 requirements?

10 A I am afraid I can't answer that question.

11 Q You also alluded to in your earlier response
12 to a division of responsibility between the CCA and
13 ESPs. Do you recall that?

14 A Yes, I do.

15 Q I am a little -- I am intrigued by this. I am
16 just trying to get clear in my mind how that would work.

17 Are you suggesting that the ESP would be
18 something other than a contractor for the CCA such that
19 the ESP would have direct responsibilities to meet
20 requirements versus those requirements being imposed on
21 the CCA and the CCA being ultimately responsible?

22 A I'm sorry. I lost the question midway. Could
23 you rephrase it.

24 Q Sure. That division of responsibility that
25 you are talking about or your proposal or what you are
26 envisioning, are you suggesting that the ESP would be
27 something other than a contractor or something other
28 than a contractor relationship with the CCA such that

1 one would look to the ESP as being ultimately
2 responsible for some requirement versus the CCA?

3 A My belief is that the CCA holds the
4 determination of such responsibilities. It does so with
5 regard to resource adequacy.

6 I believe it has the option on how it wants --
7 whether it wants to assume the responsibilities of an
8 LSE or whether it wants to delegate. I believe that
9 under 117 -- that is within the December 16th decision
10 and the Rulemaking 04-04-003. And then I believe that
11 under AB 117 that the other major risk component related
12 to what I call contract failure or the involuntary
13 return of customers to the utility, that the statute
14 specifically authorizes or requires that either an ESP
15 or a CCA hold that responsibility.

16 So therefore I consider it to be entirely
17 within the choosing and program design of the CCA to
18 make that determination.

19 Q Are you suggesting the CCA can delegate its
20 ultimate responsibility to an ESP for resource adequacy?
21 In other words, if there is a failure to meet resource
22 adequacy requirements and the Commission is looking or
23 the CEC is looking to hold somebody responsible for that
24 failure, can the CCA throw up its hands and say it is
25 the ESP's fault, look to the ESP?

26 A It can contractually agree with an ESP that
27 the ESP will accept responsibility for the provision --

28 Q But from a regulatory standpoint are you

1 saying the CCA is not responsible for that failure?

2 A What do you mean responsible?

3 Q Somebody has to be responsible ultimately.
4 There is a requirement in the statute or decision that
5 says that resource adequacy requirements will be met or
6 whatever requirement. Someone has to be ultimately
7 responsible if that requirement is met or fails to be
8 met, correct?

9 A Yes, just as someone has to be responsible for
10 the posting of the bond and demonstration of insurance,
11 but it is the option of the CCA to decide how it wants
12 to handle that. That is what I'm saying.

13 Q So you are saying the CCA can tell the
14 Commission look to the ESP, don't blame us?

15 A Well, it would be in a contract with the ESP.
16 So I don't know if it would tell the Commission
17 anything. But it could contract with an ESP to assume
18 that responsibility.

19 Q That is what I am trying to understand. So
20 does the Commission go to the CCA and say you failed to
21 meet your responsibility and then it is up to the CCA to
22 then look to its contractor to meet its contractual
23 responsibilities, is that what you're suggesting?

24 ALJ MALCOLM: I think we are getting into some
25 legal stuff here that this witness isn't here to testify
26 to.

27 MR. MONTROYA: Your Honor, I think this is pretty
28 fundamental to understand from a regulatory standpoint

1 whether the witness is suggesting that under his
2 proposal somebody else is responsible to meet
3 requirements than the CCA.

4 Can the CCA essentially delegate under his
5 proposal responsibilities, statutory responsibilities or
6 responsibilities imposed by the Commission? Is it his
7 proposal that the ESP is ultimately responsible, or it
8 is the CCA?

9 In other words, I am just trying to get to are
10 we looking at a glorified ESP setup where it is really
11 the ESP doing everything and the ESP that is responsible
12 with just a local government overlay, or is this really
13 a CCA -- something different than an ESP DA?

14 MR. BUCHSBAUM: Could I clarify because I started
15 this questioning?

16 ALJ MALCOLM: Yes, you did.

17 MR. MONTOYA: I'm asking the witness.

18 MR. BUCHSBAUM: The question that I was trying to
19 drive at is is this a situation that you would get, for
20 example, when someone has an indemnification. They are
21 primarily liable. They can have a contract and do
22 whatever they want to get reimbursements, but the
23 primary liability itself still sits with whoever has the
24 primary liabilities.

25 For example, a company sells a -- a store
26 sells a defective product. They might be liable for
27 that primarily, but they will have an indemnification
28 from the manufacturer. The issue is what happens if the

1 manufacturer goes away, is that store still liable?

2 And I think it is a fair question to ask
3 without regard to the legality as who is primarily
4 liable here.

5 ALJ MALCOLM: As long as you are asking him what
6 he is proposing, to clarify what he is proposing and not
7 whether it is legal, I don't care.

8 MR. MONTOYA: Q I am asking specifically what,
9 under your proposal, how this is going to work. You
10 don't have to use the term liabilities. Who is
11 responsible? Is the CCA ultimately responsible for all
12 the requirements that will be imposed on CCAs, or are
13 you suggesting that the CEC, the Commission or the
14 utilities or whomever it might be, under such situation
15 shall look to the ESPs as being ultimately responsible?

16 A I am not an attorney, so when you say who is
17 responsible I am wondering to whom -- you mean to the
18 Commission, who is answerable to the Commission, or who
19 is responsible legally in court for the price of power?

20 Q Let's just focus on resource adequacy. We
21 could also talk about RPS obligations and anything else
22 we are discussing in this hearing. But again, are those
23 responsibilities, the responsibilities of the CCA, are
24 you suggesting that the CCA can delegate that and say to
25 the other interested parties, the Commission, the CEC,
26 the utility, that they should look to the ESP and not
27 the CCA to fulfill those requirements?

28 A No. I would say the Commission's relationship

1 is to the CCA and the CCA is to the Commission.]

2 What I am saying is that the ESP has within
3 its own discretion the right to contract with ESPs in
4 such manner that they ultimately are legally responsible
5 even though the CCA is directly answerable within its
6 relationship to the Commission under statute.

7 Q Okay.

8 ALJ MALCOLM: Or in the civil courts --

9 THE WITNESS: Yeah, other courts. I'm just
10 saying -- in this section I'm talking about protecting
11 the option of a -- which was referred to on page 12 of
12 the reply testimony -- protecting the option of the CCA
13 to contract in that manner so that it's not required to
14 assume the risks.

15 MR. MONTROYA: Q So you're talking about a
16 contractual relationship between the CCA and the ESP?

17 A Yes.

18 Q That's very helpful. Thank you, sir.

19 One last question. You indicated that for the
20 City of San Francisco they submitted their draft
21 implementation plan to LAFCO; is that correct?

22 A I'm sorry, who did?

23 Q The City and County of San Francisco, that
24 they submitted their draft implementation plan to LAFCO;
25 isn't that what you said?

26 A Yes. The SF PUC didn't submit it, because it
27 wasn't submitted for adoption; but they entered -- they
28 presented their draft plan, just as I presented a draft

1 plan to the LAFCO.

2 Q You're way ahead of me here. Actually, you're
3 anticipating where I was going with the next question.

4 When you say "they submitted," what -- what
5 brought that about? Was there some requirement that
6 LAFCO imposed?

7 ALJ MALCOLM: Can you ask these questions of the
8 City of San Francisco?

9 I'm sorry to interrupt you, but I don't know
10 why he would be qualified to answer these questions on
11 behalf of the City about their plan.

12 MR. MONTOYA: He testified to that fact.

13 And if you were not involved in that process
14 at all, then --

15 ALJ MALCOLM: Well, is this for purposes of
16 impeachment because --

17 MR. MONTOYA: Oh, no. I'm not trying to -- I'm
18 just trying to understand what role LAFCO has in
19 implementation plans.

20 MR. COMO: Your Honor, I can stipulate that an
21 ordinance of the City and County of San Francisco
22 required the departments to prepare the plan to submit
23 it to LAFCO.

24 ALJ MALCOLM: All right. Okay.

25 MR. MONTOYA: Well, I don't have any question of
26 counsel.

27 I can ask their witnesses. That's fine. And
28 I wasn't trying to take him down another path. I was

1 simply trying to follow up, but that helps.

2 ALJ MALCOLM: Okay. Did you have questions of his
3 proposal before LAFCO?

4 MR. MONTOYA: No. That'll be fine, your Honor.
5 No further questions.

6 ALJ MALCOLM: All right. Thanks.

7 Mr. Fenn -- well, you do have a lawyer sort
8 of.

9 Is there any redirect.

10 MR. HUARD: I'm a lawyer actually, but not his.

11 (Laughter)

12 MR. HUARD: The only thing, Mr. Fenn, is there
13 anything that you were requested by way of questioning
14 today that you would like clarify at this point?

15 THE WITNESS: Nothing.

16 MR. SZYMANSKI: I -- never mind. Never mind.

17 MR. HUARD: He said no, Paul.

18 MR. SZYMANSKI: That's right. That's why I said
19 never mind.

20 ALJ MALCOLM: Then we're in recess until tomorrow
21 morning at --

22 MR. HUARD: Your Honor, can I move the admission
23 into evidence of Exhibits 17-A, 18-A and 19-A at this
24 point?

25 ALJ MALCOLM: Yeah. We didn't mark the other
26 Local Power exhibits actually. We can do that right now
27 if you like.

28 MR. SZYMANSKI: Your Honor, I don't believe that

1 utilities have marked and entered their testimonies.

2 MR. MONTOYA: We haven't finished everybody yet.

3 ALJ MALCOLM: Okay. We will wait on that.

4 All right. Then let's mark as exhibits -- and
5 Mr. Fenn, you can correct me if I get this wrong.

6 THE WITNESS: Okay.

7 ALJ MALCOLM: The reply testimony of Mr. Patrick
8 as Exhibit 20-A.

9 MR. MONTOYA: What did you say, I'm sorry?

10 ALJ MALCOLM: 20-A, Mr. Patrick's reply.

11 (Exhibit No. 20-A was marked for
12 identification.)

13 ALJ MALCOLM: 21-A, Mr. Freehling's reply.

14 (Exhibit No. 21-A was marked for
15 identification.)

16 ALJ MALCOLM: And 22-A, Mr. Freehling's rebuttal.

17 (Exhibit No. 22-A was marked for
18 identification.)

19 ALJ MALCOLM: And is that all of their testimony?

20 THE WITNESS: Yes, your Honor.

21 ALJ MALCOLM: And would you like to move those
22 into the record?

23 THE WITNESS: Yes, your Honor, I would.

24 ALJ MALCOLM: There is no questions for these
25 witnesses.

26 All right. We will move Exhibits 17-A through
27 22-A into the record.

28 (Exhibits No. 17-A through 22-A
were received into evidence.)

1
2 ALJ MALCOLM: And we are adjourned until
3 9:00 o'clock tomorrow morning.

4 (Whereupon, at the hour of 4:07 p.m.,
5 this matter having been continued to
6 9:00 a.m., June 1, 2005, at
7 San Francisco, California, the Commission
8 then adjourned.)

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